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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV04–916/917–4 FIR]

Nectarines and Peaches Grown in California; Decreased Assessment Rates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that decreased the assessment rates established for the Nectarine Administrative Committee and the Peach Commodity Committee (committees) for the 2004–05 and subsequent fiscal periods. The Nectarine Administrative Committee (NAC) decreased its assessment rate from $0.20 to $0.195 per 25-pound container or container equivalent of nectarines handled. The Peach Commodity Committee (PCC) decreased its assessment rate from $0.20 to $0.19 per 25-pound container or container equivalent of peaches handled. The committees locally administer the marketing orders that regulate the handling of nectarines and peaches grown in California. Authorization to assess nectarine and peach handlers enables the committees to incur expenses that are reasonable and necessary to administer the programs. The fiscal periods run from March 1 through the last day of February. The assessment rates will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective December 27, 2004.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Program Analyst, and/or Rose Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement Nos. 85 and 124 and Order Nos. 916 and 917, both as amended (7 CFR parts 916 and 917), regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the ''orders.'' The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing orders now in effect, California nectarine and peach handlers are subject to assessments. Funds to administer the orders are derived from such assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable nectarines and peaches beginning on March 1, 2004, and continue until amended, suspended, or terminated. This 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 USDA 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. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA 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 to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the action that decreased the assessment rates established for the NAC for the 2004–05 and subsequent fiscal periods from $0.20 to $0.195 per 25-pound container or container equivalent of nectarines and for the PCC for the 2004–05 and subsequent fiscal periods from $0.20 to $0.19 per 25-pound container or container equivalent of peaches.

The nectarine and peach marketing orders provide authority for the committees, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the programs. The members of the NAC and PCC are producers of California nectarines and peaches, respectively. They are familiar with the committees' needs, and with the costs for goods and services in their local area and are, thus, in a position to formulate appropriate budgets and assessment rates. The assessment rates are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

NAC Assessment and Expenses

The NAC recommended, for the 2004–05 fiscal period, and USDA approved, an assessment rate of $0.195 that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other information available to USDA.

The NAC met on April 28, 2004, and unanimously recommended 2004–05 fiscal period expenditures of $5,162,866 and an assessment rate of $0.195 per 25-pound container or container equivalent of nectarines. In comparison, last year's expenditures were initially budgeted at $4,173,438. The assessment rate of

$0.195 is $0.005 lower than the rate previously in effect.

After the 2003–04 fiscal period budget was formulated and recommended to USDA in May 2003, the committee received one Federal and two State grants which affected both committee income and expenditures. The NAC also used reserve funds to conduct research on the development of a commercial nectarine beverage. The NAC subsequently unanimously recommended an amended budget for the 2003–04 fiscal period. Under this amended budget, the Federal grant of $533,921 and a State grant of $200,557 were applied to the export market development program, and a State grant of $3,667 was applied to the research program, along with $45,000 of reserve funds.

The assessment rate decrease for the 2004–05 fiscal period was recommended because excess funds from the 2003–04 fiscal period totaling $786,521 were carried into 2004–05. This was substantially higher than what the NAC deemed satisfactory. Moreover, the 2004 nectarine crop was expected to be larger than last year's crop. The lower assessment rate also addressed the needs of nectarine growers and handlers who have been affected by low commodity prices for the last few years.

Total income received for the 2004–05 fiscal period is projected to be approximately $5,800,677. Decreasing the assessment rate from $0.20 to $0.195 per 25-pound container is expected to provide about $4,199,453 in assessment revenue, and along with other income, to allow the NAC to start the 2005 season with about $499,811 in reserve funds.

The major expenditures recommended by the NAC for the 2004–05 fiscal period include $219,872 for salaries and benefits, $146,613 for general expenses and industry activities, $1,153,676 for inspection, $208,568 for research, and $3,161,852 for domestic and export market development programs.

Budgeted expenses for these items in the 2003–04 fiscal period were initially estimated to be $226,121 for salaries and benefits, $142,612 for general expenses and industry activities, $1,210,220 for inspection, $138,929 for research, and $2,263,061 for domestic and export market development programs.

The major expenditures under the amended 2003–04 fiscal period budget include $226,121 for salaries and benefits, $142,612 for general expenses and industry activities, $1,210,220 for inspection, $187,596 for research, and $2,997,539 for domestic and export market development programs.

The 2004–05 fiscal period NAC assessment rate was derived after considering the total NAC expenses of $5,162,866; the initial estimated assessable nectarines of 22,245,000 twenty-five-pound containers or container equivalents; the estimated income from other sources, such as interest and grants; and the need for an adequate financial reserve to carry the NAC into the 2005 season. The committee has determined that a carry-in of $400,000 is historically necessary to meet its obligations in the early part of each season, before handler assessments are billed and received. To meet these goals, the NAC recommended an assessment rate of $0.195 per 25-pound container or container equivalent. According to the committee, that assessment rate will result in an adequate carry-in, while maintaining reserves within the maximum permitted by the order (approximately one year's expenses; § 916.42).

PCC Assessment and Expenses

The PCC recommended, for the 2004–05 fiscal period, and USDA approved, an assessment rate of $0.19 that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other information available to USDA.

The PCC also met on April 28, 2004, and recommended 2004–05 fiscal period expenditures of $5,178,002 and an assessment rate of $0.19 per 25-pound container or container equivalent of peaches. In comparison, last year's expenditures were initially budgeted at $4,086,316. The assessment rate of $0.19 is $0.01 lower than the rate previously in effect.

After the 2003–04 fiscal period budget was formulated and recommended to USDA in May 2003, the PCC received one Federal and two State grants which affected both committee income and expenditures. The committee subsequently unanimously recommended an amended budget for the 2003–04 fiscal period on June 23, 2004. Under this amended budget, the Federal grant of $488,845 and a State grant of $149,667 were applied to the export market development program, and a State grant of $3,667 was applied to the cultural research program.

The decrease for the 2004–05 fiscal period was recommended because excess funds from 2003–04 totaling $915,375 were carried into the 2004–05 fiscal period. This is substantially higher than needed by the PCC to cover early season expenses. In addition, the 2004 peach crop was expected to be higher than last year's crop. The lower assessment rate also addressed the needs of peach growers and handlers who have been affected by low commodity prices for the last few years.

Total income received for the 2004–05 fiscal period was projected to be approximately $5,883,385. Decreasing the assessment rate from $0.20 to $0.19 per 25-pound container was expected to provide about $4,153,654 assessment revenue, and along with other income, to allow the PCC to start the 2005 season with about $567,383 in reserve funds.

The major expenditures recommended by the PCC for the 2004–05 fiscal period include $219,872 for salaries and benefits, $148,598 for general expenses and industry activities, $1,240,520 for inspection, $208,570 for research, and $3,188,457 for domestic and export market development programs.

Budgeted expenditures for these items in the 2003–04 fiscal period were initially estimated to be $226,121 for salaries and benefits, $144,743 for general expenses and industry activities, $1,173,480 for inspection, $138,930 for research, and $2,211,346 for domestic and export market development programs.

The major expenditures under the amended budget for 2003–04 fiscal period include $226,121 for salaries and benefits, $144,743 for general expenses and industry activities, $1,173,480 for inspection, $142,597 for research, and $2,849,858 for domestic and export market development programs.

The 2004–05 fiscal period PCC assessment rate was derived after considering the total PCC expenses of $5,178,002; the estimated assessable peaches of 22,601,000 twenty-five-pound container or container equivalents; the estimated income from other sources, such as interest and grants; and the need for an adequate financial reserve to carry the PCC into the 2005 season. The committee has determined that a carry-in of $500,000 is historically necessary to meet its obligations in the early part of each season, before handler assessments are billed and received.

To meet these goals, the PCC recommended an assessment rate of $0.19 per 25-pound container or container equivalent. According to the committee, that assessment rate will result in an adequate carry-in, while maintaining reserves within the maximum permitted by the order (one year's expenses; § 917.38).

Continuance of Assessment Rates

The assessment rates will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committees or other available information.

Although these assessment rates are effective for an indefinite period, the committees will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rates. The dates and times of committee meetings are available from the committees' website or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate the committees' recommendations and other available information to determine whether modification of the assessment rate for each committee is needed. Further rulemaking will be undertaken as necessary. The committee's 2004–05 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

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

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.

Industry Information

There are approximately 250 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. The Small Business Administration [13 CFR 121.201] defines small agricultural service firms as those whose annual receipts are less than $5,000,000. The Small Business Administration also defines small agricultural producers as those having annual receipts of less than $750,000. A majority of these handlers and producers may be classified as small entities.

The committees' staff has estimated that there are less than 20 packers in the industry who could be defined as other than small entities. In the 2003 season, the average handler price received was $7.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 714,286 containers to have annual receipts of $5,000,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2003 season, the committees' staff estimates that small packers represent approximately 94 percent of all the packers within the industry.

The committees' staff has also estimated that less than 20 percent of the producers in the industry could be defined as other than small entities. In the 2003 season, the average producer price received was $4.00 per container or container equivalent for nectarines and peaches. A producer would have to produce at least 187,500 containers of nectarines and peaches to have annual receipts of $750,000. Given data maintained by the committees' staff and the average producer price received during the 2003 season, the committees' staff estimates that small producers represent more than 80 percent of the producers within the industry.

The nectarine and peach marketing orders provide authority for the committees, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the programs. The members of the NAC and PCC are producers of California nectarines and peaches, respectively.

This rule continues in effect the action that decreased the assessment rates established for the NAC for the 2004–05 and subsequent fiscal periods from $0.20 to $0.195 per 25-pound container or container equivalent of nectarines and for the PCC for the 2004–05 and subsequent fiscal periods from $0.20 to $0.19 per 25-pound container or container equivalent of peaches.

The NAC recommended 2004–05 fiscal period expenditures of $5,162,866 for nectarines and an assessment rate of $0.195 per 25-pound container or container equivalent of nectarines. The assessment rate of $0.195 is $0.005 lower than the previous rate. The PCC recommended expenditures of $5,178,002 for peaches and an assessment rate of $0.19 per 25-pound container or container equivalent of peaches. The assessment rate of $0.19 is $0.01 lower than the previous rate.

Analysis of NAC Budget

The quantity of assessable nectarines for the 2004–05 fiscal period was estimated at 22,245,000 twenty-five-pound container or container equivalents. Thus, the $0.195 rate was expected to provide $4,337,775 in assessment income. Income derived from handler assessments and other sources will be adequate to cover budgeted expenses and permit an adequate reserve.

The NAC met on April 28, 2004, and recommended 2004–05 fiscal period expenditures of $5,162,866 and an assessment rate of $0.195 per 25-pound container or container equivalent of nectarines. In comparison, last year's expenditures were initially budgeted at $4,173,438. The assessment rate of $0.195 is $0.005 lower than the rate previously in effect.

The major expenditures recommended by the NAC for the 2004–05 fiscal period include $219,872 for salaries and benefits, $146,613 for general expenses and industry activities, $1,153,676 for inspection, $208,568 for research, and $3,161,852 for domestic and export market development programs.

Budgeted expenses for these items in the 2003–04 fiscal period were initially estimated to be $226,121 for salaries and benefits, $142,612 for general expenses and industry activities, $1,210,220 for inspection, $138,929 for research, and $2,263,061 for domestic and export market development programs.

After the 2003–04 fiscal period budget was formulated and recommended to USDA in May 2003, the committee received one Federal and two State grants which affected both committee income and expenditures. The NAC also conducted research to test a commercial nectarine drink, using reserve funds. The committee subsequently unanimously recommended an amended budget for the 2003–04 fiscal period. Under this amended budget, the Federal grant of $533,921 and a State grant of $200,557 were applied to the export marketing development program, and a State grant of $3,667 was applied to the research program, along with $45,000 from the committee's reserves for the nectarine drink.

The major expenditures under the 2003–04 fiscal period amended budget include $226,121 for salaries and benefits, $142,612 for general expenses and industry activities, $1,210,220 for inspection, $187,596 for research, and $2,997,539 for domestic and export market development programs.

The lower assessment rate is possible because of the $786,521 in excess funds

carried into the 2004–05 fiscal period. This will provide adequate funds at the beginning of the 2005 season before assessment collections begin. A financial reserve carry-in is desirable because major expense outlays for seasonal promotions and other activities occur before assessments are received.

The 2004–05 fiscal period assessment rate for the NAC was derived after considering the total NAC expenses of $5,162,866; the estimated assessable nectarines of 22,245,000 twenty-five-pound containers or container equivalents; the estimated income from other sources, such as interest and grants; and the need for an adequate financial reserve to carry the NAC into the 2005 season.

To meet this goal, the NAC recommended an assessment rate of $0.195 per 25-pound container or container equivalent. According to the committee, that assessment rate will result in an adequate carry-in, while carrying reserves within the maximum permitted by the order (one year's expenses; § 916.42).

Analysis of PCC Budget

The quantity of assessable peaches for the 2004–05 fiscal period is estimated at 22,601,000 twenty-five-pound containers or container equivalents. Thus, the $0.19 rate should provide $4,294,190 in assessment income. Income derived from handler assessments and other sources will be adequate to cover budgeted expenses and permit a small increase in reserves.

The PCC also met on April 28, 2004, and recommended 2004–05 fiscal period expenditures of $5,178,002 and an assessment rate of $0.19 per 25-pound container or container equivalent of peaches. In comparison, last year's expenditures were initially budgeted at $4,086,316. The assessment rate of $0.19 is $0.01 lower than the rate currently in effect.

The major expenditures recommended by the PCC for the 2004–05 fiscal period include $219,872 for salaries and benefits, $148,598 for general expenses and industry activities, $1,240,520 for inspection, $208,570 for research, and $3,188,457 for domestic and export market development programs.

The major expenditures initially recommended by the PCC for the 2003–04 fiscal period include $226,121 for salaries and benefits, $144,743 for general expenses and industry activities, $1,173,480 for inspection, $138,930 for research, and $2,211,346 for domestic and export market development programs.

After the 2003–04 fiscal period budget was formulated and recommended to USDA in May 2003, the committee received one Federal and two State grants which affected both committee income and expenditures. The committee subsequently unanimously recommended an amended budget for the 2003–04 fiscal period. Under this amended budget, the Federal grant of $488,845 and a State grant of $149,667 were applied to the export market development, and a State grant of $3,667 was applied to the cultural research program.

The major expenditures under the amended budget for 2003–04 fiscal period include $226,121 for salaries and benefits, $144,743 for general expenses and industry activities, $1,173,480 for inspection, $142,597 for research, and $2,849,858 for domestic and export market development programs.

The lower assessment rate is possible because of the carry-in of $915,375 in excess funds from the 2003–04 fiscal period into the 2004–05 fiscal period. This is substantially higher than the PCC needs for early season expenses before assessment collections begin. A financial reserve carry-in of approximately $500,000 is desirable because major expense outlays for seasonal promotions and other activities occur before assessments are received.

The 2004–05 fiscal period assessment rate for the PCC was derived after considering the total PCC expenses of $5,178,002; the estimated assessable peaches of 22,601,000 twenty-five-pound containers or container equivalents; the estimated income from other sources, such as interest and grants; and the need for an adequate financial reserve to carry the PCC into the 2005 season.

To meet this goal, the PCC recommended an assessment rate of $0.19 per 25-pound container or container equivalent. According to the committee, the assessment rate will result in an adequate carry-in, while keeping reserves within the maximum permitted by the order (one year's expenses; § 917.38).

Considerations in Determining Expenses and Assessment Rates

Prior to arriving at these budgets, the committees considered information and recommendations from various sources, including, but not limited to: The Executive Committee, the Research Subcommittee, the International Programs Subcommittee, the Tree Fruit Quality Subcommittee, and the Domestic Promotion Subcommittee.

Each of the committees then reviewed the proposed expenses; the total estimated assessable 25-pound containers or container equivalents; and the estimated income from other sources, such as interest income and grants, prior to recommending a final assessment rate. The NAC decided that an assessment rate of $0.195 per 25-pound container or container equivalent will allow it to meet its 2004–05 fiscal period expenses and carry over an operating reserve of about $499,811 which is in line with the committee's financial needs. The PCC decided that an assessment rate of $0.19 per 25-pound container or container equivalent will allow it to meet its 2004–05 fiscal period expenses and carry over an operating reserve of $567,383, which is in line with the committee's financial needs. The committees then unanimously recommended these rates to USDA.

A review of historical and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2004 crop year for nectarines and peaches could range between $4.00 and $6.00 per 25-pound container or container equivalent. Therefore, the estimated assessment revenue for the 2004–05 fiscal period as a percentage of total grower revenue could range between 4.9 percent and 3.2 percent for nectarines, and 4.7 percent and 3.2 percent for peaches.

This action continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rates reduces the burden on handlers, and consequently may reduce the burden on producers.

In addition, the committees' meetings were widely publicized throughout the California nectarine and peach industries and all interested persons were invited to attend the meetings and participate in the committees' deliberations on all issues. Like all committee meetings, the April 28, 2004, meetings were public meetings and entities of all sizes were able to express views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this was published in the **Federal Register** on August 16, 2004 (69 FR 50278). Copies of that rule were also mailed or sent via facsimile to all nectarine and peach handlers. Finally, the interim final rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on October 15, 2004, and no comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/mb.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

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

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

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

PART 916—NECTARINES GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 916 which was published at 69 FR 50278, on August 16, 2004, is adopted as a final rule without change.

PART 917—PEACHES GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 917 which was published at 69 FR 50278, on August 16, 2004 is adopted as a final rule without change.

Dated: November 19, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–26121 Filed 11–24–04; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV04–955–1 IFR]

Vidalia Onions Grown in Georgia; Change in Assessment Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule changes the assessment collection requirements currently prescribed under the Vidalia onion marketing order (order). The order regulates the handling of Vidalia onions grown in Georgia and is administered locally by the Vidalia Onion Committee (Committee). Currently, assessment payments received in the Committee office later than 4 p.m. on the Tuesday following the week in which shipments are made are subject to late payment penalties. This action allows handlers to mail their assessment payments to the Committee office without incurring late payment penalties as long as the payment is postmarked on or before the due date.

DATES: November 27, 2004; comments received by January 25, 2005 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; E-mail: *moab.docketclerk@usda.gov;* or Internet: *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884; telephone: (863) 324–3375, Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 955, (7 CFR part 955), regulating the handling of Vidalia onions grown in Georgia, hereinafter referred to as the ''order.'' The 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.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This 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 USDA 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 USDA 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 to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule changes the assessment collection requirements currently prescribed under the order. This action allows handlers to mail their assessment payments to the Committee office without incurring late payment penalties as long as the payment is postmarked on or before the due date. Assessment payments are due not later than 4 p.m. on the Tuesday following the week in which the shipments were

made. This change was unanimously recommended by the Committee at a meeting held on August 12, 2004.

Section 955.42 of the order provides the authority for the formulation of an annual budget of expenses and the collection of assessments from handlers to administer the order. Section 955.42(f) provides the authority to impose a late payment charge or an interest charge or both, on any handler who fails to pay assessments in a timely manner and the authority to establish the time and rate of such charges. Section 955.142 of the order's rules and regulations outlines the procedures for applying interest charges to delinquent assessments. Both handler reports and assessment payments are to be submitted for each week during the fiscal period in which onions are shipped. Currently, handler reports and assessment payments are due at the Committee office not later than 4 p.m. on the Tuesday immediately following the week in which shipments were made.

This rule modifies the requirements under § 955.142 to provide that as long as assessment payments received by mail are postmarked on or before the due date, the payments will be considered to be timely regardless of when they arrive at the Committee office. This change allows handlers the opportunity to mail their assessment payments without risking late payment penalties. This rule makes no change to the date and time handler reports and assessments are due.

Many handlers have been submitting their weekly reports to the Committee via fax in order to have their reports in on time. Assessment checks are usually prepared at the same time and are hand carried to the Committee office or mailed. Checks mailed to the Committee office are often received several days after the date due. This has subjected handlers to an interest charge of one percent per week, beginning the day immediately after the date the assessments were due.

The production area covered under the order encompasses all or parts of twenty counties in Georgia. It is not always cost effective to drive the distance to the Committee office to hand deliver the assessment check to ensure it makes it there on time. Depending on their location in the production area, handlers can be more than 100 miles from the Committee office. Even if the handler is within 20 miles of the Committee office, considering the costs involved, using the mail still represents the most effective method of delivering assessment payments.

In its discussion of this issue, the Committee agreed that handlers should have the option to pay their assessments on time by the use of mail. If a check is postmarked by the required date, the Committee believes that handler should be viewed as paying their assessments in a timely manner.

Therefore, the Committee unanimously voted to change the assessment collection requirements so that assessments received that are postmarked on or before the date they are due will be considered as meeting the deadline and will not be subject to late payment charges.

Initial Regulatory Flexibility Analysis

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

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 145 producers of Vidalia onions in the production area and approximately 110 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms, which include handlers, are defined as those whose annual receipts are less than $5,000,000.

Based on information from the Georgia Agricultural Statistical Service and Committee data, around 90 percent of Vidalia onion handlers ship under $5,000,000 worth of onions on an annual basis. In addition, based on acreage, production, grower prices reported by the National Agricultural Statistics Service, and the total number of Vidalia onion growers, the average annual grower revenue is approximately $489,000. In view of the foregoing, it can be concluded that the majority of handlers and producers of Vidalia onions may be classified as small entities.

This rule changes the assessment collection requirements currently prescribed under the order. This action allows handlers to mail their assessment payments to the Committee office without incurring late payment charges as long as the payment is postmarked on or before the due date. Assessment payments are due in the Committee office or are to be postmarked by the Tuesday following the week in which the shipments were made. This rule revises the provisions of § 955.142 of the rules and regulations outlining the procedures for applying interest charges to delinquent assessments. Authority for this action is provided for in § 955.42 of the order. This change was unanimously recommended by the Committee at a meeting held on August 12, 2004.

This rule will not result in any additional costs for the handler or the grower. The purpose of this rule is to make it easier for the handler to submit their assessment payments using the mail without having to risk incurring additional costs and interest charges. For many handlers living a long distance from the Committee office, this will save them the time and costs associated with driving into the Committee office in order to pay their assessments on a timely basis. Having better access to the mail for their payment method will provide many handlers with a more cost-effective option. Thus, it is expected that this option will result in an overall cost savings. The savings will be available to all handlers, regardless of size. Also, as the vast majority of handlers are also growers, this action will have a like benefit for both large and small growers.

The Committee did consider the option of making no change in the current regulation. However, Committee members believe that handlers also should be able to mail their assessments in a timely manner. Therefore, this option was rejected.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large Vidalia onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee meeting was widely publicized throughout the Vidalia onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the August 12, 2004, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on a change to the assessment collection requirements currently prescribed under the Vidalia onion marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final 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 rule until 30 days after publication in the **Federal Register** because: (1) This action represents a relaxation in the regulations currently in effect; (2) the Committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (3) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 955

Onions, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 955 is amended as follows:

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

■ 1. The authority citation for 7 CFR part 955 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 955.142 is amended by revising the second sentence to read as follows:

§ 955.142 Delinquent assessments.

* * * Each such assessment shall be paid to the Committee not later than 4 p.m. on the Tuesday immediately following the week in which the shipments were made, or if the assessment is sent by mail, it must be postmarked on or before the Tuesday immediately following the week in which the shipments were made. * * *

Dated: November 19, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–26122 Filed 11–24–04; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 979

[Docket No. FV05–979–1 IFR]

Melons Grown in South Texas; Temporary Suspension of Handling and Assessment Collection Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule suspends, for the 2004–05 fiscal period, the minimum grade, quality, maturity, container, pack, inspection, assessment collection, and other related requirements currently prescribed under the South Texas melon (cantaloupes and honeydews) marketing order (order). It also suspends reporting requirements, except for the acreage planting reports, which will continue to be required during the suspension period. The order regulates the handling of melons grown in South Texas and is administered locally by the South Texas Melon Committee (Committee). This rule will reduce handler costs while the industry evaluates whether the marketing order should be continued.

DATES: Effective November 27, 2004. Comments received by January 25, 2005 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; E-mail: *moab.docketclerk@usda.gov;* or Internet: *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Texas Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; telephone: (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 156 and Order No. 979 (7 CFR part 979), regulating the handling of melons grown in South Texas, hereinafter referred to as the ''order.'' The 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.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This 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 USDA 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 USDA 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 to review USDA's ruling on

the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule suspends, for the remainder of the 2004–05 fiscal period, the minimum grade, quality, maturity, container, pack, inspection, and other related requirements currently prescribed under the South Texas melon order. For the purpose of this rule, these requirements are referred to as handling requirements. It also suspends the assessment collection and all reporting requirements, with the exception of the acreage planting reports, which will continue to be required during the suspension period. This rule will reduce industry expenses, while the industry evaluates whether the marketing order should be continued.

Section 979.52 of the order provides authority for grade, size, maturity, quality, and pack regulations for any variety of melons grown in the production area during any period. Section 979.52 also authorizes the modification, suspension, or termination of regulations issued under the order. Authority to terminate or suspend provisions of the order is specified in § 979.84.

Section 979.60 provides that whenever melons are regulated pursuant to § 979.52, such melons must be inspected by the Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations. The cost of such inspection and certification is borne by handlers.

Under the order, fresh market shipments of South Texas melons are required to be inspected and are subject to minimum grade, quality, maturity, and container and pack requirements. Section 979.304 Handling regulation (7 CFR part 979.304) states that no handler shall handle cantaloupes grown in the production area unless such cantaloupes meet the requirements specified for U.S. Commercial grade or better, except that not more than 8 percent serious damage including not more than 5 percent decay will be permitted. Honeydew melons must also meet the requirements U.S. Commercial grade except that not more than 20 percent serious damage may be allowed including not more than 10 percent for melons affected by decay. In addition, the combined juice from the edible portion of a sample of honeydews selected at random shall contain not less than 8 percent soluble solids as determined by an approved hand refractometer. Individual containers of honeydew melons may contain no less than 25 percent U.S. Commercial grade or better quality. Individual containers of cantaloupe and honeydew melons may contain not more than double the specified lot tolerance for scorable defects.

The order's container and pack requirements are also specified in § 979.304. Cantaloupes and honeydew melons must be packed in fiberboard cartons of specified dimensions. Each carton must be marked to indicate the count; the name, address, and zip code of the shipper; the name of the product; and the words ''Produce of U.S.A.'' or ''Product of U.S.A.'' Additionally, if the carton is not clean and bright in appearance without marks, stains, or other evidence of previous use, the carton must be marked with the words ''USED BOX''. Honeydew melons may also be packed in bulk containers with specified dimensions.

Section 979.304 further includes a minimum quantity exemption of 120 pounds per day, and reporting and safeguard requirements for special purpose and experimental shipments. Related provisions appear in the regulations in § 979.106 *Registered handlers;* § 979.152 *Handling of culls;* and § 979.155 *Safeguards.*

The Committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements that have been issued on a continuing basis for South Texas melons. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA reviews Committee recommendations and information submitted by the Committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

At its September 16, 2004, meeting, the Committee unanimously recommended suspending, for the 2004–2005 fiscal period, the handling, assessment collection, and all reporting requirements, except for the acreage planting reporting requirement. The 2004–05 fiscal period began October 1, 2004, and ends September 30, 2005.

The objective of the handling and inspection requirements is to ensure that only acceptable quality cantaloupe and honeydew melons enter fresh market channels, thereby ensuring consumer satisfaction, increasing sales, and improving returns to growers. While the industry continues to believe that quality is an important factor in maintaining sales, the Committee believes that the cost of inspection and certification (mandated when minimum requirements are in effect) may exceed the benefits derived, especially in view of reduced melon acreage and yields in recent years.

The South Texas cantaloupe and honeydew melon industry has been shrinking due to the inability to provide dependable supplies because of adverse weather conditions, a lack of success in breeding improved quality melons buyers desire, and intense foreign and domestic competition. South Texas historically had enjoyed a marketing window of approximately six weeks beginning about May 1 each season. That window has steadily eroded in recent years due to strong competition and quality problems with Texas melons. As a result, acreage has decreased dramatically from a high of 27,463 acres in 1987 to 4,780 in 2004. The number of producers and handlers also has declined.

The Committee recommended suspending the regulations and assessment collections for one fiscal period in hopes that new plants might be developed and help revive the industry. Some in the industry believe that the order is no longer needed. The suspensions are designed to decrease handler costs, while the industry evaluates whether the marketing order should be continued.

Underlying economics for the South Texas melon industry do not justify continuing the regulations for 2004–05. Too little revenue can be generated for an effective marketing and promotion program, and buyer demands have superseded the regulations in dictating quality requirements. Buyers have been requesting better quality melons.

This rule will enable handlers to ship melons without regard to the minimum grade, quality, maturity, container, pack, inspection, and related requirements for the 2004–2005 fiscal period. It will decrease industry expenses associated with inspection and assessments. This rule will not restrict handlers from seeking inspection on a voluntary basis.

Consistent with the temporary suspension of § 979.304, this rule also suspends § 979.106, § 979.152, and § 979.155 of the rules and regulations in effect under the order for the 2004–2005. Section 979.106 provides for the registration of handlers, § 979.152 details procedures for the handling of cull melons, and § 979.155 provides safeguard requirements for special purpose shipments and establishes reporting and recordkeeping requirements when such exemptions are in place.

In addition, this rule also suspends § 979.219 requiring that an assessment rate of $0.09 per carton of melons be collected from South Texas melon

handlers. Consistent with suspension of § 979.219, § 979.112 specifying late payment charges on delinquent assessments is also suspended. Authorization to assess melon handlers enables the Committee to incur expenses that are necessary to administer the marketing order. With the suspension of handling, inspection, and assessment requirements, a limited Committee budget will be needed for program administration and the collection of the acreage planting reports.

For the period of the suspension, the Committee recommended a reduced budget of $70,959 to cover anticipated expenses. Adequate funds to cover these expenses are currently in the Committee's reserves.

Initial Regulatory Flexibility Analysis

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

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 16 handlers of South Texas melons who are subject to regulation under the marketing order and approximately 29 melon growers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural growers are defined as those having annual receipts of less than $750,000.

Most of the handlers are vertically integrated corporations involved in growing, shipping, and marketing melons. For the 2003–04 marketing year, the industry's 16 handlers shipped melons produced on 4,780 acres with the average and median volume handled being 89,012 and 10,655 containers, respectively. In terms of production value, total revenue for the 16 handlers was estimated to be $12,175,919, with the average and median revenues being $760,996 and $91,094, respectively.

The South Texas melon industry is characterized by growers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of melons. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the melon production season is complete. For this reason, typical melon growers and handlers either double-crop melons during other times of the year or produce alternative crops, like onions.

Based on the SBA's definition of small entities, the Committee estimates that all of the 16 handlers regulated by the order would be considered small entities if only their spring melon revenues are considered. However, revenues from other productive enterprises might push a number of these handlers above the $5,000,000 annual receipt threshold. Of the 29 growers within the production area, few have sufficient acreage to generate sales in excess of $750,000; therefore, the majority of growers may be classified as small entities.

At its September 16, 2004, meeting, the Committee unanimously recommended suspending, for the 2004–2005 fiscal period, the handling, assessment collection, and all reporting requirements, except for the acreage planting reporting requirement. The Committee requested that the rule be effective for the 2004–05 fiscal period, which began October 1, 2004, and ends September 30, 2005.

The objective of the handling and inspection requirements is to ensure that only acceptable quality cantaloupe and honeydew melons enter fresh market channels, thereby ensuring consumer satisfaction, increasing sales, and improving returns to growers. While the industry continues to believe that quality is an important factor in maintaining sales, the Committee believes that the cost of inspection and certification (mandated when minimum requirements are in effect) may exceed the benefits derived, especially in view of reduced melon acreage and yields in recent years. This results in reduced melon shipments and reduced assessment income.

The South Texas cantaloupe and honeydew melon industry has been shrinking due to the inability to provide dependable supplies because of adverse weather conditions, a lack of success in breeding improved quality melons buyers desire, and intense foreign and domestic competition. South Texas historically had enjoyed a marketing window of approximately six weeks beginning about May 1 each season. That window has steadily eroded in recent years due to strong competition and quality problems in Texas melons. As a result, acreage has decreased dramatically from a high of 27,463 acres in 1987 to 4,780 in 2004. The number of producers and handlers also has declined. Some in the industry believe that the marketing order is no longer needed.

Underlying economics for the South Texas melon industry do not justify continuing the regulations for 2004–05. Too little assessment revenue can be generated for an effective marketing and promotion program, and buyer demands have superseded the regulations in dictating quality requirements.

This rule will enable handlers to ship melons without regard to the minimum grade, quality, maturity, container, pack, inspection, and related requirements for one fiscal period. It will decrease industry expenses associated with inspection and assessments. This rule will not restrict handlers from seeking inspection on a voluntary basis.

In addition, this rule also suspends § 979.219 requiring that an assessment rate of $0.09 per carton of melons be collected from South Texas melon handlers. Consistent with suspension of § 979.219, § 979.112 specifying late payment charges on delinquent assessments is also suspended. Authorization to assess melon handlers enables the Committee to incur expenses that are necessary to administer the marketing order.

With the suspension of handling, inspection, and assessment requirements, a limited Committee budget will be needed for program administration and collection of acreage planting reports. For the period of the suspension, the Committee recommended a reduced budget of $70,959 to cover anticipated expenses. Adequate funds to cover these expenses are currently in the Committee's reserves.

The Committee anticipates that this rule will not negatively impact small businesses. This rule will suspend minimum grade, quality, maturity, container, pack, inspection, assessment collection, some reporting, and other related requirements. Further, this rule will allow handlers and growers the choice to obtain inspection for melons, as needed, thereby reducing costs for the industry. The total cost of inspection and certification for fresh shipments of South Texas melons during the 2003–04 marketing season was $46,000. These costs will not be incurred during the 2004–2005 season.

The suspension of the assessment collection requirements for the 2004–05 season will also result in some cost savings. Assessment collections during

the 2003–04 season totaled $102,988. Absent the suspension of § 979.219, assessments collected during the 2004–05 season would have been about $292,840.

The Committee considered suspension of the marketing order, but wished to continue receiving data on plantings for a one-year period before deciding whether the order should be continued.

It is possible that the Committee might recommend that the order be terminated after the 2004–2005 season if conditions do not improve. Some Committee members felt that termination was premature, while others felt the order should be immediately eliminated. The Committee recommended the suspension of regulations for one fiscal period as an orderly and reasonable compromise. This will enable the committee to study the impact of suspension, allow the continued collection of data on acreage projections, and minimize disruption if the Committee chooses to recommend termination after the 2004–2005 fiscal period.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements being suspended by this rule were approved previously by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178. Suspension of some of the reporting requirements is expected to reduce the reporting burden on small or large South Texas melon handlers by 6.12 hours, and should further reduce industry expenses. During the suspension period, handlers will not have to file the following forms with the Committee: Application for Registered Handler (1.74 burden hours); Certification for Handling Melons for Processing (0.70 burden hours); Relief or Charity Certification for Handling Melons Which Fail to Meet the South Texas Rules and Regulations (0.35 burden hours); Certificate of Privilege (0.83 burden hours); and Special Purpose Shipment (2.50 hours). This rule will not impose any additional reporting or recordkeeping requirements on either small or large melon handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the melon industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the September 16, 2004, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on suspension of the handling, assessment collection, and some reporting regulations currently prescribed under the South Texas melon marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that the regulations suspended by this interim final rule, as hereinafter set forth, no longer 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 rule until 30 days after publication in the **Federal Register** because: (1) The rule suspends the current handling, assessment collection, some reporting requirements, and related regulations for South Texas melons for the remainder of the 2004–2005 fiscal period; (2) this rule was recommended by the Committee at an open public meeting and all interested persons had an opportunity to express their views and provide input; (3) South Texas melon handlers are aware of this rule and need no additional time to comply with the relaxed requirements; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 979

Marketing agreements, Melons, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 979 is amended as follows:

PART 979—MELONS GROWN IN SOUTH TEXAS

■ 1. The authority citation for 7 CFR part 979 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In Part 979, §§ 979.106, 979.112, 979.152, 979.155, 979.219, and 979.304 are suspended in their entirety effective November 27, 2004, through September 30, 2005.

Dated: November 19, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–26120 Filed 11–24–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131

[Docket No. AO–14–A72, et al.; DA–03–08]

Milk in the Northeast and Other Marketing Areas; Order Amending the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

7 CFR part	Marketing area	AO Nos.
1001	Northeast	AO–14–A72
1005	Appalachian	AO–388–A13
1006	Florida	AO–356–A36
1007	Southeast	AO–366–A42
1030	Upper Midwest	AO–361–A37
1032	Central	AO–313–A46
1033	Mideast	AO–166–A70

7 CFR part	Marketing area	AO Nos.
1124	Pacific Northwest	AO–368–A33
1126	Southwest	AO–231–A66
1131	Arizona-Las Vegas	AO–271–A38

SUMMARY: This document adopts as a final rule order language contained in the final decision published in the **Federal Register** on September 24, 2004, concerning the reclassification of milk used to produce evaporated or sweetened condensed milk in consumer-type packages from Class III to Class IV. These provisions are applicable to all Federal milk marketing orders. More than the required number of producers in each of the 10 Federal orders approved the issuance of the amended orders.

DATES: Effective December 1, 2004.

FOR FURTHER INFORMATION CONTACT: Antoinette M. Carter, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, STOP 0231—Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–3465, e-mail address: *antoinette.carter@usda.gov.*

SUPPLEMENTARY INFORMATION: This administrative rule is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), 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 request modification or exemption from such order by filing with the Department 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. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department 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 Department'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.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees.

For the purposes of determining which dairy farms are ''small businesses,'' the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

During June 2003—the most recent representative period at the time of the hearing—there were a total of 60,096 dairy producers whose milk was pooled under Federal milk orders. Of the total, 56,818 dairy producers—or about 95 percent—were considered small businesses based on the above criteria. During this same period, there were about 1,622 plants associated with Federal milk orders. Specifically, there were approximately 387 fully regulated plants (of which 143 were small businesses), 92 partially regulated plants (of which 41 were small businesses), 44 producer-handlers (of which 23 were considered small businesses), and 108 exempt plants (of which 98 were considered small businesses). Consequently, 950 of the 1,622 plants meet the definition of a small business.

Total pounds of milk pooled under all Federal milk orders was 10.498 billion for June 2003 which represented 73.5 percent of the milk marketed in the United States during June 2003. Of the 10.498 billion pounds of milk pooled under Federal milk orders during June 2003, 1.78 million pounds—or 1.7 percent—was used to produce evaporated milk and sweetened condensed milk products in consumer-type packages. Additionally, during this same period, total pounds of Class I milk pooled under Federal milk orders was 3.475 billion pounds, which represents 82.3 percent of the milk used in Class I products (mainly fluid milk products) that were sold in the United States.

This final rule implements proposals that reclassify milk used to produce evaporated milk in consumer-type packages or sweetened condensed milk in consumer-type packages from Class III to Class IV in all Federal milk orders. This rule is consistent with the Agricultural Agreement Act of 1937 (Act), which authorizes Federal milk marketing orders. The Act specifies that Federal milk orders classify milk ''in accordance with the form for which or purpose for which it is used.''

Currently, the Federal milk order system provides for the uniform classification of milk in provisions that define four classes of use for milk (Class I, Class II, Class III, and Class IV). Each Federal milk order sets minimum prices that processors must pay for milk based on how it is used and computes weighted average or uniform prices that dairy producers receive.

Under the milk classification provisions of all Federal milk orders, Class I consists of those products that are used as beverages (whole milk, low fat milk, skim milk, flavored milk products like chocolate milk, etc.)[1] Class II includes soft or spoonable products such as cottage cheese, sour cream, ice cream, yogurt, and milk that is used in the manufacturing of other food products. Class III includes all skim milk and butterfat used to make hard cheeses—types that may be grated, shredded, or crumbled; cream cheese; other spreadable cheeses; plastic cream; anhydrous milkfat; and butteroil. Class

[1] Federal milk orders do not classify products but instead classify the milk (skim milk and butterfat) disposed of in the form of a product or used to produce a product. This rule references ''Class I products,'' ''Class II products,'' ''Class III products,'' and ''Class IV products'' to simplify the findings and conclusions.

III also consists of evaporated milk and sweetened condensed milk in consumer-type packages. Class IV includes, among other things, butter and any milk product in dried form such as nonfat dry milk.

Evaporated milk and sweetened condensed milk in consumer-type packages are now classified as Class IV because their product characteristics and yields are tied directly to the solids content of the raw milk used to make these products as opposed to the protein content as for Class III products. Like other Class IV products, evaporated milk and sweetened condensed milk in consumer-type packages have a relatively long shelf-life (*i.e.*, the products can be stored for more than one year without refrigeration). These products also may be substituted for other Class IV products (*e.g.*, dry whole milk or nonfat dry milk) and compete over a wide geographic area with products made from non-Federally regulated milk. Additionally, like other Class IV products, evaporated milk and sweetened condensed milk in consumer-type packages are competitive outlets for milk surplus to the Class I needs of the market.

The amendments in this final rule will not have a significant economic impact on dairy producers or handlers associated with Federal milk orders. Since the reclassification of evaporated milk and sweetened condensed milk in consumer-type packages will be uniform in all Federal milk orders, dairy producers and handlers associated with the orders will be subject to the same provisions. The classification change will have only a minimal impact on the price dairy producers receive for their milk due to the small quantity of milk pooled under Federal milk orders that is used to produce evaporated milk or sweetened condensed milk in consumer-type packages. For example, using the Department's production data provided in the hearing record for milk, skim milk, and cream used to produce evaporated milk and sweetened condensed milk in consumer-type packages by handlers regulated under Federal milk orders for the three years of 2000 through 2002, the reclassification of the milk used to produce these products from Class III to Class IV would have affected the statistical uniform price for all Federal milk orders combined by only $0.0117 per hundredweight.

Paperwork Reduction Act

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that these proposed amendments would have no impact on reporting, recordkeeping, or other compliance requirements because they would remain identical to the current requirements. No new forms are proposed and no additional reporting requirements would be necessary.

This action does not require additional information collection that requires clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

Prior Documents in This Proceeding

Notice of Hearing: Issued September 2, 2003; published September 8, 2003 (68 FR 52860).

Correction to Notice of Hearing: Issued October 9, 2003; published October 16, 2003 (68 FR 59554).

Tentative Final Decision: Issued February 27, 2004; published March 2, 2004 (69 FR 9763).

Interim Final Rule: Issued April 19, 2004; published April 23, 2004 (69 FR 21950).

Final Decision: Issued September 20, 2004; published September 24, 2004 (69 FR 57233).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Northeast and other orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to each of the aforesaid orders:

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the order regulating the handling of milk in the respective marketing areas.

Upon the basis of the evidence introduced at such hearing and the record thereof it is found that:

(1) The said orders, as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the orders, as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders, as hereby amended, regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreement upon which a hearing has been held.

(b) Additional Findings. It is necessary in the public interest to make these amendments to the Northeast and other orders effective December 1, 2004. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the aforesaid marketing areas.

The amendments to these orders are known to handlers. The final decision containing the proposed amendments to these orders was issued on September 20, 2004.

The changes that result from these amendments will not require extensive preparation or substantial alteration in the method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making these order amendments effective for milk marketed on or after December 1, 2004.

(c) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the specified marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the Northeast and other orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the orders as hereby amended;

(3) The issuance of the order amending the Northeast and other orders is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the marketing area.

Specifically, this final rule permanently adopts classification of milk use provisions that reclassify milk used to produce evaporated or sweetened condensed milk products in consumer type-packages from Class III to Class IV.

List of Subjects in 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131

Milk marketing orders.

Order Relative to Handling

■ *It is therefore ordered*, that on and after the effective date hereof, the handling of milk in the Northeast and other marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby further amended, as follows:

■ Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131—General Provisions and Milk in the Northeast and other Milk Marketing Areas.

■ The interim final rule amending 7 CFR parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131 which was published at 69 FR 21950 on April 23, 2004, is adopted as a final rule without change.

Dated: November 19, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Serivce.

[FR Doc. 04–26123 Filed 11–24–04; 8:45 am]

BILLING CODE 3410–02–U

FARM CREDIT ADMINISTRATION

12 CFR Parts 613, 614, and 618

RIN 3052–AC06

Eligibility and Scope of Financing; Loan Policies and Operations; General Provisions; Credit and Related Services; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final rule under parts 613, 614, and 618 on July 21, 2004 (69 FR 43511). This final rule amends regulations governing domestic and international lending, certain intra-Farm Credit System consent requirements concerning similar entity participation transactions, provisions of general financing agreements, and related services. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is November 19, 2004.

DATES: The regulation amending 12 CFR parts 613, 614, and 618 published on July 21, 2004 (69 FR 43511), is effective November 19, 2004.

FOR FURTHER INFORMATION CONTACT: Dale Aultman, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434; or James Morris, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

(12 U.S.C. 2252(a)(9) and (10))

Dated: November 19, 2004.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 04–26131 Filed 11–24–04; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–61–AD; Amendment 39–13879 AD 2004–24–03]

RIN 2120–AA64

Airworthiness Directives; Hamilton Sundstrand Power Systems T–62T Series Auxiliary Power Units (APUs)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Hamilton Sundstrand Power Systems Models T–62T–46C12 and T–62T–40C14 (APS 500R) APUs with fuel filter housing assembly, part number (P/N) 4951627, 4951960, or 4952039, installed. This AD requires installation of a bracket to prevent a failed bypass button from protruding beyond the internal o-ring seal. This AD results from reports of leaks caused by cracked bypass buttons that protruded beyond the o-ring seal. We are issuing this AD to prevent a fire or explosion caused by a fuel leak from a failed bypass button on the fuel filter housing.

DATES: This AD becomes effective January 3, 2005. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of January 3, 2005.

ADDRESSES: You can get the service information identified in this AD from Hamilton Sundstrand Technical Publications Department, P.O. Box 7002, Rockford, IL 61125–7002, U.S.A.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Roger Pesuit, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5251, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed airworthiness directive (AD). The proposed AD applies to Hamilton Sundstrand Power Systems Models T–62T–46C12 and T–62T–40C14 (APS 500R) APUs with fuel filter housing assembly, P/N 4951627, 4951960, or 4952039 installed. We published the proposed AD in the **Federal Register** on May 7, 2004 (69 FR 25525). That action proposed to require installation of a bracket to prevent a failed bypass button from protruding beyond the internal o-ring seal.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. *See* **ADDRESSES** for the location.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request To Add Alert Service Bulletin Reference

Two commenters request that for APUs Model T–62T–40C14 (APS 500R),

we add EMBRAER Alert Service Bulletin (ASB) No. 145–49–A027, dated January 6, 2004, as another means of complying with the AD. We do not agree. That ASB does not contain instructions for installing the bracket, but only instructs the operator to use Hamilton Sundstrand ASB No. ASB–4504112–49–22, for installing the bracket. Because of this, we have not incorporated by reference that ASB.

Request To Reference the Latest ASB Revision

One commenter requests that we reference the latest revision of Hamilton Sundstrand ASB No. ASB–4504112–49–22, which is Revision 1, dated January 5, 2004. The commenter states that the original ASB specified a gap dimension of 0.32 inch-to-0.65 inch, which is incorrect and unachievable. ASB Revision 1 corrects the gap dimension to the proper value of 0.50 inch, plus or minus 0.015 inch. Also, ASB Revision 1 increases the recommended compliance threshold from within 400 hours time-in-service (TIS) to within 500 hours TIS.

We agree that the latest ASB Revision should be referenced, which is Revision 2, dated October 4, 2004. The 500 hours TIS threshold is consistent with EMBRAER ASB No. 145–49–A027, dated January 6, 2004. ASB Revision 2 requires, as does this AD, that brackets installed using Hamilton Sundstrand ASB No. ASB–4504112–49–22, Original issue, be inspected one time for proper gap and adjusted if necessary. ASB Revision 2 also introduces as an alternative, the installation of a different part number fuel filter assembly for APU Model T–62–T–40C14, that is designed to prevent bypass button failure. We have added that alternative as optional terminating action for APU Model T–62–T–40C14.

We are allowing previous credit for brackets installed using Hamilton Sundstrand ASB No. ASB–4504112–49–22, Original, dated December 2, 2003, or Revision 1, dated January 5, 2004, before the effective date of this AD. We have incorporated the changes described previously in this AD.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 552 Hamilton Sundstrand APUs of the affected design in the worldwide fleet. We estimate that 448 APUs installed on airplanes of U.S. registry will be affected by this AD. We also estimate that it would take about 1 work hour per APU to perform the actions, and that the average labor rate is $65 per work hour. Required parts will cost about $517 per APU. The manufacturer indicated that they might provide the parts at no cost. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $260,736.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–61–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2004–24–03 Hamilton Sundstrand Power Systems: Amendment 39–13879. Docket No. 2003–NE–61–AD.

Effective Date

(a) This AD becomes effective January 3, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Hamilton Sundstrand Power Systems Models T–62T–46C12 and T–62T–40C14 (APS 500R) auxiliary power units (APUs) with fuel filter housing assemblies, part numbers (P/Ns) 4951627, 4951960, or 4952039, installed. These APUs are installed on, but not limited to, Bombardier DHC–8–400 airplanes and Empresa Brasileira de Aeronautica S.A. (EMBRAER) EMB–135 and –145 series airplanes.

Unsafe Condition

(d) This AD results from reports of leaks caused by cracked bypass buttons that protruded beyond the o-ring seal. We are issuing this AD to prevent a fire or explosion caused by a fuel leak from a failed bypass button on the fuel filter.

Compliance

(e) You are responsible for having the actions required by this AD performed within 500 hours time-in-service or 6 months after the effective date of this AD, whichever occurs earlier, unless the actions have already been done.

Installation of Bracket on APU Model T–62T–46C12

(f) Install a bracket onto the fuel filter housing assembly on APU Model T–62T–46C12. Use 2.A through 2.D of the Accomplishment Instructions of Hamilton Sundstrand Alert Service Bulletin (ASB) No. ASB–4503067–49–9, dated December 2, 2003, to install the bracket.

Installation of Bracket on APU Model T–62T–40C14 (APS 500R)

(g) Install a bracket onto the fuel filter housing assembly on APU Model T–62T–40C14 (APS 500R). Use 2.B. and 2.D.(1) of the Accomplishment Instructions of Hamilton Sundstrand ASB No. ASB–4504112–49–22, Revision 2, dated October 4, 2004, to install the bracket.

Previous Credit

(h) Previous credit is allowed for brackets installed using Hamilton Sundstrand ASB No. ASB–4503067–49–9, dated December 2, 2003, Hamilton Sundstrand ASB No. ASB–4504112–49–22, Original, dated December 2, 2003, or Revision 1, dated January 5, 2004, before the effective date of this AD.

One-Time Inspection for Proper Gap

(i) For brackets previously installed using Hamilton Sundstrand ASB No. ASB–4504112–49–22, Original, dated December 2, 2003, perform a one-time inspection for proper gap and if necessary, adjust the gap between the bracket and bypass button. Use 2.B. and 2.D.(1) of the Accomplishment

Instructions of Hamilton Sundstrand ASB No. ASB–4504112–49–22, Revision 2, dated October 4, 2004 to inspect and adjust the gap.

Optional Terminating Action for APU Model T–62T–40C14 (APS 500R)

(j) For APU Model T–62T–40C14 (APS 500R), installation of a part number fuel filter assembly that is not listed in this AD constitutes optional terminating action to the requirements of this AD.

Alternative Methods of Compliance

(k) The Manager, Los Angeles Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(l) You must use the Alert Service Bulletins listed in Table 1 of this AD to perform the bracket installations required by this AD. The Director of the Federal Register approved the incorporation by reference of the documents listed in Table 1 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from Hamilton Sundstrand Technical Publications Department, P.O. Box 7002, Rockford, IL 61125–7002, U.S.A. You can review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Table 1 follows:

TABLE 1.—INCORPORATION BY REFERENCE

Alert service bulletin No.	Page number(s) shown on the page	Revision level shown on the page	Date shown on the page
Hamilton Sundstrand ASB–4503067–49–9	All	Original	December 2, 2003.
Hamilton Sundstrand ASB–4504112–49–22	All	2	October 4, 2004.

Related Information

(m) None.

Issued in Burlington, Massachusetts, on November 15, 2004.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 04–25792 Filed 11–24–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–23–AD; Amendment 39–13880; AD 2004–24–04]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Corporation (Formerly Allison Engine Company, Allison Gas Turbine Division, and Detroit Diesel Allison) (RRC) Models 250–C30R/3, –C30R/3M, –C47B, and –C47M Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for RRC models 250–C30R/3, –C30R/3M, –C47B, and –C47M turboshaft engines. That AD currently requires initial and repetitive electrical signal inspections of the hydromechanical unit (HMU) Power Lever Angle (PLA) potentiometer. This ad continues to require those inspections and adds replacement of the existing HMU with a new design HMU as a mandatory terminating action to the repetitive inspection requirements. This AD results from the manufacturer releasing a redesigned HMU that has a dual-element potentiometer. We are issuing this AD to prevent uncommanded and sudden changes in engine power.

DATES: This AD becomes effective January 3, 2005. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of January 3, 2005.

ADDRESSES: You can get the service information identified in this AD from Rolls-Royce Corporation, P.O. Box 420, Indianapolis, IN 46206–0420; telephone (317) 230–6400; fax (317) 230–4243.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Khailaa Hosny, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, 2300 East Devon Avenue, Des Plaines, IL 60018–4696; telephone (847) 294–7134; fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to RRC models 250–C30R/3, –C30R/3M, –C47B, and –C47M turboshaft engines. We published the proposed AD in the **Federal Register** on June 9, 2004 (69 FR 32287). That action proposed to require initial and repetitive electrical signal inspections of the HMU PLA potentiometer and replacement of the existing HMU with a new design HMU as a mandatory terminating action to the repetitive inspection requirements.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that 700 engines installed on helicopters of U.S. registry will be affected by this AD. We estimate that it will take about 4 work hours per engine to replace a single-element HMU with a dual-element HMU. We also estimate that 12 percent of the single-element HMUs will fail the required inspection and require replacing the HMU. The average labor rate is $65 per work hour. Required parts cost about $615 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $686,000.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–23–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–13210 (68 FR 38590, June 30, 2003) and by adding a new airworthiness directive, Amendment 39–13880, to read as follows:

2004–24–04 Rolls-Royce Corporation (formerly Allison Engine Company, Allison Gas Turbine Division, and Detroit Diesel Allison): Amendment 39–13880. Docket No. 2003–NE–23–AD. Supersedes AD 2003–13–10, Amendment 39–13210.

Effective Date

(a) This AD becomes effective January 3, 2005.

Affected ADs

(b) This AD supersedes AD 2003–13–10.

Applicability

(c) This AD applies to Rolls-Royce Corporation (formerly Allison Engine Company, Allison Gas Turbine Division, and Detroit Diesel Allison) (RRC) models 250–C30R/3, –C30R/3M, –C47B, and –C47M turboshaft engines that have a hydromechanical unit (HMU) with a part number (P/N) listed in 1.A. Group A of RRC Alert Commercial Engine Bulletins (ACEB) No. CEB A–73–3103, Revision 4, dated December 2, 2003; and No. CEB A–73–6030, Revision 4, dated December 2, 2003. These engines are installed on, but not limited to, Bell OH–58D, Bell Helicopter Textron 407, Boeing AH/MH–6M, and MD Helicopters Inc. 600N helicopters.

Unsafe Condition

(d) This AD results from the manufacturer releasing a redesigned HMU that has a dual-element potentiometer. The actions specified in this AD are intended to prevent uncommanded and sudden changes in engine power.

Compliance

(e) Compliance with this AD is required as indicated, unless already done.

Initial Inspection

(f) Perform an initial electrical signal inspection of the HMU Power Lever Angle (PLA) potentiometer, within 300 flight hours (FH) after the effective date of this AD. Use paragraphs 2.B. through 2.B.(8) and 2.B.(10) of the Accomplishment Instructions of RRC ACEB No. CEB A–73–3103, Revision 4, dated December 2, 2003; or No. CEB A–73–6030, Revision 4, dated December 2, 2003; to perform the inspection.

(g) Replace the HMU before further flight if the electrical signal inspection result is unacceptable.

Repetitive Inspections

(h) Thereafter, perform repetitive electrical signal inspections of the HMU PLA potentiometer within 300 FH of the last inspection. Use paragraphs 2.B. through 2.B.(8) and 2.B.(10) of the Accomplishment Instructions of RRC ACEB No. CEB A–73–3103, Revision 4, dated December 2, 2003; or No. CEB A–73–6030, Revision 4, dated December 2, 2003; to perform the inspection.

(i) Replace the HMU before further flight if the electrical signal inspection result is unacceptable.

Mandatory Terminating Action

(j) Replace the HMU with an HMU that has a P/N not specified in this AD within 600 FH after the effective date of this AD, or January 31, 2005, whichever occurs earlier. Replacing the HMU with an HMU that has a P/N not specified in this AD terminates the repetitive inspection requirement specified in paragraph (h) of this AD.

Alternative Methods of Compliance

(k) Alternative methods of compliance must be requested in accordance with 14 CFR part 39.19, and must be approved by the Manager, Chicago Aircraft Certification Office, FAA.

Material Incorporated by Reference

(l) You must use the Rolls-Royce Corporation Alert Commercial Engine Bulletins (ACEBs) listed in Table 1 of this AD to perform the inspections required by this AD. The Director of the Federal Register approved the incorporation by reference of the documents listed in Table 1 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from Rolls-Royce Corporation, P.O. Box 420, Indianapolis, IN 46206–0420; telephone (317) 230–6400; fax (317) 230–4243. You can review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Table 1 follows:

TABLE 1.—INCORPORATION BY REFERENCE

Service bulletin	Page number(s) shown on the page	Revision level shown on the page	Date shown on the page
CEB A–73–3103, Total Pages: 20	All	4	December 2, 2003.
CEB A–73–6030, Total Pages: 20	All	4	December 2, 2003.

Related Information

(m) None.

Issued in Burlington, Massachusetts, on November 15, 2004.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 04–25791 Filed 11–24–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–67–AD; Amendment 39–13878; AD 2004–24–02]

RIN 2120–AA64

Airworthiness Directives; Ostmecklenburgische Flugzeugbau GmbH ModelOMF–100–160 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for certain Ostmecklenburgische Flugzeugbau GmbH (OMF) Model OMF–100–160 airplanes. This AD requires you to inspect the outside tube (cage) that supports the main landing gear leg for cracks, repair if cracks are found, and inspect the thickness of the tube if no cracks were found and reinforce the tube as necessary. This AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this AD to detect, correct, and prevent future cracks in the outside tube of the main landing gear leg, which could result in structural failure of the fuselage tubing assembly. This failure could lead to loss of control of the airplane.

DATES: This AD becomes effective on December 28, 2004.

As of December 28, 2004, the Director of the **Federal Register** approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: To get the service information identified in this AD, contact Ostmecklenburgische Flugzeugbau GmbH, Flughafenstrasse, 17039 Trollenhagen, Federal Republic of Germany; telephone: 011 49 395 42560–0; facsimile: 011 49 395 42560–20. To review this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030.

To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov*. The docket number is 2003–CE–67–AD.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, ACE–112, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri, 64106; telephone: (816) 329–4146; facsimile: (816) 329–4149.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain OMF Model OMF–100–160 airplanes. The LBA reports that the manufacturer received a report of cracks in the outside fuselage tube that supports the main landing gear leg. Further investigation revealed that one manufacturer of fuselage tubes used out-of-design dimensions for the tube elements.

What is the potential impact if FAA took no action? Cracks in the outside tube of the main landing gear leg, if not detected, corrected, and prevented, could result in structural failure of the fuselage tubing assembly. This failure could lead to loss of control of the airplane.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain OMF Model OMF–100–160 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 18, 2004, (69 FR 51206). The NPRM proposed to detect, correct, and prevent future cracks in the outside tube of the main landing gear leg. These cracks could result in structural failure of the fuselage tubing assembly and lead to loss of control of the airplane.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in developing this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Changes to 14 CFR Part 39—Effect on the AD

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 11 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the inspections:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
Inspection for cracks—2 workhours est. $65 per hour = $130	N/A	$130	$1,430.
Inspection for inadequate thickness of tubing that supports the main landing gear leg—2 workhours est. $65 per hour = $130.	N/A	130	OMF will cover the cost for the special inspection.

We estimate the following costs to accomplish any necessary repairs that would be required based on the results of these proposed inspections. We have no way of determining the number of airplanes that may need this repair:

Labor cost	Parts cost	Total cost per airplane
85 workhours × $65 per hour = $5,525	None per manufacturer	$5,525

Regulatory Findings

Will this AD impact various entities? We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Will this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''Docket No. 2004–CE–67–AD'' in your request.

This rulemaking is promulgated under the authority in Subtitle VII, Part A, Subpart III, Section 44701, General requirements. Under that section, the FAA is charged with prescribing minimum standards required in the interest of safety for the design of aircraft. This regulation is within the scope of that authority since it corrects an unsafe condition in the design of the aircraft caused by cracks in the outside tube of the main landing gear leg.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2004–24–02 Ostmecklenburgische Flugzeugbau GmbH: Amendment 39–13878; Docket No. 2004–CE–67–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on December 28, 2004.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects Model OMF–100–160 airplanes, serial numbers 0006, 0007, 0012 through 0015, 0017, 0018, 0020, 0021, 0024, 0025, 0028, and 0029; that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of cracks in the fuselage tubing assembly and inadequate thickness of tubing that supports the main landing gear leg. The actions specified in this AD are intended to detect, correct, and prevent future cracks in the tubing for the main landing gear leg, which could result in failure of the fuselage tubing assembly. This failure could lead to loss of control of the airplane.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Inspect the main landing gear leg support for cracks.	Inspect the airplane within 50 hours time-in-service (TIS) after December 28, 2004 (the effective date of this AD).	Inspect following the procedures in OMF Alert Service Bulletin No. 1107/0002, dated September 16, 2003.
(2) If cracks are found during any inspection required in paragraph (e)(1) or (e)(3)(ii) of this AD, obtain repair instructions from the manufacturer through the FAA and incorporate the repair instructions. This repair eliminates the repetitive inspection requirement of this AD.	Repair prior to further flight after the inspection where cracks are found.	Contact an Ostmecklengurgische Flugzeugbau GmbH (OMF) representative at 1–819–377–1177 for repair instructions and incorporate these instructions. Summarize and copy all correspondence and send to FAA at the address specified in paragraph (f) of this AD.
(3) If no cracks are found during the inspection required in paragraph (e)(1) of this AD, do the following: (i) inspect tubing for proper thickness and make any appropriate reinforcements (ii) repetitively inspect main landing gear leg support for cracks	Inspect for tubing thickness of the airplane within 50 hours TIS after the initial inspection required in paragraph (e)(1) of this AD. Reinforce prior to further flight after the inspection required in paragraph (e)(3)(i) of this AD. Repetitively inspect the main landing gear leg support within 50 hours TISafter the initial inspection required by paragraph (e)(1) of this AD and thereafter at intervals not to exceed 50 hours TIS.	Inspect following procedures in OMF Alert Service Bulletin No. 1107/0002, dated September 16, 2003. Reinforce with instructions from the manufacturer. Contact an Ostmecklengurgische Flugzeugbau GmbH (OMF) representative at 1–819–377–1177 for repair instructions and incorporate these instructions. Summarize and copy all correspondence and send to FAA at the address specified in paragraph (f) of this AD.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, FAA. For information on any already approved alternative methods of compliance, contact

Karl Schletzbaum, Aerospace Engineer, ACE–112, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri, 64106; telephone: (816) 329–4146; facsimile: (816) 329–4149.

Is There Other Information That Relates to This Subject?

(g) LBA Airworthiness Directive No. 2003–272, dated October 7, 2003, and OMF Alert Service Bulletin 1107/0002, dated September 16, 2003, pertain to the subject of this AD.

Does This AD Incorporate Any Material by Reference?

(h) You must do the actions required by this AD following the instructions in OMF Aircraft Alert Service Bulletin 1107/0002, dated September 16, 2003. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact Ostmecklenburgische Flugzeugbau GmbH, Flughafenstrasse, 17039 Trollenhagen, Federal Republic of Germany; telephone: 011 49 395 42560–0; facsimile: 011 49 395 42560–20. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov.* The docket number is 2003–CE–67–AD.

Issued in Kansas City, Missouri, on November 15, 2004.

Scott L. Sedgwick,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–25789 Filed 11–24–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–351–AD; Amendment 39–13874; AD 2004–23–19]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain EMBRAER Model EMB–135 and –45 series airplanes. The existing AD currently requires a one-time inspection to detect incorrect wiring of the electrical connectors to the pressure switches and cartridges on the fire extinguisher bottles for the engines and the auxiliary power unit (APU); disconnection and reconnection of the wiring, as necessary; and adjustment of the length of the harnesses on the fire extinguisher bottles to avoid future misconnections. This amendment requires additional adjustment of the length of the harnesses; installation of a color-coded identification system to avoid misconnections during maintenance; and a functional test of the engine fire extinguisher system. This amendment also expands the applicability of the existing AD to include additional airplanes. The actions specified by this AD are intended to prevent the issuance of erroneous commands or the receipt of erroneous information pertaining to the fire extinguisher system for the engines and the APU, which could result in the inability to put out a fire in an engine or in the APU. This action is intended to address the identified unsafe condition.

DATES: Effective January 3, 2005.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 3, 2005.

The incorporation by reference of EMBRAER Service Bulletin 145–26–0009, dated January 26, 2001, as listed in the regulations, was approved previously by the Director of the Federal Register as of June 8, 2001 (66 FR 28646, May 24, 2001).

ADDRESSES: The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2001–10–15, amendment 39–12241 (66 FR 28646, May 24, 2001), which is applicable to certain EMBRAER Model EMB–135 and –145 series airplanes, was published in the **Federal Register** on May 12, 2004 (69 FR 26326). The action proposed to continue to require a one-time inspection to detect incorrect wiring of the electrical connectors to the pressure switches and cartridges on the fire extinguisher bottles for the engines and the auxiliary power unit (APU); disconnection and reconnection of the wiring, as necessary; and adjustment of the length of the harnesses on the fire extinguisher bottles to avoid future misconnections. The action also proposed to require additional adjustment of the length of the harnesses; installation of a color-coded identification system to avoid misconnections during maintenance; and a functional test of the engine fire extinguisher system. The action also proposed to expand the applicability of the existing AD to include additional airplanes.

Comments

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

Request To Extend Compliance Time for Modification

One commenter, the airplane manufacturer, requests that we revise paragraph (c) of the proposed AD to extend the compliance time from 4,000 to 5,000 flight hours for modifying the electrical harnesses and electrical connectors of the engine and APU fire extinguisher system. The commenter states that this would allow operators of affected airplanes to do the modification during a regularly scheduled maintenance visit. The commenter states that this extension would not compromise flight safety because the proposed AD would also require a general visual inspection to detect incorrect wiring of connectors. The compliance time for this general visual inspection is 100 flight hours after June 8, 2001 (the effective date of AD 2001–10–15) for airplanes subject to AD 2001–10–15, and 100 flight hours after the effective date of this AD for airplanes added to the applicability of this AD.

We do not concur. In consultation with the Departmento de Aviacao Civil,

which is the airworthiness authority for Brazil, we have determined that extending the compliance time for the modification is not appropriate, and would not adequately ensure continued flight safety. We have not revised this AD.

Explanation of Editorial Change to Final Rule

We have revised paragraph (d) of this AD to correct typographical errors in two serial numbers.

Conclusion

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

Cost Impact

There are approximately 435 airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 2001–10–15 and continue to be required by this AD take approximately 3 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $84,825, or $195 per airplane.

The new actions that are required by this AD will take approximately 7 work hours per airplane, at an average labor rate of $65 per work hour. Required parts will cost approximately $93 per airplane. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $238,380, or $548 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–12241 (66 FR 28646, May 24, 2001), and by adding a new airworthiness directive (AD), amendment 39–13874, to read as follows:

2004–23–19 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–13874. Docket 2002–NM–351–AD. Supersedes AD 2001–10–15, Amendment 39–12241.

Applicability: Model EMB–135 and –145 series airplanes, as listed in EMBRAER Service Bulletin 145–26–0010, Change 03, dated August 28, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the issuance of erroneous commands or the receipt of erroneous information pertaining to the fire extinguisher system for the engines and auxiliary power unit (APU), which could result in the inability to put out a fire in an engine or in the APU, accomplish the following:

Restatement of the Requirements of AD 2001–10–15

Inspection

(a) For airplanes listed in EMBRAER Service Bulletin 145–26–0009, dated January 26, 2001: Within 100 flight hours after June 8, 2001 (the effective date of AD 2001–10–15, amendment 39–12241), perform a one-time general visual inspection to detect incorrect wiring of electrical connectors to the pressure switches and cartridges on the fire extinguisher bottles for the engines and the APU, in accordance with paragraph 3.D. of the Accomplishment Instructions of EMBRAER Service Bulletin 145–26–0009, dated January 26, 2001; or Change 01, dated June 25, 2001.

Note 1: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(1) If the wiring connections are correct: Prior to further flight, adjust the length of the harnesses to the fire extinguisher bottles, in accordance with the service bulletin.

(2) If the wiring connections are incorrect: Prior to further flight, re-connect them and adjust the length of the harnesses to the fire extinguisher bottles, in accordance with the service bulletin.

New Requirements of This AD

Inspection

(b) For airplanes not subject to paragraph (a) of this AD: Within 100 flight hours after the effective date of this AD, perform a one-time general visual inspection to detect incorrect wiring of electrical connectors to the pressure switches and cartridges on the fire extinguisher bottles for the engines and the APU, in accordance with paragraph 3.D. of the Accomplishment Instructions of EMBRAER Service Bulletin 145–26–0009, Change 01, dated June 25, 2001.

(1) If the wiring connections are correct: Prior to further flight, adjust the length of the harnesses to the fire extinguisher bottles, in accordance with the service bulletin.

(2) If the wiring connections are incorrect: Prior to further flight, re-connect them and adjust the length of the harnesses to the fire extinguisher bottles, in accordance with the service bulletin.

Modifications

(c) For all airplanes: Within 4,000 flight hours after the effective date of this AD, modify the electrical harnesses and electrical connectors of the engine and APU fire extinguisher system, including installing identification sleeves and color-coded identification stickers, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–26–0010, Change 03, dated August 28, 2002.

Parts Installation

(d) As of the effective date of this AD, no person may install on any airplane, engine fire extinguisher bottle part number (P/N) 33600057–1 or P/N 33600057–5, serial number (S/N) 26916D1 through 42300D1 inclusive; and APU fire extinguisher bottles P/N 30100050–1 or P/N 30100050–5, S/N 30209A1 through S/N 38950A1, inclusive; unless color-coded stickers are installed in accordance with paragraph (c) of this AD.

Actions Accomplished Per Previous Issues of the Service Bulletin

(e) Actions accomplished prior to the effective date of this AD in accordance with EMBRAER Service Bulletin 145–26–0010, dated June 25, 2001; Change 01, dated January 3, 2002; or Change 02, dated June 5, 2002; are considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance

(f) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(g) Unless otherwise specified in this AD, the actions shall be done in accordance with EMBRAER Service Bulletin 145–26–0009, dated January 26, 2001, or EMBRAER Service Bulletin 145–26–0009, Change 01, dated June 25, 2001; and EMBRAER Service Bulletin 145–26–0010, Change 03, dated August 28, 2002; as applicable.

(1) The incorporation by reference of EMBRAER Service Bulletin 145–26–0009, Change 01, dated June 25, 2001; and EMBRAER Service Bulletin 145–26–0010, Change 03, dated August 28, 2002; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. EMBRAER Service Bulletin 145–26–0010, Change 03, dated August 28, 2002, contains the following effective pages:

Page number	Change level shown on page	Date shown on page
1–3, 8	03	August 28, 2002.
4–7, 9–24, 39–41	Original	June 25, 2001.
25–38	01	January 3, 2002.

(2) The incorporation by reference of EMBRAER Service Bulletin 145–26–0009, dated January 26, 2001, was approved previously by the Director of the Federal Register as of June 8, 2001 (66 FR 28646, May 24, 2001).

(3) Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 2: The subject of this AD is addressed in Brazilian airworthiness directive 2001–09–01R1, dated June 26, 2002.

Effective Date

(h) This amendment becomes effective on January 3, 2005.

Issued in Renton, Washington, on November 10, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–25788 Filed 11–24–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18809; Directorate Identifier 2004–NM–91–AD; Amendment 39–13873; AD 2004–23–18]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Model A319, A320, and A321 series airplanes. This AD requires revising the airplane flight manual (AFM) to prohibit operators from performing CAT 2 or CAT 3 automatic landings or roll-outs at certain airports. This AD also provides for an optional terminating action for the AFM revision. This AD is prompted by data showing that the magnetic variation table installed in the Honeywell inertial reference system (IRS) is obsolete at certain airports. We are issuing this AD to prevent the airplane from departing the runway during a CAT 2 or CAT 3 automatic landing or roll-out, due to magnetic and IRS deviations.

DATES: This AD becomes effective January 3, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of January 3, 2005.

ADDRESSES: For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

You can examine this information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical information:* Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

Plain language information: Marcia Walters, *marcia.walters@faa.gov.*

Examining the Docket

The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with

an AD for certain Airbus Model A319, A320, and A321 series airplanes. The proposed AD was published in the **Federal Register** on August 10, 2004 (69 FR 48426), to require revising the airplane flight manual (AFM) to prohibit operators from performing CAT 2 or CAT 3 automatic landings or roll-outs at certain airports. The proposed AD also provided for an optional terminating action for the AFM revision.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been submitted on the proposed AD. The commenters support the proposed AD.

Conclusion

We have carefully reviewed the available data, including the comments that have been submitted, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

This AD will affect about 242 airplanes of U.S. registry. The AFM revision will take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the required AFM revision for U.S. operators is $15,730, or $65 per airplane.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2004–23–18 Airbus: Amendment 39–13873. Docket No. FAA–2004–18809; Directorate Identifier 2004–NM–91–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 3, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model A319, A320, and A321 series airplanes; certificated in any category; equipped with a Honeywell air data inertial reference unit (ADIRU) having any part number (P/N) listed in Table 1 of this AD; on which Airbus Modification 30652, 30941, or 30942 has not been done.

TABLE 1.—HONEYWELL ADIRU P/N

HG1150AC05.
HG1150AC06.
HG2030AC05.
HG2030AC06.
HG2030AC08.
HG2030AC09.
HG2030AD09.

(d) This AD was prompted by data showing that the magnetic variation table installed in the Honeywell inertial reference system (IRS) is obsolete at certain airports. We are issuing this AD to prevent the airplane from departing the runway during a CAT 2 or CAT 3 automatic landing or roll-out, due to magnetic and IRS deviations.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Airplane Flight Manual (AFM) Revision

(f) Within 14 days after the effective date of this AD: Revise the Limitations Section of the Airbus A318/319/320/321 AFM to prohibit operators from performing CAT 2 or CAT 3 automatic landings or roll-outs at certain airports by incorporating Airbus Temporary Revision (TR) 2.05.00/52, dated June 13, 2003, into the AFM, and operate the airplane in accordance with those limitations.

(g) When the information in Airbus TR 2.05.00/52, dated June 13, 2003, has been incorporated into the general revisions of the AFM, the general revisions may be inserted into the AFM, and the TR may be removed from the AFM.

Optional Terminating Action

(h) Replacement of Honeywell ADIRUs having a P/N listed in Table 1 of this AD with new ADIRUs having new P/Ns, by doing all the actions using the Accomplishment Instructions of Airbus Service Bulletin A320–34–1231, Revision 02, dated October 10, 2002 (for Model A320 series airplanes); A320–34–1240, Revision 01, dated October 10, 2001 (for Model A319, A320, and A321 series airplanes); or A320–34–1249, dated June 25, 2001 (for Model A319, A320, and A321 series airplanes); as applicable; terminates the AFM revision required by paragraph (f) of this AD. Following accomplishment of the replacement, the TR may be removed from the AFM.

(i) Prior to or concurrently with accomplishment of the optional terminating action in paragraph (h) of this AD: Do the replacements using Airbus Service Bulletin A320–34–1084, dated September 15, 1994 (for Model A320 series airplanes); A320–34–1129, Revision 01, dated July 22, 1997 (for Model A319, A320, and A321 series airplanes); or A320–34–1136, dated June 5, 1997 (for Model A319, A320, and A321 series airplanes); as applicable.

(j) Prior to or concurrently with accomplishment of Airbus Service Bulletin A320–34–1084: Do the modification of certain ADIRU equipment using Airbus Service Bulletin A320–34–1010, dated September 6, 1989 (for Model A320 series airplanes).

(k) Honeywell Service Bulletins HG1150AC–34–0007, Revision 001, dated September 18, 2001; HG2030AC–34–0009, Revision 1, dated October 1, 2002; and HG2030AD–34–0007, Revision 1, dated June 4, 2001; are referenced in the Airbus service bulletins specified in paragraph (h) of this AD as additional sources of service information for accomplishment of the replacement of the ADIRUs.

Alternative Methods of Compliance (AMOCs)

(l) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(m) The subject of this AD is addressed in French airworthiness directive 2003–270(B), dated July 23, 2003.

Material Incorporated by Reference

(n) You must use Airbus Temporary Revision 2.05.00/52, dated June 13, 2003, to the Airbus A318/A319/A320/A321 Airplane Flight Manual, to perform the actions that are required by this AD, unless the AD specifies

otherwise. (Only the first page of the temporary revision contains the document date; no other page of that document contains this information.) The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. For information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC.

Issued in Renton, Washington, on November 10, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–25787 Filed 11–24–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–171–AD; Amendment 39–13876; AD 2004–23–21]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) Airplanes; and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; and Model MD–88 airplanes. This amendment requires a general visual inspection for chafing of the power feeder cables of the auxiliary power unit (APU), and repair if necessary. This amendment also requires replacement of a support bracket located on the left side of the lower cargo compartment with a new ''U'' shaped bracket. This action is necessary to prevent chafing of the power feeder cables of the APU, which could result in electrical arcing to adjacent structure and consequent fire in the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective January 3, 2005.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of January 3, 2005.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer; Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; and Model MD–88 airplanes; was published in the **Federal Register** on June 18, 2003 (68 FR 36523). That action proposed to require a general visual inspection for chafing of the power feeder cables of the auxiliary power unit (APU), and repair if necessary. That action also proposed to require replacement of a support bracket located on the left side of the lower cargo compartment with a new ''U'' shaped bracket.

Comments

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

Support for Proposed Rule

One commenter supports the proposed rule.

Request to Allow Alternative Method of Compliance (AMOC) Granted Previously

The other commenter requests that an AMOC previously granted for AD 94–09–02, amendment 39–8890 (59 FR 18720, April 20, 1994), be allowed to satisfy the requirements of the proposed rule. The commenter notes that AD 94–09–02 was previously issued to address a similar unsafe condition in the same area of the airplane, and that McDonnell Douglas MD–80 Service Bulletin 24–105 was approved as an AMOC for that AD. The commenter states that some of its airplanes had doublers previously installed to support the seat track in the modification area per that AMOC. The bracket identified in Revision 02 of McDonnell Douglas Alert Service Bulletin MD80–24A105 (referenced in the proposed rule as the appropriate source of service information for accomplishing the specified actions) could not be used at these locations; therefore, the commenter retained the doubler-bracket in lieu of the new bracket specified in the service bulletin.

The FAA does not agree to allow the specified AMOC granted for AD 94–09–02 to satisfy the requirements of this AD. That AMOC was granted based on information contained in McDonnell Douglas MD–80 Service Bulletin 24–105, dated August 15, 1989. However, since that AD was issued and that AMOC granted, McDonnell Douglas Alert Service Bulletin MD80–24A105, Revision 02, dated January 24, 2000, was released. That revision, which was also upgraded to alert status, specifically requires additional work for airplanes previously modified in accordance with previous issues of that service bulletin. Therefore, airplanes on which the described AMOC was approved are subject to the unsafe condition addressed by this AD, and operators must accomplish the actions required by this AD. No change to the final rule is made in this regard.

Request To Revise the Work-Hour Estimate of the Cost Impact Section

The same commenter points out that the proposed rule estimates 1 work hour to accomplish the proposed actions; however, McDonnell Douglas Alert Service Bulletin MD80–24A105, Revision 02, lists 3 work hours for those actions—a figure which the commenter asserts more closely reflects the time required for the specified tasks.

From this comment, we infer that the commenter is requesting that we revise the work-hour estimate in the Cost Impact section of the proposed rule. We do not agree. As stated in the preamble

of the proposed rule, the cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. Those figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The work-hour figure listed in the referenced service bulletin includes time for access and close up. No change is made to the final rule in this regard.

Clarification of Requirements of Paragraph (c) of the Final Rule

We inadvertently omitted reference to the specific service information for accomplishing the required support bracket replacement specified in paragraph (c) of the proposed rule. It was our intent that the required replacement be accomplished in accordance with McDonnell Douglas Alert Service Bulletin MD80–24A105, Revision 02, dated January 24, 2000. We have revised paragraph (c) of this final rule to specify that the required replacement be done in accordance with that service bulletin.

Conclusion

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

Labor Rate Increase

After the proposed rule was issued, we reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 634 airplanes of the affected design in the worldwide fleet. The FAA estimates that 438 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection and replacement of the bracket, and that the average labor rate is $65 per work hour. Required parts will cost approximately $147 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $92,856, or $212 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

2004–23–21 McDonnell Douglas: Amendment 39–13876. Docket 2000-NM–171-AD.

Applicability: Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; and Model MD–88 airplanes; as listed in McDonnell Douglas Alert Service Bulletin MD80–24A105, Revision 02, dated January 24, 2000; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the power feeder cables of the auxiliary power unit (APU), which could result in electrical arcing to adjacent structure and consequent fire in the airplane; accomplish the following:

No Reporting Requirement

(a) Although the alert service bulletin referenced in this AD specifies to submit information to the manufacturer, this AD does not include such a requirement.

Inspection for Chafing

(b) Within 1 year after the effective date of this AD, perform a general visual inspection for chafing of the power feeder cables of the auxiliary power unit, in accordance with McDonnell Douglas Alert Service Bulletin MD80–24A105, Revision 02, dated January 24, 2000.

(1) If no chafing is detected, no further action is required by this paragraph.

(2) If any chafing is detected, before further flight, repair the cable(s) per the alert service bulletin.

Note 1: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Replacement of a Support Bracket

(c) Within 1 year after the effective date of this AD, replace the support bracket for the power feeder cable located on the left side of the lower cargo compartment between fuselage stations Y=218.000 and Y=237.000 with a new ''U'' shaped bracket, in accordance with McDonnell Douglas Alert Service Bulletin MD80–24A105, Revision 02, dated January 24, 2000.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(e) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD80–24A105, Revision 02, dated January 24, 2000. 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 Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Effective Date

(f) This amendment becomes effective on January 3, 2005.

Issued in Renton, Washington, on November 10, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–25786 Filed 11–24–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18593; Directorate Identifier 2004–NM–21–AD; Amendment 39–13875; AD 2004–23–20]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2, A300 B4, A300 B4–600, and A300 B4–600R Series Airplanes; and Model A300 C4–605R Variant F and A300 F4–605R Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) that applies to all Airbus Model A300 B4–601, A300 B4–603, A300 B4–620, A300 B4–605R, A300 B4–622R, and A300 F4–605R airplanes. That AD currently requires repetitive inspections for cracking in the area surrounding certain fuselage attachment holes, installation of new fasteners for certain airplanes, and certain follow-on corrective actions if necessary. This new AD requires modifying certain fuselage frames, which would terminate certain repetitive inspections. This AD also adds airplanes to the applicability. This AD is prompted by the development of a modification intended to prevent cracking of the center section of the fuselage, which could result in a ruptured frame foot and reduced structural integrity of the airplane.

DATES: This AD becomes effective January 3, 2005.

The incorporation by reference of Airbus Service Bulletin A300–53–0271, Revision 03, dated June 13, 2003; and Airbus Service Bulletin A300–53–6125, Revision 01, dated June 13, 2003; as listed in the AD, is approved by the Director of the Federal Register as of January 3, 2005.

On May 7, 2001 (66 FR 17490, April 2, 2001), the Director of the Federal Register approved the incorporation by reference of Airbus Service Bulletin A300–53–6122, dated February 9, 2000.

ADDRESSES: For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. You can examine this information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Technical information: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

Plain language information: Marcia Walters, *marcia.walters@faa.gov.*

Examining the Docket

The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with an AD to supersede AD 2001–06–10, amendment 39–12157 (66 FR 17490, April 2, 2001). The existing AD applies to all Airbus Model A300 B4–601, A300 B4–603, A300 B4–620, A300 B4–605R, A300 B4–622R, and A300 F4–605R airplanes. The proposed AD, published in the **Federal Register** on July 16, 2004 (69 FR 42612), would require modifying certain fuselage frames, which would terminate certain repetitive inspections, and add airplanes to the applicability.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been submitted on the proposed AD.

Request To Clarify Grace Period

One commenter requests that we clarify the grace period specified in paragraph (i) of the proposed AD, specifically regarding the following sentence:

For airplanes that have exceeded the specified threshold, this AD requires compliance within the earlier of the flight-cycle and flight-hour grace periods specified in the service bulletin.

The commenter states that this language could be confusing. In Note (01), paragraph 1.E.(2)(b) (''COMPLIANCE''), of Airbus Service Bulletins A300–53–0271 and A300–53–6125, the grace period is described in terms of flight hours and flight cycles only for airplanes that have exceeded their ''design service goal'' (DSG). For airplanes that have exceeded the ''threshold'' but not their DSG, the service bulletins (in Note (02)) describe the grace period as the earlier of accomplishment of two service bulletins required by related AD 96–13–11, amendment 39–9679 (61 FR 35122, July 5, 1996).

We partially agree. For airplanes above their DSG, NOTE (01) specifies the imprecise grace period ''3,300FC/3700FH for B2, 2900FC/3900FH for B4–100 and 2,200FC/4500FH for B4–200.'' We added the sentence quoted by the commenter only to specify that the grace period must be determined by the earlier of the flight-hour and flight-cycle values. While ''design service goal'' might have been more precise than ''threshold'' in this context, we referred to these two terms collectively as ''the specified threshold'' to clarify the compliance-time conditions of the service bulletins. We have revised

paragraph (i) of this final rule to clarify the method for determining the appropriate grace period.

Request To Add Service Bulletin Reference

One commenter requests that we revise Table 1 of the proposed AD to add Airbus Service Bulletin A300–53–6122. The commenter provides no further explanation.

We find that clarification of Table 1 is necessary. Table 1 identifies the service bulletin references for the requirements of paragraph (i) of this AD. Service Bulletin A300–53–6122 is the reference for the requirements of paragraphs (f) and (g) of this AD. That service bulletin does not provide information relevant to Table 1. We have not changed the final rule regarding this issue.

Request To Approve Future Service Information

One commenter requests that we revise the proposed AD to indicate that any approved revisions of the identified service bulletins are acceptable, as stated in the parallel French airworthiness directives F–224–001 and F–224–002, both dated January 7, 2004.

We cannot accept as-yet unpublished service documents for compliance with the requirements of an AD. Referring to an unavailable service bulletin in an AD violates Office of the Federal Register regulations for approving materials that are incorporated by reference. We have not changed the final rule regarding this issue. However, under the provisions of paragraph (k)(1) of this final rule, affected operators may request approval to use a later revision of the referenced service bulletin as an alternative method of compliance (AMOC).

Request To Clarify Repair Approval

One commenter requests that we revise paragraphs (j) and (k) of the proposed AD to clarify the acceptability of DGAC-or Airbus-approved repairs. The commenter points out that such explicit approval would eliminate the processing time and work duplication for requests for AMOCs if an approval by DGAC or its agent is available. We infer that the commenter is requesting that paragraph (k) of this AD provide explicit approval of repairs done in accordance with a method approved by the DGAC, as specified in paragraph (j) of this AD.

We do not agree. We cannot allow operators to contact the manufacturer for repair instructions; to do so would be delegating our rulemaking authority to the manufacturer. Furthermore, we do not agree that clarification is necessary regarding approvals for repairs specified in paragraph (j) of this AD, which specifically allows repair approval by the DGAC or its delegated agent. Concerning paragraph (k) of this AD, AMOCs must be approved by the FAA.

Request To Approve Alternative Materials

One commenter reports that the oversize fasteners (specified in Airbus Service Bulletins A300–53–0271 and A300–53–6125) may be difficult to obtain. The commenter therefore requests that we revise the proposed AD to approve use of the alternative substitute fasteners listed in the Airbus Structural Repair Manual (SRM) or the Airbus Process and Materials Specification Manual.

We do not find it necessary to revise the AD regarding this issue. Because the service bulletins refer to the appropriate sections of the applicable Airbus SRM, the specific substitute parts listed in the SRM are considered acceptable for any repair or modification required by this AD.

Conclusion

We have carefully reviewed the available data, including the comments that have been submitted, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD:

ESTIMATED COSTS

Action	Model	Work hours	Labor rate per hour	Parts cost	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection	A300–600	6	$65	None required	$390, per inspection	106	$41,340, per inspection.
Modification	A300	90	65	2,000	7,850	24	188,400.
Modification	A300–600	56	65	4,000	7,640	106	809,840.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2004–23–20 Airbus: Amendment 39–13875. Docket No. FAA–2004–18593; Directorate Identifier 2004–NM–21–AD.

Effective Date

(a) This AD becomes effective January 3, 2005.

Affected ADs

(b) This AD supersedes AD 2001–06–10, amendment 39–12157. Paragraph (i) of this AD terminates certain requirements of AD 96–13–11, amendment 39–9679.

Applicability

(c) This AD applies to all Airbus Model A300 B2, A300 B4, A300 B4–600, and A300 B4–600R series airplanes; and all Airbus Model A300 C4–605R Variant F and A300 F4–605R airplanes; certificated in any category; except those airplanes modified by Airbus Modification 12168.

Unsafe Condition

(d) This AD was prompted by the development of a modification intended to prevent cracking of the center section of the fuselage, which could result in a ruptured frame foot and reduced structural integrity of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of Certain Requirements of AD 2001–06–10

Inspections

(f) For Model A300 B4–600 and A300 B4–600R series airplanes, and Model A300 C4–605R Variant F and A300 F4–605R airplanes: Perform a high-frequency eddy-current or rototest inspection to detect cracking in the area surrounding the frame feet attachment holes between fuselage frames (FR) 41 and FR46 from stringers 24 to 28, left- and right-hand sides, in accordance with Airbus Service Bulletin A300–53–6122, dated February 9, 2000, at the time specified in paragraph (f)(1) or (f)(2), as applicable.

(1) For airplanes on which Task 53–15–54 in Maintenance Review Board Document (MRBD), Revision 3, dated April 1998, has not been accomplished as of May 7, 2001 (the effective date of AD 2001–06–10): Perform the inspection at the later of the times specified in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD.

(i) Prior to the accumulation of the total flight-cycle or flight-hour threshold, whichever occurs first, specified in paragraph 1.E. (''Compliance'') of the service bulletin; or

(ii) Within the applicable grace period specified in paragraph 1.E. (''Compliance'') of the service bulletin.

(2) For airplanes on which Task 53–15–54 in the MRBD, Revision 3, dated April 1998, has been accomplished as of May 7, 2001: Perform the next repetitive inspection at the later of the times specified in paragraphs (f)(2)(i) and (f)(2)(ii) of this AD.

(i) Within the flight-cycle or flight-hour interval, whichever occurs first, specified in paragraph 1.E. (''Compliance'') of the service bulletin, following the latest inspection accomplished in accordance with the MRBD; or

(ii) Within the grace period specified in paragraph 1.E. (''Compliance'') of the service bulletin.

(g) For airplanes on which no cracking is detected during the inspection required by paragraph (f) of this AD, prior to further flight, install new fasteners as applicable, in accordance with Airbus Service Bulletin A300–53–6122, dated February 9, 2000; and repeat the inspection required by paragraph (f) of this AD thereafter at intervals not to exceed the applicable intervals specified in paragraph 1.E. (''Compliance'') of the service bulletin, until the actions required by paragraph (i) of this AD have been done.

Corrective Actions

(h) For airplanes on which cracking is detected during any inspection required by paragraph (f) of this AD: Prior to further flight, except as required by paragraph (j) of this AD, accomplish corrective actions (*e.g.*, performing rotating probe inspections, reaming out cracks, cold working fastener holes, and installing oversized fasteners) in accordance with Airbus Service Bulletin A300–53–6122, dated February 9, 2000. Repeat the inspection required by paragraph (f) of this AD thereafter at intervals not to exceed the applicable intervals specified in paragraph 1.E. (''Compliance'') of the service bulletin, until the actions required by paragraph (i) of this AD have been done.

New Requirements of This AD

Modification: All Airplanes

(i) For all airplanes: Within the compliance times specified in paragraph 1.E. of the applicable service bulletin listed in Table 1 of this AD, modify the fuselage frames in accordance with the Accomplishment Instructions of the applicable service bulletin. For airplanes that have exceeded their design service goal, as specified in NOTE (01) of paragraph 1.E. of the service bulletin, this AD requires compliance within the earlier of the flight-cycle and flight-hour grace periods specified in the service bulletin.

TABLE 1.—SERVICE INFORMATION

Airplane model	Airbus service bulletin	Required revision level	Revision level(s) also acceptable for compliance if done before the effective date of this AD
A300 B2 and A300 B4 series airplanes	A300–53–0271	Revision 03, dated June 13, 2003	Original, dated September 10, 1991. Revision 01, dated February 16, 1993. Revision 02, dated July 13, 2000.
A300 B4–600 and A300 B4–600R series airplanes, and A300 C4–605 Variant F and A300 F4–605R airplanes.	A300–53–6125	Revision 01, dated June 13, 2003	Original, dated November 8, 2000.

(1) For the affected Model A300 B4–600 series airplanes: Accomplishment of the modification terminates the requirements of this AD.

(2) For Model A300 B2 and A300 B4 series airplanes: Accomplishment of the modification terminates certain repetitive inspections required by AD 96–13–11, i.e., inspections of the frame feet holes for frames 41 to 46 (as specified in Airbus Service Bulletin A300–53–0345) and frames 48 to 54 (as specified in Airbus Service Bulletin A300–53–238). However, the repetitive inspections of the frame foot angle radius (as specified in Service Bulletin A300–53–238), which are required by AD 96–13–11, must continue.

Exceptions to Service Bulletin Procedures

(j) During any inspection required by this AD, if the applicable service bulletin specifies to contact the manufacturer for appropriate instructions: Before further flight, perform applicable corrective action in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Direction Generale de l'Aviation Civile (DGAC) (or its delegated agent).

Alternative Methods of Compliance

(k)(1) The Manager, International Branch, ANM–116, has the authority to approve alternative methods of compliance (AMOCs) for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) AMOCs approved previously in accordance with AD 2001–06–10, amendment 39–12157, are approved as AMOCs with the corresponding requirements of this AD.

Related Information

(l) French airworthiness directives F–2004–001 and F–2004–002, both dated January 7, 2004, also address the subject of this AD.

Material Incorporated by Reference

(m) Unless the AD specifies otherwise, you must use the service information that is

specified in Table 2 of this AD to perform the actions that are required by this AD, as applicable.

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

Service bulletin	Revision level	Date
Airbus Service Bulletin A300–53–0271	03	June 13, 2003.
Airbus Service Bulletin A300–53–6122	Original	February 9, 2000.
Airbus Service Bulletin A300–53–6125	01	June 13, 2003.

(1) The incorporation by reference of Airbus Service Bulletin A300–53–0271, Revision 03, dated June 13, 2003; and Airbus Service Bulletin A300–53–6125, Revision 01, dated June 13, 2003; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On May 7, 2001 (66 FR 17490, April 2, 2001), the Director of the Federal Register approved the incorporation by reference of Airbus Service Bulletin A300–53–6122, dated February 9, 2000.

(3) For copies of the service information, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on November 10, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–25785 Filed 11–24–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–18824; Airspace Docket No. 04–ACE–50]

Modification of Class D Airspace; and Modification of Class E Airspace; Joplin, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class D and Class E airspace at Joplin, MO.

EFFECTIVE DATE: 0901 UTC, January 20, 2005.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on September 29, 2004 (69 FR 58047). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 20, 2005. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on November 8, 2004.

Anthony D. Roetzel,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 04–26101 Filed 11–24–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–18820; Airspace Docket No. 04–ACE–46]

Modification of Class E Airspace; Kennett, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments; correction.

SUMMARY: This action corrects a direct final rule; request for comments that was published in the **Federal Register** on Tuesday, September 28, 2004, (69 FR 57839) [FR Doc. 04–21736]. It corrects an error in the legal description of the Class E airspace area extending upward from 700 feet above the surface at Kennett, MO.

DATES: This direct final rule is effective on 0901 UTC, January 20, 2005.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 04–21736, published on Tuesday, September 28, 2004, (69 FR 57839) modified the Class E airspace area extending upward from 700 feet above the surface at Kennett, MO. The modification expanded the airspace area to protect for diverse departures, redefined the extension to the Class E airspace area in terms of the 003° bearing from the Kennett nondirectional radio beacon (NDB), decreased the length and width of the extension, corrected the location of the NDB in the legal description and corrected the Kennett Memorial Airport reference point (ARP) used in the legal description. However, publication of a revised Kennett Memorial Airport ARP in the National Flight Data Digest on November 8, 2004, requires a further revision to the Kennett, MO Class E airspace areas.

■ Accordingly, pursuant to the authority delegated to me, the legal description of the Class E airspace area extending upward from 700 feet above the surface at Kennett, MO, as published in the **Federal Register** on Tuesday, September 28, 2004, (69 FR 57839) [FR Doc. 04–21736] is corrected as follows:

§ 71.1 [Corrected]

■ On page 57840, Column 2, last paragraph, third line, change ''(Lat. 36°13′49″ N., long. 90°02′04″ W.)'' to read: ''(Lat. 36°13′33″ N., long. 90°02′12″ W.)''

Issued in Kansas City, MO, on November 8, 2004.

Anthony D. Roetzel,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 04–26100 Filed 11–24–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–18825; Airspace Docket No. 04–ACE–51]

Modification of Class E Airspace; Harrisonville, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Harrisonville, MO.

EFFECTIVE DATE: 0901 UTC, January 20, 2005.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on October 8, 2004 (69 FR 60285). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 20, 2005. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on November 8, 2004.

Anthony D. Roetzel,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 04–26099 Filed 11–24–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 556 and 558

New Animal Drugs; Monensin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Animal Health. The supplemental NADA provides for use of monensin Type A medicated articles to formulate Type B and Type C medicated feeds used for increased milk production efficiency in dairy cows.

DATES: This rule is effective November 26, 2004.

FOR FURTHER INFORMATION CONTACT: Eric S. Dubbin, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855; 301–827–0232; e-mail: *edubbin@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, filed a supplement to NADA 95 735 that provides for the use of RUMENSIN 80 (monensin sodium) Type A medicated article to formulate Type B and Type C medicated feeds used for increased milk production efficiency (production of marketable solids-corrected milk per unit of feed intake) in dairy cows. The supplemental NADA is approved as of October 28, 2004, and the regulations in 21 CFR 556.420 and 558.355 are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental impact of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. FDA's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Division of Dockets Management (see previous paragraph).

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval qualifies for 3 years of marketing exclusivity beginning October 28, 2004.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 556

Animal drugs, Foods.

21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 556 and 558 are amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

■ 1. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

■ 2. Section 556.420 is amended by revising paragraph (b) and by adding paragraph (c) to read as follows:

§ 556.420 Monensin.

* * * * *

(b) *Tolerances.* The tolerances for residues of monensin are:

(1)*Cattle*—(i) *Edible tissues.* 0.05 part per million (ppm).

(ii) *Milk.* Not required.

(2)*Goats*—(i) *Edible tissues.* 0.05 ppm.

(ii) [Reserved]

(3) *Chickens, turkeys, and quail.* A tolerance for residues of monensin in chickens, turkeys, and quail is not required.

(c) *Related conditions of use.* See §§ 520.1448 and 558.355 of this chapter.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 4. Section 558.355 is amended by revising paragraph (d)(7)(vi); and by adding paragraphs (d)(13) and (f)(3)(xiii) to read as follows:

§ 558.355 Monensin.

* * * * *

(d) * * *

(7) * * *

(vi) A withdrawal time has not been established for preruminating calves. Do not use in calves to be processed for veal.

* * * * *

(13) The labeling of Type B and Type C (liquid and dry) medicated feeds intended for use in dairy cows shall bear the following caution statements: You may notice: Reduced voluntary feed intake in dairy cows fed monensin. This reduction increases with higher doses of monensin fed. Rule out monensin as the cause of reduced feed intake before attributing to other causes such as illness, feed management, or the environment. Reduced milk fat percentage in dairy cows fed monensin. This reduction increases with higher doses of monensin fed. Increased incidence of cystic ovaries and metritis in dairy cows fed monensin. Reduced conception rates, increased services per animal, and extended days open and corresponding calving intervals in dairy cows fed monensin.

* * * * *

(f) * * *

(3) * * *

(xiii) *Amount per ton.* Monensin, 11 to 22 grams.

(A) *Indications for use.* For increased milk production efficiency (production of marketable solids-corrected milk per unit of feed intake) in dairy cows.

(B) *Limitations.* Feed continuously to dry and lactating dairy cows in a total mixed ration (''complete feed''). See paragraphs (d)(2), (d)(5), (d)(6), (d)(7)(i), (d)(7)(ii), (d)(7)(iii), (d)(7)(vi), (d)(8), and (d)(12) of this section.

* * * * *

Dated: November 10, 2004.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 04–26091 Filed 11–24–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR–4835–F–03]

RIN 2502–AI00

FHA TOTAL Mortgage Scorecard

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

ACTION: Final rule.

SUMMARY: On November 21, 2003, HUD published an interim rule to codify the procedures that mortgagees and automated underwriting system vendors must follow if they opt to use the ''Technology Open to Approved Lenders'' (TOTAL) Mortgage Scorecard offered by the Federal Housing Administration (FHA). The interim rule did not alter the underwriting requirements applicable to FHA mortgagees. Rather, the interim rule defined the acronym TOTAL and provided the requirements and procedures for use of the TOTAL Mortgage Scorecard. This final rule follows publication of the November 21, 2003, interim rule. HUD did not receive any public comments on the interim rule. Accordingly, HUD is adopting the interim rule, as corrected by a technical correction published on January 2, 2004, without change.

DATES: *Effective date:* December 27, 2004.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Room 9278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708–2121. (This is not a toll-free number.) Hearing- or speech-impaired persons may access this number by calling the toll-free Federal Information Relay Service number at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—HUD's November 21, 2003, Interim Rule

On November 21, 2003 (68 FR 65824), HUD published an interim rule codifying the procedures that mortgagees and automated underwriting system vendors must follow if they opt to use the ''Technology Open to Approved Lenders'' (TOTAL) Mortgage Scorecard offered by the Federal Housing Administration (FHA). The TOTAL Mortgage Scorecard (or Scorecard) developed by HUD assesses the credit worthiness of FHA mortgagors by evaluating certain mortgage application and mortgagor credit information that has been statistically proven to accurately predict the likelihood of mortgagor default. The TOTAL Mortgage Scorecard is not an automated underwriting system (AUS); rather, it is a mathematical equation intended for use within an AUS.

The November 21, 2003, interim rule followed a December 6, 2000 (65 FR 76273) **Federal Register** notice announcing HUD's intention to deploy the FHA TOTAL Mortgage Scorecard. The objectives for use of the TOTAL Mortgage Scorecard, which were first stated in the Notice are (1) to provide an improved credit evaluation system for FHA loans that has been statistically proven to accurately predict the likelihood of mortgagor default while providing a uniform system protective of borrowers; (2) to expand access to mortgage credit for low- and moderate-income mortgagors and discourage unlawful discrimination against mortgagors protected by the Fair Housing Act and the Equal Credit Opportunity Act; (3) to facilitate access to, and reduce the cost and time associated with, originating HUD/FHA-insured mortgages; and (4) to encourage a standardized, industry-wide capability for communication and exchange of information among members of the mortgage lending community.

The December 6, 2000, Notice also advised that after deployment of the TOTAL Mortgage Scorecard, HUD would require use of the Scorecard in any AUS. The Notice also indicated that users of the TOTAL Mortgage Scorecard would receive documentation relief and credit policy waivers provided by HUD. Further, the Notice advised that HUD also had developed a Use Agreement that established the requirements and responsibilities for implementation and use of the TOTAL Mortgage Scorecard by qualified mortgagees and others that purchase, sell, underwrite, or document HUD mortgage loans for mortgagees under HUD's Direct Endorsement program.

While HUD could have continued, through individual approvals, to authorize organizations to use the TOTAL Mortgage Scorecard, HUD decided that a more efficient course of action would be to promulgate regulations for the use of the Scorecard consistent with the purpose and objectives described above instead of executing individual approvals that establish the requirements and responsibilities for use of the Scorecard. Accordingly, HUD issued the November 21, 2003, interim rule.

The interim rule revised HUD's regulation at 24 CFR 203.251 to define the acronym ''TOTAL'' and revised § 203.255 to establish specific requirements that mortgagees and vendors must abide by when using the TOTAL Mortgage Scorecard. The interim rule described the Scorecard requirements in order to assist the mortgagee in expediting the endorsement process. While the Scorecard is a valuable tool, its value depends on approved lenders properly using the Scorecard in accordance with HUD requirements and procedures. The preamble to the November 21, 2003,

interim rule provides additional details regarding the regulatory amendments to 24 CFR part 203.

A technical correction to the interim rule was published on January 2, 2004 (69 FR 4). The January 2, 2004, document corrected the interim rule by changing certain references to ''mortgage'' to read ''mortgagee.'' The January 2, 2004 document also made a technical correction to § 203.255(b)(5)(i)(A) of the interim rule, which contained an outdated reference to ''approved'' AUSs. As noted in the preamble to the November 23, 2003, interim rule, HUD is no longer approving individual AUSs, and the few approvals that existed at the time of publication of the interim rule have since been terminated. Accordingly, the January 2, 2004, document corrected § 203.255(b)(5)(i)(A) by removing the reference to ''approved'' AUSs.

II. This Final Rule

This final rule follows publication of the November 21, 2003, interim rule. The interim rule became effective December 22, 2003, and provided for a 60-day public comment period. The comment period for the interim rule closed on January 20, 2004. HUD did not receive any public comments on the interim rule. Accordingly, HUD is adopting the interim rule, as corrected by the technical correction published on January 2, 2004, without change.

Any AUS vendor that ''calls'' the Total Mortgage Scorecard, and any FHA-approved mortgagee that obtains a risk-assessment from the Scorecard, must abide by the requirements contained in this final rule. Only AUSs developed, operated, owned, or used by FHA-approved Direct Endorsement mortgagees, Fannie Mae, or Freddie Mac are permitted to access the Scorecard, and only FHA-approved mortgagees are able to obtain risk assessments using the TOTAL Mortgage Scorecard.

As did the preceding interim rule, this final rule affirms that Direct Endorsement Mortgagees remain solely responsible for the underwriting decision. This rule does not alter the underwriting requirements to which FHA mortgagees must currently adhere. Rather, this final rule addresses the use of the TOTAL Mortgage Scorecard and the requirements and procedures to which FHA mortgagees must adhere if they opt to use the Scorecard. AUS vendors and mortgagees found to violate these conditions may have their access to the Scorecard terminated with appropriate notice. As an additional measure to ensure compliance with these requirements, access to the TOTAL Mortgage Scorecard by a FHA mortgagee will be conditioned upon the mortgagee's certification to comply with the requirements as provided in this rule.

The TOTAL Mortgage Scorecard is only a tool to assist the mortgagee in managing its workflow and expediting the endorsement process and is not a substitute for the mortgagee's reasonable consideration of risk and credit worthiness. To help assure the TOTAL Mortgage Scorecard is not misused, the final rule requires mortgagees to provide full manual underwriting for mortgage applicants when the scorecard returns a ''refer'' risk score. The Scorecard results must not be used as the basis for rejecting any mortgage applicant.

III. Findings and Certifications

Public Reporting Burden

The information collection requirements contained in this final rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2502–0556. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The final rule governs access to, and use of, an automated, electronic tool to assist mortgagees in managing workflow and expediting the endorsement process. There are no anti-competitive discriminatory aspects of the rule with regard to small entities, and there are not any unusual procedures that would need to be complied with by small entities. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the interim rule stage in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This final rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the UMRA.

Executive Order 13132, Federalism

Executive Order 13132, (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the interim rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Numbers for 24 CFR part 203 are 14.117 and 14.133.

List of Subjects in 24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan

programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

■ Accordingly, for the reasons stated in the preamble, the interim rule for part 203 of subpart B of Title 24 of the Code of Federal Regulations, published on November 21, 2003, at 68 FR 65824, as corrected on January 2, 2004, at 69 FR 4, is promulgated as final, without change.

Dated: November 19, 2004.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 04–26113 Filed 11–24–04; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 960 and 966

[Docket No. FR–4824–F–02]

RIN 2577–AC42

PHA Discretion in Treatment of Over-Income Families

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule gives public housing agencies (PHAs) the discretion, in accordance with federal law and regulations, to establish occupancy policies that include the eviction of public housing tenants who are over the income limit for eligibility to participate in public housing programs. PHAs may decide that such families should be able to find other housing and that public housing units should be made available for eligible low-income families with greater housing need. This final rule takes into consideration the public comments received on the proposed rule. After careful review of the comments, HUD has decided to adopt the proposed rule with minor revision.

DATES: Effective Date: December 27, 2004.

FOR FURTHER INFORMATION CONTACT: Patricia Arnaudo, Director, Public Housing Occupancy and Management Division, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4116, 451 Seventh Street, SW., Washington, DC 20410–5000 telephone (202) 708–0744 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On August 1, 2003 (68 FR 45734), HUD published a notice of proposed rulemaking (NPRM) that proposed to grant PHAs the discretion to evict a family that is over the eligible income limit, with exceptions for families entitled to EID (addressed at 42 U.S.C. 1437a(d)) or with valid contracts of participation under the Family Self Sufficiency (FSS) program (42 U.S.C. 1437u). In submitting this proposed rule for public comment, HUD stated its view that public housing should be available to eligible low-income families and that it is inappropriate to limit the ability of a PHA to move over-income families out of public housing to make room for low-income families on waiting lists.

The current rule on eviction at 24 CFR 960.261 limits the ability of PHAs to evict over-income families unless (1) the PHA has determined that there is other decent, safe, and sanitary housing available to the tenant at a rent not exceeding the then-current tenant rent, or (2) the PHA is required to evict the family by local law.

This final rule does not require PHAs to evict over-income residents, but rather gives PHAs the discretion to do so and thereby make units available for applicants who are income-eligible.

II. This Final Rule

This final rule follows publication of the August 1, 2003, proposed rule. The public comment period for the proposed rule closed on September 30, 2003. Sixteen public comments were received from a variety of individuals and groups during the comment period. Commenters included tenant organizations, housing authority trade associations, public housing tenants, and PHAs. Three of the public comments were in the form of petitions signed by multiple public housing residents from one city, and gathered and submitted by a single organization. After consideration of these comments, HUD has decided to adopt a final rule that, like the proposed rule, provides an exception to eviction for over-income tenants who are receiving the earned income disallowance or have active contracts of participation in a family supportive services program. In addition, this rule makes a conforming technical change to 24 CFR 966.4(l)(2)(ii).

III. Discussion of Public Comments

Comment: The rule properly grants discretion to the PHAs regarding over-income residents. One PHA commenter agreed with the rule so long as implementation is voluntary and ''with no penalty for non-participation.'' Similarly, another PHA did not oppose the concept of the proposed rule that will grant ''public housing agencies '' the discretion to evict over income families from public housing, as long as this rule remains a PHA option.'' ''In an effort to increase accountability and ensure that public housing participants are not being evicted prematurely before reaching self-sufficiency,'' this commenter would prefer PHAs be given discretion to regulate this policy, rather than being subject to a mandatory regulation.

Observing that there may be widely divergent local strategies ranging from targeting only households most in need to retaining some over-income households as role models and to maintain the marketability of public housing, one commenter, also a PHA, agreed with the discretion the rule would grant to PHAs, and states that ''local communities deserve federal respect for the diverse implementation strategies they devise to accomplish broadly stated national policy goals.'' Another commenter stated, ''We appreciate and support the Department's recognition of the importance of local-level discretion in setting housing policies'' and ''LHAs [local housing agencies] must retain true discretion to establish policies that suit their communities.'' However, this commenter, a housing association, stated that ''a more useful formulation of the notice would be one that gives PHAs the discretion to formulate local policies with regard to families who have increased their incomes while residing in public housing.'' Another PHA stated that ''ultimate discretion'' on if, how and when it is applied should be left to the individual PHA. Local PHAs should be allowed to set the over-income ''target'' for triggering the eviction based on local market conditions.''

Response: HUD agrees with these commenters in their desire for PHAs to act with discretion. This rule gives PHAs the discretion to make decisions concerning their local housing market needs. HUD will not penalize PHAs for not incorporating this rule into their admission and continued occupancy policies.

Comment: The rule would have a negative effect on deconcentration of poverty and income-mixing goals. Several commenters specifically commented on the rule's effect on income-mixing and deconcentration of poverty. One PHA stated that having a range of incomes is preferable to having

a concentration of low-income families, observing that the presence of higher-income families under the flat-rent system serves as role models and as the core homeownership clientele. Another PHA stated that this rule would conflict with the goals of deconcentrating poverty (24 CFR 903.1), income targeting (24 CFR 960.202), and choice of income-based or flat rent (24 CFR 960.253). This commenter stated that the rule would ''negatively impact the ability of PHAs to move toward socioeconomic diversity in public housing'' and that due to the conflicts, the rule should not be implemented. A PHA-related trade association commented, ''The wisdom of evicting over income families or encouraging them to take advantage of other housing options is contingent on local policy preferences * * * retention [of some over-income families] may also contribute to whatever mixed income character public housing apartments may retain.'' Another trade association stated that, ''Families with increasing incomes can also play a vital role in local strategies to create mixed-income communities and deconcentrate poverty in public housing. The presence of working families in public housing provides role models that contribute to a healthy, stable community. The presence of relatively higher-income families could help PHAs secure private funding for development purposes, helping both residents as well as the broader community.'' An individual petition signer made a similar point.

Other commenters cited similar concerns. One individual commenter stated:

> In 1998, Congress passed the law stating that PHAs could admit higher-income tenants into low-income public housing project, because having a high concentrations of poor people had a negative effect on the neighborhoods. By adding higher-income tenants, Congress hoped to stabilize the neighborhoods.
>
> One of the problems the [HOPE VI] Revitalization grants may be used for, is demolition of drug-infested, severely distressed low-income public housing. HUD's proposal perpetuates the problem by recreating high concentrations of poor people all over again.

This commenter cited the example of the commenter's own development, which lost most of its moderate-income tenants in favor of lower-income tenants. Two commenters opposed to the rule stated that ''the proposed rule works against deconcentration objectives.'' These commenters further stated, ''Under the 1998 Quality Housing and Work Responsibility Act [QHWRA], PHA's are required to plan for deconcentration, in order to promote a comparable mix of incomes in all developments'' and ''by evicting over-income households, PHAs may be promoting higher concentrations of low income residents in some developments, thereby defeating the purposes of deconcentration.''

These commenters further stated that high turnover in a neighborhood can lessen the capacity of a community to address its needs and interests, and when the turnover occurs among higher-income households who demonstrate self-sufficiency and represent positive role models, the community can lose its strongest leaders and be significantly destabilized.

Some individual petition signers also stated that the rule would contradict income-mixing and HOPE VI goals.

Response: HUD believes that this rule does not contradict deconcentration or income-mixing policies, because those policies can be successfully achieved by a PHA while implementing this rule. Specifically, deconcentration can occur within tenant populations that are within 80 percent of area median income (AMI), since PHAs are required to target only 40 percent of extremely low-income families in the public housing program. Public housing is intended for low-income families (at or below 80 percent of AMI). Therefore, the resources of public housing should not be used by those who are not low-income while many who are low-income remain on the waiting list.

Comment: PHA commenters raised issues regarding how much pre-eviction notice to give.

One commenter suggested ''a one-to two-year minimum time limit to allow families to prepare for their move into the private market'' as not all PHAs have the resources to help residents become independent of public housing assistance. One commenter suggested a 6-month ''stabilization or grace period'' at the '' 'top rent' level for people 'exiting poverty,' '' with a mutually agreed termination of tenancy at the end of the six months. Another commenter suggested a 60-day advance notice to allow families time to enroll in a supportive services program. Another commenter, citing an example of a family that had borrowed heavily during a period of unemployment due to injury, questioned whether a PHA could establish a one-year post-employment grace period to allow families to ''get back on their feet and pay off some debt?'' One commenter observed that the length of notice is not covered in the rule.

Response: This rule will provide PHAs the discretion to determine the time frame needed to execute an eviction notice, as long as the PHA's decision complies with HUD's regulations and state and local laws.

Comment: Other issues regarding eviction. In a comment, a PHA stated that eviction might create a blemish on the family's record that could make it difficult for it to find other housing. This commenter stated that an eviction policy would require the support of local courts, cause the PHA to incur legal expenses, and should be a last resort. The commenter suggested that a better option might be to permit PHAs not to renew the lease, allowing the ''PHA to notify the over-income family that this would be the last year they would be able to lease from the PHA and provide an interim step before eviction.'' One trade association commenter stated that it has generally supported initiatives that encourage public housing residents to increase their earned income and decrease their dependence on housing assistance. The commenter disagreed with ''the rule's encouragement of punishing assisted housing families who succeed.'' The commenter believed that the rule expresses a preference for eviction, and would prefer that PHAs make discretionary use of their existing tools to encourage over-income families to seek to move, instead of the punitive measure of eviction. In another comment, a PHA stated that ''eviction is a rather serious step that cannot be taken lightly and should only occur when there is clear evidence that affordable rental opportunities are available in the open market to the household against which the action is being taken.'' An individual petition signer expressed fear of eviction if the rule becomes final. Another petition signer added a comment that the rule would ''penalize'' and ''dissuade people from moving up and out of poverty.''

Response: This rule does not require PHAs to evict, but gives PHAs the flexibility to evict or terminate the tenancies of over-income families, where it deems it appropriate, so long as its policy complies with HUD's regulations and state and local law governing tenant and landlord relations. Therefore, a PHA could take into account mitigating factors such as the family's self-sufficiency efforts.

Comment: Five commenters (three PHAs and two trade associations) disagree with, or suggest changes in, the proposed rule's exemptions for families participating in a Family Self-Sufficiency program under 24 part 984 (FSS) and families entitled to the earned-income disallowance. One commenter stated that the exemptions

are invitations to ''play the system,'' and suggested that the rule should require FSS families also to be eligible for the earned-income disallowance ''to ensure reversion of funds to PHA's by those who do not meet their commitment.'' After the 24-month period for the disallowance ends, there should be a mutual termination of tenancy with an option for eviction.

One commenter believed that working families and FSS recipients will be negatively affected if forced to leave after the end of the moratorium on the rent increase, and that the rule will be a disincentive to work if the residents' income results in the possibility of an eviction.

A trade association commenter disagreed as a matter of law that either the FSS program or the earned-income disallowance under 42 U.S.C. 1437a(d) protects over-income families from eviction. The earned-income disallowance speaks only to rent increases, not to continued tenancy, and FSS families have no right to remain in the program once their income exceeds the eligibility limits. This commenter stated that some of its members see the Quality Housing and Work Responsibility Act's favorable treatment of these classes of over-income tenants over other working families in public housing as troubling, and complained that the rule would ''aggravate this disparate statutory treatment'' by placing certain working families at risk of eviction while protecting others. This commenter would prefer HUD to grant PHAs broad discretion in connection with the retention or eviction of all classes of over-income households, or at least remain silent as to the proposed excluded classes, and leave their treatment up to PHAs as well.

Another trade association commenter similarly stated that the proposed rule's exemptions would exclude ''working families who have increasing incomes but have not participated in FSS or met the limited EID qualification criteria.'' The commenter described this different treatment of working families as a ''potential incongruity.'' This commenter also agreed that the exemptions are not required by statute. This commenter stated that ''PHAs should establish exemption categories as part of their local strategies.''

An individual housing authority commenter stated that ''FSS participants should be exempted from this rule as long as they are enrolled in the program and are actively pursuing the goals included in their contract. Over-income families should also be notified of the availability of the program and given the opportunity to enroll in the FSS program with reasonable notice before eviction proceedings are commenced.''

Response: The purpose of the Earned Income Disallowance in 42 U.S.C. 1437a(d), implemented at 24 CFR 960.255, is to encourage families to increase their annual income through participation in self-sufficiency and job training programs and employment by allowing the PHA to exclude the resulting increase in income for one 12-month period and exclude 50 percent of the increase in the second 12-month period. The total lifetime availability of any individual is limited to 48 months. To evict families properly qualified for and receiving the disallowance would clearly be contrary to the statutory purpose and to the regulation providing for the exclusion of such income. Since the earned income disallowance is available only for a limited time, and since it applies upon the commencement of employment of a qualifying family member, HUD does not believe there would be wide latitude to use the exemption improperly to avoid eviction. Therefore, HUD is including the exception to eviction for families receiving EID in this final rule.

FSS is a contractual agreement between the participant and the PHA. Because FSS involves contractual agreements, it is HUD's policy and rule to exempt participants in FSS programs until their contract of participation has ended. Otherwise, PHAs may continue to apply their admissions and continued occupancy policies except as they are modified by this rule.

Comment: One commenter states that this rule would increase program complexity. This commenter, a trade association, stated that this rule would ''make program implementation more complex rather than less complex.'' PHAs would have to identify FSS families and families entitled to the earned income disregard. Additionally, a PHA's determination of household eligibility for FSS or an earned income disregard ''may affect the amount of rent a family pays or the availability of support services to the family. If a PHA elects to implement a local discretionary policy to evict over-income households, these determinations of eligibility may come to affect a household's eligibility for continued occupancy in public housing. * * * .''

Response: PHAs are currently required to monitor FSS families and to apply the earned income disallowance in appropriate cases; therefore, this rule will not add additional complexity to the program.

Comment: HUD should support PHAs in enforcing a time limit for over-income families. This commenter agreed that a family making above 80 percent of the median ''should be evicted if that family is not making an effort to obtain housing in the private sector,'' and that PHAs should receive support from HUD to enforce a time limit not exceeding one year of housing for over-income families.

Response: HUD supports a PHA's discretion, as provided by this rule, to determine the appropriate time limit, if allowed to remain in public housing at all, for families that have reached the 80 percent AMI threshold.

Comment: Two PHA commenters support exemptions for elderly and disabled residents. One commenter, citing a particular case of an elderly resident whose income suddenly rose, asked whether a PHA could allow for an exemption for elderly or disabled persons. Another commenter stated that the only exceptions to eviction should be for elderly and disabled families who remain in public housing for a variety of reasons. ''If PHAs'' must evict an elderly or disable family, it should be for failure to comply with state laws and housing laws, not for being over income; otherwise, elderly/disable families will suffer.'' Also, ''More elderly families may become houseless or choose to rent from the private market. PHAs cannot compete with private market budgets.''

Response: This rule will provide PHAs the flexibility to exempt from eviction specific classes of families, including elderly and persons with disabilities, as long as the exemption is implemented fairly, does not violate civil rights laws, and is included in the PHA's admission and continued occupancy policies.

Comment: The type of increased income should be considered. One commenter, in addition to concerns about elderly and disabled residents, asked whether PHAs would be permitted to ''incorporate this proposal based on increased employment income only?''

Response: PHAs will have the flexibility to set and enforce over-income policy, including distinguishing employment income, so long as the distinction does not violate any other law.

Comment: Two commenters questioned whether perceived ''loopholes'' could be closed. One commenter, a PHA, stated that it is interested in implementing such a rule, while asking whether the final rule will include language to assure that PHAs have the authority to proceed with termination despite intentional or after-the-fact reductions in income in order to divert the termination process and, if not, what discretion PHAs would have

to ''close this easily-manipulated loophole.''

Another commenter stated that to be successful, this program would require that ''interim recertifications should be performed and rents adjusted accordingly (when the cumulative increase passes some baseline amount such as $100 per month to avoid the inefficient expense of [recertifications] for a few dollars)'' and that ''any six months (cumulative, not necessarily continuous) require the cessation of housing subsidy benefits.'' HUD needs to ''continually close the loopholes'' or ''creative tenant workarounds'' that divert resources from assisting the truly needy.

Response: This rule will allow PHAs to have the flexibility, within the parameters of state and local law, to set interim rent policies and other ways to ensure that the policies operate effectively.

Comment: The rule would result in hardship or homelessness. One commenter stated, ''I do not feel a family especially with children should be punished and put out just because their parents are working.'' The commenter stated that rents in her locality are ''out of control,'' and that families evicted under this rule would likely become homeless.

Two commenters stated that ''in localities with low vacancy rates and high rents, the proposed rule, if applied, will result in displacement and severe hardship for evicted families.'' These comments stated that the rule does not distinguish between localities with tight rental markets, such as New York and San Francisco, and those where vacancies are more plentiful. In tight rental markets, eviction under the rule may result in displacement of families with children, disruption of their social and community networks, access to work and other opportunities, and cause stress and hardship.

A number of individual petition signers also stated that the rule would cause displacement or homelessness among families that cannot afford the private rental market.

Response: Public housing is intended for low-income families. This rule is being implemented so that PHAs may, if it deems appropriate, require families with incomes higher than 80 percent AMI to find housing in the unassisted market so that the PHA may tend to its mission of serving truly low-income families on the waiting list.

Comment: Relationship with PHA plan. A commenter asked whether, should this rule become final, PHAs would have to wait until approval of their next agency plan to incorporate it into their policies and practices. Two commenters stated that PHAs intending to use the discretion granted by this rule should so state in their annual plan so that the PHA would be open to public comment under the annual public hearing required by QHWRA. These commenters stated that ''use of this discretion should not bypass the accountability requirements under the law.''

Response: PHAs that implement this rule must state their policy in an attachment to their annual plan required under section 5A of the U.S. Housing Act of 1937 (42 U.S.C. 1437c–1), or submit a plan amendment if necessary under local guidelines. A PHA may proceed with eviction actions up to presentation to the court pending the certification of the plan.

Comment: One commenter, a public interest group, submitted petitions signed by public housing residents.

One petition text submitted stated the following:

> Mi entendimiento es que esta propuesta/regla le dara el derecho a la Autoridad de Viviendas Publicas de Boston de desalojar residentes de viviendas publicas que estan sobre el limite de ingreso para hacer eligible para participar en programas de viviendas publicas. BHA puede hacer la decision que familias sobre ingresos pueden encontrar viviendas alternativa y viviendas publicas solamente deben hacer disponible para familias que tengan una gran necesidad para viviendas publicas.
>
> Sinceramente le pido a HUD que mantega sus restricciones en el desalojamiento de familias que estan sobre el limite de ingreso y la Autoridad de vivienda publica no pueda desalojar esas familias que estan sobre el limite de ingreso o terminar su contrato de arrendimiento.

31 persons signed this petition.

This commenter also submitted a similar petition in English, which reads as follows:

> My understanding is that this proposed rule would give the Boston Housing Authority the right to evict public housing tenants who are over the income limit for eligibility to participate in public housing programs. BHA may decide that such families should be able to find other housing and that public housing units should be made available for families with greater housing need.

One hundred fifty-four persons signed this petition. Some of these signers appended substantive individual comments. The issues raised in those comments are noted elsewhere in this preamble.

The same commenter also submitted a petition with a different text, which reads as follows:

> I am a resident of Massachusetts where the cost of rental housing is the highest in the nation, a studio apartment averages $900 per month and a four bedroom can run $2400 in my neighborhood (A copy of the Boston Globe classified is attached for your review.) Public housing residents are America's working poor. It takes two, three and even four combined incomes to just live decently. Over income is based on adult children who will some day leave, spouses who may leave, get laid off or even die. Every month we read about another company closing down or leaving the state; employment is not stable here. Left alone we would shortly return to homelessness if evicted for over income during our stable times. I want decent, safe, and sanitary housing. I respectfully ask HUD to maintain its restriction on eviction of families based on income which state that a PHA may not evict or terminate the tenancy of a family solely because the family is over income.

Sixty-three persons signed this petition. Some of these signers appended substantive individual comments. The issues raised in those comments are noted elsewhere in this preamble.

Response: It is HUD's position that PHAs should have the discretion to implement this rule. Local discretionary policies can address variances in rental markets as well as potential displacement of over-income families. As long as a PHA complies with state and local law, it will have the right to determine all housing requirements.

Comment: Fluctuations in earned income need to be taken into account.

The proposed rule should take into account fluctuations in income. An over-income family may be evicted under the rule, then suffer a reversal that makes it impossible to afford decent housing in the open rental market. The result will be to ''lock out'' these families until their turn comes up again in the waiting list. These commenters, public interest groups, propose that an ''over-income family'' be defined as one that is over-income for five consecutive years, and has little risk of suffering a significant income reversal in the next five years. Several of the individual petition signers make a similar point, that employment income is not necessarily stable and that the rule could result in eviction followed by a decrease in income.

Response: This rule provides PHAs with the flexibility to deal with the changes in a family's earned income status in terms of eviction.

Comment: Self-sufficiency planning should begin early. One PHA commented that ''With the exception of seniors and truly disabled persons, the day someone begins to receive assistance is the day self-sufficiency planning needs to begin.'' HUD assistance should be temporary.

Response: HUD agrees with the commenter's views. In fact, residents are made aware as they enter public housing of the availability of self-sufficiency programs that will allow them to become self-sufficient and make the transition out of public housing and possibly to homeownership. One of HUD's strategic goals is to increase homeownership opportunities and help residents make the transition out of public housing and possibly on to homeownership. HUD's homeownership programs are intended to assist in this process.

Comment: Asset limitations for seniors should be considered. With regard to senior citizens, a reasonable asset limitation in addition to income should be considered.

Response: PHAs have the discretion to consider asset limitations in their policies, as long as the limitations meet state and local legal requirements.

Comment: Government should increase available resources for low-income housing. A public interest group commented that HUD increase the funding of the public housing capital fund and support a national housing trust fund to finance expanded development of affordable low-income housing. This commenter also stated that HUD should increase the minimum income targeting requirement of PHAs from 40 percent of admissions to 60 percent of admissions for extremely low-income families.

Another public interest group similarly stated that HUD should increase federal commitments to adequate funding of public housing, including enabling high-performing housing authorities in tight rental markets to expand the inventory of public housing, and that HUD should recommend that the provision of prohibiting expansion of public housing stock be repealed. This commenter also agreed with the prior commenter that HUD should increase the admissions of extremely low income families from 40 to 60 percent, and added that HUD should propose an amendment to QHWRA to accomplish this.

Response: This rule addresses the public housing program only, not other available low-income housing funding sources, which are outside the scope of this rulemaking.

Comment: Concerns about flat rents and overall high rents. A number of signers of the petition submitted as comments disagree with increases in, or express concerns with, the flat rent. Other petition signers stated generally that rents are too high in relation to their income and other expenses. Others also stated that rents are too high in relation to the condition of public housing units.

Response: HUD regulations at 24 CFR 960.253(2)(b) set the standard for flat rents. Flat rents are statutorily required and must be set by comparable market rents. Any concern about the level of flat rents should be raised to either the PHA or local HUD office.

Comment: Petition signers suggest giving a homeownership option to over-income public housing residents who cannot afford rent in the private market. One commenter stated that ''if someone's income is to high place them in their own home build by the state so they would only need to pay a mortgage [sic].'' Another asked why the government does not allow PHAs to build or buy and refurbish old housing for over-income residents, and give them an option to buy after a certain length of time with no down-payment. This would free up an overly saturated market and help alleviate homelessness.

Response: HUD programs are intended for eligible families—those with incomes below 80 percent of AMI. Various homeownership options are available to those above this level.

Comment: Length of time for upper-income families to remain. One petition signer asked: If over-income residents are moved out, will a new standard be established as to how long upper income families replacing them can remain in the development?

Response: This rule provides the PHA flexibility to determine if over-income families should remain in public housing.

IV. Findings and Certifications

Environmental Impact

This rule concerns a statutorily required or discretionary establishment and review of income limits and exclusions with regard to eligibility for or calculation of HUD housing assistance or rental assistance. As such, this rule is categorically excluded from the provisions of the National Environmental Policy Act (42 U.S.C. 4332 *et seq.*), under 24 CFR 50.19(c)(6) of HUD's regulations.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)(5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This rule is concerned only with granting PHAs the discretion to evict over-income families. It does not mandate that any PHA take such action. Furthermore, the rule preserves the ability that small PHAs have to admit over-income families in cases where there is no demand for a unit by an eligible family, thus preventing such small PHAs from having to support vacant units.

Therefore, the undersigned certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This final rule does not impose any federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Office of the General Counsel, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number applicable to the program affected by this rule is 14.850.

List of Subjects

24 CFR 960

Aged, Grant programs—housing and community development, Individuals with disabilities, Pets, Public housing.

24 CFR 966

Grant programs—housing and community development, Public housing.

■ Accordingly, HUD amends 24 CFR parts 960 and 966 to read as follows:

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

■ 1. The authority citation for part 960 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437n, 1437z–3, and 3535(d).

Subpart C—Rent and Reexamination

■ 2. Revise § 960.261 to read as follows:

§ 960.261 Restriction on eviction of families based on income.

(a) PHAs may evict or terminate the tenancies of families who are over income, subject to paragraph (b) of this section.

(b) Unless it is required to do so by local law, a PHA may not evict or terminate the tenancy of a family solely because the family is over the income limit for public housing, if the family has a valid contract for participation in an FSS program under 24 part 984. A PHA may not evict a family for being over the income limit for public housing if the family currently receives the earned income disallowance provided by 42 U.S.C. 1437a(d) and 24 CFR 960.255.

PART 966—PUBLIC HOUSING LEASE AND GRIEVANCE PROCEDURE

■ 3. The authority citation for part 966 continues to read as follows:

Authority: 42 U.S.C. 1437d and 3535(d).

Subpart A—Dwelling Leases, Procedures and Requirements

■ 4. Amend § 966.4 by redesignating paragraph (l)(2)(ii) as (l)(2)(iii) and adding a new paragraph (l)(2)(ii) to read as follows:

§ 966.4 Lease requirements.

* * * * *

(l) * * *

(2) * * *

(ii) Being over the income limit for the program, as provided in 24 CFR 960.261.

* * * * *

Dated: November 19, 2004.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 04–26114 Filed 11–24–04; 8:45 am]

BILLING CODE 4210–27–U

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is adding a procedural rule to provide that parole revocation and reparole decisions resulting from a revocation hearing for a District of Columbia Code offender may be administratively appealed. With this change, the Commission is also amending several rules to permit the initial decisions in DC parole revocation cases to be made by one Commissioner. Extending an appeal procedure to revoked DC parolees provides an avenue for these parolees to seek administrative correction of alleged errors in revocation proceedings and to present their views before a second Commissioner. The rule changes further the Commission's goal of greater uniformity in decision-making procedures for all cases within the Commission's jurisdiction.

DATES: *Effective Date:* December 27, 2004.

FOR FURTHER INFORMATION CONTACT: Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION: Since the Parole Commission assumed the revocation functions of the former District of Columbia Board of Parole in August 2000 under the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33, the Commission has required that parole revocation and reparole decisions for District of Columbia offenders be made by the concurrence of two Commissioners. The Commission adopted this requirement to replicate the voting procedures of the former DC Board, which made its decisions on the basis of a majority of the quorum of Board members (*i.e.*, two out of three).[1] The Board did not provide for an appeal of any of its decisions, and, when the Commission took on DC revocation functions, neither did the Commission. (The Commission is required by statute to afford an appeal procedure to U.S. Code offenders.) In response to recommendations that the Commission allow DC offenders to submit appeals, the Commission has explained that staff resources were not sufficient to justify increasing the agency's workload by allowing appeals for DC offenders, and that the two-vote requirement was an acceptable substitute for an appeal procedure. See 65 FR 45885, 45886 (July 26, 2000).

Last year the Commission began modifying its procedures for post-hearing voting and appeals in DC cases. The Commission promulgated a rule permitting appeals of revocation decisions for DC supervised releasees, and made a corresponding amendment that allowed the initial revocation decision for these releasees to be made by one Commissioner. *See* 68 FR 41696–41714 (July 15, 2003). Now the Commission is adopting similar changes for DC offenders who have had parole revocation hearings. DC parolees will now have a formal avenue for seeking administrative correction of alleged errors in revocation proceedings. By extending an appeal procedure to DC parole violators, the Commission will provide for cumulative review of the case by two Commissioners for those offenders who file an appeal. Under the Commission's long-standing practice, an appeal is, whenever possible, reviewed by a Commissioner who did not participate in the decision under review. *See* 28 CFR 2.26(b)(1). For appeals from revoked DC parolees, the Commission will employ the same policies and practices that the Commission identified in the publication of the rule granting an appeal procedure for revoked DC supervised releasees. *See* 68 FR 41698.

In adding an appeal procedure for revoked DC parolees, the Commission must also ensure that the initial dispositions in these cases continue to be made in a timely manner. The

[1] The Board's use of a majority-vote procedure was required by former DC Code § 24–201.2 (renumbered § 24–401.02), but this law and others regarding the creation, powers, and rulemaking authority of the Board were abolished by section 11231(b) of the Revitalization Act.

Commission is particularly vigilant in ensuring continued compliance with the 86-day time period for making revocation decisions for DC parolees arrested and held within the DC metropolitan area. The Commission promulgated the rule on this time limit under a consent decree that resolved class action litigation brought against the Commission regarding significant delays in the handling of DC revocation cases in the early months of the Commission's assumption of revocation functions. Over FY 2004, the number for all revocation dispositions for DC offenders increased 32% from the previous fiscal year. The Commission must be careful in apportioning its workload among the Commissioners so as to avoid violations of decision-making time limits. Therefore, in conjunction with the grant of an administrative appeal, the Commission is adopting a one-vote requirement for cases in which the Commissioner agrees with the examiner panel's recommended decisions on whether to revoke parole and to grant reparole to a DC offender. Consistent with the Commission's traditional practice in federal cases, two Commissioners must still concur in order to make a decision in those cases in which the Commissioner who first reviews the case disagrees with the panel recommendation reached by the hearing examiner and the executive hearing examiner.[2]

With these changes, the Commission's post-hearing voting procedures and appeal procedures for DC parole revocation and supervised release revocation are now identical. This result is consistent with the Commission's goal of achieving greater uniformity in its procedures for all cases under the Commission's jurisdiction. But the Commission is limiting the amendments described in this publication to the procedures that follow revocation hearings for DC parolees (including mandatory releasees), whether the hearing is a local, institutional, or dispositional revocation hearing. At this time, the Commission is not making any changes for DC offenders who have received parole release hearings, including hearings on possible reparole that are subsequent to an earlier revocation and reparole decision (*e.g.*, a rescission or special reconsideration hearing). The Commission is continuing to employ an incremental approach in making appeals available to DC offenders and in modifying the agency's voting procedures. The Commission wants to see the results of the changes made by these amendments before making any further modifications. Budget constraints and the availability of sufficient staff and Commissioners to handle the appeals are factors that affect the Commission's ability to expand or maintain an appeal procedure. *See* 68 FR 41698–99.

[2] In employing a two-vote requirement in such cases, the Commission seeks to allay the concern that one Commissioner may reject the panel recommendation and make a different decision without adhering to the collective policy of the Commission.

Implementation

Because these rule changes are only rules of procedure, the Commission is promulgating the changes as final rules without the need for notice and public comment. In July 2003, similar rules for DC supervised release cases were published, along with other rules, for an extended period of notice and comment and no comment was received. The rule amendments are made effective thirty days after the date of publication. The new rules shall be employed for any DC parolee: (1) Who has a revocation hearing on or after the effective date; or (2) who had a revocation hearing before the effective date, but the case has not been voted on by a Commissioner as of the effective date. If a DC parole revocation case has been voted on by a Commissioner before the effective date, and is before another Commissioner for a vote, the case shall be processed under the two-vote requirement under the former rule and no appeal may be submitted. An appeal may be submitted in any case in which the Commissioner who first voted on the case signed the order on or after the effective date.

The single vote procedure shall be used for decisions made under the expedited revocation procedure. A parolee who accepts an expedited offer waives the opportunity to appeal the decisions identified in the offer.

Executive Order 12866

The U.S. Parole Commission has determined that this final rule does not constitute a significant rule within the meaning of Executive Order 12866.

Executive Order 13132

This rule 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. Under Executive Order 13132, this rule does not have sufficient federalism implications requiring a Federalism Assessment.

Regulatory Flexibility Act

The final rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b), and is deemed by the Commission to be a rule of agency practice that does not substantially affect the rights or obligations of non-agency parties pursuant to Section 804(3)(c) of the Congressional Review Act.

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local, or tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Sec. 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on the ability of United States-based companies to compete with foreign-based companies.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

The Final Rule

■ Accordingly, the U.S. Parole Commission is adopting the following amendment to 28 CFR Part 2.

PART 2—[AMENDED]

■ 1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

■ 2. Amend § 2.74 by revising paragraph (c) to read as follows:

§ 2.74 Decision of the Commission.

* * * * *

(c) The Commission shall resolve relevant issues of fact in accordance with § 2.19(c). Decisions granting or denying parole shall be based on the concurrence of two Commissioners, except that three Commissioner votes shall be required if the decision differs from the decision recommended by the examiner panel by more than six months. A decision releasing a parolee

from active supervision shall also be based on the concurrence of two Commissioners. All other decisions, including decisions on revocation and reparole made pursuant to § 2.105(c), shall be based on the vote of one Commissioner, except as otherwise provided in this subpart.

■ 3. Amend § 2.105 by revising the first sentence of paragraph (c) and adding paragraph (g). The revised and added text reads as follows:

§ 2.105 Revocation decisions.

* * * * *

(c) Decisions under this section shall be made by one Commissioner, except that a decision to override an examiner panel recommendation shall require the concurrence of two Commissioners.

* * *

* * * * *

(g) A parolee may appeal a decision made under this section to revoke parole, to grant or deny reparole, or to modify the conditions of release. The provisions of § 2.26 on the time limits for filing and deciding the appeal, the grounds for appeal, the format of the appeal, the limits regarding the submission of exhibits, and voting requirements apply to an appeal submitted under this paragraph.

Dated: November 18, 2004.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 04–26188 Filed 11–24–04; 8:45 am]

BILLING CODE 4410–31–U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1960

Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters; Subpart I for Recordkeeping and Reporting Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is issuing a final rule amending the occupational injury and illness recording and reporting requirements applicable to Federal agencies, including the forms used by Federal agencies to record those injuries and illnesses. The final rule will make the Federal sector's recordkeeping and reporting requirements essentially identical to the private sector by adopting applicable OSHA recordkeeping provisions as requirements for Federal agencies. In addition to eliminating the problems in the existing system whereby injuries and illnesses suffered by some groups of employees, such as contract employees, are not recorded, this final rule will produce more useful injury and illness records, collect better information about the incidence of occupational injuries and illnesses at the establishment level, create reporting and recording criteria that are consistent among Federal agencies, enable injury and illness comparisons between the Federal and private sectors, and promote improved employee awareness and involvement in the recording and reporting of job-related injuries and illnesses. The final rule will also assist in achieving the stated goal in Executive Order 12196 that Federal agencies comply with all OSHA standards, and generally, assure worker protection in a manner comparable to the private sector. This final rule applies to all Federal agencies of the Executive Branch subject to Executive Order 12196, and does not apply to military personnel and uniquely military equipment, systems, and operations.

The requirements of this final rule do not diminish or modify in any way a Federal Agency's responsibility to report or record injuries and illnesses as required by the Office of Workers' Compensation Programs under the Federal Employees' Compensation Act (FECA).

DATES: This final rule becomes effective January 1, 2005.

FOR FURTHER INFORMATION CONTACT: Acting Director, Thomas K. Marple, Office of Federal Agency Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3622, Washington, DC 20210, Telephone 202–693–2122.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Section 19 of the Occupational Safety and Health Act (the ''OSH Act'') (29 U.S.C. 668) includes provisions to ensure safe and healthful working conditions for Federal sector employees. Under that section, each Federal agency is responsible for establishing and maintaining an effective and comprehensive occupational safety and health program consistent with the standards promulgated by OSHA under Section 6 of the OSH Act. Executive Order 12196, Occupational Safety and Health Programs for Federal Employees, issued February 26, 1980, prescribes additional responsibilities for the heads of Federal agencies, the Secretary of Labor, and the General Services Administrator. Among other things, the Secretary of Labor, through OSHA, is required to issue basic program elements with which the heads of agencies must operate their safety and health programs. These basic program elements are set forth at 29 CFR Part 1960. Section 19 of the OSH Act, the Executive Order, and the basic program elements under 29 CFR Part 1960 apply to all agencies of the Executive Branch except military personnel and uniquely military equipment, systems, and operations. This final rule will amend the basic program elements under 29 CFR Part 1960, Subpart I, to make pertinent private sector recordkeeping requirements under 29 CFR Part 1904 applicable to all Executive Branch Federal agencies. By amendment to the OSH Act on September 28, 1998 (through the Postal Employees' Safety Enhancement Act), the U.S. Postal Service is already complying with the recordkeeping requirements under Part 1904.

Pursuant to Section 19(a) of the OSH Act, each head of a Federal agency is responsible for keeping adequate records of all occupational injuries and illnesses. Section 1–401(d) of the Executive Order provides the Secretary of Labor with the authority to prescribe recordkeeping and reporting requirements for Federal agencies. Under 29 CFR Part 1960, Subpart I, each Federal agency is currently responsible for keeping records of all occupational injuries and illnesses. Section 19 of the OSH Act also provides the Secretary of Labor with access to occupational injury and illness records and reports kept and filed by Federal agencies ''unless those records and reports are specifically required by Executive Order to be kept secret in the interest of the national defense or foreign policy, in which case the Secretary of Labor shall have access to such information as will not jeopardize national defense or foreign policy.''

In its role as the lead Agency for implementing and reviewing compliance with Executive Order 12196 and the basic program elements set forth at 29 CFR Part 1960, OSHA requires Federal agencies to comply with all occupational safety and health standards, and generally, to assume responsibility for worker protection in a manner comparable to private employers. The OSH Act authorizes the Secretary of Labor to issue two types of final rules, ''standards'' and

''regulations.'' Occupational safety and health standards issued pursuant to Section 6 of the Act specify the measures to be taken to remedy occupational hazards. 29 U.S.C. 652(8), 655. OSHA regulations, issued pursuant to general rulemaking authority found, inter alia, under Section 8 of the Act, are the means to effectuate other statutory purposes, including the collection and dissemination of records on occupational injuries and illnesses. 29 U.S.C. 657(c)(2). Because 29 CFR Part 1904, which sets forth occupational injury and illness recordkeeping requirements for the private sector, was promulgated pursuant to Section 8 of the OSH Act, and thus is technically a ''regulation'' and not a ''standard,'' Federal agencies are currently not required to comply with the provisions in Part 1904. Therefore, OSHA is amending the basic program elements at 29 CFR Part 1960, Subpart I, to make pertinent private sector recordkeeping and reporting requirements under Part 1904 applicable to the Federal sector.

II. Functions of the Recordkeeping System

In general, recording incidents of occupational deaths, injuries, and illnesses have several distinct functions or uses for employers, employees, and OSHA. One is to provide information to employers about hazards in their workplaces that are injuring or making their employees ill. Employers and employees can then use the information to implement safety and health programs at individual workplaces. Analysis of injury and illness data is a widely recognized method for discovering workplace safety and health problems and for tracking progress in solving those problems.

Federal employees who are better informed about the hazards they face are more likely to follow safe work practices and to report workplace hazards to their Federal agency safety and health personnel. Such employees may then participate in identifying and controlling those hazards, thus improving the overall level of safety and health in the workplace.

The records are an important source of information for Federal agency safety and health staff, as well as for OSHA's oversight function. Federal agency safety and health personnel use the data to identify the most dangerous worksites, as well as during inspections to help direct their efforts to the hazards in the workplace that are hurting workers. Injury and illness information is used to develop statistics that assist OSHA (through its oversight function) in identifying the scope of occupational safety and health problems and decide whether regulatory intervention, compliance assistance, or other measures are warranted. These data also provide the outcome measures used to determine the effectiveness of Federal agency safety and health programs.

Section 8 of the OSH Act authorizes the Secretary of Labor to issue regulations she determines to be necessary to carry out her statutory functions, including regulations requiring employers to record and report work-related deaths and non-minor injuries and illnesses. OSHA's regulations under 29 CFR Part 1904 include requirements for recording, maintaining, posting, retaining, and reporting occupational injury and illness information in the private sector. Employers must record each fatality, injury, and illness that is work related, is a new case, and meets one or more of the general recording criteria in § 1904.7, or specific cases as described under § 1904.8 through § 1904.12. Under Part 1904, recordable work-related injuries and illnesses are those that result in one or more of the following: death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, loss of consciousness, or diagnosis of a significant injury or illness. Injuries include cases such as, but not limited to, a cut, fracture, sprain, or amputation. Illnesses include both acute and chronic illnesses such as, but not limited to, a skin disease, respiratory disorder, or poisoning.

Also under Part 1904, employers are required to let employees know how and when to report work-related injuries and illnesses. This means that the employer must set up a system for the employees to report work-related injuries and illnesses and instruct them on how to use it. Part 1904 does not specify how the employer must accomplish these objectives, so employers have flexibility to set up systems that are appropriate to their workplace.

III. Overview of the Existing Federal Sector Recordkeeping System

Under 29 CFR Part 1960, Subpart I, Federal agencies are required to collect occupational injury and illness data, analyze these data to identify unsafe and unhealthful working conditions, and establish program priorities based on their analyses. Under existing 1960.67c, Federal agencies are required to record only injury and illness information that is reported to the Office of Workers' Compensation Programs (OWCP) on forms CA–1, CA–2, or CA–6.[1] Under this system, injuries and illnesses are recordable only if a medical expense was incurred or expected, or if the employee was away from work or on leave without pay (LWOP) or continuation of pay (COP) as a result of the injury or illness.

OSHA uses injury and illness statistical data provided by OWCP to set program priorities, identify Federal worksites for OSHA oversight activity, and monitor agencies' progress in reducing occupational injury and illness. Also, OSHA uses the injury and illness statistical data from OWCP to develop an annual report for the President on the status of Federal civilian employees' safety and health.

Under the existing system, the records used by Federal agencies include the OSHA Federal Agency Log and Summary of Occupational Injuries and Illnesses, and the OSHA Form 101, Supplementary Record of Occupational Injuries and Illnesses. On the OSHA Federal Agency Log, agencies must include some brief descriptive information, and use a simple check-off procedure to maintain a running total of occupational injuries and illnesses for the year. OSHA Form 101 is used to provide supplementary information regarding each injury and illness entered on the log. Alternate forms, such as workers' compensation forms, may be used if they contain all the information OSHA requires.

Existing Part 1960, Subpart I, directs each Federal agency to complete an annual summary of occupational injuries and illnesses based on the OSHA Federal Agency Log. Agencies are also required to post a copy of the annual summaries for injuries and illnesses at each establishment. Under the existing system, the head of each Federal agency must ensure access to the injury and illness logs and annual summaries to Occupational Safety and Health Committees, employees, former employees, and employee representatives.

IV. OSHA's Reasons for Revising the Recordkeeping Rule for the Federal Sector

A. The Need To Improve the Quality of the Federal Recordkeeping System

OSHA's revision, which essentially adopts applicable private sector recordkeeping requirements under Part 1904, will increase the ability of Federal agency establishments to identify and

[1] CA–1, Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation; CA–2 , Notice of Occupational Disease and Claim for Compensation; CA–6, Official Superior's Report of Employee's Death.

track occupational injury and illness trends, extend the injury and illness recordkeeping requirements to all civilian workers in the Executive Branch, eliminate the problems associated with non-existent injury and illness reporting for contract employees who are supervised on a daily basis by Federal workers, improve Federal agency and Federal employee awareness of the root causes of accidents in their workplace, create more consistent statistics from Federal agency to Federal agency, and resolve the problem of incompatibility of data between the private sector and Federal sector. Establishing Part 1904 recordkeeping requirements will also reduce reporting errors because Part 1904 is written in plain language, is more detail oriented, uses the question-and-answer format, minimizes ambiguity, eliminates recording of minor injuries and illnesses, and allows agencies flexibility to use computer programs to meet their OSHA recordkeeping obligations.

From an administrative and management perspective, differences in Federal sector and private sector recordkeeping requirements are confusing to Federal agencies and OSHA personnel. Establishing one regulation for recordkeeping will standardize the requirements for both the Federal and private sectors.

Standardizing recordkeeping requirements will allow for more accurate comparisons between Federal and private sector injury and illness experiences. Under the existing Part 1960, Subpart I, recordkeeping system for Federal agencies, comparable data to show how Federal agencies compare statistically with the private sector injury and illness experiences are not available due to the differences in reporting and recording requirements. Therefore, OSHA has not been able to address the concerns raised by several organizations that monitor government activity, and respond to the perception that the Federal Government has a worse injury and illness experience than its private industry counterparts.

For instance, from time to time certain advocacy groups have issued reports comparing some Federal agencies with the highest occupational injury or illness rates per 100 full-time workers with different sectors of private industry. These reports avowed that several Federal agencies had significantly higher occupational injury and illness rates than their private sector counterparts. While the reports intimated that an employee was more likely to be injured or become ill while working for a Federal agency than working for a number of high-risk private sector industries, the reports compared risks in different industries, and OSHA could not verify the injury and illness data reported.

This is best shown in an example of injuries that are compensable but not recordable under 29 CFR Part 1904. Consider the case where a private sector employee falls on the job, notes pain in his or her shoulder, is sent for evaluation at a local emergency room, and following an examination and x-ray, is released back to work without restrictions, days away from work, or medical treatment beyond first aid. Under 29 CFR Part 1904, this case would not be recordable because it does not meet any of the recording requirements (evaluation and x-rays for diagnostic purposes are considered first aid under 29 CFR 1904.7(b)(5)(i)(A) & (B) and the case would not be recordable). However under the current Federal agency recordkeeping system, if the employee files for reimbursement of medical costs under FECA, a CA–1 must be submitted and the case would be recorded.

Another reason for revising the occupational injury and illness recordkeeping system for the Federal sector is that under Part 1960, Subpart I, many groups of employees are not included in the recordkeeping process, including employees hired through the Non-Appropriated Funds Instrumentalities Act (NAFIA), Commissioned Officers of the Public Health Service, and contract employees working under the daily supervision of Federal personnel. Conversely, volunteers are covered under Part 1960 through OWCP reporting requirements, which is not the case for the private sector under Part 1904.

The existing Part 1960 also creates inconsistencies in recordkeeping among Federal establishments. FECA compensability covers injuries to employees that occur on the employer's premises during work hours or in reasonable proximity to the work hours, and the incident is recorded if a CA form is submitted to OWCP because the incident results in a reimbursable medical expense to the employee. Establishments with in-house medical facilities or with contracts for medical services to treat their employees are likely to have fewer claims filed under FECA for medical reimbursement, and therefore are likely to have fewer incidents that are recordable. Establishments without in-house medical facilities or contracts for medical service would record employee injuries and illnesses that result in filing a CA form for any reimbursable medical expense(s). Federal agency establishments with in-house medical staff frequently do not record such events, while those establishments that rely on outside medical staff to treat their injured or ill employees would record such events.

Another example of current inconsistencies in recordkeeping among Federal agencies lies with the U.S. Postal Service (USPS). As mentioned earlier, the U.S. Postal Service, which comprises approximately one-third of the Federal sector workforce in the Executive Branch, is already recording injuries and illnesses under Part 1904 regulations, while the remaining two-thirds of the Federal sector are recording under Part 1960.

The existing Part 1960 system captures little data that are useful in identifying root causes of accidents, fails to adequately capture days away from work, fails completely to capture days of restricted activity or job transfer, and fails to capture important data related to bloodborne pathogens, such as needlesticks and other sharps injuries.

Additional reasons for changing Federal agencies' recordkeeping requirements to the Part 1904 system include: the OSHA 300 log more accurately reflects injuries and illnesses at a glance than does the existing Federal agency log; injuries and illnesses for all employees, including contract employees who are supervised by Federal employees on a daily basis and whose employers do not also record, will be covered; the calendar year reporting will be consistent with the recordkeeping practices in private industry; and, a unified tracking system will result for all workplace injuries and illnesses covered by OSHA.

OSHA's Voluntary Protection Program (VPP) is a program that recognizes worksites with exemplary safety and health programs. In the VPP, management, labor, and OSHA establish cooperative relationships at workplaces that have implemented a comprehensive safety and health management program. OSHA's experience indicates that when an employer commits to the VPP approach to safety and health management and completes the challenging VPP application process, the result includes a dramatic improvement in the organization's safety and health performance.

To qualify for VPP, an establishment must have comprehensive safety and health management programs that include effective injury, illness, and accident recordkeeping, as well as injury and illness lost time and total case rates below the national averages, as measured under Part 1904. As

Federal agencies participating in VPP are currently required to maintain records under two systems, the Federal sector has just over ten VPP sites (including a few in the USPS, as of December 31, 2003) compared to over 1,000 in private industry. Adopting the Part 1904 recordkeeping system for the Federal sector will yield consistent injury and illness data, and would make participation in the VPP program much more attractive to Federal agencies.

Standardizing the private and Federal sector recordkeeping and reporting requirements will lessen the administrative burden on OSHA when changes to the recordkeeping requirements need to be made, as well as streamline training efforts. If the recordkeeping systems remain separate, any changes made to the requirements in the private sector will not be applicable to the Federal sector, unless additional modifications to Part 1960, Subpart I, are made reflecting such changes. Requiring Federal agencies to comply with Part 1904 will largely eliminate this problem. Additionally, standardizing the private and Federal sector recordkeeping and reporting requirements will eliminate OSHA's need to develop and present separate training, outreach, interpretations, etc. on both systems.

B. Advantages for Adopting Applicable Part 1904 Requirements in Part 1960, Subpart I

The advantages of improved recordkeeping fall into two groups. Improved recordkeeping will enhance the ability of Federal agencies and Federal employees to prevent occupational injuries and illnesses. Also, improved recordkeeping and reporting will increase the utility of injury and illness records for Federal agency safety and health staff as well as OSHA's oversight function.

(1) *Enhanced Ability of Federal Agencies and Their Employees to Prevent Injuries and Illnesses.* Collecting additional or improved information about events and exposures of injuries and illnesses on Form 301, including information on the location, the equipment, materials or chemicals being used, and the specific activity being performed, will increase the ability of Federal agencies and their employees to identify hazardous conditions and take remedial action to prevent future injuries and illnesses. Identifying the irritating substance that caused an employee to experience a recordable case of occupational dermatitis, for example, could prompt a Federal agency to re-examine available Material Safety Data Sheets to identify a non-irritating substitute material. On Form 301, details will be recorded in a logical sequence that will help structure the information and focus attention on problem processes and activities. Thus the establishment's records of injuries and illnesses will provide management with an analytical tool that can be used to control or eliminate hazards.

(2) *Increased Utility of Data to Federal Agency Safety and Health Staff and OSHA.* Improvements in the quality and usefulness of the records being kept by Federal agencies will enhance their capacity to: focus investigative efforts on the most significant hazards; identify types or patterns of injuries and illnesses whose investigation might lead to prevention efforts; and, set priorities among Federal agency establishments for inspection purposes. Federal agencies and their employees both stand to benefit from the more effective use of Agency resources. The enhanced ability of safety and health personnel to identify patterns of injuries will enable them to focus on the more serious hazards.

Identifying such patterns will also increase the ability of Federal agencies to control these hazards and prevent other similar injuries. To the extent that Federal agencies take advantage of this information, the task of OSHA's oversight function will be facilitated. Federal employees clearly will also benefit from these reductions in injuries.

Specific Advantages of the Final Rule

(1) *Forms Simplification and Definitions.* Simplifying the forms used by Federal agencies will result in improved information. The same is true of definitional changes, such as counting lost workdays or restricted workdays as calendar days and capping the count at 180 days. Easier recording of data will make records of individual cases more complete and consistent. By using simplified recording procedures, we hope to encourage more complete recording of job-related injuries and illnesses. This process is illustrated by the change from days away from work to calendar days. This change represents an explicit decision to shift the emphasis from lost productivity to the seriousness of the injury or illness. Calendar days are a more accurate and consistent reflection of seriousness than are lost scheduled workdays. They are also directly comparable across establishments and industries while days away from work are not. Thus, calendar days produce more useful information for the purpose of assessing patterns of injuries and illnesses. This variable is also generally much simpler to determine and record, so that the information is more likely to be complete and accurate. This combination of attributes, OSHA believes, will substantially improve the quality of the information available for analysis and enhance the resulting actions taken to reduce job-related injuries and illnesses.

(2) *Recordable Injuries and Illnesses.* The changes in defining injuries and illnesses that are recordable have several advantages. In general, they follow a pattern of simplification and/or more cost effective targeting of recording requirements, which should produce the types of advantages discussed above. Changes that add to the information recorded have other benefits as well.

Specified Recording Thresholds. One change involves identifying the threshold at which a medical removal condition or restriction is to be recorded, and tying this to the level in a specific OSHA standard (lead, cadmium, etc.). This requirement involves no increase in cost to Federal agencies since the pre-removal or restriction conditions are already required under the specific OSHA standard.

Needlesticks and Sharps Injuries and Hearing Loss Cases. By far the most extensive change in recording is the requirement to report all needlesticks and sharps injuries involving exposure to blood or other potentially infectious materials. In effect, OSHA is changing the emphasis on these injuries from the effects (the injury's medical treatment) to the actual injury caused by the incident (*i.e.*, the needlestick or sharps injury). Recording all needlesticks and sharps injuries will provide far more useful information for illness prevention purposes to Federal agencies that administer hospitals and other medical facilities. Unlike many other conditions (*e.g.*, blood poisoning and hearing loss) that are progressive, AIDS and hepatitis are either present or they are not. In any given work setting, the risk is probabilistic and bi-modally distributed; whether one is infected by an injury or one is not. Under these circumstances, the important focus is to prevent all injuries that might lead to illness. For that prevention strategy to be successful, however, the agency should have a complete picture of the overall pattern of all needlesticks and sharps injuries. This requires recording all such injuries, whether or not they result in AIDS, hepatitis, or other bloodborne illness.

Because of their high mortality and disability potentials, AIDS and hepatitis are particularly serious illnesses. One implication of this fact, however, is that

the benefits per case of prevention are large. Another implication is that there are substantial employee morale benefits to a prevention program that is comprehensive and well informed. Recording all risky wounds and then using the data for prevention are actions that are reasonable. Adopting Part 1904 provisions is also likely to result in indirect benefits in the form of improved patient care.

Hearing loss cases also result in substantial disability and can lead to safety accidents in the workplace. OSHA believes that aligning the recording threshold for such cases with the Standard Threshold Shift criterion in the Agency's Occupational Noise Standard will simplify recording for many Federal agencies that are already familiar with this criterion. The shift in this recording criterion will also increase the number of hearing loss cases captured by the recordkeeping system and provide core opportunities for Federal agencies to intervene to prevent other hearing loss cases.

(3) *Procedural Changes and Informational Requirements.* The relationship between costs and benefits varies for the final rule's procedural changes and for its requirements for additional information. Some provisions have positive but trivial costs. Others have more significant costs but provide substantial advantages.

De Minimis Costs. A number of changes have costs that are so low that the benefits of the change are clearly greater. Examples include the provisions discussed below. Recording incidents within seven calendar days, rather than six working days, will impose costs for more rapid recording on establishments that work only five days a week. The reduced burden resulting from a simpler deadline—one week later—almost certainly outweighs this minimal cost, however. Moreover, for establishments that operate six or seven days a week, such as the law enforcement agencies, this change does not impose any additional costs. Under Part 1960, Federal agencies must compile the Annual Summary on a fiscal year basis, complete the Summary not later than 45 calendar days after the close of the fiscal year, and post the Summary copy for a minimum of 30 consecutive days. Under Part 1904, the Summary must be compiled at the end of the calendar year, completed no later than February 1, and posted until April 30. The cost, if any, for posting (but not revising) the Annual Summary for three months, rather than one month, is extremely small—particularly considering that quite a number of other certificates and information (*e.g.* elevator or boiler inspection certificates) must be posted at all times. The ability of employees to refer back to the Annual Summary information, as well as the availability of the information to new employees when they are hired, clearly produces benefits that exceed the costs.

Certification by an Agency Executive. The requirement that an Agency executive certify the Summary will have the effect of increasing the oversight and accountability of higher management in health and safety activities. The certifying official will be responsible for ensuring that systems and processes are in place, and for holding the recordkeeper accountable. This increased awareness of job-related injuries and illnesses, and of their prevention, will translate into fewer accidents and injuries because the certifying executive will have a heightened sense of responsibility for safety and health, although quantifying this benefit is not possible at this time.

Additional Data Requirements for Form 301 and Form 300–A. The final rule will require Federal Agencies to provide several additional pieces of information, at an estimated cost of two minutes per Form 301 and twenty minutes per Form 300–A. Additional information related to incidents (on Form 301) includes: employee's date of hire, emergency room visits, time the employee began work (starting time of the shift), and time of the accident. Additional establishment information (on the Form 300–A Summary) includes: annual average number of employees employed in that year, and total hours worked by all employees during the year. Information on the injured employee's date of hire can provide insight into a number of factors that have been shown to relate to injury rates. Such factors may include inadequate training, inexperience on the job, etc. If OSHA were to link its injury data with information on the distribution of job tenure, for example, it could then calculate injury rates by job tenure category for different jobs. That information will help to identify areas where better training would have the greatest potential to reduce injuries. Data on starting times of shifts and the time of occurrence of the accident will facilitate research on whether accidents rates vary by shift, and whether certain portions of a shift are particularly dangerous. This information will be helpful to OSHA as well as a Federal agency's own assessment of workplace safety and health. Most importantly, employees will receive the information they need to understand both the absolute and relative incidence of injuries and illnesses in their establishment. The inclusion of information concerning the average number of employees and total hours worked by all employees during the year will make it easier to calculate incidence rates directly from the posted summary. Federal agencies will also benefit from their ability to obtain incidence information quickly and easily. At the establishment level, occupational injury and illness records are examined at the beginning of a safety and health inspection and used by compliance personnel to identify safety and health problems that deserve attention. The data on Form 300 and Form 301 will also be used to determine what areas of the site, if any, warrant particular attention during the inspection.

V. The Present Rulemaking

The Federal Advisory Council on Occupational Safety and Health (FACOSH) was established by Executive Order 11612 to advise the Secretary of Labor on matters relating to the occupational safety and health of Federal employees. At the request of FACOSH, OSHA held a meeting on October 31, 2002 to discuss proposed changes to Federal agency occupational injury and illness recordkeeping and reporting requirements. Representatives from fourteen Federal departments or agencies and two Federal employee unions attended the meeting. Although OSHA received almost unanimous consensus that recordkeeping requirements for Federal agencies should be changed, two issues were raised.

The first issue concerned whether under the proposed change a Federal agency could collect and report their injury and illness data on a fiscal year basis instead of a calendar year basis. Some agencies wanted to report on a fiscal year basis so that the OSHA 300 log and the workers' compensation chargeback costs reflected the same time periods. Currently, fiscal years (October through September) and chargeback years (July through June) do not reflect the same time periods. However, since OWCP chargeback data are available to each agency on a quarterly basis, agencies could use their data to compare chargeback costs to OSHA recordable injuries and illnesses for any period of time they desired. Also, use of the calendar year recording and reporting would allow for more accurate comparisons of Federal and private sector data.

At the meeting, the second issue discussed was the differences between the information required on the CA forms and the OSHA 301 incident

report, and having to complete two different forms. While preparation of duplicative paperwork should be avoided, clearly in most instances if the CA form is used, a supplemental statement will frequently still be necessary to comply with OSHA reporting requirements. Agencies must be sensitive to the fact that the CA–1 or CA–2 is frequently the first entry in a FECA case record, and these forms are maintained in a Privacy Act government-wide system of records known as DOL/GOVT–1. Release of information on the CA forms must be consistent with the purpose for which the record was created and must be authorized by the Federal agency as a routine use under the Privacy Act. While elements of the CA–1, CA–2, and CA–6 contain some information useful to OSHA, OWCP's forms are focused on identifying the injury, properly compensating the individual for any wage loss or impairment, and affecting a smooth return to duty. The data collected by OWCP, while valuable for its purpose under FECA, may for OSHA's purposes provide too much unnecessary and extremely personal information about the employee and too little information on the details of how the injury occurred. Accordingly, while use of the information on the CA forms is not prohibited under the new OSHA rule because the Department of Labor seeks to minimize the burdens placed on agencies, OSHA recommends that each agency analyze whether it would be just as easy and cost effective to comply with these new requirements by implementing a system where OSHA 301 forms are completed contemporaneously with CA forms. The information requested on the OSHA 301 form, such as Items 14–17 which asks, ''What was the employee doing just before the incident occurred?'', ''What happened?'', ''What was the injury or illness?'', or ''What object or substance directly harmed the employee?'', are not asked on the CA forms. Certain data elements contained on the CA forms contain personal information (such as the names of eligible dependents under FECA) which must be deleted before the CA forms are utilized to comply with OSHA's new rule. For example, the following information must be deleted from the CA–1 forms: Entry 2 for Social Security Number, Entry 3 for Date of Birth, Entry 5 for Home Telephone Number, Entry 6 for Grade Level as of the date of injury, Entry 7 for Employee's Home Mailing Address, Entry 8 for Dependent Information, Entry 19 for Employee's Retirement Coverage, Entries 30 and 31 relating to information on Third Party subrogation, Entries 32 to 34 relating to medical treatment and the Receipt of Notice of Injury.

The Department of Labor wishes to note that the use of electronic filing systems for Federal workers' compensation claims would facilitate the elimination of those data fields not needed by OSHA. Moreover, an electronic prompt could then be developed when preparing the OSHA Form 301 at a time when memories of the injury are fresh and useful details about the injury can be most easily obtained. For example, a description of an injury on a CA form, such as ''slipped in hallway,'' while sufficient for FECA purposes, might fail to alert safety and health professionals to the fact of which hallway or that the hallway in question is improperly lighted or slippery.

At the January 10, 2003 FACOSH meeting, OSHA gave a presentation describing the differences between recordkeeping requirements under Parts 1904 and 1960. OSHA pointed out that Part 1904 provides very specific instructions on recording criteria, and even contains a flow chart to aid in the decisionmaking process of recordability. OSHA also discussed the new forms and reviewed the timeframes to record injuries and illnesses. A number of questions followed the presentation, and FACOSH recommended that OSHA hold a meeting of Federal agency safety and health representatives to discuss the impact of the proposed recordkeeping change.

On February 25, 2003, OSHA held an informal meeting that was open to the public to discuss the proposed change. This meeting was announced in the **Federal Register** on February 10, 2003 (Vol. 68, No. 27 FR 6783). The meeting agenda included: reason for the proposed change, description of the change, impact of the change, and implementation of the change. The meeting also provided a forum to air any issues that Federal agencies or the public wanted to bring up regarding the proposed change. The meeting produced four main issues: cost, timing, systems adjustment, and training. Representatives attended the meeting from twenty-one Federal agencies, two labor unions representing Federal employees, and several members of the public.

Some felt that since Federal injury and illness rates continued to fall, Federal agencies would receive no benefit in switching recordkeeping systems. OSHA explained that this statement was not entirely accurate. Federal rates increased slightly between 1999 and 2001, while the private sector rates declined by 9.5%. However, as already mentioned, comparing rates between the two recordkeeping systems is not currently possible because the two systems do not measure the same injury and illness experiences.

Some agencies were concerned about the training costs they expected to incur to educate their employees about the new recordkeeping procedures. OSHA explained that while there could be some costs associated with training, this should not be significant. The new system is similar to existing Part 1960, Subpart I, in recording injury and illness incidents, and the Part 1904 regulation is written in plain, user-friendly language, which should permit easily understandable recording criteria. Additionally, OSHA has developed training materials and will make training available as resources permit. OSHA will maximize the use of distance-learning technology and satellite broadcasting to make training available to the greatest number of personnel at the lowest possible cost. In some instances, OSHA plans to make available DVDs and videos to disseminate training materials, and OSHA has Part 1904 recordkeeping training material already available on its website.

Based on OSHA's experience with other transitions to Part 1904, the overall costs associated with changing the Federal agency injury and illness recordkeeping system should not be significant. Many Federal agencies perform work activities comparable to private sector employers, and OSHA has not been made aware of any significant concerns raised by the private sector related to the economic resources needed to complete the transition to and subsequent compliance with Part 1904. Any discussion regarding the cost to the Federal Government for implementing the provisions under Part 1904 must be considered in light of the fact that OSHA already requires private sector employers, some with as few as eleven employees, to comply with these same recordkeeping requirements. Likewise, since 2001, twenty-six States have been requiring employers of public sector employees (State and local government employees) to comply with the Part 1904 recordkeeping requirements, and there has been no indication of a resource problem.

OSHA has also discussed Part 1904 transition with the U.S. Postal Service, and no significant problems related to cost have been identified. During 1999, the Postal Service established Part 1904 requirements at 38,000 of its facilities nationwide, and although the Agency

did not specifically monitor the cost of training or implementation, the Postal Service did derive several benefits in its incident prevention efforts. For example, after implementing Part 1904, the Postal Service created an enhanced database of causal factors based on the reporting and investigation of all occupational injuries and illness beyond those previously reported to OWCP. The new information was used by the Postal Service to develop recommendations to address those causal factors and prevent reoccurrence of similar incidents. Since 1998, the Postal Service has achieved an 11% reduction in their lost time case rate (from 3.03 in FY 1998 to 2.69 in FY 2003). The Postal Service lost time case rate (a measurement of the occurrence of severe injuries and illnesses) represents an 18% improvement over the rest of Executive Branch Federal agencies. OSHA considers the information obtained from the Postal Service to be significant since the USPS employs approximately one-third of the total Federal workforce.

Costs of Transition

The Occupational Safety and Health Administration does not consider an economic feasibility study to be necessary for the purpose of this regulation. In the private sector employers with as few as eleven employees must comply with the requirements of 29 CFR Part 1904. It cannot be reasonably argued that the costs would be too great for the United States Government to comply. As discussed above the U.S. Postal Service converted their recordkeeping to conform with1904 in 1999 and then in 2002 made the transition to the revised 1904. They did not track the costs incurred in making these transitions but did not feel that the costs exceeded the benefits of the change.

Like their private sector counterparts, Federal agencies will incur the initial costs of training recordkeeping personnel. This is estimated at one hour per person trained. Each Federal establishment will incur the annual costs of setting up the log and posting the annual summary. OSHA estimated that this will require 8 minutes per establishment. However, since Federal agencies already must keep a log, and must post a summary, it is estimated that these tasks will not create additional costs for Federal agencies. The proposed regulation requires the senior establishment management official or someone in the direct chain of command between the senior establishment manager and the agency head to certify that he or she has examined this document and ''reasonably believes, based on his or her knowledge of the process by which the information was recorded, that the annual summary is correct and complete.'' This is not significantly different than the private sector requirement for certification by the owner of the company, an officer of the corporation, the highest ranking company official working at the establishment, or the immediate supervisor of the highest ranking company official working at the establishment. OSHA estimated the amount of time for this activity as 30 minutes. The amount of time for the record keeper to prepare the annual summary was estimated as 20 minutes.

The costs of maintaining the Log and Incident Reports are related to the number of cases recorded. During the private sector rule making OSHA estimated that it will require an average of 15 minutes for the Log entry plus, for 18% of the cases, 22 minutes for the 301 form following the requirements of 29 CFR Part 1904. In fiscal year 2003 Executive Branch agencies (excluding the U.S. Postal Service)* reported 81,283 non fatal injuries, and 61 fatalities. This equates to 50161 hours for 1,941,511 Federal employees or slightly more than 1.5 minutes for each covered employee. This figure assumes 15 minutes to complete the log entry and 22 minutes to complete the 301 for 100% of the incidents.

The current rule requires employers to provide the Log and Incident Reports to an OSHA inspector during a compliance visit. Federal establishments like their private sector counter parts are required by the final rule to provide a copy of these forms to the inspector on request. OSHA believes that providing copies has in fact been the practice in the past, even though former rule did not spell this out specifically. OSHA thus does not believe that this small change in the regulation will result in burdens or costs for Federal establishments.

This regulation requires employers to set up a way for employees to report work-related injuries and illnesses and inform employees about the approach they have chosen. OSHA assumes that it will take a Personnel Training and Labor Relations Specialist (or equivalent) at each establishment an average of twenty minutes to decide on a system and inform employees of it. The ''way'' will usually simply involve directing supervisors to inform their subordinates, as part of their usual communication with them, to report work-related injuries and illnesses to their supervisor. Most, if not all, establishments require employees routinely to report problems of any kind to their supervisors, and reporting injuries and illnesses is simply one of the kinds of things employees report. OSHA believes there will be no additional cost associated with the supervisors' forwarding of these reports to the person in charge of recordkeeping, because this is already part of supervisors' duties.

A costs analysis conducted for the private sector rule making on 29 CFR Part 1904 estimated the average annual costs of compliance with this regulation for private sector establishments were less than $58.00 for all businesses in the private sector. For establishments with fewer than 20 employees, the average annual costs per establishment were $31.63 (**Federal Register** Vol 66, No. 13/ Friday, January 19, 2001/page 6108).

Because the requirements for the Federal establishments will be essentially the same as covered private sector establishments there is no reason to believe that the costs per Federal establishment will exceed the costs for private sector establishments.

For a full explanation of the costs and how they were estimated, *see* **Federal Register** Vol. 66, No. 13/Friday, January 19, 2001/pages 6089–6108.

In addition to providing training and compliance assistance, during the first year in which the Part 1904 recordkeeping provisions are in effect, OSHA compliance officers conducting inspections at Federal establishments will focus on assisting Federal agencies to comply with the new rule. OSHA will not issue notices for violations under Part 1960, Subpart I, until January 1, 2006, provided that the Federal agency is attempting in good faith to meet its recordkeeping obligation and agrees to make corrections necessary to bring the records into compliance.

Some agencies questioned how OSHA would communicate the Part 1904 recordkeeping change to the Federal sector. OSHA suggested that the field Federal Safety and Health Councils (FSHC) would be a good source to help communicate information across the country. The FSHCs, which include approximately fifty chapters throughout the country, are cooperative interagency organizations chartered by the Secretary of Labor to facilitate the exchange of information regarding occupational safety and health. OSHA agreed to participate in communication and training as resources permitted, and believed that train-the-trainer courses would work well to help prepare

* The Postal service is excluded from this figure, because they are already covered by the requirements of 29 CFR Part 1904.

Federal agencies throughout the nation for the recordkeeping change.

In response to a concern about whether Federal agencies and their employees will be more inclined to underreport or manipulate the recording of injuries, OSHA stated that like the current OWCP-based recording system, the accuracy of records under Part 1904 relies on agency and employee integrity.

Another issue raised was whether as a result of the OSHA recordkeeping system change agencies would lose the independent data provided by OWCP. OSHA explained that OWCP data will not be impacted by this change, and will continue to be available to Federal agencies. The OWCP data track different issues and information, and would still be available to measure workers' compensation injuries and associated costs. OSHA agrees that Federal agencies may use OWCP CA forms in lieu of the OSHA 301 forms, provided that the Federal agencies include the additional OSHA-required information on an attached supplemental sheet (to include the four questions mentioned earlier).

One commenter raised the concern that including applicable portions of the Part 1904 system would require Federal agencies to record different or non-traditional incidents, such as information related to workplace violence. OSHA believes that requiring Federal agencies to keep records under the Part 1904 system would have the opposite effect. Indeed, under existing Part 1960, Subpart I, Federal agencies are required to report on the OSHA log injuries resulting from workplace violence when medical care is provided and information is reported on the OWCP CA–1 Form. Likewise, OSHA's current recordkeeping requirements for the private sector under Part 1904 include the recording of injuries resulting from workplace violence. OSHA believes that the standardization of recordkeeping requirements will eliminate much of the uncertainty as to whether specific incidents should be recorded, and will require Federal agencies to record injuries and illnesses regardless of whether they are recordable under OWCP.

Another apprehension raised by one commenter was whether changing to the Part 1904 requirements would cause injury and illness rates to go up. OSHA explained that the change could affect those rates. Some agencies might experience a reduction in rates, some might have rates that go up, and some might have rates that remain the same. The increased accuracy in recordkeeping resulting from the change to the Part 1904 system could cause injury and illness rates to go down, but if an agency is not recording them accurately under existing Part 1960, Subpart I, the rates could go up. For instance, injuries and illnesses related to diagnosis, prevention, first aid, or in some cases travel on temporary duty (TDY) would no longer be recordable, and would result in a reduction in the number of recordable incidents. As stated earlier, one of the reasons for making the change is because the two systems do not track the same incidents, and therefore do not keep a record of the same data. The data will change, and this may cause injury and illness rates to go up or down. It should be noted that the current system under 29 CFR Part 1960 does not track injuries of contract employees. Under 29 CFR 1904.31, employers ''must record the recordable injuries and illnesses that occur to employees who are not on your payroll if you supervise these employees on a day-to-day basis.'' Because of this provision, Federal agencies will be responsible for recording recordable injuries sustained by independent contractors who work alongside Federal employees. If a Federal agency chooses to use OWCP Forms CA–1, CA–2 and CA–6 for the purpose of complying with OSHA's recording requirements, agencies should not use the CA forms for recording injuries sustained by contractors. To do so would create administrative problems for OWCP and potential confusion over workers' compensation coverage for such individuals. As a result, OSHA Form 301 must be used to record injuries and illnesses of contract employees.

OSHA acknowledged that agencies could incur additional costs to develop information systems that would capture their injury and illness experience and subsequent data roll-up (collecting and assembling injury and illness statistics from subordinate establishments into reports that reflect the total agency experience), but explained that the Part 1904 recordkeeping change does not include a requirement mandating data roll-up. Federal agencies would not have to invest in a data roll-up system, but OSHA acknowledged that agencies would have the discretion to use the data as a management tool for executing their safety and health programs. The meeting closed with the agreement that absent the mandate to roll-up the data, the agency representatives had no substantive reasons why OSHA should not go forward with the proposed recordkeeping change. Of note, while most participants were opposed to mandating roll-up, there was a consensus that OSHA should look at systems that could be offered Government-wide to assist agencies in the roll-up of their safety and health recordkeeping data.

VII. Access to Injury and Illness Records

As noted above, the final rule requires Federal agencies to use the same injury and illness reporting forms as the private sector. Specifically, Federal agencies will be required to use OSHA Form 300, Log of Work-Related Injuries and Illnesses (replacing the OSHA Federal Agency Log), and OSHA Form 300–A, Summary of Work-Related Injuries, and OSHA Form–301, Injury and Illness Incident Report (replacing OSHA Form 101, Supplementary Record of Occupational Injuries and Illnesses). As with the existing requirements under Part 1960, Subpart I, OSHA will continue to allow Federal agencies to use alternate forms, such as workers' compensation claim forms, to report OSHA injury and illness information. The use of alternate workers' compensation claim forms to record OSHA injury and illness information is also currently available to private sector employers under Part 1904. In both the private sector and Federal sector, any use of alternate forms to record occupational injuries and illnesses must include all OSHA-related information (29 CFR 1904.29(a) and 29 CFR 1960.66(e)).

The final rule continues OSHA's long-standing policy of allowing employees and their representatives to access the occupational injury and illness information kept by their employers, with some limitations. Part 1904 requires an employer to provide limited access to the OSHA injury and illness recordkeeping forms to current and former employees, as well as to two types of employee representatives. The first is a personal representative of an employee or former employee, who is a person that the employee or former employee designates, in writing, as his or her personal representative, or is the legal representative of a deceased or legally incapacitated employee or former employee. The second is an authorized employee representative, which is defined as an authorized collective bargaining agent of one or more employees working at the employer's establishment.

29 CFR 1904.35 accords employees and their representatives three separate access rights. First, it gives any employee, former employee, personal representative, or authorized employee representative the right to a copy of the current OSHA 300 Log, and to any

stored OSHA 300 Log(s), for any establishment in which the employee or former employee has worked. The employer must provide one free copy of the OSHA 300 Log(s) by the end of the next business day. The employee, former employee, personal representative, or authorized employee representative is not entitled to see, or to obtain a copy of, the confidential list of names and case numbers for privacy cases (as discussed above).

Second, any employee, former employee, or personal representative is entitled to one free copy of the OSHA 301 Incident Report describing an injury or illness to that employee, by the end of the next business day. Finally, an authorized employee representative is entitled to copies of the right-hand portion of all OSHA 301 forms for the establishment(s) where the representative represents one or more employees under a collective bargaining agreement. The right-hand portion of the 301 form contains the heading ''Information about the case,'' and elicits information about how the injury or illness occurred, including the employee's actions just prior to the incident, the materials and tools involved, and how the incident occurred, but does not contain the employee's name. No information other than that on the right-hand portion of the OSHA 301 form may be disclosed to an authorized employee representative. The employer must provide the authorized employee representative with one free copy of all the 301 forms for the establishment within seven calendar days.

Part 1904 also includes a number of provisions requiring employers to protect the privacy of employees when recording injuries and illnesses. For certain injuries and illnesses listed under § 1904.29, the employer must omit the employee's name from the OSHA 300 Log. Instead, the employer simply enters ''privacy case,'' and keeps a separate, confidential list containing the identifying information. The separate listing is needed to allow OSHA and other government representatives to obtain the employee's name during a workplace inspection and to assist employers in keeping track of such cases in the event future revisions to the entry become necessary. This approach also allows the employer to provide OSHA 300 Log data to employees, former employees and employee representatives, as required by § 1904.35, while at the same time protecting the privacy of workers who have experienced occupational injuries and illnesses that have privacy concerns.

Under Part 1904, privacy cases include injury and illness to an intimate body part or the reproductive system; injury or illness resulting from sexual assault; mental illnesses; HIV infection, hepatitis, or tuberculosis; needlestick injuries and cuts from sharp objects that are contaminated with another person's blood or other potentially infectious material; and, other illnesses, if the employee voluntarily requests that his or her name not be entered on the log. Mental illnesses are not considered work-related unless the employee voluntarily provides the employer with an opinion from a physician or other licensed health care professional with appropriate training and experience stating that the employee has a mental illness that is work-related. Also, if the employer has a reasonable basis to believe that information describing the privacy concern case may be personally identifiable even though the employee's name has been omitted, the employer may use discretion in describing the injury or illness. In such cases, the employer must enter enough information to identify the incident and the general severity of the injury or illness.

The Privacy Act of 1974, 5 U.S.C. 552a (2000) regulates the collection, maintenance, use, and dissemination of personal information by Federal agencies. Section 552a(e)(4) of the Privacy Act requires that all Federal agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. The Privacy Act permits the disclosure of information about individuals without their consent pursuant to a published routine use where the information will be used for a purpose that is compatible with the purpose for which the information was originally collected.

OSHA anticipates that Federal agencies will develop agency-specific data systems for recording illness and injury information to meet the requirements of the revised Part 1960, Subpart I. While OSHA does not require that Federal employee illness and injury records be retrieved by individual identifiers, some Federal agencies developing illness and injury data systems may find it useful to do so. Each agency is responsible for assuring its own compliance with the Privacy Act, and for establishing Privacy Act systems of records when the agency determines such compliance is required. As noted above, the revised recordkeeping rules include mandatory access rights to certain illness and injury records, such as an employee's right to copy the OSHA 300 Log and an employee representative's right to view the non-identifying right-hand portion of the OSHA 301 Incident Report (29 CFR 1904.35). Where an agency determines that all or part of the records required under the revised OSHA recordkeeping rule are part of a Privacy Act records system, the agency is responsible for issuing appropriate Notices of Routine Use to ensure that all access rights prescribed in Part 1960, Subpart I, are preserved.

VIII. Technical Revisions to Existing Requirements

As described elsewhere in today's final rule, Federal agency injury and illness recordkeeping requirements will, with certain modifications, be the same as those in subparts C, D, E and G of Part 1904. However, in order to eliminate confusion, and provide for a single definition, today's final rule will not adopt the definition of ''establishment'' in Part 1904.46. Instead, the definition of establishment in existing Part 1960.2(h) will remain applicable to Federal agencies. OSHA believes the existing definition of establishment in 1960.2 better describes the application of that term in the Federal sector.

Unlike the private sector, it is common for most Federal agencies to have multiple establishments throughout their national and regional offices. Under Part 1960, the term establishment means a single physical location where business is conducted or where services or operations are performed. Where distinctly separate activities are performed at a single physical location, such as in a typical national or regional office of an executive branch department where headquarters for several agencies or programs are housed, each agency headquarters operation must be treated as a separate establishment. At the Department of Labor, for example, regional and national offices for OSHA, the Employment Standards Administration, Employment and Training Administration, Employee Benefits Security Administration, etc. would all be treated as distinct establishments for illness and injury recordkeeping purposes. Typically, an establishment as used in Part 1960 refers to a field activity, regional office, area office, installation, or facility.

OSHA is also amending certain provisions in existing Part 1960 to eliminate duplication and provide consistency with the requirements in Part 1904. First, today's final rule amends Part 1960.2(l) to incorporate the regulatory text from the definition of ''injury and illness'' set forth in Part 1904.46. As a result, the existing language defining Categories of injuries/

illnesses/fatalities in 1960.2(l)(1) through (6) is deleted, and replaced with the definition for injury and illness from 1904.46.

Likewise, in order to make Part 1960 consistent with Part 1904, today's final rule modifies the requirements in existing 1960.29(b) addressing accident investigation. Existing 1960.29 provides that, while all accidents should be investigated, such investigation should be reflective of the seriousness of the accident. Existing paragraph (b) includes a statement directing Federal agencies that ''each accident which results in a fatality or the hospitalization of five or more employees shall be investigated to determine the causal factors involved.'' Today's final rule modifies this provision to direct Federal agencies to conduct an investigation after ''a fatality or the in-patient hospitalization of three or more employees.'' This change preserves the requirement in the current Part 1960 that federal agencies investigate multiple-hospitalization accidents, but reduces the trigger from five to three to conform with the revised requirements in 29 CFR 1960.70 and 1904.39 that agencies report to OSHA accidents that involve a fatality or the hospitalization of three or more employees.

IX. Administrative Procedure

This rule relates to matters of Federal agency management and personnel and, therefore, is exempt from the usual Administrative Procedure Act requirements for prior notice and comment and a 30-day delay in effective date. *See,* 5 U.S.C. 553(a)(2) and (d).

The Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) does not apply because this rulemaking, which applies only to Federal agencies, does not create or modify information collection requirements that require the approval of the Office of Management and Budget. Additionally, the Department of Labor has determined that this rulemaking is a nonmajor rule under the Congressional Review Act (5 U.S.C. Chapter 8) and will submit a report thereon to the U.S. Senate, House of Representatives, and General Accounting Office in accordance with that law at the same time this rulemaking document is sent to the Office of the Federal Register for publication.

Because this rulemaking applies only to Federal agencies, the Department of Labor certifies pursuant to the Regulatory Flexibility Act, (5 U.S.C. 605(b)), that this final rule will not have a significant impact on a substantial number of small entities. Similarly, the requirements of the Unfunded Mandates Reform Act of 1995 and Executive Order 13132 addressing ''Federalism'' do not apply. The Department of Labor has also determined that this is not a ''significant regulatory action'' under Section 3(f) of Executive Order 12866, ''Regulatory Planning and Review,'' and that it relates to a matter of agency organization, management, or personnel. *See* Executive Order 12866; Section 3(d)(3).

X. Summary and Explanation of the Final Rule, 29 CFR Part 1960, Subpart I, Recordkeeping and Reporting Requirements

As described below, the final rule revises OSHA's requirements for the recording and reporting of work-related deaths, injuries, and illnesses for Federal agencies.

The final rule becomes effective on January 1, 2005. At that time, the following recordkeeping actions will occur:

(1) The revisions to 29 CFR Part 1960, Subpart I, entitled Recordkeeping and Reporting Requirements, which include reference to pertinent provisions in 29 CFR Part 1904, will be in effect.

(2) Federal agencies will utilize the same injury and illness recordkeeping forms that the private sector is required to use:

(A) OSHA Form 300, Log of Work-Related Injuries and Illnesses (replaces the Log of Federal Occupational Injuries and Illnesses);

(B) OSHA Form 300–A, Summary of Work-Related Injuries and Illnesses;

(C) OSHA Form 301, Injury and Illness Incident Report; and

(3) The following OSHA publication will be withdrawn: OSHA 2014 (revised 1986);

(4) All letters of interpretation regarding the former Federal agency recordkeeping requirements will be withdrawn and removed from the OSHA CD–ROM and the OSHA Internet site.

Summary of the Modifications to Existing 29 CFR Part 1960, Subparts A and D.

Today's final rule deletes the existing language in 29 CFR 1960.2(l) addressing the definition of ''Categories of injuries/illnesses/fatalities,'' and replaces it with the definition of ''injury and illness'' set forth at 29 CFR 1904.46. The change is necessary to eliminate duplicative definitions in Part 1960 and Part 1904. Accordingly, new Section 1960.2(l) provides: ''(l) Injury or Illness. An injury or illness is an abnormal condition or disorder. Injuries include cases such as, but not limited to, a cut, fracture, sprain, or amputation. Illness includes both acute and chronic illnesses, such as, but not limited to, a skin disease, respiratory disorder, or poisoning.''

Existing 29 CFR 1960.29 is revised to provide: ''(b) In any case, each accident which results in a fatality or the hospitalization of three or more employees shall be investigated to determine the causal factors involved. Except to the extent necessary to protect employees and the public, evidence at the scene of an accident shall be left untouched until inspectors have an opportunity to examine it.'' This change preserves the requirement in the current Part 1960 that federal agencies investigate multiple-hospitalization accidents, but reduces the trigger from five to three to conform with the revised requirements in 29 CFR 1960.70 and 1904.39 that agencies report to OSHA accidents that involve a fatality or the hospitalization of three or more employees.

Summary of the Modifications to Existing 29 CFR Part 1960, Subpart I, to Make the Pertinent Recordkeeping Requirements in Part 1904 Applicable to the Federal Sector.

Today's final rule includes modifications to existing 29 CFR Part 1960, Subpart I, to make the requirements in Part 1904 applicable to the Federal sector. The final rule revises existing 29 CFR 1960.66—Purpose, scope and general provisions—to include new language, as well as removes and redesignates certain paragraphs. Paragraph (a), which includes new language, states: ''The purpose of this Subpart is to establish uniform requirements for collecting and compiling by agencies of occupational safety and health data, for proper evaluation and necessary corrective action, and to assist the Secretary in meeting the requirement to develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics.''

Paragraph (b) also includes new language and makes certain provisions in 1904 applicable to Federal agencies. It provides: ''Except as modified by this Subpart, Federal agency injury and illness recording and reporting requirements will be the same as 29 CFR Part 1904 Subparts C, D, E, and G.'' Paragraph (b) also makes clear that the definition of ''establishment'' found in 29 CFR 1960.2(h) remains applicable to Federal agencies.

Existing 1960.66(c), which directs Federal agencies to utilize collected information to identify unsafe and unhealthful working conditions and establish program priorities, is retained.

The final rule removes the language in existing paragraph (d) and replaces it

with existing paragraph (e). Accordingly, existing paragraph (e), which provides for the use of more detailed recordkeeping forms than those provided by the Department of Labor, is now new paragraph (d). The new paragraph (d) also includes the following additional language: ''Because of the unique nature of the national recordkeeping program, Federal agencies must have recording and reporting requirements that are the same as Part 1904 for determining which injuries and illnesses will be entered into the records and how they are entered. All other injury and illness recording and reporting requirements used by any Federal agency may be more stringent than, or supplemental to, the requirements of Part 1904, but must not interfere with the agency's ability to provide the injury and illness information required by Part 1904.''

The final rule also removes existing paragraph (f), but retains the requirements in existing paragraph (g). However, existing paragraph (g), which addresses requirements for secrecy when Federal agencies collect information on occupational injuries and illness related to national defense and foreign policy, is redesignated as new paragraph (e).

The final rule also includes the following note at the end of Part 1960.66: ''The recording or reporting of a work-related injury, illness or fatality does not mean that the Federal agency or employee was at fault, that an OSHA rule has been violated, or that the employee is eligible for workers' compensation or other benefits.''

''The requirements of this Part do not diminish or modify in any way a Federal agency's responsibilities to report or record injuries and illnesses as required by the Office of Workers' Compensation Programs under the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 *et seq.*''

The final rule replaces existing 29 CFR 1960.67—Log of occupational injuries and illnesses—with a new paragraph clarifying who is responsible for certifying the OSHA 300 Log at Federal establishments. The new Section 1960.67 provides: ''As required by 29 CFR 1904.32, a company executive must certify that he or she has examined the OSHA 300 Log and that he or she believes, based on his or her knowledge of the process by which the information was recorded, that the annual summary is correct and complete. For Federal establishments, the person who performs the certification must be one of the following: (1) The senior establishment management official, (2) the head of the Agency for which the senior establishment management official works, or (3) any management official who is in the direct chain-of-command between the senior establishment management official and the Agency head.

The final rule also includes a note to Section 1960.67 explaining that the modification to the above requirement for certification of Federal agency injury and illness records is necessary because the private sector position titles contained in the regulation do not fit the Federal agency position titles for agency executives. The Federal officials listed in this paragraph are intended to be the equivalent of the private sector officials who are required to certify records under 1904.32(b)(4).

Today's final rule removes existing Section 1960.68 addressing requirements associated with Federal agency completion of supplementary records of occupational injuries and illnesses. Instead, the new Section 1960.68 addresses ''prohibition against discrimination'' and provides: ''29 CFR 1904.36 refers to Section 11(c) of the Occupational Safety and Health Act. For Federal agencies, the words 'Section 11(c)' shall be read as 'Executive Order 12196, Section 1–201(f).' '' The revised section includes a note explaining that the modification is necessary because Section 11(c) of the Occupational Safety and Health Act only applies to private sector employers and the U.S. Postal Service. The corresponding prohibitions against discrimination applicable to Federal employers are contained in Section 1–201(f) of Executive Order 12196.

Existing Section 1960.69, which includes requirements for Federal agencies to complete annual injury and illness summaries, is removed. The new Section 1960.69 outlines the retention and updating of old forms. The new paragraph states: ''Federal agencies must retain copies of the recordkeeping records utilized under the old system for five years following the year to which they relate and continue to provide access to the data as though these forms were the OSHA Form 300 Log and Form 301 Incident Reports. Agencies are not required to update the old forms.''

The final rule revises existing Section 1960.70, addressing the reporting of serious accidents, to read: ''Agencies must provide the Office of Federal Agency Programs with a summary report of each fatal and catastrophic accident investigation. The summaries must address the date/time of accident, agency/establishment name and location, and consequences, description of operation and the accident, causal factors, applicable standards and their effectiveness, and agency corrective/preventive actions.'' The final rule also includes a note to Section 1960.70 explaining that the paragraph is retained from the previous regulation 29 CFR 1960.70 paragraph (e). The requirements of this paragraph are in addition to the requirements for reporting fatalities and multiple hospitalization incidents to OSHA under 29 CFR 1904. 39.

The final rule deletes existing Sections 1960.71, Location and utilization of records and reports; 1960.72, Access to records by Secretary; and 1960.73, Retention of records. Existing 1960.74, addressing Federal agencies' annual reports, is retained, but is redesignated as Section 1960.71. Paragraph (a)(2) of the new 1960.71 has been revised to provide: ''The Secretary must provide the agencies with the guidelines and format for the reports at the time they are requested.''

Today's final rule also provides that new Sections 1960.72 through 1960.74 are reserved.

XI. Authority and Signature

This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, Third and Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to Sections 19 of the Occupational Safety and Health Act of 1970 (84 Stat. 1609, 1614; 29 U.S.C. 688, 673), 5 U.S.C. 553, Secretary of Labor's Order No. 1–90 (55 FR 9033), and Executive Order 12196.

List of Subjects in 29 CFR Part 1960

Government employees, Occupational safety and health, Reporting and recordkeeping requirements.

Signed at Washington, DC, this 18th day of November 2004.

John L. Henshaw,

Assistant Secretary of Labor for Occupational Safety and Health.

■ For the reasons stated in the preamble, 29 CFR Part 1960 is amended to read as follows:

PART 1960—BASIC PROGRAM ELEMENTS FOR FEDERAL EMPLOYEE OCCUPATIONAL SAFETY AND HEALTH PROGRAMS AND RELATED MATTERS

■ 1. The authority citation for Part 1960 continues to read as follows:

Authority: Sections 19 and 24 of the Occupational Safety and Health Act of 1970 (84 Stat. 1609, 1614; 29 U.S.C. 668, 673), 5

U.S.C. 553, Secretary of Labor's Order No. 1–90 (55 FR 9033), and Executive Order 12196.

■ 2. Amend § 1960.2 by revising paragraph (l) to read as follows:

§ 1960.2 Definitions.

* * * * *

(l) *Injury or illness.* An injury or illness is an abnormal condition or disorder. Injuries include cases such as, but not limited to, a cut, fracture, sprain, or amputation. Illness includes both acute and chronic illnesses, such as, but not limited to, a skin disease, respiratory disorder, or poisoning.

* * * * *

■ 3. Amend § .1960.29 by revising paragraph (b) to read as follows:

§ 1960.29 Accident investigation.

* * * * *

(b) In any case, each accident which results in a fatality or the hospitalization of three or more employees shall be investigated to determine the causal factors involved. Except to the extent necessary to protect employees and the public, evidence at the scene of an accident shall be left untouched until inspectors have an opportunity to examine it.

* * * * *

■ 4. Revise Subpart I to read as follows:

Subpart I—Recordkeeping and Reporting Requirements

Sec.

Subpart I—Recordkeeping and Reporting Requirements

§ 1960.66 Purpose, scope and general provisions.

(a) The purpose of this subpart is to establish uniform requirements for collecting and compiling by agencies of occupational safety and health data, for proper evaluation and necessary corrective action, and to assist the Secretary in meeting the requirement to develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics.

(b) Except as modified by this subpart, Federal agency injury and illness recording and reporting requirements shall comply with the requirements under 29 CFR Part 1904, subparts C, D, E, and G, except that the definition of ''establishment'' found in 29 CFR 1960.2(h) will remain applicable to Federal agencies.

(c) Each agency shall utilize the information collected through its management information system to identify unsafe and unhealthful working conditions, and to establish program priorities.

(d) The provisions of this subpart are not intended to discourage agencies from utilizing recordkeeping and reporting forms which contain a more detailed breakdown of information than the recordkeeping and reporting forms provided by the Department of Labor. Because of the unique nature of the national recordkeeping program, Federal agencies must have recording and reporting requirements that are the same as 29 CFR Part 1904 for determining which injuries and illnesses will be entered into the records and how they are entered. All other injury and illness recording and reporting requirements used by any Federal agency may be more stringent than, or supplemental to, the requirements of 29 CFR Part 1904, but must not interfere with the agency's ability to provide the injury and illness information required by 29 CFR Part 1904.

(e) Information concerning occupational injuries and illnesses or accidents which, pursuant to statute or Executive Order, must be kept secret in the interest of national defense or foreign policy shall be recorded on separate forms. Such records shall not be submitted to the Department of Labor but may be used by the appropriate Federal agency in evaluating the agency's program to reduce occupational injuries, illnesses and accidents.

Note to § 1960.66: The recording or reporting of a work-related injury, illness or fatality does not constitute an admission that the Federal agency, or other individual was at fault or otherwise responsible for purposes of liability. Such recording or reporting does not constitute an admission of the existence of an employer/employee relationship between the individual recording the injury and the injured individual. The recording or reporting of any such injury, illness or fatality does not mean that an OSHA rule has been violated or that the individual in question is eligible for workers' compensation or any other benefits. The requirements of this part do not diminish or modify in any way a Federal agency's responsibilities to report or record injuries and illnesses as required by the Office of Workers' Compensation Programs under the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 *et seq.*

§ 1960.67 Federal agency certification of the injury and illness annual summary (OSHA 300–A or equivalent).

As required by 29 CFR 1904.32, a company executive must certify that he or she has examined the OSHA 300 Log and that he or she believes, based on his or her knowledge of the process by which the information was recorded, that the annual summary is correct and complete. For Federal establishments, the person who performs the certification shall be one of the following:

(a) The senior establishment management official,

(b) The head of the Agency for which the senior establishment management official works, or

(c) Any management official who is in the direct chain of command between the senior establishment management official and the head of the Agency.

Note to § 1960.67: The requirement for certification of Federal agency injury and illness records in this section is necessary because the private sector position titles contained in 29 CFR part 1904 do not fit the Federal agency position titles for agency executives. The Federal officials listed in this section are intended to be the equivalent of the private sector officials who are required to certify records under § 1904.32(b)(4).

§ 1960.68 Prohibition against discrimination.

Section 1904.36 of this chapter refers to Section 11(c) of the Occupational Safety and Health Act. For Federal agencies, the words ''Section 11(c)'' shall be read as ''Executive Order 12196 Section 1–201(f).''

Note to § 1960.68: Section 11(c) of the Occupational Safety and Health Act only applies to private sector employers and the U.S. Postal Service. The corresponding prohibitions against discrimination applicable to Federal employers are contained in Section 1–201(f) of Executive Order 12196, 45 FR 12769, 3 CFR, 1980 Comp. p. 145.

§ 1960.69 Retention and updating of old forms.

Federal agencies must retain copies of the recordkeeping records utilized under the system in effect prior to January 1, 2005 for five years following the year to which they relate and continue to provide access to the data as though these forms were the OSHA Form 300 Log and Form 301 Incident Report. Agencies are not required to update the old forms.

§ 1960.70 Reporting of serious accidents.

Agencies must provide the Office of Federal Agency Programs with a summary report of each fatal and catastrophic accident investigation. The

summaries shall address the date/time of accident, agency/establishment named and location, and consequences, description of operation and the accident, causal factors, applicable standards and their effectiveness, and agency corrective/preventive actions.

Note to § 1960.70: The requirements of this section are in addition to the requirements for reporting fatalities and multiple hospitalization incidents to OSHA under 29 CFR 1904.39.

§ 1960.71 Agency annual reports.

(a) The Act and E.O. 12196 require all Federal agency heads to submit to the Secretary an annual report on their agency's occupational safety and health program, containing such information as the Secretary prescribes.

(1) Each agency must submit to the Secretary by January 1 of each year a report describing the agency's occupational safety and health program of the previous fiscal year and objectives for the current fiscal year. The report shall include a summary of the agency's self-evaluation findings as required by § 1960.78(b).

(2) The Secretary must provide the agencies with the guidelines and format for the reports at the time they are requested.

(3) The agency reports will be used in preparing the Secretary's report to the President.

(b) The Secretary will submit to the President by October 1 of each year a summary report of the status of the occupational safety and health of Federal employees based on agency reports, evaluations of individual agency progress and problems in correcting unsafe or unhealthful working conditions, and recommendations for improving their performance.

§§ 1960.72–1960.74 [Reserved]

[FR Doc. 04–25955 Filed 11–24–04; 8:45 am]
BILLING CODE 4510–26–P

DEPARTMENT OF THE INTERIOR

30 CFR Part 204

RIN 1010–AC30

States' Decisions on Participating in Accounting and Auditing Relief for Federal Oil and Gas Marginal Properties

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of States' decisions to participate or not participate in accounting and auditing relief for Federal oil and gas marginal properties located in their State for calendar year 2005.

SUMMARY: The Minerals Management Service's (MMS) final regulations providing accounting and auditing relief for marginal Federal oil and gas properties, published on September 13, 2004 (69 FR 55076), require MMS to notify industry of the decisions by States concerned to allow or not to allow one or both forms of relief in their State by publishing the decisions in the **Federal Register**. As required under the regulation, MMS provided those States that receive a portion of the Federal royalties with a list of qualifying marginal Federal oil and gas properties located in their State so that each affected State could decide whether to participate in one or both relief options. This Notice provides the decisions by the States concerned under the Accounting and Auditing Relief for Marginal Properties rule (rule) to allow one or both types of relief.

DATES: *Effective Date:* January 1, 2005.

FOR FURTHER INFORMATION CONTACT: Mary Williams, Manager, Federal Onshore Oil and Gas Compliance and Asset Management, telephone (303) 231–3403, FAX (303) 231–3744, e-mail to *mary.williams@mms.gov*, or P.O. Box 25165, MS 392B2, Denver Federal Center, Denver, Colorado 80225–0165.

SUPPLEMENTARY INFORMATION:

Introduction: The rule implemented certain provisions of section 7 of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996. The rule provides two options for relief: (1) notification-based relief for annual reporting, and (2) other requested relief, as proposed by industry and approved by MMS and the State concerned. The rule requires that MMS publish by December 1 of each year, a list of the States concerned and their decision on marginal property relief.

To qualify for the first option of relief (notification-based relief) for Calendar Year 2005, properties must have produced less than 1,000 barrels-of-oil-equivalent (BOE) per year for the base period (July 1, 2003—June 30, 2004). Annual reporting relief will begin on January 1, 2005, with the annual report and payment due February 28, 2006 (unless an estimated payment is on file, which will move the due date to March 31, 2006).

To qualify for the second option of relief (other requested relief), properties must have produced less than 15 BOE per well per day for the base period.

The following table shows states with marginal properties from which a portion of the royalties are shared between MMS and the state and their decision to allow one or both forms of relief.

State concerned	Participating in notification-based relief? (less than 1,000 BOE per year)	Participating in request-based relief? (less than 15 BOE per well per day)
Alabama	No	No.
Arkansas	No	No.
California	No	No.
Colorado	No	No.
Kansas	Yes	No.
Louisiana	Yes	Yes.
Michigan	Yes	No.
Montana	Yes	No.
North Dakota	No	No.
New Mexico	No	No.
Nevada	No	No.
Oklahoma	Yes	Yes.
South Dakota	No	No.
Utah	No	No.
Wyoming	Yes	No.

Federal oil and gas properties located in all other States, where a portion of the royalties are not shared with the State, are eligible for relief if they qualify as marginal under this rule.

For information on how to obtain relief, please refer to the rule, which can be viewed on the MMS Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/AC30.htm*.

All correspondence, records, or information received in response to this Notice are subject to disclosure under the Freedom of Information Act. All information provided will be made public unless the respondent identifies which portions are proprietary. Please highlight the proprietary portions, including any supporting documentation, or mark the page(s) that contain proprietary data. Proprietary information is protected by the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1733), the Freedom of Information Act (5 U.S.C. 552(b)(4), the Indian Minerals Development Act of 1982 (25 U.S.C. 2103), and Department regulations (43 CFR 2).

Dated: November 12, 2004.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 04–26111 Filed 11–24–04; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Jacksonville 04–132]

RIN 1625–AA00

Safety Zone; St. Johns River, Jacksonville, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the St. Johns River extending 210 feet east and west of the Main Street Bridge and 210 feet east of the Acosta Bridge, as well as 500 yards around the firework barges located in front of the Landing and the Adam's Mark Hotel. The safety zone is established for the Lighted Boat Parade fireworks display scheduled on November 27, 2004, on the St. Johns River, downtown Jacksonville. This rule is needed to protect participants, vendors, and spectators from the hazards associated with the launching of fireworks off the aforementioned bridges and barges, and cascading onto the St. Johns River.

DATES: This rule is effective from 8 p.m. to 9:30 p.m. on November 27, 2004.

ADDRESSES: Documents mentioned in this preamble as being available in the docket, are part of docket (COTP Jacksonville 04–132) and are available for inspection and copying at Coast Guard Marine Safety Office Jacksonville, 7820 Arlington Expressway, Suite 400, Jacksonville, Florida, 32211, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Carol Swinson at Coast Guard Marine Safety Office Jacksonville, Florida, tel: (904) 232–2640, ext. 155.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553 (b)(B), the Coast Guard finds that good cause exists for not publishing a NRPM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued, and delaying the rule's effective date is contrary to public safety because immediate action is necessary to protect the public and waters of the United States. Moreover, a NPRM is unnecessary due to the limited amount of time this rule will be in effect.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** The Coast Guard will issue a broadcast notice to mariners and may place Coast Guard vessels in the vicinity of this zone to advise mariners of the restriction.

Background and Purpose

This rule is needed to protect spectator craft in the vicinity of the fireworks presentation from the hazards associated with transport, storage, and launching of fireworks. Anchoring, mooring, or transiting within these zones is prohibited, unless authorized by the Captain of the Port, Jacksonville, Florida. The temporary safety zone encompasses all waters 210 feet east and west of the Main Street Bridge and 210 feet east of the Acosta Bridge and 500 yards around both fireworks barges. During the fireworks show, the fireworks will be launched off both sides of the Main Street Bridge in position 30°19.399′ N, 081°39.533′ W and the east side of the Acosta Bridge in position 30°19.326′ N, 081°39.849′ W; as well as from barges located in front of the Landing and the Adam's Mark Hotel.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential cost and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has exempted it from review under the order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS) because these regulations will only be in effect for a short period of time, and the impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominate in their field, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under section 5 U.S.C. 605 (b) that this rule will not have a significant economic impact upon a substantial number of small entities because the regulations will only be in effect for two hours and the impact on routine navigation are expected to be minimal because traffic may transit safely around the zone and traffic may enter upon permission of the Captain of the Port or his representative.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small each agency's responsiveness to small business. If you

wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that my result in the expenditure by State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or safety that may disproportionately affect children.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(g), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T–07–132 is added to read as follows:

§ 165.T–07–132 Safety Zone St. Johns River, Jacksonville, Florida.

(a) *Regulated area.* The Coast Guard is establishing a temporary safety zone on the St. Johns River extending 210 feet east and west of the Main Street Bridge in position 30° 19.39′N, 081°39.53′W and 210 feet east of the Acosta Bridge in position 30°19.32′N, 081°39.84′W, and 500 yards around both fireworks barges, one located in front of the Landing and the other in front of the Adam's Mark Hotel.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, anchoring, mooring or transiting in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Jacksonville, Florida.

(c) *Dates.* This rule is effective from 8 p.m. to 9:30 p.m. on November 27, 2004.

Dated: November 2, 2004.

David L. Lersch,

Captain, U.S. Coast Guard, Captain of the Port Jacksonville.

[FR Doc. 04–26098 Filed 11–24–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Savannah–04–139]

RIN 1625–AA00

Safety Zone; Savannah River, Savannah, GA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone encompassing all waters of the Savannah River from the Talmadge Bridge to the east end of the Marriott hotel. This regulation is necessary to protect life and property on the navigable waters of the Savannah River due to possible dangers associated with the annual Savannah Harbor Boat Parade of Lights. No vessel may enter the safety zone without the permission of the Captain of the Port Savannah.

DATES: This rule is effective from 4:45 p.m. on November 26, 2004, until 9:30 p.m. on November 26, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket (COTP Savannah–04–139) and are available for inspection or copying at Coast Guard Marine Safety Office, 100 W. Oglethorpe, Savannah, GA 31401

between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Anthony Quirino, Coast Guard Marine Safety Office Savannah, 912–652–4353.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this rule. Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued, would be contrary to public safety interests since immediate action is needed to minimize potential danger to the public.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The temporary safety zone will encompass all waters of the Savannah River from the Talmadge Bridge (32°05′19″ N 081°05′58″ W) to the east end of the Marriott hotel (32°04′52″ N 81°05′18″ W). The temporary safety zone will be effective from 4:45 p.m. on November 26, 2004, until 9:30 p.m. on November 26, 2004. Marine traffic will not be permitted to enter the safety zone without the permission of the Captain of the Port Savannah or his representative. Any concerned traffic can contact the representative of the Captain of the Port on board the U.S. Coast Guard vessel, which will be on scene throughout the event. Traffic needing permission to pass through this safety zone can contact the representative for the COTP on VHF-FM channel 16 or via phone at (912) 652–4181.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS) because marine traffic should be able to safely transit around the safety zone and may be allowed to enter the zone with the permission of the COTP or his representative.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because small entities and marine traffic should be able to safely transit around the safety zone and may be allowed to enter the zone with the permission of the COTP.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pubic Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector, of $100,000,000 or more in any one year. Although this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or safety that may disproportionately affect children.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are not required for this rule.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and

responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that Order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T07–108 to read as follows:

§ 165.T07–108 Savannah River, Savannah, GA.

(a) *Location:* The Coast Guard is establishing a temporary safety zone encompassing all waters of the Savannah River from the Talmadge Bridge (32°05′19″ N 081°05′58″ W) to the east end of the Marriott hotel (32°04′52″ N 081°05′18″ W).

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, anchoring, mooring or transiting in this zone is prohibited, except as provided for herein, or unless authorized by the Coast Guard Captain of the Port Savannah, GA or his representative. Any concerned traffic can contact the representative of the Captain of the Port on board the U.S. Coast Guard vessel, which will be on scene throughout the event. Traffic needing permission to pass through this safety zone can contact the representative for the COTP on VHF–FM channel 16 or via phone at (912) 652–4181.

(c) *Dates:* This rule is effective from 4:45 p.m. on November 26, 2004 to 9:30 p.m. on November 26, 2004.

Dated: November 10, 2004.

M.D. Drieu,

Captain, U. S. Coast Guard, Captain of the Port Savannah.

[FR Doc. 04–26097 Filed 11–24–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 355

[SFUND–2003–0007; FRL–7842–1]

RIN 2050–AE42

Emergency Planning and Community Right-to-Know Act; Extremely Hazardous Substances List; Deletion of Phosmet

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On November 12, 2003, the Environmental Protection Agency proposed to delete phosmet from the list of extremely hazardous substances (EHS) issued under the Emergency Planning and Community Right-to-Know Act (EPCRA). Today, EPA is taking final action to delete phosmet from the EHS list. Facilities with phosmet on-site will no longer be required to comply with emergency planning and emergency release notification requirements. In addition, facilities handling phosmet will no longer have to file an emergency and hazardous chemical inventory form and Material Safety Data Sheet (MSDS) for phosmet with their State Emergency Response Commission (SERC), Local Emergency Planning Committee (LEPC), and local fire department, for amounts less than 10,000 pounds.

DATES: This rule is effective December 27, 2004.

ADDRESSES: EPA has established a docket for this action under Docket ID No. SFUND–2003–0007. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Superfund Docket is (202) 566–0270.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Emergency Planning and Community Right-to-Know Hotline at (800) 424–9346; in the Washington, DC metropolitan area, contact (703) 412–9810. The Telecommunications Device for the Deaf (TDD) Hotline number is (800) 535–7672. You may also access general information online at the Hotline Internet site, *http://www.epa.gov/epaoswer/hotline/.* For questions on the contents of this document, contact Kathy Franklin, Office of Emergency Management (formerly Chemical Emergency Prevention and Preparedness Office), Office of Solid Waste and Emergency Response, (5104A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Telephone (202)564–7987; Fax (202) 564–8444 e-mail: *franklin.kathy@epa.gov*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me? Entities that would be affected by this section are those organizations and facilities subject to 40 CFR part 355—Emergency Planning and Emergency Release Notification Requirements and 40 CFR part 370—Hazardous Chemical Reporting. To determine whether your facility is affected by this action, you should carefully examine the applicability provisions at 40 CFR part 355 and 40 CFR part 370. Entities potentially affected by this action are facilities that produce phosmet formulations, distribute phosmet as a pesticide for commercial use, and farms that store, handle and apply phosmet. If you have any questions regarding the applicability of this action to a particular entity, consult the person(s) listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr.* An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets

at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the public docket, and access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number: SFUND–2003–0007.

The information in this final rule is organized as follows:

I. Background

A. Statutory Authority

This final rule is issued under sections 302 and 328 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA).

B. Extremely Hazardous Substances Under EPCRA

On October 17, 1986, the President signed into law the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99–499 (1986). Title III of SARA established a program designed to require state and local planning and preparedness for spills or releases of certain hazardous materials and to provide the public and local governments with information concerning potential chemical hazards in their communities. This program is codified as the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11001–11050.

Subtitle A of EPCRA establishes the framework for local emergency planning. The statute requires that EPA publish a list of ''extremely hazardous substances'' (EHSs). The EHS list was established by EPA to identify chemical substances which could cause serious irreversible health effects from accidental releases (51 *FR* 13378). EPA had previously published this list as the list of acutely toxic chemicals in November 1985, in Appendix A of the Chemical Emergency Preparedness Program Interim Guidance (CEPP Guidance). The Agency was also directed to establish ''threshold planning quantities'' (TPQs) for each extremely hazardous substance.

Under EPCRA section 302, a facility which has on-site an EHS in excess of its TPQ must notify the State Emergency Response Commission (SERC) and Local Emergency Planning Committee (LEPC) as well as participate in local emergency planning activities. Under section 304 of EPCRA, the facility must also report accidental releases in excess of the Reportable Quantity (RQ) to the National Response Center, the LEPC and SERC. However, releases from the application of a registered pesticide are exempted from the EPCRA section 304 emergency release notification according to 40 CFR 355.40(a)(2)(iv).

As provided under 40 CFR 370.20, EHSs are subject to EPCRA section 311 and 312 reporting requirements. Facilities with an EHS present on-site in excess of 500 pounds or its TPQ, whichever is lower, are required to submit an emergency and hazardous chemical inventory form and Material Safety Data Sheet (MSDS) to their SERC, LEPC and local fire department. Facilities must also submit chemical inventory forms and MSDS for other hazardous chemicals present on-site in quantities of 10,000 pounds or more. However, under sections 311 and 312 of EPCRA, facilities that apply chemicals to crops as a pesticide, do not have to file the inventory form or MSDS for those chemicals, because chemicals that are used at facilities in routine agricultural operations are not included as hazardous chemicals subject to the reporting requirements.

The purpose of the extremely hazardous substance list is to focus initial efforts in the development of state and local contingency plans. Inclusion of a chemical on the EHS list does not mean state or local communities should ban or otherwise restrict use of a listed chemical. Rather, such identification indicates a need for the community to undertake a program to investigate and evaluate the potential for accidental exposure associated with the production, storage or handling of the chemical at a particular site.

The list of extremely hazardous substances and their threshold planning quantities are codified in 40 CFR part 355, appendices A & B. EPA first published the EHS list and TPQs along with the methodology for determining threshold planning quantities as an interim final rule on November 17, 1986 (51 *FR* 41573–41579 and 41580). In the final rule, EPA made a number of revisions to the interim final rule (52 *FR* 13387, April 22, 1987). Among other things, the final rule republished the EHS list, with the addition of four new chemicals and revised the methodology for determining some TPQs. Details of the methodology used to determine whether to list a substance as an extremely hazardous substance and for deriving the threshold planning quantities are found in the November 1986 and April 1987 **Federal Register** notices and in technical support documents in the rulemaking records. These records are found in Superfund Docket No. 300PQ. *See* Section III of this notice for the criteria used for determining whether a substance qualifies as an extremely hazardous substance.

EPA has since received a number of petitions to amend the EHS list. To date, 46 chemicals have been delisted from the EHS list in previous rulemakings because they did not meet the toxicity criteria for the list and were originally listed under section 302 in error.

II. Basis for Final Rule

On November 12, 2003 (68 FR 64041), EPA proposed to delete the chemical phosmet from the EHS list under Section 302 of EPCRA, in response to a petition from Gowan Company. Gowan believed that the listing of phosmet was based on an invalid toxicity study and argued that phosmet should be removed from the EHS list because there were no valid data to indicate that the chemical meets the listing criteria.

Phosmet was originally listed on the EHS list because a four-hour rat inhalation LC_{50}, reported in the 1985 Registry of Toxic Effect of Chemical Substances (RTECS) database, met the EHS primary toxicity inhalation criteria of $LC_{50} \leq 0.5$ mg/L. *See* Section III of this notice for discussion of the EHS listing criteria. The secondary toxicity criteria for EHSs did not apply to phosmet because it does not have a high production volume. Approximately 1,125,000 pounds of phosmet as an active ingredient (a.i.) in pesticide formulations are used annually. The LC_{50} result of 0.054 mg/L was from in a 1969 Russian study, unavailable to EPA. However, a translation of a 1969 Russian journal article about the study

was available for review. The phosmet used in the experiment was manufactured in a Russian research institute using an unknown method. The journal article severely lacked key details of the experimental methods, such as the purity of phosmet, extent of animal body exposure, possibility of other routes of exposure, specific emulsion components and their toxicity. With the number of unanswered key questions regarding the experimental protocol, EPA agrees that the Russian study results were not a sufficient basis for keeping phosmet on the EHS list.

However, before EPA took any regulatory action, a comprehensive review was undertaken of available acute toxicity studies by inhalation, dermal and oral routes; this review found no other inhalation or dermal study results for phosmet that met the EHS primary listing criteria of inhalation $LC_{50} \leq 0.5$ mg/L or dermal LD_{50} of ≤50 mg/kg. A review of acute oral toxicity studies indicated that mice were more sensitive than rats to phosmet. The lowest reported rat oral LD_{50} for technical grade phosmet (96.1%) is 113 mg/kg, which did not meet the primary oral listing criteria of ≤ 25 mg/kg. Technical grade phosmet is generally 94% or higher phosmet content. Reported acute oral toxicity LD_{50}s of technical grade phosmet in mice varied from of 23.1 to 51 mg/kg, based on eight studies.

Stauffer Chemical Company in 1971 reported an oral LD_{50} of 23.3 mg/kg for mice for technical grade phosmet, purity unspecified. The phosmet used in the study was manufactured by a different synthesis method (using ethylene chloride (EDC) as solvent) than used by the current and previous pesticide registrants (Gowan and Stauffer) and thus the phosmet tested may not be representative of the phosmet used in commerce. The greater toxicity observed for technical phosmet synthesized via the EDC route presumably may have been due to impurities resulting from the starting material, incomplete synthesis, degradation or other syntheses method-specific factors. Because of these uncertainties, EPA does not believe the phosmet-EDC results are representative for the phosmet manufactured and registered with EPA by either Stauffer Chemical (former pesticide registrant) or Gowan Company (current pesticide registrant). Therefore, EPA did not consider these values in its review of phosmet for EHS listing purposes.

Another study conducted by researchers at the National Center for Toxicological Research (NCTR) reported oral LD_{50} results of 23.1 and 24.9 mg/kg for male and female mice, respectively, using 99.5% phosmet. The results from this study were presented in a journal article (Haley *et al.*, 1975), but the actual study data could not be found. Because the actual doses and number of animals killed at each dose are not cited, the LD_{50} results could not be replicated or confirmed. Other concerns regarding the Haley study included the variations in mortality response, lack of information on the use of control data, and other questions or potential problems with the study methodology and design. The Agency discussed these issues in detail in the technical background document supporting this rulemaking.

Because of the uncertainties surrounding result verification and the design details of the Haley study, EPA proposed conducting a new acute oral mouse LD_{50} study. Gowan then offered to conduct a new study in acute oral toxicity in mice, which they completed in December 2002. In Gowan's study, twenty female mice were administered 40 mg/kg of 98% pure phosmet, by oral gavage. No mortalities occurred. Because the tested dose produced no deaths in the twenty mice, testing at lower doses was considered unnecessary. EPA believes the Gowan study confirms the oral mouse LD_{50} results from the majority of the previous reported studies, which show LD_{50}s greater than the EHS listing criterion of ≤ 25 mg/kg. Therefore, EPA believes that phosmet does not meet the acute oral toxicity listing criterion and it should be removed from the EHS list. Because phosmet does not have a high production volume (about 1.25 million pounds are applied annually), only the primary listing criteria (discussed below) were used to evaluate whether phosmet should be retained on the EHS list.

III. The EHS Listing Criteria

As previously described, in November 1985, EPA published a list of substances in appendix A of the ''Chemical Emergency Preparedness Program Interim Guidance.'' Under section 302(a) of EPCRA, Congress required EPA to adopt that same list as the EHS list. Appendix A defines the list of chemicals as those ''for which an acute toxicity measure has a value meeting the criteria stated in Chapter 6'' of the November 1985 Interim Guidance. The listing criteria discussed in Chapter 6 are the same criteria referenced and discussed in EPA's interim final and final rules establishing the EHS list. Those criteria contain two sets of numerical acute toxicity measures. For purposes of clarification in today's rulemaking, EPA will refer to the two sets of numerical acute toxicity criteria as the primary listing criteria and the secondary listing criteria. In developing these criteria, the Agency presumed that humans may be as sensitive as the most sensitive mammalian species tested.

A. Primary Listing Criteria

The primary acute toxicity criteria are, based on data from mammalian testing:

Inhalation $LC_{50} \leq 0.5$ milligrams per liter of air (mg/L) (for exposure time ≤ 8 hours), or
Dermal $LD_{50} \leq 50$ milligrams per kilogram of body weight (mg/kg), or
Oral—$LD_{50} \leq 25$ milligrams per kilogram of body weight (mg/kg)

LC_{50} is the median lethal concentration, defined as the concentration level at which 50 percent of the test animals died when exposed by inhalation for a specified time period.

LD_{50} is the median lethal dose, defined as the dose at which 50 percent of the test animals died during exposure.

B. Secondary Listing Criteria

EPA included on the EHS list other chemicals that did not meet the primary acute toxicity criteria. These were added based on the secondary acute toxicity criteria below as well as the following factors: large volume production and known risk, as indicated by the fact that some of the chemicals have caused death and injury in accidents.

The secondary acute toxicity criteria are, based on data from mammalian testing:

Inhalation— $LC_{50} \leq 2$ mg/L for exposure time of ≤ 8 hours, or
Dermal—$LD_{50} \leq 400$ mg/kg or
Oral—$LD_{50} \leq 200$ mg/kg

The chemical with the lowest production volume that was included as an EHS based on the secondary criteria and high production volume, had an annual production volume of 30 million pounds. In addition to high production chemicals meeting these criteria, several other chemicals slightly less toxic than the secondary criteria, were listed because of their recognized toxicity as a chemical of concern or known hazard; for example several of them have caused death or injury in accidents.

C. Development of Listing Criteria

The selection criteria were designed as screening tools to identify chemicals with high acute toxicity. The specific values chosen are recognized by the scientific community as indicating a high potential for acute toxicity, and

chemicals meeting the toxicity criteria are considered potentially hazardous. Even with the amount of animal data that are available, some chemicals have no standard acute toxicity test data.

In choosing chemicals for the EHS list, EPA matched the criteria against all mammalian test data for all chemicals. A chemical was identified as acutely toxic according to these criteria if mammalian acute toxicity data for any one of the three routes of administration was equal to or less than the numerical criteria specified for that route. The Agency used LC_{LO} or LD_{LO} data for a chemical in cases where median lethal concentration or dose (LC_{50} or LD_{50}) were not available. The lethal concentration low (LC_{LO}) and the lethal dose low (LD_{LO}) are the lowest concentration in air or the lowest dose in milligrams of chemical per kilogram of body weight, respectively, at which any test animals died. These values may be more variable than those provided from median lethality tests, but for the purposes of screening large numbers of chemicals, it was deemed necessary to provide a second level screening tool in preference to missing potentially toxic chemicals because they were not adequately tested. For inhalation data, the Agency chose to use LC_{50} and LC_{LO} values with exposure periods up to eight hours or even with no reported exposure period. EPA recognized that this was a conservative approach, but wanted to ensure that acutely toxic chemicals of concern were identified.

For purposes of this assessment, the Agency also used lethality data from the most sensitive mammalian species and not only those from rats because it was not possible to predict which species is the appropriate surrogate for humans for a given chemical. In addition, because populations are heterogeneous and individuals are expected to vary considerably in their sensitivity to chemical substances for this assessment, the Agency assumed that humans may be as sensitive as the most sensitive mammalian species tested.

D. Toxicity Data Sources

When the initial list was developed, the Agency used acute toxicity data from the Registry of Toxic Effects of Chemical Substances (RTECS), maintained by the National Institute of Occupational Safety and Health (NIOSH). The RTECS data was compared with the EHS listing toxicity criteria (both primary and secondary). The RTECS data base was used as the principal source of toxicity data for identifying acutely toxic chemicals because it represents the most comprehensive repository of acute toxicity information available with basic toxicity information and other data on more than 79,000 chemicals. Although RTECS is not formally peer-reviewed, data from RTECS is widely accepted and used as a toxicity data source by industry and regulatory agencies alike. The data presented are from scientific literature which has been edited by the scientific community before publication.

IV. Response to Comments on the November 12, 2003 Proposed Rule

EPA received eight comments during the comment period.[1] Four were from growers or agricultural trade associations, one was from a horticultural agent, one was from a certified professional agronomist, one was from an pesticide/fertilizer retailer and one was from the petitioner seeking delisting of phosmet. All commenters supported the removal of phosmet from the EHS list. Most commenters stated that phosmet has been an essential pest control tool. Some commented that EPA used good science to eliminate unnecessary regulation and would provide regulatory relief. Additionally, several of these commenters stated that the delisting would allow public and private resources to be focused on more critical issues.

Gowan Company, the petitioner requesting the removal of phosmet from the EHS list and the one of the pesticide registrants, had already submitted many toxicity studies and other information to EPA before the proposal was published. Their comments on the proposed rule noted that in addition to no valid data being available that indicate phosmet meets the listing criteria, a robust set of valid data is available that unequivocally shows that phosmet does not meet any of the toxicity (or other) listing criteria. Gowan also believes that the proposed rulemaking will appropriately rectify the mischaracterization of risk.

EPA agrees that there are many acute toxicity studies available for phosmet with results that do not meet the listing criteria. The **Federal Register** notice for the proposed rule focused more on those studies that, at first, appeared to meet the listing criteria. As EPA explained in the notice for the proposal, other acute toxicity studies indicate that phosmet does not meet the listing criteria. These studies are summarized and discussed in the technical background document; and available for review in the public docket. EPA did take into consideration the many results of these other acute oral toxicity studies when making its decision to delist phosmet.

EPA also reviewed the 17 technical references and reports submitted by the Working Group on Community Right-to-Know, in July 2002. These references primarily contained information on phosmet's acute and chronic toxicity, human health effects and risks. EPA carefully reviewed the submitted information and saw no new data or studies on acute toxicity that had not already been reviewed and considered in the decision. The EHS listing criteria is based on specific LC_{50} or LD_{50} acute toxicity testing results in mammals and does not rely on chronic, long-term health effects.

V. Regulatory Impacts of This Rule

As a result of this final rule, phosmet will no longer be an EHS listed under section 302 of EPCRA. As a result, facilities that have phosmet on-site will no longer be required to (1) notify their SERCs and LEPCs that they are subject to the emergency planning provisions of EPCRA section 302 for the chemical phosmet; (2) provide to their LEPC a facility emergency coordinator (unless other listed EHS chemicals are present at the facility) and information about phosmet for developing and implementing the emergency plan; and (3) notify SERCs and LEPCs of accidental releases of phosmet under the requirements of EPCRA Section 304. Releases from application of a pesticide were already exempted from Section 304 reporting. LEPCs would no longer be required to include phosmet as part of a local emergency plan for responding to a chemical emergency at a facility.

Phosmet is still a ''hazardous chemical'' under Section 311 and 312 requirements, except when it is used in routine agricultural operations, such as a pesticide applied on crops. According to 29 CFR 1900.1200(c), phosmet is considered a ''toxic'' health hazard because it has an oral rat acute toxicity LD_{50} of less than 200 mg/kg. Facilities that process or distribute phosmet, such as phosmet product manufacturers and agricultural chemical distributors would still be subject to EPCRA section 311 and 312 reporting requirements for phosmet if they have phosmet present in amounts equal to or greater than 10,000 pounds, as provided in 40 CFR 370.20(b)(4).

[1] In addition, the Agency also received toxicity information on phosmet from the Working Group of Community Right-To-Know in July 2002, which requested that these documents be placed in the official docket if the Agency proposed to change phosmet's listing as an Extremely Hazardous Substance under EPCRA.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 *FR* 51735, (October 4, 1993)), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to formal review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 40 CFR part 355 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0092, (EPA ICR No. 1395.05). Copies of the ICR document(s) may be obtained from Susan Auby, by mail at U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, by e-mail at *auby.susan@epa.gov*, or by calling 202–566–1672. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*. Include the ICR and/or OMB number in any correspondence.

This action does not impose any new information collection burden. This rule will relieve burden for facilities that have phosmet on-site. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et. seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that is defined by the Small Business Administration by category of business using North America Industrial Classification System (NAICS) and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the final rule on small entities, we have concluded that this action will not have a significant economic impact on a substantial number of small entities. This action would remove requirements for reporting and emergency planning for small entities with phosmet on site, and thus relieves regulatory burden.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials to have meaningful and timely input in the development of EPA regulatory proposals, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not include a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any one year. This rule will provide regulatory burden relief and does not impose any additional costs to any State, local, or tribal governments.

EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The rule will provide burden relief to regulated entities.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 *FR* 43255, August 10, 1999), requires EPA to develop an

accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.''

Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation.

This final rule does not have federalism implications. It 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, as specified in Executive Order 13132. This rule does not impose any new requirements on States or other levels of government. Instead, it relieves LEPCs of the responsibility of developing and maintaining emergency plans for facilities that handle and store phosmet. SERCs and LEPCs will no longer be notified of releases of phosmet under the requirements of EPCRA Section 304. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

Because this rule deletes phosmet from the list of EHS chemicals, it relieves some burden on local governments for preparing emergency response plans because fewer facilities will be subject to reporting requirements. This action does not prevent any State government from enforcing more stringent standards for this chemical.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 *FR* 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

This final rule does not have tribal implications, as specified in Executive Order 13175. It does not impose any new requirements on tribal officials. Instead it relieves them of the responsibility of developing emergency plans for facilities that handle and store phosmet. EPA does not believe that tribes have any significant number of facilities that handle, store or use phosmet. Phosmet formulations are handled and stored by farm chemical distributors and used mostly on fruit and nut crops. Today's rule does not significantly or uniquely affect the communities of Indian tribal governments, nor would it impose substantial direct compliance costs on them. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action defined under Executive Order 12866.

I. National Technology Transfer and Advancement Act of 1995

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

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). The rule will be effective December 27, 2004.

List of Subjects in 40 CFR Part 355

Environmental protection, Air pollution control, Chemicals, Chemical accident prevention, Chemical emergency preparedness, Community emergency response plan, Community right-to-know, Extremely hazardous substances, Hazardous substances, Reportable quantity, Reporting and recordkeeping requirements, Superfund, Threshold planning quantity.

Dated: November 18, 2004.

Michael O. Leavitt,

Administrator.

■ For the reasons set out in the preamble, part 355 of title 40 of the Code of Federal Regulations is amended as follows:

PART 355—EMERGENCY PLANNING AND NOTIFICATION

■ 1. The authority citation for part 355 continues to read as follows:

Authority: 42 U.S.C. 11002, 11004, and 11048.

Appendices A and B—[Amended]

■ 2. Appendices A and B to part 355 are amended by removing the entry for CAS No. 732–11–6 for the Chemical Name Phosmet.

[FR Doc. 04–26162 Filed 11–24–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 447

[CMS–2175–F]

RIN 0938–AM20

Medicaid Program; Time Limitation on Recordkeeping Requirements Under the Drug Rebate Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule finalizes 10-year recordkeeping requirements for drug manufacturers under the Medicaid drug rebate program. Manufacturers must retain records for 10 years from the date the manufacturer reports data to us for a rebate period.

This final rule also finalizes the requirement that manufacturers must retain records beyond the 10-year period if the records are known by the manufacturer to be the subject of an audit or a government investigation.

Furthermore, this final rule responds to public comments on the January 6, 2004 interim final rule with comment period and the proposed rule pertaining to the 10-year recordkeeping requirements, respectively.

DATES: This rule is effective January 1, 2005.

FOR FURTHER INFORMATION CONTACT: Kim Howell, (410) 786–6762.

SUPPLEMENTARY INFORMATION:

I. Background

In order for a pharmaceutical manufacturer's products to be eligible for Medicaid reimbursement under section 1903(a) of the Social Security Act (the Act), the manufacturer must sign an agreement with us on behalf of the Secretary of Health and Human Services to participate in the Medicaid drug rebate program. Among the terms to which the manufacturer must agree is the requirement to retain pricing data to support the calculation of average manufacturer price and best price as defined in section 1927 of the Act. Absent a regulatory or statutory requirement, it has been our position that manufacturers must retain these records indefinitely.

On September 19, 1995, we published a proposed rule (60 FR 48442) in the **Federal Register** that proposed numerous provisions related to the Medicaid drug rebate program. As relevant to this rule, we proposed a new 3-year recordkeeping requirement for drug manufacturers under the Medicaid drug rebate program and proposed a 3-year time limitation during which manufacturers must recalculate and report data to us on the average manufacturer price and best price. On August 29, 2003, we published a final rule with comment period (68 FR 51912) in the **Federal Register** that finalized both provisions. On September 26, 2003, we issued a correction notice (68 FR 55527) in the **Federal Register** to change the effective date of the August 29, 2003 rule from October 1, 2003 to January 1, 2004.

II. Provisions of the Proposed Regulations and Interim Final Rule

On January 6, 2004, we published an interim final rule with comment period that removed the 3-year recordkeeping requirement issued in the August 29, 2003 final rule with comment period, and replaced it with 10-year recordkeeping requirements on a temporary basis for manufacturers participating in the Medicaid drug rebate program, and solicited comments on the 10-year requirement.

Under the 10-year recordkeeping requirement, we required that manufacturers retain records for 10 years from the date the manufacturer reports data to us for a rebate period. We also required that manufacturers retain records beyond the 10-year period if the records are the subject of an audit or a government investigation of which the manufacturer is aware and if the audit findings or investigation related to the average manufacturer price and best price have not been resolved. The provisions of the January 6, 2004 interim final rule related to record retention are scheduled to sunset on December 31, 2004.

In addition, the January 6, 2004 interim final rule with comment period responded to public comments on the August 29, 2003 final rule with comment period that pertain to the 3-year recordkeeping requirement at § 447.534(h). The 3-year recordkeeping requirement for drug manufacturers participating in the Medicaid drug rebate program has caused a significant amount of concern from commenters with regard to the False Claims Act (FCA) and other possible fraud and abuse violations.

Also, on January 6, 2004, we published a proposed rule (69 FR 565) that would remove the 3-year recordkeeping requirement and replace it with 10-year recordkeeping requirement on a permanent basis. We also proposed that manufacturers must retain records beyond the 10-year period if the manufacturers are aware that the records are the subject of an audit or a government investigation and if the audit findings or investigation related to the manufacturer's average manufacturer price and best price have not been resolved. This final rule finalizes both the interim final rule and the proposed rule that we published on January 6, 2004.

III. Analysis of and Response to Public Comments on the January 6, 2004 Interim Final With Comment Period and Proposed Rule

We received 3 timely comments in response to the January 6, 2004 interim final rule with comment period and proposed rule. We received comments from an attorney who represents the pharmaceutical industry, a coalition comprised of national advocacy groups, and a non-profit organization. These comments and our responses are summarized below.

Comment: One commenter urged us to promulgate the 10-year requirement as a final rule, effective before the expiration of the current 10-year requirement on December 31, 2004.

Response: We agree; therefore, we are issuing this final rule to permanently establish the 10-year recordkeeping requirements for manufacturers.

Comment: One commenter expressed the opinion that the January 6, 2004 interim final rule and proposed rule should be modified to change the record retention requirements back to 3 years. A manufacturer would still have the discretion to retain records for as long as it wanted, but would not be subject to a mandatory requirement in excess of the 3-year period. The government would not be restricted by these rules from pursuing claims under the False Claims Act (FCA) or applicable health care laws against a manufacturer for fraud, abuse, or knowingly submitting false data to the government. Changing the record retention requirement back to 3 years would reconcile the current conflict between the 10-year record retention requirement and the 3-year price recalculation reporting requirement. The commenter further stated that the interim final rule and the proposed rule should be finalized to clearly state that the 3-year time

limitation is a statute of limitations and that a manufacturer will not be liable or obligated to pay the government or be entitled to be the beneficiary of any errors in calculations for periods outside of the 3-year time limitation.

Response: We believe that it is necessary to replace the 3-year provision with a 10-year provision to address concerns regarding Federal and State investigations for fraud under the FCA and related anti-fraud provisions concerning the Medicaid drug rebate program. Since the manufacturer is often unaware of the qui tam investigations, we must ensure that manufacturers participating in the Medicaid drug rebate program do not erroneously conclude that they could discard records concerning drug price calculations, as well as data supporting those calculations that are subject to the FCA and other fraud laws. The qui tam whistleblower provisions allow persons with evidence of fraud against Federal programs or contracts to bring suit on behalf of the government. Qui tam actions are filed under seal and preliminary investigations often take place without notice to manufacturers.

As noted in the January 6, 2004 interim final rule, we received comments suggesting that the 3-year recordkeeping requirements were too short, but none to convince us to expand the time limit on pricing recalculations. Therefore, since manufacturers are in full possession of the documents that they need to make pricing recalculations, we continue to believe that 3 years is an adequate timeframe to permit manufacturers to recalculate their pricing data. Furthermore, the 3-year limitation rule was designed to establish time limits for reporting recalculations and to decrease associated administrative burdens on manufacturers and States. After further consideration, we firmly believe that the 10–year provision will be more appropriate and sufficient to ensure a Federal standard with regard to the Medicaid drug rebate program that will not hinder the activities of Federal and State law enforcement activities regarding the issues of potential fraud and abuse violations and litigation.

Comment: One commenter expressed the opinion that the 10-year recordkeeping requirement is a significant improvement over the original rule, and will provide a more effective safeguard against improper or fraudulent drug price inflation and abuse of both the Medicaid rebate program and the program under section 340B of the Public Health Service Act. However, the commenter believes that an even longer period of record retention should be required of drug manufacturers.

Response: We recognize that there is some cross-over between the data required for the Medicaid drug rebate program and the 340B program. However, our regulation is solely designed to address the Medicaid drug rebate program. We believe that a 10-year recordkeeping requirement is consistent with the FCA and offers immediate protection to address potential fraud and abuse violations and litigation.

IV. Provisions of the Final Rule

We are adopting the provisions of the regulation text in the January 6, 2004 proposed rule. We are making editorial changes to § 447.534(h)(1)(i) and we are removing paragraph (h)(2), which was included in the interim final rule with comment. This final rule establishes a permanent 10-year recordkeeping requirement for prescription drug manufacturers that participate in the Medicaid drug rebate program. This provision would be set forth in 42 CFR part 447 subpart I. Under the 10-year recordkeeping requirement, we require that a drug manufacturer retain records for 10 years from the date the manufacturer reports that rebate period's data to us. In addition, we require a manufacturer retain data beyond the 10-year period if the manufacturer is aware that the records are the subject of an audit or a government investigation and if the audit findings or investigation related to the manufacturer's average manufacturer price and best price have not been resolved.

In addition, in § 447.534, we are removing the paragraph (ii) [Reserved] at the end of the section, which is a misprint. The paragraph that precedes it is the lower case letter ''i.'' It was misconstrued for the roman numeral one (i). Thus, paragraph (ii) is erroneous and should be removed.

V. Collection of Information Requirements

Under the Paperwork Reduction Act (PRA) of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment when a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

However, the collection requirements referenced below are currently approved by OMB, under OMB control number 0938–0578, entitled ''Medicaid Drug Rebate Program, Manufacturers''.

Section 447.534 Manufacturer Reporting Requirements

Paragraph (h) of this section states a manufacturer must retain records (written or electronic) for 10 years from the date the manufacturer reports data to CMS for a rebate period. The records must include these data and any other materials from which the calculations of the average manufacturer price and best price are derived, including a record of any assumptions made in the calculations. The 10-year timeframe applies to a manufacturer's quarterly submission of pricing data and any revised pricing data subsequently submitted to CMS.

VI. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely assigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We do not believe this rule will have an economically significant effect. We believe the rule will not result in costs to the Medicaid program and that additional costs to drug manufacturers will be minimal. We do not consider this rule to be a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. For purposes of the RFA, pharmaceutical manufacturers with 750 or fewer employees are considered small businesses according to the Small Business Administration's size standards matched to the North American Industry Classification System, effective October 1, 2002, (*http://www.sba.gov/size/sizetable2002.html*). Use of the Small Business Administration's size standards matched to North American Industry Classification System is in compliance with the Small Business Administration's regulation that set forth size standards for health care industries at 65 FR 69432. Individuals and States are not included in the definition of a small entity. Because pharmaceutical manufacturers are not required to report their numbers of employees to the Small Business Administration, we find there is no practical way to determine how many are considered small entities out of a total of 3,295 firms and establishment as reported by the United States Census Bureau (see *http://www.census.gov/csd/susb/usaalliol.xls*). Therefore, we believe this rule will not have a significant impact on small businesses because, although some pharmaceutical manufacturers may be small businesses, we estimate that the cost to manufacturers will be minimal, as described in section VII.B below.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. This rule will not have a significant impact on small rural hospitals, because the provisions contained herein do not pertain to hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. We anticipate this rule will not impact State governments or the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We do not anticipate this rule will impose any direct requirement costs on State governments.

B. Anticipated Effects

1. Effects on Drug Manufacturers

We do not collect information on the costs associated with manufacturer recordkeeping under the Medicaid drug rebate program. Therefore, in the absence of such information, we derived an estimate based on our annual costs of storing electronic pricing data that we receive from approximately 500 drug manufacturers. We store drug product data, including pricing information, for approximately 55,000 drug products. Over the course of the 12 years the Medicaid drug rebate program has been in existence, we have gathered nearly 250 megabytes of information. This information fits on one compact disc. The cost of one blank compact disc is less than $1. We did not have a reasonable proxy available to estimate the staffing costs associated with maintaining the data, so our estimate does not include these costs.

On the whole, we believe this approach is reasonable because it is our understanding that these records are maintained by most manufacturers in an electronic format, while smaller companies may maintain their pricing records in written format. In order to more accurately evaluate the fiscal impact of this provision in the final rule, we requested that manufacturers provide us with information on the costs they would expect to incur pursuant to retaining records for a 10-year period. To the extent possible, we asked that manufacturers make an effort to distinguish between the costs of meeting the 10-year recordkeeping requirement versus other recordkeeping requirements that may apply to the same records. However, we did not receive any information or data in response to our request regarding the expected cost that would be incurred pursuant to retaining records for a 10-year period necessary to determine whether our original assumptions were unsubstantiated. Accordingly, we continue to believe that our estimates are reasonable.

We do not anticipate that this rule will adversely affect a drug manufacturer's participation in the Medicaid drug rebate program or impact the current level of access and availability of prescription drugs for Medicaidbeneficiaries. There is no impact on contractors or providers.

2. Effects on the Medicaid Program

We are unable to quantitatively address the burden to States with respect to recordkeeping. This rule will not adversely affect a State's ability to obtain manufacturers' rebates or impact the current level of access and availability of prescription drugs for Medicaid beneficiaries. There is no impact on Medicaid providers or contractors.

C. Alternatives Considered

Retain the 3-Year Recordkeeping provision in the August 29, 2003 final rule with comment period.

We considered retaining the 3-year recordkeeping provision in the August 29, 2003 final rule with comment period. However, we believe it is necessary to replace the 3-year provision with a 10-year provision to address concerns regarding Federal and State investigations for fraud under the FCA concerning the Medicaid drug rebate program.

Establish a different time limitation.

Another alternative would be to establish a longer or shorter recordkeeping requirement. We did not choose a longer recordkeeping timeframe because we believe a 10-year period will offer immediate protection to address situations where investigations are under seal in qui tam actions. Further, the exception to the 10-year requirement adequately addresses situations where investigations known to manufacturers are not yet resolved. We did not choose a shorter recordkeeping timeframe in this rule because we are concerned that such a timeframe could be misconstrued to lead a manufacturer to believe that it could prematurely destroy vital evidence in a potential fraud and abuse litigation.

Finalize the 10-year recordkeeping requirement with a sunset date provision.

We considered finalizing the 10-year recordkeeping requirement with a sunset date provision. However, we did not choose to finalize the provision with a sunset date because as discussed previously, we have concerns about the potential premature destruction of evidence in false claims act litigation.

D. Conclusion

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs—health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 447—PAYMENTS FOR SERVICES

■ 1. The authority for citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart I—Payment for Outpatient Prescription Drugs Under Drug Rebate Agreements

■ 2. In § 447.534, the following changes are made:
■ A. Paragraph (h)(1)(i) is revised.
■ B. Paragraph (h)(1)(ii) is republished.
■ C. Paragraph (h)(2) is removed and reserved.
■ D. Paragraph (i) is republished.
■ E. The paragraph designated (ii) [Reserved] at the end of the section is removed.

§ 447.534 Manufacturer reporting requirements.

* * * * *

(h) *Recordkeeping requirements.* (1)(i) A manufacturer must retain records (written or electronic) for 10 years from the date the manufacturer reports data to CMS for that rebate period. The records must include these data and any other materials from which the calculations of the average manufacturer price and best price are derived, including a record of any assumptions made in the calculations. The 10-year timeframe applies to a manufacturer's quarterly submission of pricing data, as well as any revised pricing data subsequently submitted to CMS.

(ii) A manufacturer must retain records beyond the 10-year period if both of the following circumstances exist:

(A) The records are the subject of an audit or of a government investigation related to pricing data that are used in average manufacturer price or best price of which the manufacturer is aware.

(B) The audit findings or investigation related to the average manufacturer price and best price have not been resolved.

(2) [Reserved]

(i) *Timeframe for reporting revised average manufacturer price or best price.* A manufacturer must report to CMS revisions to average manufacturer price or best price for a period not to exceed 12 quarters from the quarter in which the data were due.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: August 18, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: September 8, 2004.

Tommy G. Thompson,

Secretary.

[FR Doc. 04–25969 Filed 11–24–04; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–3522, MB Docket No. 04–253, RM–11007]

Digital Television Broadcast Service; Greeley, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Thomas Desmond, allots DTV channel 45 to Greeley, Colorado, as the community's first local commercial television service. *See* 69 FR 45301, July 29, 2004. DTV channel 45 can be allotted to Greeley, Colorado, in compliance with the Sections 73.623(d) and 73.625(a) at reference coordinates 40–25–15 N. and 104–31–30 W. With this action, this proceeding is terminated.

DATES: Effective January 3, 2005.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 04–253, adopted November 4, 2004, and released November 18, 2004. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 301–816–2820, facsimile 301–816–0169, or via e-mail *joshir@erols.com*.

This document does not contain [new or modified] information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

The Commission will send a copy of this Report & Order in a report to be sent to Congress and the General Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Colorado, is amended by adding Greeley, DTV channel 45.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 04–26158 Filed 11–24–04; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 69, No. 227
Friday, November 26, 2004

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

Agricultural Marketing Service

7 CFR Part 946

[Docket No. AO–F&V–946–3; FV03–946–01]

Irish Potatoes Grown in Washington; Recommended Decision and Opportunity To File Written Exceptions to Proposed Amendments to Marketing Agreement No. 113 and Marketing Order No. 946

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This recommended decision invites written exceptions on proposed amendments to the marketing agreement and order (order) for Irish potatoes grown in Washington. Seven amendments are based on those proposed by the State of Washington Potato Committee (Committee), which is responsible for local administration of the order. These amendments include: Adding authority for container and marking regulations; requiring Committee producer members to have produced potatoes for the fresh market in at least 3 out of the last 5 years prior to nomination; updating order provisions pertaining to establishment of districts and apportionment of Committee membership among those districts; requiring Committee nominees to submit a written background and acceptance statement prior to selection by USDA; allowing for nominations to be held at industry meetings or events; adding authority to change the size of the Committee; and adding authority to allow temporary alternates to serve when a Committee member and that member's alternate are unable to serve.

The USDA proposed two additional amendments: To establish tenure limitations for Committee members; and to require that continuance referenda be conducted on a periodic basis to ascertain producer support for the order. The proposed amendments are intended to improve the operation and functioning of the marketing order program.

DATES: Written exceptions must be filed by December 27, 2004.

ADDRESSES: Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, room 1081–S, Washington, DC 20250–9200, Facsimile number (202) 720–9776 or *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments will be made available for public inspection in the Office of the Hearing Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Post Office Box 1035, Moab, UT 84532, telephone: (435) 259–7988, fax: (435) 259–4945.

Small businesses may request information on this proceeding by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, fax: (202) 720–8938.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on October 6, 2003, and published in the October 10, 2003, issue of the **Federal Register** (68 FR 58638).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed amendment of Marketing Agreement No. 113 and Marketing Order 946 regulating the handling of Irish potatoes grown in Washington, and the opportunity to file written exceptions thereto. Copies of this decision can be obtained from Melissa Schmaedick, whose address is listed above.

This recommended decision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the ''Act,'' and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900).

The proposed amendments are based on the record of a public hearing held November 20, 2003, in Moses Lake, Washington. Notice of this hearing was published in the **Federal Register** on October 10, 2003 (68 FR 58638). The notice of hearing contained order changes proposed by the Committee and USDA.

The Committee's proposed amendments include: Adding authority to establish container and marking regulations; requiring Committee producer members to have produced potatoes for the fresh market in at least 3 out of the last 5 years prior to nomination; updating provisions pertaining to districts and allocation of Committee membership among those districts; requiring Committee nominees to submit a written background and acceptance statement prior to selection by USDA; allowing for nominations to be held at industry meetings or events; adding authority to change the size of the Committee; and adding authority to allow temporary alternates to serve when a Committee member and that member's alternate are unable to serve.

The USDA proposed two additional amendments: To establish tenure limitations for Committee members; and require that continuance referenda be conducted on a periodic basis to ascertain producer support for the order. In addition, USDA proposed to allow such changes as may be necessary to the order, if any of the proposed changes are adopted, so that all of the order's provisions conform to the effectuated amendments.

Four industry witnesses testified at the hearing. These witnesses represented fresh Irish potato producers and handlers in the production area, and they all supported the Committee's recommended changes.

Industry witnesses addressed the need for adding authority to establish container and marking regulations, noting that uniform industry regulations and increased flexibility in marketing practices would positively affect the Washington fresh potato industry. Witnesses also recommended that definitions of ''pack'' and ''container'' be added to the order.

Industry witnesses stated their approval of the Committee's recommendations to: Require producer members to have produced potatoes for the fresh market in at least 3 out of the last 5 years prior to nomination; update obsolete order language pertaining to districts; and to require Committee nominees to submit a written background and acceptance statement prior to their selection by USDA. These proposals would ensure adequate representation of fresh potato growers on the Committee, replace outdated language pertaining to districts and allocation of membership among the districts, and combine the Background Statement and the Letter of Acceptance into a single form.

Witnesses also supported the proposals to allow for nominations to be held at large industry meetings rather than at meetings in each district, and to add authority for changes in Committee size. Witnesses stated that the former would broaden grower participation in the nomination process. The latter would allow the Committee to assess the appropriateness of current Committee size and structure in light of changes in the Washington potato industry.

Lastly, industry witnesses testified in support of allowing a temporary alternate to serve at Committee meetings when both a member and his or her alternate are unable to attend. This would facilitate attaining a quorum and prevent delays in Committee decision-making.

A USDA witness testified in support of tenure limitations as a means of broadening industry participation in administering the programs. That witness also favored continuance referenda as a means of periodically determining whether potato growers want the program to continue.

At the conclusion of the hearing, the Administrative Law Judge stated that the final date for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing would be 30 days after USDA's receipt of the hearing record transcript. No briefs were filed.

Material Issues

The material issues presented on the record of hearing are as follows:

(1) Whether to add authority to establish container and marking regulations;

(2) Whether Committee producer members should be required to have produced potatoes for the fresh market in at least 3 out of the last 5 years before nomination;

(3) Whether to update order provisions pertaining to establishment of districts and allocation of Committee membership among those districts;

(4) Whether to require Committee nominees to submit a written background and acceptance statement prior to selection by USDA;

(5) Whether to allow for nominations to be held at industry meetings or events;

(6) Whether to add authority to change the size of the Committee;

(7) Whether to add authority to allow for temporary alternates to serve when a Committee member and that member's alternate are unable to serve;

(8) Whether to establish tenure limitation for Committee members; and

(9) Whether to require periodic grower continuance referenda.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof.

Material Issue Number 1—Authority To Establish Container and Marking Regulations

The order should be amended to give authority to the Committee to recommend, for approval by USDA, container and container marking regulations. Such recommendations could include specification of the size, capacity, weight, dimensions, pack, and marking or labeling of the containers that can be used in the packaging or handling of Irish potatoes grown in Washington. This amendment would also require the definition of two new terms: ''pack'' and ''container.'' ''Pack'' would be defined to mean a quantity of potatoes in any type of container which falls within specific weight limits or within specific grade and/or size limits, or any combination thereof. ''Container'' would be defined to mean a sack, box, bag, crate, hamper, basket, carton, package, barrel or any other type of receptacle used in the packing, transportation, sale or other handling of potatoes.

Section 946.52 of the order currently authorizes the establishment of grade, size, quality and maturity regulations for fresh potatoes. Under this authority, fresh potatoes grown in the production area must meet a minimum grade requirement of U.S. No. 2, and must meet minimum size, cleanness, and maturity specifications. Additionally, potatoes packed in cartons must grade at least U.S. No. 1. These requirements appear in § 946.336 of the order's rules and regulations.

The Committee proposed amending § 946.52 to add authority for container regulations, including labeling requirements. Witnesses supported this proposal as a way to add flexibility to the order, allowing the industry to adjust to changing market demands. To illustrate their point, witnesses discussed their desire to allow U.S. No. 2 grade potatoes to be packed in cartons, but only if the grade were required to be clearly marked on the container.

Witnesses stated that having the authority to require labeling of cartons is vital to the industry, as mandatory labeling would prevent any handler from misrepresenting the quality of the potatoes packed in specified cartons. As previously mentioned, only U.S. No. 1 or higher grade Washington potatoes have been traditionally packed in cartons. Witnesses pressed the importance of mandatory labeling if U.S. No. 2 potatoes were packed in cartons to differentiate the lower quality pack, thereby preventing customer dissatisfaction with the quality of Washington potatoes. As one witness stated, mandatory labeling would ensure that handlers accurately represent the quality of potatoes packed in cartons, thereby maintaining the market for the industry's premium pack.

According to the hearing record, the U.S. potato industry is highly competitive. Consolidation within the industry has resulted in fewer producers and handlers competing for market demand. For this reason, witnesses asserted that the Washington potato industry's ability to respond to customer demands for alternate containers and labeling or marking requirements is essential to its continued success in the market place.

To illustrate this point, witnesses described a recurring request among industry customers for the packing of U.S. No. 2 grade potatoes in 50-pound cartons. Record evidence indicates this request stems from wholesalers and retailers who desire U.S. No. 2 grade potatoes packed in 50-pound cartons for the purpose of addressing issues such as ease of stacking in warehouses and greater product protection. Adding this authority would allow the Washington potato industry to offer its customers a package that is easier to handle and store, that would protect potatoes from light induced ''greening'', and would help protect against bruising during transport.

Witnesses also submitted as evidence a letter from a major food service distributor outlining several reasons for requesting that U.S. No. 2 grade potatoes from Washington be packed in cartons. Reasons outlined in the letter include:

Reduced damage losses and increased product integrity in the distribution system; increased handling efficiencies in the flow of product from the handlers throughout the distribution system; and efficient receiving, storage, order selection and delivery of the product to the end user as a result of clear, consistent and accurate labeling of product. Labeling could include grade, pack, and product description. When asked if the industry agreed with these statements, witnesses stated that these benefits could be realized if container and marking regulatory authority was added to the order.

Witnesses stated that the order's lack of container and labeling authority has challenged the Washington potato industry's ability to meet evolving requests from its customers. Moreover, witnesses fear that if this authority were not added to the order, the Washington potato industry would potentially lose valuable market share, as customers would search elsewhere to satisfy their demand for specific product in specific packaging.

In addition to meeting packing demands, witnesses noted the importance of proper labeling and product quality. Upholding the integrity of the Washington State potato industry, witnesses explained, is as important as meeting customer specifications. Mandatory labeling would not only ensure that handlers are putting the right product in the right packaging, but it would also assure that customers actually receive what they have ordered, thus alleviating potential consumer perception problems. For example, without labeling authority, a customer could mistakenly receive cartons containing U.S. No. 2 grade potatoes instead of U.S. No. 1 grade potatoes. If such a situation were to occur, it could damage customer perceptions of U.S. No. 1 grade potatoes produced in Washington.

Having the flexibility to market different grades of potatoes in labeled cartons would also expand the marketability of Washington potatoes. Witnesses explained that conditions relating to the production of table stock, or fresh market, potatoes and the resultant marketability of such potatoes can greatly fluctuate annually due to water availability, weather, and variances in pest control and other cultural practices. Thus, the overall quality of the potato crop can change enough from year to year that the U.S. No. 1 grade packout percentage can be widely variable. Witnesses explained that, generally, U.S. No. 2 grade potatoes are directed to the dehydration market, a market that does not always provide returns high enough to meet the costs associated with potato production. Witness added, however, that occasional demand exists for U.S. No. 2 grade potatoes as ''peelers'' in the restaurant sector for use in soups and salads, or as ''natural'' French fries.

Witnesses stated that because the order lacks container labeling authority, greater opportunities to market U.S. No. 2 grade potatoes are not currently available. If this authority were added to the order, witnesses indicated that the Washington fresh potato industry would gain access to opportunities that other production areas have access to that they do not. Witnesses stated that having the ability to pack U.S. No. 2 grade potatoes in labeled cartons would meet the current demand of the food service industry, enable the Washington potato industry to remain competitive with other growing areas, and help potato producers in Washington State remain viable.

While witnesses used the example of packing U.S. No. 2 grade potatoes in cartons, it is not intended that the authority for container (including labeling) requirements be limited to this situation. Witnesses stated that this authority would allow the industry to respond to consumer demands as new market trends develop. Another witness stated that demands on the fresh potato industry are changing on a regular basis. In order to remain competitive, producers and handlers cannot rely on ''business as usual'' from year to year.

Testimony indicated that packing facilities are already configured for packing potatoes in cartons and labeling the cartons. Witnesses noted that there would be little, if any, need for equipment changes or additions. Thus, the proposed change is not expected to negatively affect the costs associated with handling fresh market potatoes. Moreover, one handler testifying in favor of this amendment expressed confidence in the principle that customers seeking alternate packing procedures, container types, or specific marking requirements would also be willing to pay any cost differential. Thus, the witness argued that any additional charge incurred while packing would be offset by the increased selling price. The proposed amendment authorizes container and marking specifications. Any specific recommendation by the Committee to implement this authority would be subject to further analysis through the informal rulemaking process.

It was also requested by witnesses at the hearing that definitions of ''pack'' and ''container'' be added to the order to further clarify this proposed amendment. Adding these two definitions would assist in clarifying future requirements established under the above-proposed authority. Proposed definitions of both terms were presented at the hearing and are supported by the hearing record.

Record evidence supports amending the order to include container and marking regulatory authority. This amendment would allow the Committee to recommend, and USDA to implement, container and marking requirements through the informal rulemaking procedure. No opposition to the above proposal was voiced at the hearing. Accordingly, USDA proposes that § 946.52 be amended.

The USDA also proposes that definitions of ''pack'' and ''container'' be added to the order. Adding these two definitions would assist in defining future requirements established under the above-proposed authority.

Material Issue Number 2—Eligibility Requirements for Producer Members of the Committee

The order should be amended to require Committee producer members to have produced potatoes for the fresh market in at least three out of the last five years before nomination. In addition, producer member nominees should also be required to be current producers of fresh potatoes. Such recommendation would ensure representation of fresh potato interests in a market increasingly dominated by processed potato interests.

Section 946.22 of the order establishes the Washington Potato Committee to locally administer the program. The Committee consists of 10 producer and 5 handler members, each having an alternate. Section 946.25 further provides that a producer member of the Committee must be a producer in the district he or she is nominated to represent, or be an officer or employee of a corporate grower in that district. The record supports adding additional eligibility requirements for producer members of the Committee.

Generally, producers nominated to serve on the Committee produce fresh market potatoes. However, the order does not specifically prevent a producer who is solely engaged in the production of potatoes for processing from being elected to serve on the Committee. Witnesses indicated that adding this requirement to the order would ensure adequate representation of fresh potato producers in Committee deliberations.

Witnesses introduced support for this proposal by noting that Marketing Order 946 was established in 1949 to address market needs of the Washington State

fresh potato industry. Since that time, the proportion of potatoes produced for the fresh market relative to those produced for the processing market has shifted substantially. As an example, one witness noted that, in 1955, nearly three-quarters of the production from the State's 36,000 acres of potatoes was directed to the fresh market. In 2003, the share directed to the fresh market represented only 15 percent of the 165,000 acres grown in Washington. Witnesses stated that the declining number of Washington potato producers, coupled with the decreasing proportion of potato production directed to the fresh market, has heightened the Committee's awareness of its need to ensure representation of fresh producers.

Because the order was created to serve the fresh market industry, witnesses felt that only those producers who supply product to that market should represent the industry. Moreover, witnesses stated that a Committee member's personal experience in the production and marketing of fresh market potatoes would enable that producer to make decisions that are in his or her best interest, as well as in the best interest of the industry.

According to the hearing record, the cultural practices of fresh potato production differ significantly from the cultural practices utilized in the production of potatoes for processing. Witnesses explained that, while some shifts by individual producers in delivery of potatoes to the fresh versus the processing market may occur because of economic conditions, substantial swings in the flow of product are unlikely. Reasons preventing significant diversion of potatoes produced for the fresh market to the processing potato market include different production and harvesting techniques, as well as differences in the varieties grown for each market.

One witness stated that production for the fresh versus processing market is a factor that is taken into consideration before planting of the crop. While some adjustments may be made due to production or market conditions, it is unlikely for an entire crop to be diverted from one market to the other. Therefore, witnesses stressed that representation of the fresh market industry should be distinct from that of the processing market industry, even though there may be some diversion from one to the other.

Witnesses stated that a nominee's eligibility could be easily verified through the collection of pertinent information on nominee background and acceptance statements. Nominees would be asked to designate the number of years they have been growing for the fresh market, and whether they are currently producing for that market.

Record evidence supports amending the order to require producer members to have produced potatoes for the fresh market in at least three out of the last five years before nomination. In addition, USDA recommends clarifying the industry's intent, as presented at the hearing, that producer member nominees also be current producers of fresh potatoes. Further, USDA recommends adding these requirements to § 946.25(a) of the order, rather than to § 946.22 as proposed by the Committee. This would put all producer member eligibility requirements in a single location. This proposal would ensure adequate representation of fresh potato interests on the Committee. There was no opposition given to the above proposal.

Material Issue Number 3—Establishment of Districts and Allocation of Committee Membership Among Districts

Section 946.25, Selection, and § 946.31, Districts, of the order should be revised to incorporate updated language currently in the order's administrative rules and regulations. The intent of this proposal is to replace obsolete order language pertaining to the establishment of districts and the allocation of Committee membership among those districts.

As previously discussed, the Committee is comprised of 10 producer members and 5 handler members. For purposes of Committee representation, the production area is divided into geographic districts, and Committee membership is allocated among those districts.

Section 946.31 of the order establishes five districts. Section 946.25 allocates producer and handler membership among those districts. Section 946.31 further authorizes USDA, upon recommendation of the Committee, to reestablish the districts and to reapportion Committee membership among the various districts.

Under the authority in § 946.31, the districts were reestablished and membership reapportioned in 1975. A further reapportionment occurred in 1987. These revisions were made to reflect changes in production patterns since the order's promulgation in 1952. Current requirements appear in § 946.103, Reestablishment of districts, and § 946.104, Reapportionment of committee membership, of the order's administrative rules and regulations.

To update and simplify the order, the Committee recommended that the current language in §§ 946.104 and 946.103 replace the obsolete language in §§ 946.25 and 946.31.

Witnesses maintained that the currently established districts and apportionment of membership among those districts remain adequate to ensure appropriate representation of the Washington potato industry on the Committee. Further, witnesses supported retaining the authority to further reestablish the districts and reapportion membership in the future if deemed appropriate.

Record evidence supports revising the order by replacing obsolete language pertaining to districts and allocation of membership. As this proposal would facilitate proper interpretation of the order and there was no opposition presented at the hearing, USDA is proposing that §§ 946.25 and 946.31 be revised accordingly.

A conforming change is recommended in § 946.31. Paragraph (b) of that section authorizes reestablishment of the districts and reapportionment of membership among those districts. It also lists the criteria that must be considered in making such changes. As discussed further in connection with Material Issue Number 6, USDA is proposing that this authority be included in § 946.22. Additionally, the criteria for changes in membership (including reestablishment of districts and reapportionment among those districts) are being updated. Thus, USDA recommends deleting current § 946.31(b) as unnecessary and in need of updating.

Material Issue Number 4—Combing Written Background and Acceptance Statements

Section 946.26 should be amended to require Committee nominees to qualify as a member or alternate member by filing a written background and acceptance statement indicating willingness to serve before selection. Currently, USDA requires a background statement to be completed before selection to determine nominees' eligibility to serve. Section 946.26 requires a written acceptance after selection.

Witnesses stated that this amendment would allow the Background Statement to be combined with the Letter of Acceptance for nominated Committee members, thereby reducing the number of forms required of each nominee from two to one. Rather than eliminate any requirements currently outlined in the order, this proposal would streamline the process by making it more efficient.

Currently, nominations of Committee members are made within each district

utilizing mail balloting procedures. This process generally entails two separate mailings, follow-up telephone calls, and finally, submission of the nominees' names to USDA for final selection. The Committee staff first collects the names of individuals interested in being on the Committee. Producers and handlers may nominate themselves or are nominated by other potato producers or handlers. The Committee manager then verifies with each individual his or her consent to serve as a Committee member if selected. The names of all individuals who wish to serve are then placed on a ballot and mailed to all producers and handlers by district. Completed ballots are returned and tabulated at the Committee office.

The producer or handler receiving the highest number of votes for a vacant producer or handler Committee position is designated as the member nominee. The producer or handler receiving the second highest votes is designated as the respective alternate member nominee. Before submission to USDA for selection, nominated members and alternate members are required to complete and sign a Background Statement. The Background Statement allows both the Committee and USDA to determine a nominee's eligibility to serve on the Committee by requiring information on the nominee's position in the Washington potato industry. Following selection by the USDA, the newly appointed Committee members are each required to complete an Acceptance Letter by providing their name, address, and signature.

Testimony indicated that this process utilizing two forms is unnecessary because the producer or handler has already indicated his or her willingness to serve by accepting the nomination and filling out the background statement. The Committee believes that combining the two forms, and requiring the single form's submission at the time of nomination, would be more efficient than the current method. By combining these forms into one and requiring the information at the time of nomination, the Committee and USDA would also know in advance that the nominees are willing to serve on the Committee if selected.

Record evidence supports amending the order to require Committee nominees to submit a written background and acceptance statement before selection by USDA. No opposition to this proposal was presented at the meeting. Accordingly, record evidence supports revising § 946.26 of the order.

Material Issue Number 5—Industry Nomination Meetings

Section 946.32 should be amended to authorize Committee nominations to be held at industry meetings or events rather than at meetings held in each of the five districts. This proposal would provide more flexibility in the nomination process and could result in increased industry participation.

According to the record, several industry-wide meetings are held between the months of November and March each year. Because these meetings include producer education and information components, they typically draw larger crowds than the scheduled district meetings held solely for the purpose of nominations. Given recent challenges in recruiting and maintaining a fully seated Committee, witnesses at the hearing suggested that these large meetings may also represent an untapped opportunity to educate the industry on the duties of the administrative committee and to hold nomination meetings. Witnesses stated that recruitment efforts at these meetings would give Committee vacancies more exposure and could provide greater diversity on the Committee, as a broader group of potential nominees would be reached.

Constant demands for time on both producers' and handlers' schedules limit the effectiveness of current recruitment efforts that rely heavily on distributing marketing order information through the mail. Because of this factor, many in the fresh market potato industry are not knowledgeable about Committee issues and membership responsibilities. Industry meetings or events would provide an opportunity to improve understanding of the Committee, its role, and its objectives relative to the fresh market potato industry. If such authority is added to the order, testimony indicated that the Committee could explore the option of asking for nominations at industry meetings or events. Such meetings would have to be open to all Washington potato growers and handlers.

Witnesses stated that this amendment would neither change the Committee's authority to conduct nominations at district meetings or by mail, nor would it affect the current structure of the Committee.

Record evidence supports amending the order to authorize nominations at meetings other than at individual district meetings held by the Committee. This amendment would provide more flexibility in conducting nominations and could result in participation by more growers and handlers. There was no opposition to the above proposal. Accordingly, USDA is proposing that § 946.32 be amended.

Material Issue Number 6—Authority for Changes in Committee Size

Section 946.22 of the order should be revised to add authority for the Committee to recommend changes in Committee size and structure. The intent of this proposal is to provide the Committee with a tool to more efficiently respond to the changing character of the Washington State fresh potato industry. In recommending any such changes, the following would be considered: (1) Shifts in acreage within districts and within the production area during recent years; (2) the importance of new production in its relation to existing districts; (3) equitable relationship between Committee apportionment and the various districts; (4) other relevant factors.

Testimony indicates that significant changes have occurred in both the production base and industry demographics of the fresh market potato industry since the order was implemented. These changes suggest that flexibility in adapting to the changing character of the Washington fresh market potato industry is important to the administrative applicability of the order. Witnesses stated that, ultimately, the order's ability to remain effective over time would be reliant on its ability to change with the needs of the industry. In this regard, the Committee has proposed adding authority to the order that would allow for Committee size and structure to be considered, and recommendations for change to be made.

Witnesses testified that careful industry analysis would lead to sound recommendations to USDA regarding any change in Committee size or structure. If the authority to change the size of the Committee were added to the order, the Committee could, at a regular meeting, review the current structure of the Committee using the points of consideration mentioned above. Upon completing this analysis on the fresh industry, the Committee could make a recommendation to USDA for a change in the size of the Committee.

Implementation of this authority would allow such changes to be pursued through the informal rulemaking process. Witnesses stated that formal rulemaking does not allow the industry to respond quickly enough to changes in the industry.

Given the changes that the Washington fresh potato industry has seen over the past 10 years, flexibility to

change the size of the Committee in step with the evolving needs of the industry would be an important tool. It would allow the Committee to focus on the increasing competitiveness in the market while minimizing costs and maximizing efficiency.

When asked how procedural aspects of the order would be impacted given a change in Committee size, witnesses stated that administration of the order should continue to be conducted as currently outlined, but should be modified to reflect any changes in the number of Committee members. For example, § 946.24, Procedure, provides that nine members are required for a quorum at Committee meetings, and that nine concurring votes are required to pass any Committee action. If the Committee size were to change from its current 15 members to 10 members, for example, witnesses felt that the intent of § 946.24 should be maintained. To accomplish this, a conforming change is recommended in § 946.24. The current ratio of 9 out of 15 members, or 60 percent, would be applied to the quorum and voting requirements for any newly established Committee. The revision of this language would be necessary to maintain the current voting parameters of the order if the Committee size were to change.

Record evidence supports amending the order to add authority to change in Committee size and structure. This amendment would allow the Committee, given due analysis and consideration of key factors and USDA approval, to more quickly adapt to changes within the industry. There was no opposition to the above proposal. Accordingly, USDA is proposing that §§ 946.22 and 946.24 be amended.

Material Issue Number 7—Designation of a Temporary Alternate To Act for an Absent Committee Member

The order should be amended to include the authority for a Committee member, when that Committee member and his or her alternate are unable to attend a Committee meeting, to designate any available, current Committee member alternate of the same classification (handler or producer) to serve in his or her stead. This should include a provision that, if the absent Committee member is unable or unwilling to designate a temporary alternate to serve in his or her place, the Committee members present could designate the temporary alternate.

The Committee is composed of 15 members, with the industry members allocated among five geographic districts. Each Committee member has an alternate who has the same qualifications as the member. Committee members and alternates are nominated by their peers in the district they represent.

Section 946.23 of the order provides that if a Committee member is absent from a meeting, his or her alternate shall act in that member's place. There is no provision for a situation in which both the member and that member's alternate are unavailable.

The Committee's proposal would change § 946.23 to provide that if both a member and his or her alternate cannot attend a Committee meeting, the Committee members present could designate an available, current alternate member of the same classification (handler or producer) to act in their place and stead. Witnesses also stated that the temporary alternate designated should, if possible, represent the same district as the absent member.

Witnesses felt strongly about the need to ensure adequate producer and handler representation at Committee meetings in order to gain efficiencies in Committee meeting time. Witnesses cited examples of meetings where a quorum was not present and Committee discussions and decisions were delayed. Because the Committee typically only meets twice annually, issues are either tabled until the next meeting or have to be addressed through telephone meetings or special mailings or fax transmissions that poll each member on the specific issues requiring Committee action.

According to the record, the lack of a quorum results in the Committee staff dedicating valuable time and resources to secure a Committee decisions through either mail or fax votes. By allowing the Committee to designate temporary alternates, witnesses stated that a quorum could be established and Committee business could be carried out without the need for costly follow-up. This authority would result in a more cost-effective use of industry time and money. Witnesses also testified that assembled meetings are preferred quorums for Committee decision making (as opposed to mail or telephone voting). Such a forum provides for full and open discussion of issues under consideration.

When asked what type of selection mechanism would be employed to designate a temporary alternate, witnesses suggested that that decision should be left to the Committee chairperson, subject to approval from other members present. However, no specific suggestions were made as to how the Committee would either voice its approval or disapproval if no quorum were present, or what guidelines should be offered to ensure impartial selection of the temporary alternate. Witnesses suggested that the Committee, if deemed necessary, could establish specific procedures, as part of its by-laws.

The USDA agrees that full participation at Committee meetings should be encouraged. The USDA also believes that there is merit in allocating membership among districts because the conditions in one district may vary considerably from those in another. Committee members are nominated by their producer and handler peers to represent them at Committee meetings. A Committee member's charge to represent his or her constituents is an important part of fulfilling Committee member responsibilities for that district.

However, it is also recognized that the order should contain flexibility to minimize delays in Committee decisions due to a lack of a quorum. Therefore, should a situation arise where neither a Committee member nor his or her alternate are able to attend a meeting, the Committee member should be able to designate a temporary alternate from among available, current Committee alternate members of the same classification. However, if the absent Committee member does not designate a temporary alternate, such responsibility should fall on his or her alternate. Further, if neither the absent member nor absent alternate member designate a temporary alternate, the responsibility should become that of the Committee members present at the meeting.

USDA proposes that § 927.23 be revised accordingly. A conforming change is recommended in § 946.24 Procedure to provide that Committee action to designate a temporary alternate to serve at a meeting shall not be subject to the quorum and voting requirements of that section.

Material Issue Number 8—Tenure Limitations

Section 946.27, Term of office, should be revised to establish a limit on the number of consecutive terms a person may serve as a member of the Committee. Currently, the term of office of each member and alternate member of the Committee is three years. There are no provisions related to tenure in the marketing order. Members and alternates may serve on the Committee until their respective successors are selected and have qualified.

The record evidence is that tenure limits for Committee members could increase industry participation on the Committee, provide for more diverse membership, provide the Committee with new perspectives and ideas, and

increase the number of individuals in the industry with Committee experience.

Experience with other marketing order programs suggests that a period of six years would be appropriate. Since the current term of office for members and alternates is three years, USDA is proposing that members serve no more than two consecutive three-year terms or a total of six years. This proposal for a limitation on tenure would not apply to alternate members. Once a member has served on the Committee for two consecutive terms, or six years, the member would sit out for at least one year before being eligible to serve as a member again. However, the individual could immediately begin serving as an alternate member after completing two consecutive terms as a member.

Industry witnesses presented testimony in opposition to this proposal. Although they agreed increased industry participation in the program is desirable, the application of tenure could be problematic. Testimony indicated that the number of Washington fresh market potato producers is decreasing, and that finding producers willing to serve on the Committee is difficult. Witnesses noted that there currently exist at least six vacancies for alternate member positions on the Committee due in part to the difficulty involved in recruiting new members. Moreover, witnesses stated that industry members who currently serve on the Committee bring knowledge and experience to the Committee that would be difficult to replace.

The Committee has had difficulty in recent years in recruiting and maintaining a full membership. However, other program changes proposed in this recommended decision have been designed to mitigate problems associated with recruitment and appointment of Committee members. Therefore, USDA recommends establishing tenure requirements for Committee members.

Section 946.27 also provides that Committee members serve staggered terms so that about one-third of the membership is selected each year. The language of this section if proposed to be revised to retain the staggered terms of office, but delete references to initial Committee members' terms of office. These references are obsolete and no longer needed.

Material Issue Number 9—Continuance Referenda

Section 946.63, Termination, should be amended to require that continuance referenda be conducted every six years to ascertain industry support for the order.

Currently, there is no requirement in the order that continuance referenda be conducted on a periodic basis. The USDA believes that producers should have an opportunity to periodically vote on whether a marketing order should continue. Continuance referenda provide an industry with a means to measure producer support for the program. Experience has shown that programs need significant industry support to operate effectively. Under this proposal, USDA would consider termination of the order if continuance is not favored by at least two-thirds of those voting, or at least two-thirds of the volume represented in the referendum. This is the same as that for issuance and amendment of an order. Experience in recent years indicates that six years is an appropriate period to allow producers an opportunity to vote for continuance of the program. Therefore, the proposal sets forth that a referendum would be conducted six years after the effective date of this amendment and every sixth year thereafter.

Several industry witnesses opposed periodic continuance referenda. They indicated that the industry currently has the ability to request a continuance referendum at any time, and requiring unnecessary referenda would be costly and of little value to the industry or USDA.

The USDA believes, however, that producers should have an opportunity to periodically vote on whether the marketing order should continue, and that the costs in time and money are well worth the periodic producer feedback afforded the Committee and the USDA by such referenda. Accordingly, the record evidence supports adding a requirement that such referenda be conducted.

The USDA also proposed to make such changes as may be necessary to the order to conform to any amendment that may result from the hearing. All conforming changes have been identified and discussed in this document.

Small Business Consideration

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than $5,000,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments to the order on small businesses. The record evidence is that while minimal costs may occur upon implementation of some of the proposed amendments, those costs would be outweighed by the benefits expected to accrue to the Washington fresh market potato industry.

The record indicates that there are about 39 fresh potato handlers currently regulated under the order. With total fresh sales valued at $108 million, on average, these handlers each received $2.8 million. In addition, there are about 160 producers of fresh potatoes in the production area. With total fresh sales at the grower level valued at $58 million, each grower's average receipts would be $362,500. Witnesses testified that about 76 percent of these growers are small businesses.

It is reasonable to conclude that a majority of the fresh Washington potato handlers and producers are small businesses.

Potato Industry Overview

Record evidence supplied by the Washington State Potato Commission indicates that there are approximately 323 potato producers in the State, of which approximately 160 (50 percent) are producers of fresh market potatoes. Approximately 76 percent of the fresh market potato producers are small entities, according to the SBA definition. Many of these farming operations also produce potatoes for the processing market. The Washington State potato industry also includes 39 handlers and 12 processing plants.

A 2001 publication of Washington State University (WSU) Extension estimated that total demand for potatoes produced in Washington State was $495 million. Of this total sales value figure for Washington potato producers, fresh market potato pack-out represented approximately 12 percent, with

producer sales valued at $58 million. The largest proportion of the crop ($357 million or 72 percent) was represented by sales to the frozen potato product market, principally for French fries. Other uses included seed potatoes, dehydration and potato chips.

The WSU report also explained that the supply of fresh market potatoes is handled by various potato packers (handlers) whose operations vary in size. These handlers supply the retail market, including supermarkets and grocery stores, as well as restaurants and other foodservice operations. Potatoes are prepared for the fresh market by cleaning, sorting, grading, and packaging before shipment is made to final destinations. Due to customer specifications about sizes, shapes, and blemishes, as well as the minimum quality, size, and maturity regulations of the order, about 42–43 percent of the potatoes delivered to handlers are graded out of the fresh market. Potatoes not meeting grade are generally delivered to processors for use in the frozen French fry and dehydrated potato markets. The total output of the fresh pack industry in terms of sales value is $108 million.

Washington State acreage and production is second only to that of Idaho, but its yields per acre are the highest of any State in the United States. Produced on 165,000 acres, total potato production in Washington in 2002 was 92.4 million hundredweight, with an average yield of 560 hundredweight per acre. These figures are based on data published by the USDA's National Agricultural Statistical Service (NASS), which is also the source for most of the other production, acreage, yield, and price information used in this document. The Committee provided other figures at the hearing. Over the last several years, Washington has produced about 21 percent of the total U.S. potato production on about 13 percent of the total acreage dedicated to potatoes. Washington's share of the total value has been about 17 percent of the nation's total. Fresh utilization has varied between 11 percent and 15 percent from 1993 through 2002.

The record indicates that soil type, climate, and number of irrigated acres combine to make Washington an excellent area to grow potatoes. In 2000, Washington produced a record crop with 105 million hundredweight grown on 175,000 acres with a total industry value of $555.2 million. This represents a substantial increase from 1949—the year in which the marketing order was established—in which producers harvested 29,000 acres with a yield of 6.4 million hundredweight of potatoes valued at $14.8 million. According to testimony, the producer price per hundredweight of potatoes was $2.30 in 1949 and $5.40 in 2002.

The Role of U.S. No. 2 Grade Potatoes in the Washington Potato Industry

Witnesses at the hearing explained that potato production is dependent on many factors over which they have little control, including water availability, weather, and pest and weed pressures. For example, the potato crop may be of higher average quality one year, yielding an increased supply of U.S. No. 1 grade potatoes, and have an overall lower quality the next year with a preponderance of U.S. No. 2 grade potatoes.

According to testimony, U.S. No. 2 grade potatoes in Washington are generally diverted for use in making dehydrated potato products. In addition, U.S. No. 2 grade potatoes are occasionally in demand as ''peelers'' for use in soups and salads, or as ''natural'' fries. Regardless of the secondary products markets, witnesses explained, the fresh, table stock market is an important additional market for U.S. No. 2 grade potatoes. Witnesses explained that the Washington potato industry cannot currently take advantage of this market without container marking authority. Having the additional flexibility to pack U.S. No. 2 grade potatoes in labeled cartons would help the industry overall.

Economic Impact of Proposal 1, Adding Container and Marking Regulatory Authority

The proposal described in Material Issue No. 1 would amend § 946.52, Issuance of regulations, to add authority for the Committee to recommend container and marking regulations to the USDA for subsequent implementation. This would be in addition to the existing authority for grade, size, quality and maturity requirements.

In testifying in support of this amendment, witnesses cited an example of how this authority could be used. They stated that the Committee wants to respond to customer demand for U.S. No. 2 grade potatoes packed in cartons, but at the same time it wants to ensure that such cartons would be properly labeled. Three people testified in favor of this proposal, and no one testified in opposition. The three witnesses covered similar themes in expressing their views on the proposal.

Each stated that the U.S. potato market is highly competitive and that the potato industry in Washington needs to be vigilant in responding to market needs so as not to lose market share to other states. Testimony indicated that the fresh market potato industry in Washington needs to ensure that their customers are receiving what they order, and must remain flexible and innovative. All three witnesses emphasized that offering appropriate packaging is a key element of being flexible and responsive to customers.

The witnesses offered an historical perspective by pointing out that 40 years ago, the industry standard for potato packaging was a 50 or 100-pound burlap bag. The passing of 30 years saw the phasing in of 50-pound cartons and polyethylene (poly) bags. Now, potatoes are shipped in burlap, cartons, poly, mesh, cardboard bulk displays and baler bags. Container sizes can range from 2 pounds to 100 pounds. It was emphasized that the industry is constantly looking for new packaging and delivery methods.

Witnesses stated that as early as 1994, the Committee began receiving requests from retailers and wholesalers to pack U.S. No. 2 grade potatoes from Washington in 50 lb. cartons. These customers cited a number of reasons for wanting the U.S. No. 2 grade potatoes in cartons, including ease of handling and stacking in warehouses, improved worker safety, and better product protection (for example, less ''greening'' from exposure to light, and reduced bruising during transport.)

Although authority exists in the order for the Committee to recommend regulations to allow packing of U.S. No. 2 grade potatoes in cartons, witnesses explained that up until now the Committee has chosen not to permit this lower grade to be packed in cartons because of the inability to mandate labeling. The current handling regulations specify that only U.S. No. 1 or better grade potatoes may be packed in cartons, and as such, buyers of Washington potatoes have learned to expect this premium grade when purchasing potatoes in cartons. Adding this labeling authority would provide assurance to customers and to the industry that the product being shipped is properly identified. Mandatory labeling prevents handlers from misrepresenting the quality of the potatoes packed in the carton. Even one handler sending substandard product to customers can mar the reputation of the Washington State potato industry, according to witnesses.

Witnesses stated that upholding the integrity of the Washington State potato industry is as important to producers as meeting customer specifications. Mandating labeling would help ensure product integrity. The Committee has discussed that without the labeling

authority, a customer could potentially receive U.S. No. 2 grade potatoes from a handler, thinking that they are of U.S. No. 1 grade quality. This could damage customer perceptions of the higher-grade potatoes coming out of Washington. Labeling authority would help alleviate consumer perception problems. Further, not only would it help verify that handlers are putting the right product into the right packaging, but it also would assure customers that they are actually receiving what they have ordered.

Witnesses also emphasized the minimal additional cost of implementing this proposal. They point out that handlers' facilities are already configured for packing potatoes in cartons, and for labeling those cartons, so there is no need for any equipment changes or additions. In the witnesses' view, any additional costs a handler would have in packing potatoes in cartons rather than sacks would be offset by the increased selling price.

The USDA concurs that adding container and marking authority would be a useful market-facilitating improvement to the order. Requiring labeling of cartons would help to improve market transactions between seller and buyer by assuring all concerned as to the exact content of such cartons. Washington producers and handlers would benefit from taking advantage of another market niche, with minimal additional cost.

Testimony and industry data together indicate that little to no differential impact between small versus large producers or handlers would result from the proposed amendment to authorize container and labeling requirements. Although not easily quantifiable, the USDA concurs that benefits to the potato industry appear to substantially outweigh the potential costs associated with implementing this proposal.

Economic Impact of Remaining Amendment Proposals

Remaining amendment proposals are administrative in nature and would impose no new regulatory burdens on Washington potato growers or handlers. They should benefit the industry by improving the operation of the program and making it more responsive to industry needs.

Grower members of the Committee are currently required to be growers in the district they are nominated to represent. Adding another eligibility requirement—that they be growers of fresh potatoes—would ensure that the Committee is representative of, and responsive to, those growers the program impacts most directly. No additional costs would be incurred.

Replacing obsolete order language pertaining to establishment of districts and allocation of Committee membership among those districts would simply update the order. To the extent updating order language simplifies the program and reduces confusion, it would benefit the industry.

Currently, Committee member nominees are required to complete a Background Statement before selection by USDA, and an Acceptance Letter subsequent to selection. Combining these into a single form would streamline the appointment process and reduce reporting requirements imposed on Committee members.

Nominations of Committee members can be conducted through mail balloting or at meetings held in each of the five established districts. Allowing nominations to be made at larger, industry-wide meetings would provide the industry with an additional option. This option could result in the Committee reaching a larger audience of growers and handlers, thereby broadening industry participation and facilitating the nomination process.

The Washington Potato Committee consists of 10 growers, 5 handlers, and their alternates. Changing the size of the Committee would allow the industry to adjust to changes in fresh potato production patterns and in the number of active industry participants. An increase in Committee size could lead to marginally higher program costs because Committee members are reimbursed for expenses they incur in attending meetings and performing other duties under the order. A reduction in Committee size (deemed to be more likely according to the record) would likewise reduce program costs. Any recommendation to change the size of the Committee would be considered in terms of cost and the need to ensure appropriate representation of growers and handlers in Committee deliberations.

Committee members serve 3-year terms of office, with no limit on the number of terms they may serve. The proposed amendment to add tenure requirements would allow more persons the opportunity to serve as Committee members. It would provide for more diverse membership, provide new perspectives and ideas, and increase the number of individuals in the industry with Committee experience. No additional costs are expected to be incurred because of this proposed amendment.

The recommendation to require periodic continuance referenda to ascertain industry support for the program would allow growers the opportunity to vote on whether to continue the operation of the order. Most of the costs associated with referenda are borne by USDA. Ensuring that the program is administered in response to grower needs would outweigh these costs.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 35), any reporting and recordkeeping provision changes that would be generated by the proposed amendments would be submitted to the Office of Management and Budget (OMB).

The Washington Potato Committee recommended amending producer eligibility requirements to require production of potatoes for the fresh market for 3 out of the 5 years of production prior to nomination. The Committee has also made recommendations that would streamline the nomination process and increase industry participation in nominations. In conformance with these recommendations, a confidential qualification and acceptance statement would be used in the appointment of committee members. This form would be based on the currently approved Confidential Background Statement for the Washington Potato Marketing Committee. If this proposal is implemented, the form would only be used after approval by OMB.

Current information collection requirements for Part 946 are approved by OMB under OMB number 0581–0178. Any changes in those requirements as a result of this proceeding would be submitted to OMB for approval.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. These amendments are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

Committee meetings regarding these proposals as well as the hearing date were widely publicized throughout the Washington potato industry, and all interested persons were invited to attend the meetings and the hearing and participate in Committee deliberations on all issues. All Committee meetings and the hearing were public forums and all entities, both large and small, were

able to express views on these issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate so that this rulemaking may be completed in a timely manner. All written exceptions timely received will be considered and a grower referendum will be conducted before these proposals are implemented.

Civil Justice Reform

The amendments to Marketing Agreement 113 and Marketing Order 946 proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposal.

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 USDA 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, USDA 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 to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Rulings on Briefs of Interested Persons

Briefs, and proposed findings and conclusions based on the record evidence were solicited in this proceeding. No briefs were filed.

General Findings

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing agreement and order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(1) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of Irish potatoes grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of Irish potatoes grown in the production area; and

(5) All handling of Irish potatoes grown in the production area as defined in the marketing agreement and order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate so that this rulemaking may be completed prior to the 2005–2006 season. All written exceptions timely received will be considered and a grower referendum will be conducted before these proposals are implemented.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

Recommended Further Amendment of the Marketing Agreement and Order

For the reasons set out in the preamble, 7 CFR part 946 is proposed to be amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR part 946 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Add a new § 946.17 to read as follows:

§ 946.17 Pack.

Pack means a quantity of potatoes in any type of container and which falls within the specific weight limits or within specific grade and/or size limits, or any combination thereof, recommended by the committee and approved by the Secretary.

3. Add a new § 946.18 to read as follows:

§ 946.18 Container.

Container means a sack, box, bag, crate, hamper, basket, carton, package, barrel, or any other type of receptacle used in the packing, transportation, sale or other handling of potatoes.

4. In § 946.22, designate the current text as paragraph (a) and add a new paragraph (b) to read as follows:

§ 946.22 Establishment and membership.

* * * * *

(b) The Secretary, upon recommendation of the committee, may reestablish districts, may reapportion members among districts, may change the number of members and alternate members, and may change the composition by changing the ratio of members, including their alternates. In recommending any such changes, the following shall be considered:

(1) Shifts in acreage within districts and within the production area during recent years;

(2) The importance of new production in its relation to existing districts;

(3) The equitable relationship between committee apportionment and districts; and,

(4) Other relevant factors.

5. In § 946.23, designate the current text as paragraph (a) and add a new paragraph (b) to read as follows:

§ 946.23 Alternate members.

* * * * *

(b) In the event that both a member and his or her alternate are unable to attend a Committee meeting, the member, the alternate member, or the Committee members present, in that order, may designate another alternate of the same classification (handler or producer) to serve in such member's place and stead.

6. Section 946.24 is revised to read as follows:

§ 946.24 Procedure.

(a) Sixty percent of the committee members shall constitute a quorum and a concurring vote of 60 percent of the committee members will be required to

pass any motion or approve any committee action.

(b) The quorum and voting requirements of paragraph (a) of this section shall not apply to the designation of temporary alternates as provided in § 946.23.

(c) The committee may provide for meetings by telephone, telegraph, or other means of communication and any vote cast at such a meeting shall be confirmed promptly in writing: Provided, That if any assembled meeting is held, all votes shall be cast in person.

7. Section 946.25 is amended by:

A. Revising paragraph (a).

B. Revising paragraph (c).

The revisions read as follows:

§ 946.25 Selection.

(a) Persons selected as committee members or alternates to represent producers shall be individuals who are producers of fresh potatoes in the respective district for which selected, or officers or employees of a corporate producer in such district. Such individuals must also have produced potatoes for the fresh market for at least three out of the five years prior to nomination.

(b) * * *

(c) The Secretary shall select committee membership so that, during each fiscal period, each district, as designated in § 946.31, will be represented as follows:

(1) District No. 1—Three producer members and one handler member;

(2) District No. 2—Two producer members and one handler member;

(3) District No. 3—Two producer members and one handler member;

(4) District No. 4—Two producer members and one handler member;

(5) District No. 5—One producer member and one handler member.

8. Revise § 946.26 to read as follows:

§ 946.26 Acceptance.

Any person nominated to serve as a member or alternate member of the committee shall, prior to selection by USDA, qualify by filing a written background and acceptance statement indicating such person's willingness to serve in the position for which nominated.

9. Amend § 946.27 by revising paragraph (a) to read as follows:

§ 946.27 Term of office.

(a) The term of office of each member and alternate member of the committee shall be for 3 years beginning July 1 and continuing until their successors are selected and have qualified. The terms of office of members and alternates shall be determined so that about one-third of the total committee membership is selected each year. Committee members shall not serve more than 2 consecutive terms. Members who have served for 2 consecutive terms will be ineligible to serve as a member for 1 year.

* * * * *

10. Revise § 946.31 to read as follows:

§ 946.31 Districts.

For the purpose of determining the basis for selecting committee members, the following districts of the production area are hereby established:

(a) District No. 1—The counties of Ferry, Stevens, Pend Oreille, Spokane, Whitman, and Lincoln, plus the East Irrigation District of the Columbia Basin Project, plus the area of Grant County not included in either the Quincy or South Irrigation Districts which lies east of township vertical line R27E, plus the area of Adams County not included in either of the South or Quincy Irrigation Districts.

(b) District No. 2—The counties of Kittitas, Douglas, Chelan, and Okanogan, plus the Quincy Irrigation District of the Columbia Basin Project, plus the area of Grant County not included in the East or South Irrigation Districts which lies west of township line R28E.

(c) District No. 3—The counties of Benton, Klickitat, and Yakima.

(d) District No. 4—The counties of Walla Walla, Columbia, Garfield, and Asotin, plus the South Irrigation District of the Columbia Basin Project, plus the area of Franklin County not included in the South District.

(e) District No. 5—All of the remaining counties in the State of Washington not included in Districts No. 1, 2, 3, and 4 of this section.

11. Amend § 946.32 by revising paragraph (a) to read as follows:

§ 946.32 Nomination.

* * * * *

(a) Nominations for Committee members and alternate members shall be made at a meeting or meetings of producers held by the Committee or at other industry meetings or events not later than May 1 of each year; or the Committee may conduct nominations by mail not later than May 1 of each year in a manner recommended by the Committee and approved by the Secretary.

* * * * *

12. Amend § 946.52 by adding a new paragraph (a)(5) to read as follows:

§ 946.52 Issuance of regulations.

(a) * * *

(5) To regulate the size, capacity, weight, dimensions, pack, and marking or labeling of the container, or containers, which may be used in the packing or handling of potatoes, or both.

* * * * *

13. In § 946.63, redesignate paragraph (d) as paragraph (e) and add a new paragraph (d) to read as follows:

§ 946.63 Termination.

* * * * *

(d) The Secretary shall conduct a referendum six years after the effective date of this paragraph and every sixth year thereafter to ascertain whether producers favor continuance of this part.

* * * * *

Dated: November 19, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Loans to Members and Lines of Credit to Members

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: NCUA is proposing to amend three subsections of its lending rule to incorporate legal interpretations previously issued by its Office of General Counsel (OGC) regarding permissible maturities for certain types of loans and the effect of partial government guarantees. The proposal clarifies: The conditions for applying the lending rule to loans secured by mobile homes, recreational vehicles, house trailers and boats; that loans secured by manufactured homes may be considered residential real estate loans; and that loans with a partial government guarantee, insurance, or advance commitment to purchase a portion of a loan fall within the rule. The NCUA Board is proposing these changes because it believes it is helpful to federal credit unions (FCUs) and others that may consult NCUA regulations to incorporate these interpretations as part of the rule itself rather than having them stated separately in OGC legal opinions.

DATES: The NCUA must receive comments on or before January 25, 2005.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- NCUA Web site: *http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html*. Follow the instructions for submitting comments.
- E-mail: Address to *regcomments@ncua.gov*. Include ''[Your name] Comments on Proposed Rule 701.14, Change in Official in Newly Chartered or Troubled Credit Unions'' in the e-mail subject line.
- Fax: (703) 518–6319. Use the subject line described above for e-mail.
- Mail: Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- Hand Delivery/Courier: Same as mail address.

FOR FURTHER INFORMATION CONTACT: Dianne M. Salva, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

The NCUA Board (the Board) has a policy of continually reviewing NCUA regulations to ''update, clarify and simplify existing regulations and eliminate unnecessary and redundant and unnecessary provisions.'' NCUA Interpretive Ruling and Policy Statement (IRPS) 87–2, Developing and Reviewing Government Regulations. As a result of NCUA's 2003 review, the Board determined that the rules on loan guarantees and loan maturities should be updated to reflect recent OGC opinions.

Summary of Proposed Changes

The Federal Credit Union Act (the FCU Act) generally limits an FCU's authority on matters of loan maturity, rates of interest, security and prepayment penalties. 12 U.S.C. 1757(5). Where a loan is secured by a State or Federal Government insurance or guarantee or in the case of a State or Federal program providing an advance commitment to purchase the loan, the FCU Act provides relief from these limitations and permits an FCU to make the loan for the maturity and under the terms and conditions of the government program. 12 U.S.C. 1757(5)(A)(iii). The FCU Act does not specify the extent to which the government program must guarantee or insure the loan, or the portion of the loan the program must commit to purchase. NCUA's lending regulation mirrors this section of the FCU Act and adds that FCUs may make such loans at rates of interest provided in the government program. 12 CFR 701.21(e). These provisions have the effect of enabling FCUs to participate in government lending programs that might otherwise be out of reach because of the FCU Act's general limitations.

OGC has issued legal opinions clarifying that the regulation applies whether the government program offers a full or partial guarantee, insurance, or commitment to purchase the loan. The proposed amendment clarifies that a partial government guarantee, insurance, or commitment to purchase a loan is sufficient to effect the application of the regulation. The Board believes that adding this clarification to the regulation will give full effect to the FCU Act and will benefit FCUs and their members by encouraging participation in government lending programs.

The FCU Act prohibits FCUs from granting loans with maturities greater than 12 years. 12 U.S.C. 1757(5). It permits longer maturities, however, for certain loans including those secured by residential real estate and mobile homes. 12 U.S.C. 1757(5)(A). As permitted under the FCU Act, the Board has promulgated rules allowing loan maturities of 20 years for mobile home loans and up to 40 years, or more with specific Board approval, on residential real estate loans. 12 CFR 701.21(f) and (g).

Neither the FCU Act nor the lending regulation defines what constitutes a mobile home. Previously OGC had narrowly interpreted the term to include only homes that met the standards established by an industry association to describe a manufactured home. More recently in legal opinion OGC 01–0262, dated June 4, 2001, OGC interpreted the term to include homes that qualify for the home mortgage interest deduction under the Internal Revenue Code (IRC). 26 U.S.C. 163(a), (h)(2)(D). The Internal Revenue Service describes three main features any first or second home must have to qualify for the deduction. The home securing the debt must be a house, condominium, cooperative, mobile home, house trailer or similar property that has sleeping, cooking and toilet facilities. In the above-referenced opinion, and in a subsequent opinion dated July 3, 2001, OGC concluded that, if a loan for a house trailer, recreational vehicle (RV) or a boat is secured by a first lien and qualifies for the home mortgage interest deduction, then it is appropriate to permit an FCU to consider it a mobile home loan with a maximum maturity of 20 years.

The Board believes it will be helpful to clarify the lending rule by incorporating this standard into the regulation. An FCU must still ensure that it complies with the other requirements of the rule, namely, that the home is owner-occupied and the loan is secured by a first lien. Of course, FCUs must also perform due diligence to ensure that loans are properly secured and safety and soundness concerns may dictate against extended maturities for any RV, trailer or boat loan with a short useful life.

A third issue OGC recently addressed involves whether a loan secured by manufactured housing should qualify for the longer maturities of residential real estate loans. Legal opinion OGC 03–0934, dated November 17, 2003. Previously OGC equated manufactured housing with mobile homes. Over the past several years, the manufactured housing industry has undergone significant changes. Enhancements to the quality and standards of manufactured housing, and the fact that manufactured housing is intended to be permanently affixed to the land, prompted OGC to conclude that loans for manufactured houses that are permanently affixed to the land and also meet all other regulatory requirements for residential real estate loans under 12 CFR 701.21(g) will qualify for the longer maturities. The manufactured housing must qualify as real property and be titled as real property under the laws of the state where it is located. The loan must have a first lien on the manufactured housing as required by § 701.21(g)(5). If the member-borrower leases rather than owns the land where the manufactured home is located then, to preserve the effectiveness of the FCU's first lien position, the FCU and the land owner should have an agreement providing for cooperation in the event of default and foreclosure. Of course, as a matter of safety and soundness, the FCU should also ensure that, when the member-borrower leases the land where the manufactured housing is located, the lease is at least as long as the term of the loan.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities. NCUA considers credit unions having less than ten million in assets to

be small for purposes of RFA. Interpretive Ruling and Policy Statement (IRPS) 87–2 as amended by IRPS 03–2. The proposal clarifies and expands the lending rules to incorporate recent OGC opinions. The NCUA has determined and certifies that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

NCUA has determined that the proposed rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget (OMB). NCUA currently has OMB clearance for § 701.21's collection requirements (OMB No. 3133–0139).

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on State and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule applies only to federal credit unions. NCUA has determined that the proposed amendments will not have a substantial direct effect on the States, on the connection between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—-Assessment of Federal Regulations and Policies on Families

NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is clear, understandable regulations that impose a minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive if implemented as proposed.

List of Subjects in 12 CFR Part 701

Credit unions, Loans.

By the National Credit Union Administration Board on November 18, 2004.

Mary Rupp,

Secretary of the Board.

Accordingly, the National Credit Union Administration proposes to amend 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789.

2. Amend § 701.21 by revising paragraphs (e), (f) and (g)(1) to read as follows:

§ 701.21 Loans to members and lines of credit to members.

* * * * *

(e) *Insured, guaranteed and advance commitment loans.* A loan secured, in full or in part, by the insurance or guarantee of, or with an advance commitment to purchase the loan, in full or in part, by the Federal Government, a State Government or any agency of either, may be made for the maturity and under the terms and conditions, including rate of interest, specified in the law, regulations or program under which the insurance, guarantee or commitment is provided.

(f) *20-year loans.* (1) Notwithstanding the general 12-year maturity limit on loans to members, a federal credit union may make loans with maturities of up to 20 years in the case of:

(i) A loan to finance the purchase of a mobile home if the mobile home will be used as the member-borrower's residence and the loan is secured by a first lien on the mobile home, and the mobile home meets the requirements for the home mortgage interest deduction under the Internal Revenue Code;

(ii) A second mortgage loan (or a nonpurchase money first mortgage loan in the case of a residence on which there is no existing first mortgage) if the loan is secured by a residential dwelling which is the residence of the member-borrower; and

(iii) A loan to finance the repair, alteration, or improvement of a residential dwelling which is the residence of the member-borrower.

(2) For purposes of this paragraph (f), mobile home may include a recreational vehicle, house trailer or boat.

(g) *Long-term mortgage loans*—(1) *Authority.* A federal credit union may make residential real estate loans to members, including loans secured by manufactured homes permanently affixed to the land, with maturities of up to 40 years, or such longer period as may be permitted by the NCUA Board on a case-by-case basis, subject to the conditions of this paragraph (g)).

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[FR Doc. 04–25996 Filed 11–24–04; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter 1

[Docket No. 2002N–0434]

Withdrawal of Certain Proposed Rules and Other Proposed Actions

AGENCY: Food and Drug Administration, HHS.

ACTION: Withdrawal of proposed rules.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal of certain advance notice of proposed rulemakings (ANPRMs), proposed rules, and other proposed actions that published in the **Federal Register** more than 5 years ago. These proposals are no longer considered viable candidates for final action at this time. FDA is taking this action to reduce its regulatory backlog and focus its resources on current public health issues. The FDA's actions are part of an overall regulatory reform strategy initiated by Health and Human Services (HHS) Secretary Tommy G. Thompson.

DATES: The proposed rules are withdrawn as of November 26, 2004.

FOR FURTHER INFORMATION CONTACT: Lisa M. Helmanis, Regulations Policy and Management Staff (HF–26), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3480.

SUPPLEMENTARY INFORMATION:

I. Background

On June 8, 2001, Secretary Thompson announced his regulatory reform initiative designed to reduce regulatory burdens in health care and respond faster to the concerns of health care providers, State and local governments, and individual Americans who are affected by HHS rules. In December 2001, the Secretary announced the membership of his Regulatory Reform Committee designed to carry out his initiative. In November 2002, the Committee released its final report with over 255 specific recommendations for simplifying, streamlining, and generally reducing the regulatory burden while

continuing to require accountability by those doing business with HHS and its agencies. Over 25 of the recommendations have been adopted, and the Secretary charged the Office of the Assistant Secretary for Planning and Evaluation to continue the efforts of the Regulatory Reform Committee. FDA's continuing efforts to finalize or withdraw regulations that have been proposed but not finalized are part of this overall initiative.

In 1990, FDA began this process of conducting periodic, comprehensive reviews of its regulations process that included reviewing the backlog of ANPRMs, notices of proposed rulemaking, and other notices for which no final action or withdrawal notice had been issued. In the **Federal Register** of December 30, 1991 (56 FR 67440), FDA issued its first notice withdrawing 89 proposed rules that had published before December 31, 1985, but had never been finalized. Then again, in the **Federal Register** of January 20, 1994 (59 FR 3042), the agency withdrew an additional nine outstanding proposed rules.

Once again, on April 22, 2003, FDA published a notice in the **Federal Register** (68 FR 19766) announcing its intent to withdraw 84 proposed rules and other proposed actions that had published in the **Federal Register** more than 5 years ago, but that had never been finalized. Included in this list were 19 proposed rules that were originally proposed for withdrawal in 1991, but at that time the agency decided to defer its decision to withdraw or finalize them until a later date.

The agency undertook this most recent review because it believes that the backlog of pending proposals dilutes its ability to concentrate on higher priority regulations that are mandated by statute or are necessary to address current public health issues. Because of the agency's limited resources and changing priorities, FDA has been unable to: (1) Consider, in a timely manner, the issues raised by the comments on these proposals and (2) complete the action on them. Additionally, because many of the proposals have become outdated in the time that has elapsed since their publication, the agency would need to obtain further comment on them before proceeding to final action. FDA has determined that the proposals identified in this document are lower in priority than those on the Unified Agenda and the Regulatory Plan. It is unlikely that the agency will have sufficient resources in the foreseeable future to further consider or prioritize these proposed rules. Although not required to do so by the Administrative Procedure Act or by regulations of the Office of the Federal Register, the agency believes the public interest is best served by withdrawing the proposals identified in this document. In some instances, the agency has already completed action on alternatives (e.g., the issuance of guidance or inclusion of provisions in related regulations) that have obviated the need to complete the proposed action. In addition, the agency notes that upon reviewing the comments and other records related to the rulemaking, the agency found that ''Amend Animal Care Regulations'' (Docket No. 89P–0320 (July 3, 1990, 55 FR 27476)) was the subject of a petition, and the agency assigned another docket number to that action. This action was finalized on July 15, 1991 (56 FR 32087), and therefore it is not necessary to be included in this withdrawal notice.

The withdrawal of the proposals identified in this document does not preclude the agency from reinstituting proceedings to issue rules concerning the issues addressed in the proposals listed in table 1 of this document. Should FDA decide to undertake such a rulemaking sometime in the future, it will repropose the actions and provide new opportunities for comment.

The agency notes that withdrawal of a proposal is not intended to affect whatever utility the preamble statements may currently have as indications of FDA's position on a matter at the time the proposal was published, and in some cases the preambles of these proposals may still reflect the current position of FDA on the matter addressed. Anyone unsure whether a statement in one of the preambles reflects the agency's current thinking should contact FDA.

II. Summary of and Responses to Comments

FDA received a total of 37 letters, each containing 1 or more comments, in response to its notice of intent to withdraw certain proposed rules. The following is a discussion of the comments and the agency's response to those comments.

A. General Comments

(Comment 1) One comment provided recommendations on FDA's overall withdrawal process and the way information in the notice of intent was presented to the public. The comment requested that the agency identify how it intended to handle each individual item included in the notice of intent including reasons for withdrawal and future actions. The comment also requested that the agency identify which preambles will continue to reflect the agency's current thinking even after the proposed rule has been withdrawn. Finally, the comment thought that FDA should have made all the proposed actions listed in the notice of intent available on FDA's Web site for easy access to all interested parties.

(Response) The agency disagrees with these comments. The agency's decisions on the items proposed to be withdrawn were based on the general factors described in the notice of intent and whether the proposals fell within the listed factors. When the agency published the notice of intent, it did not have definite future plans for any of the items listed. The reason the agency stated that it may take future action was to emphasize that the withdrawals were based on resources and priorities. A withdrawal does not prevent the agency from taking action in the future on its own initiative or as a result of being prompted by the public. Also, a withdrawal of a proposed rule neither affirms nor rejects the views contained in the preamble. If someone wants a clarification of any agency policy or position, they should contact FDA.

While not providing copies on its Web site, the agency provided the title, docket number, and **Federal Register** publication date and cite. The agency believes that, in most cases, this information was sufficient to allow readers to find the documents whether online or in a library. Also, the agency provided the name, address, and phone number of an FDA contact who was prepared to provide copies of each proposal, if requested. Therefore, none of these issues raised by this comment would have affected the ability of the public to comment on the items listed in the notice of intent.

(Comment 2) One comment opposed the withdrawal of all the proposed generally recognized as safe (GRAS) actions listed in the notice of intent unless FDA could provide assurance that the agency would continue to permit the use of these food ingredients as detailed in the preamble statements.

(Response) This withdrawal does not affect the regulatory status of the ingredients listed in these documents. Furthermore, the comment did not raise any issues not considered by FDA before publication of the notice of intent to withdraw. Therefore, FDA is withdrawing all the GRAS proposed rules listed in the notice of intent.

(Comment 3) One comment recommended that the agency withdraw an ANPRM on hearing aids (58 FR 59695, November 10, 1993) that was not included in the notice of intent.

(Response) While the agency agrees that this ANPRM is a good candidate for withdrawal, because it was not included in the original notice of intent, we will withdraw or take other action with respect to this proposal separately, in a future **Federal Register** notice.

B. Specific Comments

The agency received specific comments on 17 of the documents listed in the notice of intent. These comments generally supported FDA's attempt at streamlining the regulations process, and in some cases, supported the agency's decision to withdraw a certain proposed rule. However, several of these comments opposed the agency's decision to withdraw a proposal. The specific comments received, and the agency's responses are as follows:

1. Cosmetic Products Containing Certain Hormone Ingredients—Docket No. 91N–0245, September 9, 1993, 58 FR 47611

FDA received 9 comments opposing the withdrawal of this proposed rule.

(Comment 4) These comments argued that the withdrawal of this proposed rule would call into question the findings presented in the proposed rule and possibly change the marketing status of cosmetic products containing hormone ingredients.

(Response) With regard to the first concern, as stated previously in this document, this withdrawal neither affirms nor rejects statements contained in the preamble. With regard to the second concern, the proposed rule was never finalized, and therefore withdrawal of the proposed rule does not affect the marketing status of these products. The agency intends to issue a new proposed rule regarding these products in the future.

2. Caffeine in Nonalcoholic Carbonated Beverages—Docket No. 82N–0318, May 20, 1987, 52 FR 18923

3. Shellac and Shellac Wax; Proposed Affirmation of GRAS Status With Specific Limitations as Direct Human Food Ingredients—Docket No. 89N–0106, July 26, 1989, 54 FR 31055

4. Unmodified Food Starches and Acid-Modified Starches; Proposed Affirmation of GRAS Status as Direct and Indirect Food Ingredient—Docket No. 84N–0341, April 1, 1985, 50 FR 12821

5. Caffeine; Deletion of GRAS Status; Proposed Declaration That No Prior Sanction Exists and Use on an Interim Basis Pending Additional Study—Docket No. 80N–0418, October 21, 1980, 45 FR 69817

6. Protein Hydrolysates and Enzymatically Hydrolyzed Animal (Milk Casein) Protein; Proposed GRAS Status—Docket No. 82N–0006, December 8, 1983, 48 FR 54990

7. Cellulose Derivatives; Affirmation of GRAS Status—Docket No. 78N–0144, February 23, 1979, 44 FR 10751

(Comment 5) FDA received five comments on these six GRAS proposed rules. The majority of the comments opposed the withdrawal of these proposals.

(Response) None of the comments raised issues not considered by the agency before publication of the notice of intent to withdraw. Therefore, FDA is withdrawing all the GRAS proposed rules listed in the notice of intent. However, this withdrawal does not affect the regulatory status of the ingredients listed in these documents.

8. Reclassification of Electroconvulsive Therapy—Docket No. 82P–0316, September 5, 1990, 55 FR 36578

(Comment 6) FDA received one comment supporting the withdrawal of this proposed rule. However, the comment was concerned that the information contained in this docket (i.e., reports of adverse reactions) would be disregarded when the proposed rule was withdrawn.

(Response) The agency is withdrawing this proposed rule, and in the future, intends to start a new proceeding on this matter. The agency will retain the data and information contained in this docket and consider it at that time.

9. Food Labeling; Declaration of Ingredients; Common or Usual Name Declaration for Protein Hydrolysates and Vegetable Broth in Canned Tuna; ''and/or'' Labeling for Soft Drinks—Docket No. 90N–361M, January 6, 1993, 58 FR 2950

(Comment 7) FDA received 15 comments supporting and one comment opposing the withdrawal of this proposed rule. The comment opposing the withdrawal of this proposed rule stated that the proposed rule memorialized the development of the agency's policy on ''and/or'' labeling for sweeteners in soft drinks and is the sole source of reference on these matters. The comment expressed concern that withdrawal may call into question current and future labeling practices of the soft drink industry regarding sweeteners in soft drinks.

(Response) The agency disagrees with this comment's implication that the proposed rule announced a final FDA policy decision on ''and/or'' labeling for sweeteners in soft drinks. By definition, a proposed rule only states the agency's tentative conclusions; with limited exceptions not applicable here, final decisions in the rulemaking context must be issued in a final rule after public notice and opportunity for comment (see 5 U.S.C. 553(b) to (c)). Further, the agency stated in the preamble to the proposed rule (58 FR 2950 at 2953) that its final decision on whether to revise its regulations to permit ''and/or'' labeling for sweeteners in soft drinks would be based largely on whether comments in response to the proposed rule included data demonstrating that it is impracticable to produce the limited number of versions of a label that would be necessary if ''and/or'' labeling were not permitted. The agency received no such data and therefore did not have sufficient basis to proceed to a final rule allowing ''and/or'' labeling for soft drinks. Accordingly, this comment does not persuade the agency to reconsider the withdrawal of this proposed rule.

Comments supporting the withdrawal of this proposal asked that the agency initiate enforcement action against soft drink manufacturers that use ''and/or'' labeling. The agency acknowledges that it has not pursued any enforcement action against soft drink manufacturers who are using ''and/or'' labeling because of the pending rulemaking. The agency is considering its position on the use of ''and/or'' labeling.

10. Yogurt Products; Frozen Yogurt, Frozen Lowfat Yogurt; and Frozen Nonfat Yogurt; Petitions to Establish Standards of Identity and to Amend Existing Standards—Docket Nos. 89P–0208 and 89P–0444, May 31, 1991, 56 FR 24760

(Comment 8) The agency received one comment supporting the withdrawal of this proposed rule. The comment agreed that there is no need to complete this rulemaking since the agency issued an ANPRM (68 FR 39873) in 2003 to address this issue.

(Response) The agency agrees. Therefore, FDA is withdrawing this proposed rule.

11. Canned Pineapple; Proposal to Amend Standards of Identity and Quality—Docket No. 88P–0224, March 24, 1989, 54 FR 12237

FDA received two comments opposing the withdrawal of this proposed rule.

(Comment 9) One comment requested that, if FDA withdraws the proposed rule, FDA allow marketing for canned pineapple as a nonstandardized product.

(Response) FDA is denying this request because a product that purports to be or is represented as a food for which a standard of identity has been prescribed (e.g., canned pineapple) that does not comply with the provisions of that standard is misbranded under

section 403(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(g)). FDA notes, however, that regulations in § 130.17 (21 CFR 130.17) provide that manufacturers may market foods that deviate from established standards of identity if they receive temporary marketing permits from FDA.

(Comment 10) The second comment stated that there are temporary marketing permits issued under this proposal that would not be valid if the proposal is withdrawn.

(Response) The comment is incorrect. There are no active temporary marketing permits to market test a ''whole'' style of canned pineapple that are the basis of this proposed rule. There were two temporary market permits that were issued in 1988 to Dole Packaged Foods Co. (53 FR 16471, May 9, 1988) and to Del Monte Corp. (53 FR 23602, June 22, 1988), which expired after 15 months. The agency is withdrawing this proposed rule.

12. Current Good Manufacturing Practices; Proposed Exemption From Active Ingredient Identity and Strength Testing for Homoeopathic Drug Products—Docket No. 79P–0265, April 1, 1983, 48 FR 14003

(Comment 11) The agency received one comment opposing the withdrawal of this proposed rule which would have exempted homeopathic drugs from the current good manufacturing practice (CGMP) requirements that drug products be tested for identity and strength of each active ingredient prior to release for distribution. The comment expressed concerns about possible changes in our enforcement policy towards final release testing of homeopathic drugs.

(Response) There may be instances where testing of a homeopathic product for identity and strength of the active ingredients prior to release for distribution would be appropriate and consistent with protection of the public health. For example, in instances where a product includes an active ingredient that at certain levels could be toxic or otherwise pose a public health concern, finished product testing may be appropriate because the testing could identify a significant manufacturing or labeling error. Since requiring this testing when necessary to protect the public health is consistent with FDA's mandate, we are withdrawing the proposed rule.

13. Pineapple Juice; Proposal to Amend U.S. Standards of Identity and Quality—Docket No. 86P–0338, May 21, 1987, 52 FR 19169

FDA received two comments opposing the withdrawal of this proposed rule.

(Comment 12) One comment requested that if FDA withdraws the proposed rule, FDA allow marketing for pineapple juice as a nonstandardized product.

(Response) FDA is denying this request because a product that purports to be or is represented as a food for which a standard of identity has been prescribed (e.g., pineapple juice) that does not comply with the provisions of that standard is misbranded under section 403(g) of the act. FDA notes, however, that regulations in § 130.17 provide that manufacturers may market foods that deviate from established standards of identity if they receive temporary marketing permits from FDA.

(Comment 13) The second comment stated that this proposed rule allowed the addition of pineapple juice from concentrate to pineapple juice to increase the brix level. Because the proposed rule addressed the use of pineapple juice from concentrate, the comment asks the agency either to complete this rulemaking or to publish a notice of policy that 21 CFR 102.33 (which applies to nonstandardized juices) would apply to pineapple juice.

(Response) The comment is incorrect in stating that the proposed rule allowed the addition of pineapple juice from concentrate to increase the brix level of pineapple juice in § 146.185 (21 CFR 146.185). The proposed rule only proposed to amend the standard of identity to allow this change. This amendment would not be effective until the rule was finalized. Thus, currently, the standard of identity for pineapple juice in § 146.185 does not permit the use of pineapple juice from concentrate to increase the brix level. A manufacturer who wishes to market pineapple juice with added pineapple juice from concentrate to increase the brix level may apply for a temporary marketing permit to do so. The agency is withdrawing this proposed rule.

14. Regulation of Medical Foods—Docket No. 96N–0364, November 29, 1996, 61 FR 60661

(Comment 14) The agency received one comment opposing the withdrawal of this ANPRM. The comment stated that manufacturers are marketing therapeutic products directly to consumers without prior FDA approval of health claims or FDA review of the suitability of the ingredients for the intended population. The comment stated that current FDA policies in this area create a loophole for manufacturers to make unauthorized health claims and use ingredients that may not be GRAS.

(Response) This comment does not persuade FDA that the ANPRM should not be withdrawn. Because of competing priorities that have tied up FDA's limited resources, the agency has been unable to consider, in a timely manner, the issues raised by comments on the ANPRM, and does not foresee having sufficient resources in the near term to do so. Therefore, the agency is withdrawing this ANPRM. However, FDA believes that the basic principles described in the ANPRM provide an appropriate framework for understanding the regulatory paradigm governing medical foods. Therefore, FDA advises that it will continue to refer to the basic principles described in the ANPRM and in FDA's Medical Foods Compliance Program (CP 7321.002) when evaluating medical foods. With regard to the specific points made in the comment regarding regulation of medical foods, the comment is correct that the act exempts medical foods from the nutrition labeling, health claim and nutrient content claim requirements that are applicable to most other foods. However, all statements on food labels (including medical foods) must be truthful and not misleading (see section 403(a)(1) of the act). FDA advises that medical foods with false or misleading labeling are subject to enforcement action. The agency also advises that withdrawal of this ANPRM does not change the requirement that all ingredients used in medical foods must be approved food additives, GRAS, or otherwise exempt from the food additive definition. Medical foods that do not comply with this requirement are subject to enforcement action.

15. Food Labeling: Nutrient Content Claims Pertaining to the Available Fat Content of Food—Docket Nos. 96N–0421 and 94P–0453/CP1, December 20, 1996, 61 FR 67243

(Comment 15) FDA received one comment opposing the withdrawal of this proposed rule. The comment states that misleading claims are being made by producers of products that contain nondigestible fat, including olestra, and that the total amount of fat in a product—regardless of whether it is digestible or nondigestible—should be declared to avoid consumer deception. The proposed rule responds in part to a citizen petition requesting use of digestibility coefficients in determining the quantity of fat declared in the label.

(Response) Currently, FDA regulations require that nutrition labeling and claims reflect the total amount of fat, which is defined as total lipid fatty acids and expressed as triglycerides § 101.9(c)(2) (21 CFR 101.9(c)(2)). The only exceptions to this general requirement are provided in the following: (1) The voluntary nutrition

labeling final rule for raw fruit, vegetables, and fish (61 FR 42742, August 16, 1996) with respect to total fat in orange roughy fish and (2) the final rule for olestra (61 FR 3118, January 30, 1996) (61 FR 67243 at 67246). In the final rule for olestra, FDA specified that olestra need not be considered as a source of fat or calories for purposes of nutrition labeling or nutrient content claims (21 CFR 172.867(e)(5)).

By withdrawing this proposed rule, FDA will not be authorizing the use of digestibility coefficients, so that the total amount of fat in a product must be declared on the label whether it is digestible or nondigestible as provided in § 101.9(c)(2). However, withdrawing this proposed rule will have no effect on the nutrition labeling of products containing olestra or how the agency calculates the fat content of orange roughy for the purpose of voluntary nutrition labeling of that raw fish. Due to the agency's limited resources and other higher priority matters, the agency is withdrawing this proposed rule.

16. Food Labeling; Nutrient Content Claims and Health Claims; Special Requirements—Docket No. 95N–0103, February 2, 1996, 61 FR 3885

(Comment 16) The agency received one comment opposing the withdrawal of this proposed rule. The comment states that FDA access to records needed to evaluate the validity of nutrient content claims and health claims is essential to prevent consumer deception and ensure fair competition.

(Response) FDA continues to believe that, for health and nutrient content claims that pose particular enforcement difficulties, it would be valuable for the agency to have access to information that the manufacturer relied on in determining that the food meets the requirements of the claims. As the agency stated in the proposed rule (61 FR 3385 at 3889), the claims that are likely to present enforcement difficulties are those based on new food technology or a new use of food technology, those based on the results of novel or non-standardized testing procedures, and those which the agency cannot evaluate without information because the information is available only to the manufacturer. However, other higher priority matters require the agency's resources at this time, and therefore, the agency is withdrawing this proposed rule.

17. Food Labeling; Declaration of Free Glutamate in Food—Docket No. 96N–0244, September 12, 1996, 61 FR 48102

(Comment 17) FDA received two comments supporting the withdrawal of this ANPRM.

(Response) Thus, the agency is withdrawing this ANPRM.

For the reasons set forth previously, and under the act, the agency announces the withdrawal of the following documents, published in the **Federal Register** on the dates indicated in table 1:

TABLE 1.

Title	Docket No.	FR Publication Date and Cite
Radioactive Drugs, Including Biological Products	75N–0069	July 25. 1975, 40 FR 31314
Conditions for Use of Methadone; Notice of Proposed Rulemaking	75N–0125	April 29, 1976, 41 FR 17922
Pasteurized Milk Ordinance and Interstate Milk Shippers	75N–0243	May 5, 1975, 40 FR 19513
Oral Contraceptive Drug Products; Physician and Patient Labeling	75N–0304	December 7, 1976, 41 FR 53633
Penicillin Streptomycin Powder; Penicillin-Dihydrostreptomycin Powder; Proposed Revocation of Certification Provision	75N–0374	July 9, 1976, 41 FR 28313
Conditions for Use of Methadone; Physiologic Dependence, Staffing, and Urine Testing Requirements	76N–0098	April 29, 1976, 41 FR 17926
Sorbic Acid and Its Salts; Proposed Affirmation and Deletion of GRAS Status	77G–0379[1]	March 10, 1978, 43 FR 9823
Butylated Hydroxytoluene; Use Restrictions	77N–0003[1]	May 31, 1977, 42 FR 27603
Color Additives; Proposed Use of Abbreviations for Labeling Foods, Drugs, Cosmetics, and Medical Devices	77N–0009 and 78P–0164	June 6, 1985, 50 FR 23815
Brown and Yellow Mustard and Their Derivatives; Proposed Affirmation of GRAS Status as Direct Human Food Ingredients	77N—0033[1]	August 26, 1977, 42 FR 43092
Acrylonitrile Copolymers Intended for Use in Contact With Food; Proposed Rulemaking	77N—0078	March 11, 1977, 42 FR 13562
Gelatin; Affirmation of GRAS Status as a Direct and Indirect Human Food Ingredient	77N–0232[1]	November 11, 1977, 42 FR 58763 and May 12, 1993, 58 FR 27959 (tentative final rule)
New Animal Drugs for Use in Animal Feeds; Animal Feeds Containing Penicillin and Tetracycline	77N–0318	January 20, 1978, 43 FR 3032
Ethylene Oxide, Ethylene Chlorohydrin, and Ethylene Glycol; Proposed Maximum Residue Limits and Maximum Levels of Exposure	77N–0424[1]	June 23. 1978, 43 FR 27474
Label Designation of Ingredients in Cheese and Cheese Products	77P–0146	July 19, 1984, 49 FR 29242
Food Chemicals Codex Monographs; Opportunity for Public Comment on Revisions	78N–0072	April 18, 1978, 43 FR 16413

TABLE 1.—Continued

Title	Docket No.	FR Publication Date and Cite
Cellulose Derivatives; Affirmation of GRAS Status	78N–0144[1]	February 23, 1979, 44 FR 10751
Tocopherols and Derivatives; Proposed Affirmation of GRAS Status for Certain Tocopherols and Removal of Certain Others From GRAS Status as Direct Human Food Ingredients	78N–0213[1]	October 27, 1978, 43 FR 50193
Chlortetracycline-Sulfamethazine Tablets; Proposed Rulemaking	78N–0247	September 22, 1978, 43 FR 43036
Phosphates; Proposed Affirmation of and Deletion From GRAS Status as Direct and Human Food Ingredients	78N–0272	December 18, 1979, 44 FR 74845
Biotin; Proposed Affirmation of GRAS Status	78N–0308[1]	January 14, 1983, 48 FR 1739
Lard and Lard Oil; Proposed Affirmation of GRAS Status as Indirect Human Food Ingredients	78N–0336[1]	May 18, 1979, 44 FR 29102
Glycerin; Affirmation of GRAS Status as a Direct Human Food Ingredient	78N–0348[1]	February 8, 1983, 48 FR 5758
Medical Devices; Classification of Sponges for Internal Use	78N–1074	November 28, 1978, 43 FR 55697
Medical Devices; Classification of Powered Myoelectric Biofeedback Equipment	78N–1183	August 28, 1979, 44 FR 50464
Porcine Burn Dressing	78N–2670	January 19 1982, 47 FR 2828
Food Ingredient Labeling; Emulsifiers and Stabilizers; Exemptions	78P–0052	April 17, 1985, 50 FR 15177
Sodium Dithionite and Zinc Dithionite; Proposed Affirmation of GRAS Status	79N–0095[1]	January 25, 1980, 45 FR 6117 and September 17, 1982, 47 FR 41137 (tentative final rule)
Current Good Manufacturing Practice in Manufacture Processing, Packing, or Holding; Proposed Exemption From Active Ingredient Identity and Strength Testing for Homeopathic Drug Products	79P–0265	April 1, 1983, 48 FR 14003
Hydrochloric Acid; Proposed Affirmation of GRAS Status as a Direct Human Food Ingredient	80N–0148[1]	April 26, 1984, 49 FR 17966
Cheeses and Related Cheese Products; General Standard of Identity for ''Certain Other Cheeses''	80N–0373	April 23, 1984, 49 FR 17018
Caffeine; Deletion of GRAS Status, Proposed Declaration That No Prior Sanction Exists, and Use on an Interim Basis Pending Additional Study	80N–0418[1]	October 21, 1980, 45 FR 69817
Policy for Recognizing Carcinogenic Chemicals in Food and Color Additives; Advance Notice of Proposed Rulemaking	81N–0281	April 2, 1982, 47 FR 14464
Magnesium Gluconate, Potassium Gluconate, Sodium Gluconate, Zinc Gluconate, and Gluconic Acid: Proposed GRAS Status as Direct and Indirect Human Food Ingredients	81N–0382	October 29, 1982, 47 FR 49028
Protein Hydrolysates and Enzymatically Hydrolyzed Animal (Milk Casein) Protein; Proposed GRAS Status	82N–0006[1]	December 8, 1983, 48 FR 54990
Zinc Salts: Proposed Affirmation of GRAS Status	82N–0167[1]	October 26, 1982, 47 FR 47441
Regenerated Collagen; Proposed GRAS Status as a Direct Human Food Ingredient	82N–0219[1]	April 26,1983, 48 FR 18833
Ascorbic Acid and Its Sodium and Calcium Salts, Erythorbic Acid and Its Sodium Salt, and Ascorbyl Palmitate; Proposed Affirmation of GRAS Status and Removal of Calcium Ascorbate From the List of GRAS Ingredients	82N–0246[1]	January 14, 1983, 48 FR 1735
Caffeine in Nonalcoholic Carbonated Beverages	82N–0318	May 20, 1987, 52 FR 18923
Common or Usual Names for Nonstandardized Foods; Diluted Fruit or Vegetable Juice Beverages	82N–0389	June 1, 1984, 49 FR 22831
Neurological Devices, Proposed Rule to Reclassify the Electroconvulsive Therapy Device Intended for Use in Treating Severe Depression	82P–0316	September 5, 1990, 55 FR 36578
New Drug and Antibiotic Application Review; Proposed User Charge	84N–0101	August 6, 1985, 50 FR 31726

TABLE 1.—Continued

Title	Docket No.	FR Publication Date and Cite
Proposed Uses of Vinyl Chloride Polymers	84N–0334	February 3, 1986, 51 FR 4177
Unmodified Food Starches and Acid Modifled Starches—Proposed Affirmation of GRAS Status as Direct and Indirect Human Food Ingredients	84N–0341[1]	April 1, 1985, 50 FR 12821
Use of Acrylonitrile Copolymers	85N–0145	March 8, 1990, 55 FR 8476
Hematology and Pathology Devices; Premarket Approval of the Automated Blood Cell Separator Intended for Routine Collection of Blood and Blood Components	85N–0241	February 19, 1988, 53 FR 5108
New Drugs for Human Use: Proposed Clarification of Requirements for Application Supplements	86N–0077	June 4, 1986, 51 FR 20310
Quality Standards for Foods With No Identity Standards; Bottled Water	86N–0445	September 16, 1988, 53 FR 36063
Pineapple Juice; Proposal to Amend U.S. Standards of Identity and Quality	86P–0338	May 21, 1987, 52 FR 19169
New Animal Drug Regulations	88N–0058	December 17, 1991, 56 FR 65544
Current Good Manufacturing Practice for Blood and Blood Components; Proficiency Testing Requirements	88N–0413	June 6, 1989, 54 FR 24296
Canned Pineapple; Proposal To Amend Standards of Identity and Quality	88P–0224	March 24, 1989, 54 FR 12237
Shellac and Shellac Wax; Proposed Affirmation of GRAS Status With Specific Limitations as Direct Human Food Ingredients	89N–0106	July 26, 1989, 54 FR 31055
Erythromycin Capsules; Proposed Amendment of Dissolution Standard of Erythromycin Capsules	89N–0378[1]	October 26, 1989, 54 FR 43592
Yogurt Products; Frozen Yogurt, Frozen Lowfat Yogurt, and Frozen Nonfat Yogurt; Petitions To Establish Standards of Identity and To Amend the Existing Standards	89P–0208 and 89P–0444	May 31, 1991, 56 FR 24760
Exemption From Preemption of State and Local Hearing Aid Requirements; Vermont	89P–0314	October 30, 1990, 55 FR 45615
Food Labeling; Declaration of Ingredients, Common or Usual Name Declaration for Protein Hydrolysates and Vegetable Broth in Canned Tuna; ''and/or'' Labeling for Soft Drinks	90N–0361M	January 6, 1993, 58 FR 2950
Use of Aseptic Processing and Terminal Sterilization in the Preparation of Sterile Pharmaceuticals for Human and Veterinary Use	91N–0074	October 11, 1991, 56 FR 51354
Cosmetic Products Containing Certain Hormone Ingredients; Notice of Proposed Rulemaking	91N–0245	September 9, 1993, 58 FR 47611
Substances in Food-Contact Articles in the Household, Food Service Establishments, and Food Dispensing Equipment; Food Additive Status	74–8424	April 12, 1974, 39 FR 13285
Drug Listing Compliance Verification Reports	92N–0291	September 2, 1993, 58 FR 46587
Food Labeling: Metric Labeling Requirements	92N–0406	May 21, 1993, 58 FR 29716
Food Labeling: Net Quantity of Contents; Compliance	92P–0441	March 4, 1997, 62 FR 9826
Cardiovascular Devices; Effective Date of Requirement for PMA of Nonroller-Type Cardiopulmonary Bypass Blood Pump	93M–0150	July 6, 1993, 58 FR 36290
Laser Products; Proposed Amendment to Performance Standards	93N–0044	March 24, 1999, 64 FR 14180
Quality Standards for Foods With No Identity Standards; Bottled Water	93N–0200	October 6, 1993, 58 FR 52042
Metric Labeling; Quantity of Contents Labeling Requirement for Foods, Human and Animal Drugs, Animal Foods, Cosmetics, and Medical Devices	92N–0406 and 93N–0226	December 21, 1993, 58 FR 67444
Lead in Food and Color Additives and GRAS Ingredients; Request for Data	93N–0348	February 4, 1994, 59 FR 5363
Substances Prohibited From Use in Animal Food or Feed; Specified Offal From Adult Sheep and Goats Prohibited in Ruminant Feed; Scrapie	93N–0467	August 29, 1994, 59 FR 44584

TABLE 1.—Continued

Title	Docket No.	FR Publication Date and Cite
Dental Devices; Effective Date of Requirement for Premarket Approval of Over-the-Counter (OTC) Denture Cushions or Pads and OTC Denture Repair Kits	95N–0034	July 11, 1995, 60 FR 35713
Food Labeling; Nutrient Content Claims and Health Claims; Special Requirements	95N–0103	February 2, 1996, 61 FR 3885
Maltodextrin; Food Chemicals Codex Specifications	95N–0189	September 21, 1995, 60 FR 48939
Beverages: Bottled Water	95N–0203	November 13, 1995, 60 FR 57132
Dental Devices; Effective Date of Requirement for Premarket Approval of Partially Fabricated Denture Kits	95N–0298	November 29, 1995, 60 FR 61232
Lowfat and Skim Milk Products, Lowfat and Nonfat Yogurt Products, Lowfat Cottage Cheese: Proposed Revocation of Standards of Identity; Food Labeling, Nutrient Content Claims for Fat, Fatty Acids and Cholesterol Content of Food	95P–0250	November 9, 1995, 60 FR 56541
Food Standards; Reinvention of Regulations Needing Revisions, Request for Comments on Certain Existing Regulations	96N–0149	June 12, 1996, 61 FR 29701
Reinvention of Certain Food Additive Regulations	96N–0177	June 12, 1996, 61 FR 29711
Food Labeling; Declaration of Free Glutamate In Food	96N–0244	September 12, 1996, 61 FR 48102
Regulation of Medical Foods	96N–0364	November 29, 1996, 61 FR 60661
Food Labeling: Nutrient Content Claims Pertaining to the Available Fat Content of Food	96N–0421 and 94P–0453/CP1	December 20, 1996, 61 FR 67243
Food Labeling; Serving Sizes; Reference Amounts for Candies	96P–0023 and 96P–0179	January 8, 1998, 63 FR 1078

[1]Denotes documents that were included in the December 1991 withdrawal notice, but were not withdrawn at that time.

Dated: August 30, 2004.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 04–26234 Filed 11–24–04; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–149519–03]

RIN 1545–BC63

Section 707 Regarding Disguised Sales, Generally

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the treatment of transactions between a partnership and its partners as disguised sales of partnership interests between the partners under section 707(a)(2)(B) of the Internal Revenue Code (Code). The proposed regulations affect partnerships and their partners, and are necessary to provide guidance needed to comply with the applicable tax law. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by February 24, 2005. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for March 8, 2005, at 10 a.m. must be received by February 24, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–149519–03), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–149519–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS internet site *http://www.irs.gov/regs* or via the Federal eRulemaking Portal site at *http://www.regulations.gov* (indicate IRS and REG–149519–03). The public hearing will be held in the IRS Auditorium, Seventh Floor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Deane M. Burke or Christopher L. Trump, (202) 622–3070; concerning submissions of comments, the hearing, or to be placed on the building access list to attend the hearing, Treena V. Garrett, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by

January 25, 2005. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in the proposed regulations is in §§ 1.707–3(c)(2), 1.707–5(a)(8), 1.707–6(c), and 1.707–7(k). This information is required by the IRS to ensure that section 707(a)(2)(B) of the Code and the regulations thereunder are properly applied to transfers between partners in a partnership. The information collected will be used to determine whether partners are complying with section 707(a)(2)(B) and the regulations thereunder. The respondents will be partners and partnerships.

Estimated total annual reporting burden: 7,500 hours.

Estimated average burden per respondent varies from 15 minutes to 25 minutes, depending on individual circumstances, with an estimated average of 20 minutes.

Estimated number of respondents: 22,500.

Estimated annual frequency of responses: annually.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document proposes to amend section 707 of the Income Tax Regulations (26 CFR part 1) regarding disguised sales of partnership property, including partnership interests.

Section 707(a)(2)(B) of the Code provides that, under regulations prescribed by the Secretary, transfers to and by a partnership that are more properly characterized as transactions between the partnership and one who is not a partner or between two or more partners acting other than in their capacity as partners shall be treated as such transactions. The legislative history of section 707(a)(2)(B) indicates the provision was adopted as a result of Congressional concern that taxpayers were deferring or avoiding tax on sales of partnership property, including sales of partnership interests, by characterizing sales as contributions of property, including money, followed or preceded by related partnership distributions. *See* H.R. Rep. No. 861, 98th Cong. 2nd Sess. 861 (1984), 1984–3 (Vol. 2) C.B. 115. Specifically, Congress was concerned about court decisions that allowed tax-free treatment in cases that were economically indistinguishable from sales of property to a partnership or another partner, and believed that these transactions should be treated for tax purposes in a manner consistent with their underlying economic substance. See H.R. Rep. No. 432, 98th Cong. 2nd Sess. 1218 (1984) (H.R. Rep.), and S. Prt. No. 169 (Vol. I), 98th Cong. 2nd Sess. 225 (1984) (S. Prt.) (discussing *Communications Satellite Corp.* v. *United States,* 625 F.2d 997 (Ct. Cl. 1980), and *Jupiter Corp.* v. *United States,* 2 Cl. Ct. 58 (1983), both of which involved disguised sales of a partnership interest).

On September 30, 1992, final regulations under section 707(a)(2) (TD 8439, 1992–2 C.B. 126) relating to disguised sales of property to and by partnerships were published in the **Federal Register** (57 FR 44974 as corrected on November 30, 1992, by 57 FR 56443) (existing regulations). Section 1.707–7 of the existing regulations was reserved for rules on disguised sales of partnership interests. On October 9, 2001, the IRS and the Treasury Department issued Notice 2001–64 (2001–2 C.B. 316), announcing that the IRS and the Treasury Department were considering issuing proposed regulations under section 707(a)(2)(B), relating to disguised sales of partnership interests. The IRS and the Treasury Department requested comments on the scope and substance of guidance concerning disguised sales of partnership interests, including any applicable safe harbors or exceptions. Written comments in response to Notice 2001–64 were received and considered in drafting these proposed regulations.

In February 2003, the Joint Committee on Taxation released its Report of Investigation of Enron Corporation and Related Entities Regarding Federal Tax and Compensation Issues and Policy Recommendations (Enron Report), and the Written Testimony of the Staff of the Joint Committee on the Enron Report (Written Testimony). In the Enron Report and the Written Testimony, the Joint Committee recommended changes to rules in the existing regulations that require disclosure of certain transactions. These proposed regulations include those changes and provide disclosure rules for disguised sales of partnership interests consistent with the disclosure rules in the existing regulations, as amended.

Explanation of Provisions

1. Framework of Rules

Commentators responding to Notice 2001–64 generally recommended that the proposed regulations relating to disguised sales of partnership interests include a framework similar to that in the existing regulations, with a general rule that applies based on all of the facts and circumstances, and a variety of safe harbors and presumptions. In addition, the commentators specifically recommended that certain of the presumptions and safe harbors in the existing regulations be incorporated into the proposed regulations and that the treatment of liabilities under the proposed regulations largely follow the treatment of liabilities under the existing regulations. The IRS and the Treasury Department agree with those recommendations and, accordingly, the proposed regulations follow the form of the existing regulations and include rules similar to many of the rules in the existing regulations, with appropriate modifications.

2. General Rule

The commentators also recommended that the proposed regulations provide a narrower rule than the existing regulations for determining that a purported contribution and distribution are related, and therefore, are treated as a disguised sale of a partnership interest. One commentator noted that, unlike the existing regulations, the proposed regulations would potentially apply whenever there are cash contributions and distributions, which are common events for most partnerships. In addition, unlike in a disguised sale of partnership property, no person, other than the partnership, participates in both of the transactions

that constitute the disguised sale (transfers to and by a partnership) and a party engaged in one of those transactions may not even be aware of the other transaction. Another commentator expressed concern that without a narrower rule, the proposed regulations could apply to many common, legitimate partnership transactions, such as the routine admission to and redemption from professional and securities partnerships.

Under the existing regulations, a transfer of property by a partner to a partnership and a simultaneous transfer of money or other consideration by the partnership to the partner are treated as a disguised sale of property only if, based on all the facts and circumstances, the transfer by the partnership would not have been made but for the transfer to the partnership, and, in cases in which the transfers are not made simultaneously, the subsequent transfer is not dependent on the entrepreneurial risks of partnership operations. Section 1.707–3(b)(1). One of the commentators suggested that in addition to the ''but for'' test in the existing regulations, the proposed regulations provide that transfers to and by a partnership will constitute a disguised sale of a partnership interest only if the two transfers are ''directly related.'' Another commentator suggested that the proposed regulations find a disguised sale of a partnership interest only where both the transfer to and the transfer by the partnership would not have been made but for the other transfer, a so-called ''double but for test.'' The commentators also recommended narrowing the scope of the proposed regulations by providing additional favorable presumptions or safe harbors for certain transactions, such as transfers to and from professional partnerships.

The IRS and the Treasury Department agree that because many more transactions may potentially be subject to the proposed regulations, it is appropriate that the proposed regulations be narrower than the existing regulations. However, the IRS and the Treasury Department have concerns about the alternate tests of relatedness suggested by the commentators. Specifically, the IRS and the Treasury Department are not certain how a ''directly related'' test would be interpreted or applied, or whether it would be effective in narrowing the scope of the proposed rules. In addition, the IRS and the Treasury Department are concerned that certain transactions that should be treated as a disguised sale of a partnership interest would not be covered under a ''double but for test.'' For example, assume that a prospective investor in a partnership and an existing partner who wishes to sell its partnership interest agree that upon the prospective investor's transfer to the partnership, the partnership will make a corresponding transfer to the existing partner. If the prospective investor is indifferent as to whether the existing partner retains its partnership interest, the transaction would not satisfy a ''double but for test'' since the transfer to the partnership was not made but for the transfer from the partnership. Nonetheless, the IRS and the Treasury Department believe that the transaction is economically indistinguishable from a sale of a partnership interest and should be treated as such. In contrast, the IRS and the Treasury Department believe that the ''but for'' test of the existing regulations provides a relatively bright line rule that is easier to interpret and administer and that, in most cases, covers those transactions that should be treated as disguised sales of partnership interests. The IRS and the Treasury Department thus believe that the appropriate way to narrow the scope of those rules is to provide additional safe harbors but adopt the same ''but for'' test included in the existing regulations.

Accordingly, the proposed regulations provide that a transfer of money, property or other consideration (including the assumption of a liability) (consideration) by a purchasing partner to a partnership and a transfer of consideration by the partnership to a selling partner constitute a sale, in whole or in part, of the selling partner's interest in the partnership to the purchasing partner only if, based on all the facts and circumstances, the transfer by the partnership would not have been made but for the transfer to the partnership, and, in cases in which the transfers are not made simultaneously, the subsequent transfer is not dependent on the entrepreneurial risks of partnership operations.

3. Facts and Circumstances

As under the existing regulations, the proposed regulations provide that whether two transfers constitute a disguised sale is determined based on all the facts and circumstances. The proposed regulations list a series of factors that, among others, tend to indicate the existence of a disguised sale of a partnership interest. The weight given each of the factors will depend on the circumstances of each case. Generally, the facts and circumstances existing on the date of the earliest of the transfers are the ones considered in determining if a sale exists.

Many of the factors listed in the proposed regulations are similar to those under the existing regulations. However, the proposed regulations include additional facts and circumstances that are relevant in the context of a disguised sale of a partnership interest. For example, included in the facts and circumstances in the proposed regulations are (1) that the same property (other than money, including marketable securities that are treated as money under section 731(c)(1)) (non-cash property) that is transferred to the partnership by the purchasing partner is transferred to the selling partner, and (2) that the partnership holds transferred non-cash property for a limited period of time, or during the period of time the partnership holds transferred non-cash property, the risk of gain or loss associated with the property is not significant.

4. Presumptions and Safe Harbors

a. In General

The commentators generally suggested that the proposed regulations provide presumptions and safe harbors that model those contained in the existing regulations. Those rules generally focus on the timing, risk, and source of partnership distributions. The IRS and the Treasury Department believe that rules similar to those rules in the existing regulations should apply in the context of disguised sales of partnership interests. Therefore, the proposed regulations include presumptions and safe harbors similar to those in the existing regulations, along with an additional favorable presumption and an additional exception that address concerns specifically relevant in the context of disguised sales of partnership interests. As under the existing regulations, each of the presumptions in the proposed regulations may be rebutted only by facts and circumstances that clearly establish the contrary.

b. Timing of Transfers, Liquidations, and Service Partnerships

The proposed regulations adopt an approach similar to that in the existing regulations regarding transfers made within two years and transfers made more than two years apart. Thus, the proposed regulations provide that a transfer of consideration by a purchasing partner to a partnership and a transfer of consideration by the partnership to a selling partner that are made within two years of each other are presumed to be a sale, and that such transfers made more than two years

apart are presumed not to be a sale. One commentator suggested that the timing presumptions in the proposed regulations should only apply to ''extraordinary'' contributions and distributions because the proposed regulations, unlike the existing regulations, may apply whenever there is a cash contribution to and cash distribution from a partnership, which are routine transactions for many partnerships. The IRS and the Treasury Department believe that this concern is adequately addressed by the inclusion in the proposed regulations of (1) presumptions, discussed below, against sale treatment for transfers of money (including marketable securities) to a selling partner in liquidation of the selling partner's interest in the partnership as well as for guaranteed payments, preferred returns, operating cash flow distributions, and reimbursements of preformation expenditures, and (2) an exception for contributions and distributions of money (including marketable securities) to and from service partnerships (defined as described below).

Another commentator argued that the proposed regulations should not include presumptions based upon the amount of time that elapses between transfers. The commentator submitted that the timing presumptions in the existing regulations have done little to promote certainty for taxpayers. The IRS and the Treasury Department did not follow the commentator's recommendation. Even though timing presumptions do not eliminate the need to analyze the relevant facts and circumstances, the IRS and the Treasury Department believe that timing presumptions help the IRS and taxpayers identify transactions where closer scrutiny is required. *See* S. Prt. No. 169 (Vol. I), 98th Cong. 2nd Sess. 231 (1984) (suggesting that regulations provide a presumption of ''relatedness'' for transfers within three years).

The IRS and the Treasury Department believe that the abuse that section 707(a)(2)(B) was intended to address typically is not present in situations involving complete liquidations of partners' partnership interests for money. Accordingly, the proposed regulations provide that, notwithstanding the presumption relating to transfers within two years, a transfer of money, including marketable securities that are treated as money under section 731(c)(1), to a selling partner in liquidation of that partner's entire interest in the partnership is presumed not to be part of a disguised sale of that interest. However, the IRS and the Treasury Department recognize that there are instances in which a liquidating distribution may properly be characterized as part of a disguised sale of a partnership interest, particularly when the tax consequences of a liquidating distribution are significantly different from those of a sale of a partnership interest. Accordingly, the presumption against sale treatment may be rebutted in those cases.

As recommended by the commentators, the proposed regulations provide that transfers of money, including marketable securities that are treated as money under section 731(c)(1), to and by a partnership that would be described in section 448(d)(2) if the partnership were a corporation (service partnership) are not a sale and need not be disclosed. This exception takes into account that partners frequently enter and exit service partnerships and, in most cases, those transactions are factually unrelated to each other and should not be treated as a disguised sale of a partnership interest. One commentator also suggested that the proposed regulations provide favorable presumptions or safe harbors for other types of partnerships, including securities partnerships and partnerships involved in staged closings. The IRS and the Treasury Department specifically request additional comments on whether the proposed regulations should include safe harbors for partnerships other than service partnerships, and if so, how to appropriately define those categories of partnerships.

c. Guaranteed Payments, Preferred Returns, Operating Cash Flow Distributions, and Qualified Reimbursements

As recommended by the commentators, the proposed regulations provide that rules similar to those provided in § 1.707–4 of the existing regulations concerning guaranteed payments, preferred returns, operating cash flow distributions, and reimbursements of preformation expenditures apply (notwithstanding the presumption relating to transfers made within two years of each other) to determine the extent to which a transfer to a selling partner is treated as part of a sale of the selling partner's interest in the partnership to the purchasing partner. The IRS and the Treasury Department agree that inclusion of those rules in the proposed regulations is appropriate in order to distinguish between transfers to partners that occur in the ordinary course of business and transfers to partners that are part of a disguised sale.

d. Certain Presumptions Not Included

Commentators expressed concern that a transfer of property by one partner to a partnership and a transfer of different property by the partnership to another partner should not form the basis of a disguised sale of a partnership interest. One commentator argued that to recharacterize those transfers as a sale of a partnership interest would require the reordering of steps or the creation of additional steps, which is impermissible under the step transaction and related doctrines. Nonetheless, the commentator acknowledged that there are situations in which the recharacterization more properly reflects the substance of the transaction.

The proposed regulations do not adopt a specific favorable presumption or safe harbor for transactions involving transfers of different property. The IRS and the Treasury Department are concerned that if such a favorable presumption or safe harbor were available, a purchasing partner and selling partner could easily structure a transaction to fit within the favorable presumption or safe harbor, for example, by the purchasing partner transferring an asset that it wishes to sell to the partnership and the partnership selling the asset and transferring the sales proceeds to the selling partner. The IRS and the Treasury Department specifically request additional comments on whether a favorable presumption or safe harbor for transactions involving transfers of different property is appropriate and, if so, how any favorable presumption or safe harbor could be narrowly tailored to cover only those transactions that clearly should not be characterized as a sale of a partnership interest.

The commentators also suggested that the proposed regulations provide a safe harbor for situations in which one partner funds a defaulting partner's obligation to make a capital contribution. According to one commentator, the subsequent transfer by the defaulting partner to the partnership and the related transfer by the partnership to the non-defaulting partner merely restore the original economic deal intended, and should not be characterized as a sale. The IRS and the Treasury Department believe, however, that this type of transaction can be difficult to distinguish from an actual sale of a partnership interest. Therefore, the proposed regulations do not include a safe harbor for these transactions.

5. Liabilities

The proposed regulations generally follow the approach of the existing regulations with respect to the treatment of liabilities. Thus, if a partnership assumes a liability of a partner, the partnership is treated as transferring consideration to the partner to the extent that the amount of the liability exceeds the partner's share of that liability immediately after the partnership assumes the liability. Similarly, if a partner assumes a liability of a partnership, the partner is treated as transferring consideration to the partnership to the extent that the amount of the liability assumed exceeds the partner's share of that liability immediately before the assumption. However, the proposed regulations specifically provide, as suggested by the commentators, that deemed contributions to and distributions from a partnership under section 752 resulting from reallocations of partnership liabilities among partners are not treated as transfers of consideration. The rules in the proposed regulations relating to a partner's share of a partnership liability, including the effect of a subsequent reduction in a partner's share of a partnership liability, follow those rules in the existing regulations. The proposed regulations also include rules with respect to debt-financed transfers of consideration by partnerships that follow the rules in the existing regulations.

Unlike the existing regulations, the proposed regulations do not include any special rules for qualified liabilities. The IRS and the Treasury Department believe that the inclusion of those special rules in the existing regulations is appropriate because, otherwise, any transfer of property to a partnership subject to a liability could be recharacterized as a disguised sale of property. In contrast, under the proposed regulations, a transfer to a partnership of encumbered property alone would not be subject to recharacterization as a disguised sale of a partnership interest. Rather, a transfer to a partnership of encumbered property would have to be related to a transfer of consideration by another partner in order for disguised sale treatment to apply. Nonetheless, the IRS and the Treasury Department specifically request comments on whether the proposed regulations should include rules similar to those in the existing regulations for qualified liabilities, and if so, whether and how those rules should be modified to address issues particular to disguised sales of partnership interests.

The proposed regulations also include an anti-abuse rule to address cases in which the rules of the proposed regulations do not adequately capture the substance of an integrated set of transactions. The anti-abuse rule in the proposed regulations provides that an increase in a partner's share of a partnership liability may be treated as a transfer of consideration in a sale of a partnership interest if, within a short period of time after the partnership incurs or assumes the liability or another liability, one or more partners (or related parties) in substance bear an economic risk for the liability that is disproportionate to the partners' interests in partnership profits or capital, and the transactions are undertaken pursuant to a plan that has as one of its principal purposes minimizing the extent to which the partners are treated as making a transfer of consideration to a partnership that may be treated as part of a sale. Comments are requested on this proposed anti-abuse rule, including examples of particular situations where application of this rule would be appropriate.

6. Treatment of Transfers as a Sale

If a transfer of consideration by a purchasing partner to the partnership and a transfer of consideration by the partnership to a selling partner are treated as part of a sale of a partnership interest, the proposed regulations provide several rules relating to the tax consequences of sale treatment. First, the proposed regulations provide that transfers that are treated as a sale of a partnership interest are treated as a sale for all purposes of the Code. In addition, the proposed regulations include rules relating to the timing of the sale that are similar to those in the existing regulations. Specifically, the proposed regulations provide that the sale is considered to take place on the date of the earliest of the transfers. If the transfer by the partnership occurs before the transfer to the partnership, the partners and the partnership are treated as if, on the date of the sale, the purchasing partner transferred to the partnership an obligation to deliver that partner's consideration in exchange for the consideration transferred by the partnership to the selling partner (selling partner's consideration), and the purchasing partner transferred the selling partner's consideration to the selling partner in exchange for the selling partner's partnership interest. If the transfer by the partnership occurs after the transfer to the partnership, the partners and the partnership are treated as if, on the date of the sale, the purchasing partner transferred that partner's consideration to the partnership (purchasing partner's consideration) in exchange for an obligation of the partnership to deliver the selling partner's consideration, and the purchasing partner transferred that obligation to the selling partner in exchange for the selling partner's partnership interest.

The IRS and the Treasury Department intend that the deemed transactions that are treated as occurring as described in the immediately preceding paragraph result in actual tax consequences to the partnership, the purchasing partner(s), and the selling partner(s) for all purposes of the Code. Thus, for instance, where the consideration actually transferred by the purchasing partner to a partnership is different than the actual consideration later transferred from the partnership to the purchasing partner, there may be tax consequences for the partnership and the partners resulting from deemed exchanges of consideration, *e.g.*, gain or loss recognition to the partnership or partners (including the potential application of section 267 or 707).

The proposed regulations also provide rules relating to the amount of the sale and the inclusion of liability relief in the amount realized on the sale. Specifically, with respect to the amount of the sale, the proposed regulations provide that the selling partner is treated as selling to the purchasing partner a partnership interest with a value equal to the lesser of the selling partner's consideration or the purchasing partner's consideration. For this purpose, simultaneous transfers of consideration by more than one purchasing partner to a partnership, or by a partnership to more than one selling partner, are aggregated. In those cases, each purchasing partner is presumed to have purchased a fractional share of the partnership interest(s) sold, and each selling partner is presumed to have sold its fractional share of the total partnership interest(s) sold. In addition, although the proposed regulations provide that deemed contributions to and distributions from a partnership under section 752 resulting from reallocations of partnership liabilities among partners are not treated as transfers of consideration, the proposed regulations clarify that the amount realized by a selling partner on the sale of the partner's interest in the partnership includes any reduction in the selling partner's share of partnership liabilities that is treated as occurring as a result of the sale, if the reduction in liability has not otherwise been treated

as a transfer of consideration to the selling partner.

The proposed regulations also address issues relating to the application of certain rules that may overlap. First, the proposed regulations provide that if a portion of a transfer of consideration by a partnership to a selling partner is not treated as part of a sale of the partner's interest in the partnership, but as a distribution to the selling partner under section 731, and the sale is treated as occurring on the same date as the distribution, then the distribution is treated as occurring immediately following the sale. Thus, the portion of the transfer that is treated as a distribution is not taken into account for purposes of computing the selling partner's basis in its partnership interest prior to the disguised sale of the interest. In addition, the proposed regulations provide that the rules for disguised sales of property apply before the rules of the proposed regulations, and to the extent a transfer of consideration is treated as part of a sale of property under the rules for disguised sales of property, the transfer is not taken into account for purposes of the rules in the proposed regulations. This ordering rule is appropriate because, in some cases, the tax consequences of a disguised sale of property may be simpler than a disguised sale of a partnership interest because, for example, a disguised sale of property will not result in a technical termination of the partnership under section 708(b)(1)(B) or basis adjustments under section 743(b).

Finally, the proposed regulations clarify whether the rules apply to certain transfers that occur upon the formation or termination of a partnership. The proposed regulations do not apply to transfers incident to the formation of a partnership, although these transfers may be subject to recharacterization as a disguised sale of property under the existing regulations. The proposed regulations also do not apply to deemed transfers resulting from a termination of a partnership under section 708(b)(1)(B). The IRS and the Treasury Department specifically request comments on whether the proposed regulations should include special rules or exceptions for some or all of the transfers occurring in a partnership merger or division under § 1.708–1(c) or (d).

7. Disclosure

In the Enron Report and the Written Testimony, the Joint Committee recommended that the period for which disclosure of a transaction is required under the disguised sale rules should be extended beyond two years. The Committee further suggested that expanding the disclosure period to seven years might make it more likely that taxpayers would undertake the facts and circumstances determination for transfers occurring more than two years apart and would make that facts and circumstances determination easier for the IRS to administer. To effect this recommendation, the proposed regulations would amend §§ 1.707–3(c)(2) and 1.707–6(c) of the existing regulations to extend the disclosure requirement to the specified events occurring within seven years instead of two years. The IRS and the Treasury Department request comments regarding whether the disclosure requirement should be extended to a period that is more than two years, but less than seven years.

The proposed regulations also would add a new requirement to both §§ 1.707–5 and –6 of the existing regulations, relating to the disclosure of the assumption of or taking subject to liabilities. Specifically, § 1.707–5(a)(8) of the proposed regulations would require disclosure if a partner transfers property to a partnership, and the partnership assumes or takes subject to a liability of the partner (whether or not the liability is qualified) within a seven-year period (without regard to the order of the transactions), and the partner treats the transactions as other than as a sale for tax purposes. Similarly, § 1.707–6(c)(3) of the proposed regulations would require disclosure if a partnership transfers property to a partner, and the partner assumes or takes subject to a liability of the partnership (whether or not the liability is qualified) within a seven-year period (without regard to the order of the transactions), and the partnership treats the transactions as other than as a sale for tax purposes. These disclosure requirements were added because of a concern that taxpayers are taking unwarranted positions regarding a partner's share of partnership liabilities before or after an assumption of or taking subject to a liability.

Finally, the proposed regulations would amend the provision in § 1.707–8(c) to clarify who is required to disclose under the disguised sale rules. The amended paragraph provides that the required disclosure must be made by any person who makes a transfer that is required to be disclosed, and that the persons who are required to disclose may designate by written agreement a single person to make the disclosure. However, the designation of one person to make the disclosure does not relieve the other persons required to disclose from their obligation to make the disclosure, if the designated person fails to make the appropriate disclosure.

The proposed regulations provide disclosure rules for transactions that may be treated as disguised sales of partnership interests consistent with the disclosure rules in the existing regulations, as amended. Disclosure to the IRS is required when a partner transfers consideration to a partnership and the partnership transfers consideration to another partner within a seven-year period (without regard to the order of the transfers), the partners treat the transfers other than as a sale for tax purposes, and the transfer of consideration by the partnership is not presumed to be a guaranteed payment for capital, is not a reasonable preferred return, and is not an operating cash flow distribution. However, disclosure is not required if the exception described earlier for service partnerships applies.

8. Review of Existing Regulations

The IRS and the Treasury Department have become aware of certain deficiencies and technical ambiguities in the existing regulations under §§ 1.707–3, 1.707–4 and 1.707–5. Among the deficiencies and technical ambiguities identified are the rules for capital expenditure reimbursements, the liability sharing rules, and the interaction of the capital expenditure reimbursement rules with the qualified liability rules. In order to address these deficiencies and technical ambiguities, the IRS and the Treasury Department intend to issue proposed regulations amending the existing regulations. In addition, the IRS and the Treasury Department intend to revise these proposed regulations to reflect those proposed amendments to the existing regulations. The IRS and Treasury Department request comments on the scope and content of the revisions to the existing regulations (and these proposed regulations).

Proposed Effective Date

The regulations are proposed to apply to transactions with respect to which all transfers considered part of a sale occur on and after the date these regulations are published as final regulations in the **Federal Register**. A determination of disguised sale treatment for a partnership interest for the period between the effective date of section 707(a)(2)(B) and the effective date of these regulations is to be made based on the statutory language and the guidance provided in the legislative history of section 707(a)(2)(B).

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the amount of time necessary to prepare the required disclosure is not lengthy and few small businesses are likely to be partners or parties required to make the disclosures required by the rule, and particularly, because the disclosure requirement does not apply to certain service partnerships. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on all aspects of the proposed regulations. Comments are also requested on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for March 8, 2005, at 10 a.m. in the IRS Auditorium, Seventh Floor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by February 24, 2005, and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by February 15, 2005. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Deane M. Burke of the Office of the Associate Chief Counsel (Passthroughs & Special Industries), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX

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

Authority: 26 U.S.C. 7805 * * *

Section 1.707–2 through 1.707–9 also issued under 26 U.S.C. 707(a)(2)(B).

Par. 2. Section 1.707–0 is amended as follows:

1. Adding an entry for § 1.707–5(a)(8).
2. Revising the entry for § 1.707–7.
3. Adding entries for §§ 1.707–7(a) through 1.707–7(l).
4. Revising the entry for § 1.707–8(c).
5. Revising the entries for §§ 1.707–9(a) and (a)(2).

The revisions and additions read as follows:

* * * * *

§ 1.707–0 Table of contents.

* * * * *

§ 1.707–5 Disguised sales of property to partnerships; special rules relating to liabilities.

* * * * *

(a) * * *

(8) Disclosure of liabilities assumed or taken subject to within seven years of transfer.

* * * * *

§ 1.707–7 Disguised sales of partnership interests.

(a) Treatment of transfers as a sale.

(1) In general.

(2) Definition, timing and consequences of sale.

(i) Definition of sale.

(ii) Timing and consequences of sale.

(A) In general.

(B) Simultaneous transfers.

(C) Transfer to selling partner first.

(D) Transfer by purchasing partner first.

(E) Consequences of deemed transactions.

(3) Amount of sale.

(i) In general.

(ii) Aggregation of consideration.

(4) Liability relief included in amount realized on sale.

(5) Sale precedes excess distribution to selling partner.

(6) Transfers first treated as a sale of property.

(7) Application of disguised sale rules.

(8) Certain transfers disregarded.

(b) Transfers treated as sale.

(1) In general.

(2) Facts and circumstances.

(c) Transfers made within two years presumed to be a sale.

(d) Transfers made more than two years apart presumed not to be a sale.

(e) Transfers of money in liquidation of a partner's interest presumed not to be a sale.

(f) Application of § 1.707–4 (special rules applicable to guaranteed payments, preferred returns, operating cash flow distributions, and reimbursements of preformation expenditures).

(g) Exception for certain transfers to and by service partnerships.

(h) Other exceptions.

(i) [Reserved.]

(j) Special rules relating to liabilities.

(1) In general.

(2) Partner liability assumed by partnership.

(3) Partnership liability assumed by partner.

(4) Partner's share of liability.

(i) Recourse liability.

(ii) Nonrecourse liability.

(5) Reduction of partner's share of liability.

(6) Treatment of debt-financed transfers of consideration by partnerships.

(i) In general.

(ii) Partner's allocable share of liability.

(A) In general.

(B) Debt-financed transfers made pursuant to a plan.

(*1*) In general.

(*2*) Special rule.

(C) Reduction of partner's share of liability.

(7) Share of liability where assumption accompanied by transfer of money.

(8) Anti-abuse rule.
(k) Disclosure rules.
(l) Examples.
* * * * *

§ 1.707–8 Disclosure of certain information.

* * * * *
(c) Parties required to disclose.
* * * * *

§ 1.707–9 Effective dates and transitional rules.

(a) Sections 1.707–3 through 1.707–7.
(1) * * *
(2) Transfers occurring before effective dates.
* * * * *

Par. 3. In § 1.707–3, the heading for paragraph (c)(2) and the text in paragraph (c)(2)(i) are amended by removing the language ''two'' and adding ''seven'' in its place.

Par. 4. In § 1.707–5, new paragraph (a)(8) is added.

The addition reads as follows:

§ 1.707–5 Disguised sales of property to partnership; special rules relating to liabilities.

(a) * * *
(8) *Disclosure of liabilities assumed or taken subject to within seven years of transfer.* Disclosure to the Internal Revenue Service in accordance with § 1.707–8 is required if—
(i) A partner transfers property to a partnership and the partnership assumes or takes subject to a liability of the partner (whether or not the liability is qualified, as described in § 1.707–5(a)(6)) within a seven-year period (without regard to the order of the transactions);
(ii) The partner treats the transactions as other than as a sale for tax purposes; and
(iii) The transactions are not disclosed under paragraph (a)(7)(ii) of this section.
* * * * *

Par. 5. In § 1.707–6 is amended as follows:

1. Revising paragraph (c) introductory text.
2. Amending paragraph (c)(1) by removing the language ''two'' and adding ''seven'' in its place.
3. Adding new paragraph (c)(3).

The revisions and addition read as follows:

§ 1.707–6 Disguised sales of property by partnership to partners; general rule.

* * * * *
(c) * * * Similar to the rules provided in §§ 1.707–3(c)(2), 1.707–5(a)(7)(ii), and 1.707–5(a)(8), a partnership is to disclose to the Internal Revenue Service, in accordance with § 1.707–8, the facts in the following circumstances:
* * * * *
(3) When a partnership transfers property to a partner and the partner assumes or takes subject to a liability of the partnership (whether or not the liability is qualified, as described in § 1.707–5(a)(6)) within a seven-year period (without regard to the order of the transactions), the partnership treats the transactions as other than as a sale for tax purposes, and the transactions are not disclosed under paragraph (c)(2) of this section.
* * * * *

Par. 6. Section 1.707–7 is revised to read as follows:

§ 1.707–7 Disguised sales of partnership interests.

(a) *Treatment of transfers as a sale*—(1) *In general.* Except as otherwise provided in this section, if a transfer of money, property or other consideration (including the assumption of a liability) (consideration) by a partner (purchasing partner) to a partnership and a transfer of consideration by the partnership to another partner (selling partner) are described in paragraph (b)(1) of this section, the transfers are treated as a sale, in whole or in part, of the selling partner's interest in the partnership to the purchasing partner. For purposes of this section, the term *transfer* refers to a portion of a single transfer or to one or more transfers.

(2) *Definition, timing and consequences of sale*—(i) *Definition of sale.* For purposes of this section, the use of the term *sale* (or any variation of that word) to refer to a transfer of consideration by a purchasing partner to a partnership and a transfer of consideration by the partnership to a selling partner means a sale or exchange, in whole or in part, of the selling partner's interest in the partnership to the purchasing partner, rather than a contribution and distribution to which sections 721 and 731, respectively, apply. Transfers that are treated as a sale under paragraph (a)(1) of this section are treated as a sale for all purposes of the Internal Revenue Code (*e.g.*, sections 453, 483, 704, 708, 743, 751, 1001, 1012 and 1274).

(ii) *Timing and consequences of sale*—(A) *In general.* For purposes of this section, a transfer is treated as occurring on the date of the actual transfer, or if earlier, on the date that the transferor agrees in writing to make the transfer. The sale of the selling partner's partnership interest is considered to take place on the date of the earliest of the transfers described in paragraph (a)(1) of this section. On this date, the purchasing partner is treated as acquiring the partnership interest sold for all purposes of the Internal Revenue Code.

(B) *Simultaneous transfers.* If the transfer of consideration by the purchasing partner and the transfer of consideration to the selling partner are simultaneous and the consideration transferred is the same, the partners and the partnership are treated as if, on the date of the sale, the purchasing partner transferred that partner's consideration (purchasing partner's consideration) directly to the selling partner in exchange for all or a portion of the selling partner's interest in the partnership. If the transfer of consideration by the purchasing partner to the partnership and the transfer of consideration by the partnership to the selling partner are simultaneous and the consideration transferred is not the same, the partners and the partnership are treated as if, on the date of the sale, the purchasing partner transferred that partner's consideration to the partnership in exchange for the consideration to be transferred to the selling partner (selling partner's consideration) and then the purchasing partner transferred the selling partner's consideration to the selling partner in exchange for all or a portion of the selling partner's interest in the partnership.

(C) *Transfer to selling partner first.* If the transfer of consideration by the partnership to the selling partner occurs before the transfer of consideration by the purchasing partner to the partnership, the partners and the partnership are treated as if, on the date of the sale, the purchasing partner transferred an obligation to deliver the purchasing partner's consideration to the partnership in exchange for the selling partner's consideration and then the purchasing partner transferred the selling partner's consideration to the selling partner in exchange for all or a portion of the selling partner's interest in the partnership. On the date of the actual transfer of the purchasing partner's consideration, the purchasing partner and the partnership are treated as if the purchasing partner satisfied its obligation to deliver the purchasing partner's consideration to the partnership.

(D) *Transfer by purchasing partner first.* If the transfer of consideration by the partnership to the selling partner occurs after the transfer of consideration by the purchasing partner to the partnership, the partners and the partnership are treated as if, on the date of the sale, the purchasing partner transferred the purchasing partner's

consideration to the partnership in exchange for an obligation of the partnership to deliver the selling partner's consideration and then the purchasing partner transferred that obligation to the selling partner in exchange for all or a portion of the selling partner's interest in the partnership. On the date of the actual transfer of the selling partner's consideration, the selling partner and the partnership are treated as if the partnership satisfied its obligation to deliver the selling partner's consideration to the selling partner.

(E) *Consequences of deemed transactions.* Transfers and exchanges that are deemed to occur under paragraphs (a)(2)(ii)(B), (a)(2)(ii)(C), and (a)(2)(ii)(D) of this section are treated as actual transfers or exchanges for all purposes of the Internal Revenue Code (*e.g.*, sections 453, 483, 704, 708, 743, 751, 1001, 1012 and 1274).

(3) *Amount of sale*—(i) *In general.* If a transfer of consideration by a purchasing partner to a partnership and a transfer of consideration by the partnership to a selling partner are treated as a sale under paragraph (b)(1) of this section, the selling partner is treated as selling to the purchasing partner a partnership interest with a value equal to the lesser of the selling partner's consideration or the purchasing partner's consideration.

(ii) *Aggregation of consideration.* For purposes of paragraph (a)(3)(i) of this section, simultaneous transfers of consideration by more than one purchasing partner to a partnership or by a partnership to more than one selling partner are aggregated. In those cases—

(A) Each purchasing partner is presumed to have purchased that fraction of each partnership interest(s) sold equal to—

(*1*) The amount of consideration transferred by that partner to the partnership, divided; by

(*2*) The aggregate consideration transferred by all purchasing partners to the partnership; and

(B) Each selling partner is presumed to have sold that fraction of the total partnership interest(s) sold equal to—

(*1*) The amount of consideration transferred by the partnership to that partner, divided; by

(*2*) The aggregate consideration transferred by the partnership to all selling partners.

(4) *Liability relief included in amount realized on sale.* The amount realized by a selling partner on the sale of the selling partner's interest in the partnership includes any reduction in the selling partner's share of partnership liabilities that is treated as occurring as a result of the sale. If a sale of a partnership interest and either a distribution by the partnership to the selling partner under section 731 or a contribution by the purchasing partner to the partnership under section 721 occur on the same date, the reduction in the selling partner's share of partnership liabilities is computed immediately after the sale and before the distribution or the contribution, as the case may be. To the extent a reduction in a selling partner's share of partnership liabilities is included in the amount realized by the selling partner on the sale of an interest in a partnership because the amount is treated as consideration received by the selling partner in exchange for the selling partner's interest under paragraph (j)(2) of this section, the amount of the reduction shall not also be included in the amount realized by operation of this paragraph.

(5) *Sale precedes excess distribution to selling partner.* If a portion of a transfer of consideration by a partnership to a selling partner is not treated as part of a sale of the selling partner's interest in the partnership, but as a distribution to the selling partner under section 731, and the sale is treated as occurring on the same date as the distribution, then the distribution is treated as occurring immediately following the sale.

(6) *Transfers first treated as a sale of property.* To the extent that a transfer of consideration by a purchasing partner to a partnership or a transfer of consideration by a partnership to a selling partner may be treated as part of a sale of property under § 1.707–3(a), § 1.707–3(a) applies before this section, and to the extent the transfer is treated as part of a sale of property under § 1.707–3(a), such transfer is not taken into account in applying the rules of this section.

(7) *Application of disguised sale rules.* Except as otherwise provided in paragraph (a)(8) of this section, the rules of this section apply to transfers to and from a partnership even if, after the application of the rules of this section, it is determined that the partnership has terminated under section 708(b)(1)(A).

(8) *Certain transfers disregarded.* Section 707(a)(2)(B) and the rules of this section do not apply to deemed transfers resulting from a termination of a partnership under section 708(b)(1)(B) and transfers incident to the formation of a partnership. However, transfers incident to the formation of a partnership may be transfers to which § 1.707–3(a) applies.

(b) *Transfers treated as sale*—(1) *In general.* A transfer of consideration by a purchasing partner to a partnership and a transfer of consideration by the partnership to a selling partner constitute a sale, in whole or in part, of the selling partner's interest in the partnership to the purchasing partner only if, based on all the facts and circumstances—

(i) The transfer of consideration by the partnership to the selling partner would not have been made but for the transfer of consideration to the partnership by the purchasing partner; and

(ii) In cases in which the transfers are not made simultaneously, the subsequent transfer is not dependent on the entrepreneurial risks of partnership operations.

(2) *Facts and circumstances.* The determination of whether a transfer of consideration by a purchasing partner to a partnership and a transfer of consideration by the partnership to a selling partner constitute a sale under paragraph (b)(1) of this section is made based on all the facts and circumstances in each case. The weight to be given each of the facts and circumstances will depend on the particular case. Generally, the facts and circumstances existing on the date of the earliest of the transfers are the ones considered in determining if a sale exists under paragraph (b)(1) of this section. Among the facts and circumstances that may tend to prove the existence of a sale under paragraph (b)(1) of this section are the following:

(i) That the timing and amount of all or any portion of a subsequent transfer are determinable with reasonable certainty at the time of an earlier transfer;

(ii) That the person receiving the subsequent transfer has a legally enforceable right to the transfer or that the right to receive the transfer is secured in any manner, taking into account the period for which it is secured;

(iii) That the same property (other than money, including marketable securities that are treated as money under section 731(c)(1)) that is transferred to the partnership by the purchasing partner is transferred to the selling partner;

(iv) That partnership distributions, allocations or control of operations are designed to effect an exchange of the benefits and burdens of ownership of transferred property (other than money, including marketable securities that are treated as money under section 731(c)(1)), including a partnership interest;

(v) That the partnership holds transferred property (other than money, including marketable securities that are

treated as money under section 731(c)(1)) for a limited period of time, or during the period of time the partnership holds transferred property (other than money, including marketable securities that are treated as money under section 731(c)(1)), the risk of gain or loss associated with the property is not significant;

(vi) That the transfer of consideration by the partnership to the selling partner is disproportionately large in relationship to the selling partner's general and continuing interest in partnership profits;

(vii) That the selling partner has no obligation to return or repay the consideration to the partnership, or has an obligation to return or repay the consideration due at such a distant point in the future that the present value of that obligation is small in relation to the amount of consideration transferred by the partnership to the selling partner;

(viii) That the transfer of consideration by the purchasing partner or the transfer of consideration to the selling partner is not made pro rata;

(ix) That there were negotiations between the purchasing partner and the selling partner (or between the partnership and each of the purchasing and selling partners with each partner being aware of the negotiations with the other partner) concerning any transfer of consideration; and

(x) That the selling partner and purchasing partner enter into one or more agreements, including an amendment to the partnership agreement (other than for admitting the purchasing partner) relating to the transfers.

(c) *Transfers made within two years presumed to be a sale.* For purposes of this section, if within a two-year period a purchasing partner transfers consideration to a partnership and the partnership transfers consideration to a selling partner (without regard to the order of the transfers), the transfers are presumed to be a sale, in whole or in part, of the selling partner's interest in the partnership to the purchasing partner unless the facts and circumstances clearly establish that the transfers do not constitute a sale.

(d) *Transfers made more than two years apart presumed not to be a sale.* For purposes of this section, if a transfer of consideration by a purchasing partner to a partnership and the transfer of consideration by the partnership to a selling partner (without regard to the order of the transfers) occur more than two years apart, the transfers are presumed not to be a sale, in whole or in part, of the selling partner's interest in the partnership to the purchasing partner unless the facts and circumstances clearly establish that the transfers constitute a sale.

(e) *Transfers of money in liquidation of a partner's interest presumed not to be a sale.* Notwithstanding the presumption set forth in paragraph (c) of this section, for purposes of this section, if a partnership transfers money, including marketable securities that are treated as money under section 731(c)(1), to a selling partner, or is treated as transferring consideration to the selling partner under paragraph (j)(2) of this section, in liquidation of the selling partner's interest in the partnership, the transfer is presumed not to be a sale, in whole or in part, of the selling partner's interest in the partnership to the purchasing partner unless the facts and circumstances clearly establish that the transfer is part of a sale. See § 1.761–1(d) for the definition of the term *liquidation of a partner's interest.*

(f) *Application of § 1.707–4 (special rules applicable to guaranteed payments, preferred returns, operating cash flow distributions, and reimbursements of preformation expenditures).* Notwithstanding the presumption set forth in paragraph (c) of this section, rules similar to those provided in § 1.707–4 apply to determine the extent to which a transfer to a selling partner is treated as part of a sale of the selling partner's interest in the partnership to the purchasing partner.

(g) *Exception for certain transfers to and by service partnerships.* Section 707(a)(2)(B) and the rules of this section do not apply to transfers of money, including marketable securities that are treated as money under section 731(c)(1), to and by a partnership that would be described in section 448(d)(2) if the partnership were a corporation. Solely for purposes of applying section 448(d)(2) to partnerships under this paragraph (g), partners are treated as employees of the partnership and ''partnership interest'' is substituted for ''stock'' in testing for ownership by the employees performing services.

(h) *Other exceptions.* The Commissioner may provide by guidance published in the Internal Revenue Bulletin that section 707(a)(2)(B) and the rules of this section do not apply to other transfers to and by a partnership.

(i) [Reserved.]

(j) *Special rules relating to liabilities*—(1) *In general.* For purposes of this section, deemed contributions to and distributions from a partnership under section 752 resulting from reallocations of partnership liabilities among partners are not treated as transfers of consideration. Under paragraph (a)(4) of this section, the preceding sentence does not apply if the transaction is otherwise treated as a sale of a partnership interest under the rules of this section.

(2) *Partner liability assumed by partnership.* For purposes of this section, if a partnership assumes a liability of a partner, the partnership is treated as transferring consideration to the partner to the extent that the amount of the liability exceeds the partner's share of that liability (determined under the rules of paragraphs (j)(4) and (5) of this section) immediately after the partnership assumes the liability. For purposes of this section, a partnership is treated as assuming a liability of a partner to the extent provided in §§ 1.752–1(d) and (e). For purposes of this paragraph (j)(2), if the partnership assumes the liabilities of more than one partner pursuant to a plan, a partner's share of the liabilities assumed by the partnership pursuant to that plan immediately after the assumptions equals the sum of that partner's shares of the liabilities assumed by the partnership pursuant to the plan. The preceding sentence does not apply to any liability assumed by the partnership with a principal purpose of reducing the extent to which any other liability assumed by the partnership is treated as a transfer of consideration to a partner under this paragraph (j)(2).

(3) *Partnership liability assumed by partner.* For purposes of this section, if a partner assumes a liability of a partnership, the partner is treated as transferring consideration to the partnership to the extent that the amount of the liability exceeds the partner's share of that liability (determined under the rules of paragraph (j)(4) of this section) immediately before the partner assumes the liability. For purposes of this section, a partner assumes a partnership liability to the extent provided in §§ 1.752–1(e) and 1.704–1(b)(2)(iv)(c). For purposes of this paragraph (j)(3), if more than one partner assumes a liability of the partnership pursuant to a plan, the amount that is treated as a transfer of consideration by each partner is the amount by which all of the liabilities assumed by the partner pursuant to the plan exceed the partner's share of all of those liabilities immediately before the assumption. The preceding sentence does not apply to any liability assumed by a partner with a principal purpose of reducing the extent to which any other liability assumed by a partner is treated as a transfer of consideration to a partnership under this paragraph (j)(3).

(4) *Partner's share of liability*. A partner's share of any liability of the partnership is determined under the following rules:

(i) *Recourse liability*. A partner's share of a recourse liability of the partnership equals the partner's share of the liability under the rules of section 752 and the regulations thereunder. A partnership liability is a recourse liability to the extent that the obligation is a recourse liability under § 1.752–1(a)(1) or would be treated as a recourse liability under that section if it were treated as a partnership liability for purposes of that section.

(ii) *Nonrecourse liability*. A partner's share of a nonrecourse liability of the partnership is determined by applying the same percentage used to determine the partner's share of the excess nonrecourse liability under § 1.752–3(a)(3). A partnership liability is a nonrecourse liability of the partnership to the extent that the obligation is a nonrecourse liability under § 1.752–1(a)(2) or would be treated as a nonrecourse liability under that section if it were treated as a partnership liability for purposes of that section.

(5) *Reduction of partner's share of liability*. For purposes of this section, a partner's share of a liability, immediately after a partnership assumes the liability, is determined by taking into account a subsequent reduction in the partner's share if—

(i) At the time that the partnership assumes a liability, it is anticipated that the transferring partner's share of the liability will be subsequently reduced; and

(ii) The reduction of the partner's share of the liability is part of a plan that has as one of its principal purposes minimizing the extent to which the assumption of the liability is treated as part of a sale under this section.

(6) *Treatment of debt-financed transfers of consideration by partnerships*—(i) *In general.* For purposes of this section, if a partnership incurs a liability and all or a portion of the proceeds of that liability are allocable under § 1.163–8T to a transfer of consideration to a partner made within 90 days of incurring the liability, the transfer of consideration to the partner is taken into account only to the extent that the amount of consideration transferred exceeds that partner's allocable share of the partnership liability.

(ii) *Partner's allocable share of liability*—(A) *In general.* A partner's allocable share of a partnership liability for purposes of paragraph (j)(6)(i) of this section equals the amount obtained by multiplying the partner's share of the liability (as defined in paragraph (j)(4) of this section) by a fraction determined by dividing—

(*1*) The portion of the liability that is allocable under § 1.163–8T to the consideration transferred to the partner; by

(*2*) The total amount of the liability.

(B) *Debt-financed transfers made pursuant to a plan*—(1) *In general.* Except as provided in paragraph (j)(6)(ii)(C) of this section, if a partnership transfers to more than one partner pursuant to a plan all or a portion of the proceeds of one or more partnership liabilities, paragraph (j)(6)(i) of this section is applied by treating all of the liabilities incurred pursuant to the plan as one liability, and each partner's allocable share of those liabilities equals the amount obtained by multiplying the sum of the partner's shares of each of the respective liabilities (as defined in paragraph (j)(4) of this section) by the fraction obtained by dividing—

(*i*) The portion of those liabilities that is allocable under § 1.163–8T to the consideration transferred to the partners pursuant to the plan; by

(*ii*) The total amount of those liabilities.

(*2*) *Special rule*. Paragraph (j)(6)(ii)(B)(1) of this section does not apply to any transfer of consideration to a partner that is made with a principal purpose of reducing the extent to which any transfer is taken into account under paragraph (j)(6)(i) of this section.

(C) *Reduction of partner's share of liability*. For purposes of paragraph (j)(6)(ii) of this section, a partner's share of a liability is determined by taking into account a subsequent reduction in the partner's share if—

(*1*) It is anticipated that the partner's share of the liability that is allocable to a transfer of consideration to the partner will be reduced subsequent to the transfer; and

(*2*) The reduction of the partner's share of the liability is part of a plan that has as one of its principal purposes minimizing the extent to which the partnership's distribution of the proceeds of the borrowing is treated as part of a sale.

(7) *Share of liability where assumption accompanied by transfer of money.* For purposes of paragraph (j)(2) of this section, if pursuant to a plan a partner pays or contributes money to the partnership and the partnership assumes one or more liabilities of the partner, the amount of those liabilities that the partnership is treated as assuming is reduced (but not below zero) by the money transferred. Similarly, for purposes of paragraph (j)(3) of this section, if pursuant to a plan a partnership pays or distributes money to a partner and the partner assumes one or more liabilities of the partnership, the amount of those liabilities that the partner is treated as assuming is reduced (but not below zero) by the money transferred.

(8) *Anti-abuse rule.* For purposes of this section, an increase in a partner's share of a partnership liability may be treated as a transfer of consideration by the partner to the partnership, notwithstanding any other rule in this section, if—

(i) Within a short period of time after the partnership incurs or assumes the liability or another liability, one or more partners of the partnership, or related parties to a partner (within the meaning of section 267(b) or 707(b)), in substance bears an economic risk for the liability that is disproportionate to the partner's interest in partnership profits or capital; and

(ii) The transactions are undertaken pursuant to a plan that has as one of its principal purposes minimizing the extent to which the partner is treated as making a transfer of consideration to the partnership that may be treated as part of a sale under this section.

(k) *Disclosure rules.* Disclosure to the Internal Revenue Service in accordance with § 1.707–8 is required when a partner transfers consideration to a partnership and the partnership transfers consideration to another partner within a seven-year period (without regard to the order of the transfers), the partners treat the transfers other than as a sale for tax purposes, and the transfer of consideration by the partnership is not presumed to be a guaranteed payment for capital under § 1.707–4(a)(1)(ii), is not a reasonable preferred return within the meaning of § 1.707–4(a)(3), and is not an operating cash flow distribution within the meaning of § 1.707–4(b)(2). However, disclosure is not required under this paragraph if an exception provided in either paragraph (a)(8) (relating to transfers resulting from a termination of a partnership under section 708(b)(1)(B) and transfers incident to the formation of a partnership) or paragraph (g) (relating to transfers to and by service partnerships) applies to either of the transfers.

(l) *Examples.* The following examples illustrate the application of this section. For purposes of these examples, assume that the transfers would otherwise be respected as contributions and distributions and that, except as otherwise provided, sections 721(b), 751(b), 704(c)(1)(B), 737, and § 1.707–3 do not apply. All amounts and

percentages in these examples are rounded to the nearest whole number.

Example 1. Treatment of simultaneous transfers as a sale by a selling partner to a purchasing partner. (i) A and B each owns a 50% interest in partnership AB. AB holds Blackacre, real property with a fair market value of $400x. AB has no liabilities. On May 25, 2008, C transfers $100x in cash to AB in exchange for an interest in AB. Simultaneously, AB transfers $100x in cash to A.

(ii) Because C's transfer of $100x to AB and AB's transfer of $100x to A occurred within two years, the transfers are presumed to be a sale of a portion of A's interest in AB to C under paragraph (c) of this section, unless the facts and circumstances clearly establish otherwise. There are no facts that rebut the presumption of sale treatment or that support the application of either of the presumptions against sale treatment provided in paragraphs (e) or (f) or the exception provided in paragraph (g) of this section. Thus, the transfers are treated as a sale of a portion of A's interest in AB to C. Under paragraph (a)(3)(i) of this section, the value of the partnership interest that A is treated as selling to C equals the lesser of the consideration transferred by AB to A or the consideration transferred by C to AB. C transferred $100x to AB, and A received $100x from AB. Thus, A is treated as having sold an interest in AB with a value of $100x to C.

Example 2. Treatment of non-simultaneous transfers as a sale by a selling partner to a purchasing partner. (i) The facts are the same as in *Example 1*, except that AB transfers $100x in cash to A on March 25, 2008, and C transfers $50x in cash to AB on May 25, 2008, in exchange for an interest in AB.

(ii) Because AB's transfer of $100x to A and C's transfer of $50x to AB occurred within two years, the transfers are presumed to be a sale of a portion of A's interest in AB to C under paragraph (c) of this section, unless the facts and circumstances clearly establish otherwise. There are no facts that rebut the presumption of sale treatment or that support the application of either of the presumptions against sale treatment provided in paragraphs (e) or (f) or the exception provided in paragraph (g) of this section. Thus, the transfers are treated as a sale of a portion of A's interest in AB to C. Under paragraph (a)(2)(ii)(A) of this section, the sale takes place on the date of the earliest of the transfers, March 25, 2008, upon AB's transfer of $100x to A. Under paragraph (a)(3)(i) of this section, the value of the partnership interest that A is treated as selling to C equals the lesser of the consideration transferred by AB to A or the consideration transferred by C to AB. C transferred $50x to AB, and A received $100x from AB. Thus, A is treated as having sold an interest in AB with a value of $50x to C. Under paragraph (a)(2)(ii)(C), because the transfer to A precedes the transfer by C, each of A, C, and AB is treated as if, on March 25, 2008, C transferred an obligation to deliver $50x to AB in exchange for $50x, and then C transferred $50x to A in exchange for a portion of A's interest in AB with a value of $50x. On May 25, 2008, when C actually transfers $50x to AB, C is treated as satisfying the obligation to deliver $50x to AB. A also is treated as receiving, in its capacity as a partner, a distribution from AB to which section 731 applies of $50x ($100x transfer—$50x amount of sale). Under paragraph (a)(5) of this section, the distribution is treated as occurring immediately following the sale.

Example 3. Treatment of deemed transfers and exchanges. (i) A and B each owns a 50% interest in partnership AB. AB holds Whiteacre, real property with a fair market value of $1,000x and a tax basis of $700x, along with other assets. AB has no liabilities. On January 1, 2008, C transfers Investment Property, with a fair market value of $1,500x and a tax basis of $300x, to AB. Simultaneously with that transfer, AB transfers Whiteacre to B.

(ii) Because C's transfer of Investment Property to AB and AB's transfer of Whiteacre to B occurred within two years, the transfers are presumed to be a sale of a portion of B's interest in AB to C under paragraph (c) of this section, unless the facts and circumstances clearly establish otherwise. There are no facts that rebut the presumption of sale treatment or that support the application of either of the presumptions against sale treatment provided in paragraphs (e) or (f) or the exception provided in paragraph (g) of this section. Thus, the transfers are treated as a sale of a portion of B's interest in AB to C. Under paragraph (a)(2)(ii)(A) of this section, the sale takes place on the date of the earliest of the transfers, January 1, 2008. Under paragraph (a)(3)(i) of this section, the value of the partnership interest that B is treated as selling to C equals the lesser of the consideration transferred by C to AB or the consideration transferred by AB to B. C transferred the Investment Property with a fair market value of $1,500x to AB, and B received Whiteacre with a fair market value of $1,000x from AB. Thus, B is treated as having sold an interest in AB with a value of $1,000x to C.

(iii) Under paragraph (a)(2)(ii)(B), because the transfers are simultaneous and the consideration transferred is not the same, each of B, C, and AB is treated as if, on January 1, 2008, C transferred $1,000x of the Investment Property to AB in exchange for Whiteacre and then C transferred Whiteacre to B in exchange for a portion of B's interest in AB with a value of $1,000x. In the deemed exchange of $1,000x worth of the Investment Property for Whiteacre, AB realizes and recognizes gain of $300x ($1,000x–-$700x basis), and C realizes and recognizes gain of $800x ($1,000x–$200x allocable basis). In the deemed exchange of Whiteacre for B's interest in AB, B realizes and recognizes gain or loss under section 741 (and section 751(a), if applicable) based on an amount realized of $1,000x. C also is considered to have contributed to AB, in C's capacity as a partner, $500x of the Investment Property ($1,500x total value of transferred Investment Property—$1,000x amount treated as C's consideration) with an allocable basis of $100x in a transaction to which section 721 applies. Thus, the basis of the Investment Property in the hands of AB is $1,100x, C's basis in the partnership interest is $1,100x, and the basis of Whiteacre in the hands of B is $1,000x.

Example 4. Treatment of simultaneous transfers as a sale by a selling partner to more than one purchasing partner. (i) E and F each owns a 50% interest in partnership EF. EF holds a building with a fair market value of $500x. EF has no liabilities. On May 25, 2008, G and H each transfer $50x in cash to EF in exchange for an interest in EF. Simultaneously, EF distributes $100x in cash to E.

(ii) Because each of G's and H's transfers of $50x to EF and EF's transfer of $100x to E occurred within two years, G's transfer to EF and EF's transfer to E, and H's transfer to EF and EF's transfer to E, are presumed to be a sale of a portion of E's interest in EF to G and H, respectively, under paragraph (c) of this section, unless the facts and circumstances clearly establish otherwise. There are no facts that rebut the presumption of sale treatment or that support the application of either of the presumptions against sale treatment provided in paragraphs (e) or (f) or the exception provided in paragraph (g) of this section. Thus, the transfers are treated as a sale of a portion of E's partnership interest to G and H, respectively. Under paragraph (a)(3)(i) of this section, the value of the partnership interest that E is treated as selling to each of G and H equals the lesser of the consideration transferred by EF to E or the consideration transferred by G and H to EF. Because G and H made simultaneous transfers of consideration to EF, the transfers are aggregated under paragraph (a)(3)(ii) of this section. G and H together transferred $100x to EF, and E received $100x from EF. Thus, E is treated as having sold a partnership interest with a value of $100x to G and H. Under paragraph (a)(3)(ii) of this section, when transfers of multiple purchasing partners are aggregated, each purchasing partner is presumed to have purchased a pro rata portion of the selling partner's partnership interest. That is, G is presumed to have purchased the fraction of E's partnership interest sold that is equal to G's amount transferred ($50x) divided by the aggregate amount transferred by G and H ($100x), or one-half of the partnership interest that was sold. H also is presumed to have purchased the fraction of E's partnership interest equal to H's amount transferred ($50x) divided by the aggregate amount transferred by both G and H ($100x), or one-half of the partnership interest that was sold. Thus, each of G and H is treated as having purchased a fraction of E's partnership interest that is equal to $50x.

Example 5. Treatment of non-simultaneous transfers as a sale by a selling partner to more than one purchasing partner. (i) The facts are the same as in *Example 4*, except that partnership EF distributes $75x in cash to E on May 1, 2007. In addition, G transfers $50x in cash to EF on March 25, 2008, and H transfers $50x in cash to EF on May 25, 2008, each in exchange for a partnership interest in EF.

(ii) Because each of G's and H's transfers of $50x to EF and EF's transfer of $75x to E occurred within two years, G's transfer to EF and EF's transfer to E, and H's transfer to EF

and EF's transfer to E, are presumed to be a sale of a portion of E's partnership interest to G and H, respectively, under paragraph (c) of this section, unless the facts and circumstances clearly establish otherwise. There are no facts that rebut the presumption of sale treatment or that support the application of either of the presumptions against sale treatment provided in paragraphs (e) or (f) or the exception provided in paragraph (g) of this section. Thus, the transfers are treated as a sale of a portion of E's interest in EF to each of G and H, respectively. Under paragraph (a)(2)(ii)(A) of this section, the sale takes place on the date of the earliest of the transfers, May 1, 2007, the date that EF transferred $75x to E. Under paragraph (a)(3)(i) of this section, the value of the partnership interest that E is treated as selling to each of G and H equals the lesser of the consideration transferred by G and H to EF, or the consideration transferred by EF to E. Because the transfers made by G and H were not simultaneous, the transfers are not aggregated. Rather, in accordance with paragraph (a)(2)(ii)(A) of this section, the transfers are considered in the order in which they were made. The value of the partnership interest that E is treated as selling to G equals $50x, the lesser of G's $50x transfer to EF and the $75x that E received from EF. The value of the partnership interest that E is treated as selling to H equals $25x, the lesser of the remaining amount of the transfer to E, $25x ($75x − $50x = $25x), and H's $50x transfer to EF. H also is considered to have contributed to EF, in H's capacity as a partner, $25x ($50x transfer − $25x amount of sale), to which section 721 applies.

(iii) Under paragraph (a)(2)(ii)(C), each of E, G, and EF are treated as if, on May 1, 2007, G transferred an obligation to deliver $50x to EF in exchange for $50x, and, on that same date, G transferred $50x to E in exchange for a portion of E's interest in EF with a value of $50x. On March 25, 2008, when G actually transfers $50x to EF, G is treated as satisfying its obligation to deliver $50x to EF. Also, under paragraph (a)(2)(ii)(C), each of E, H, and EF are treated as if, on May 1, 2007, H transferred an obligation to deliver $25x to EF in exchange for $25x, and, on that same date, H transferred $25x to E in exchange for a portion of E's interest in EF with a value of $25x. On May 25, 2008, when H actually transfers $25x to EF, H is treated as satisfying its obligation to deliver $25x to EF.

Example 6. Operation of presumption for liquidation of a partner for money. (i) A and B each owns a 50% interest in partnership AB. AB holds marketable securities with a fair market value of $200x. AB has no liabilities. On April 1, 2008, C transfers $100x in cash to AB in exchange for an interest in AB. Simultaneously, AB distributes $100x of the marketable securities to A in liquidation of A's partnership interest in AB. Assume that the marketable securities transferred to A are treated, under section 731(c)(1), as money for purposes of section 731(a)(1).

(ii) Because C's transfer of $100x to AB and AB's transfer of $100x of marketable securities to A occurred within two years, the transfers are presumed to be a sale of a portion of A's interest in AB to C under paragraph (c) of this section. However, under paragraph (e) of this section, notwithstanding the presumption set forth in paragraph (c) of this section, AB's transfer of marketable securities to A in liquidation of A's interest in AB is presumed not to be a sale of A's partnership interest to C, unless the facts and circumstances clearly establish otherwise. If, however, one of the exceptions under section 731(c)(3) applies to the $100x of marketable securities distributed to A, the securities would not be treated as money for purposes of section 731(a)(1), and the presumption against sale treatment under paragraph (e) of this section would not apply.

Example 7. Transfers that would otherwise be treated as both a sale of property and a sale of a partnership interest. (i) C and D each owns a 50% interest in partnership CD. CD holds Greenacre, real property with a fair market value of $2,000x. CD has no liabilities. On June 1, 2008, E transfers $500x in cash to CD in exchange for a partnership interest in CD. Immediately after E's transfer, C transfers Redacre to CD, and CD distributes $500x in cash to C. At the time of the transfers, Redacre has a fair market value of $250x.

(ii) Because E's transfer of $500x to CD and CD's transfer of $500x to C occurred within two years, the transfers are presumed to be a sale of a portion of C's partnership interest in CD to E under paragraph (c) of this section, unless the facts and circumstances clearly establish otherwise. There are no facts that rebut the presumption of sale treatment or that support the application of either of the presumptions against sale treatment provided in paragraphs (e) or (f) or the exception provided in paragraph (g) of this section. Thus, the transfers are treated as a sale of a portion of C's partnership interest in CD to E. However, because C's transfer of Redacre to CD and CD's transfer of $500x to C occurred within two years, under § 1.707–3(c), the transfers are presumed to be a sale of Redacre by C to CD. There are no facts that rebut the presumption that the transfers are a sale of Redacre by C to CD. Under paragraph (a)(6) of this section, transfers that are in part a sale of a partnership interest and in part a sale of property are treated, first, as part of a sale of property.

Thus, C's transfer of Redacre to CD and $250x of CD's $500x transfer to C are treated, first, as a sale of Redacre by C to CD for $250x. Although the $250x distributed to C that is treated as part of a sale of Redacre is not treated as part of a sale of C's partnership interest in CD to E, the remaining $250x that is distributed to C is treated as part of a sale of C's partnership interest in CD to E. The value of the partnership interest that C is treated as selling to E equals $250x, the lesser of E's $500x transfer to CD, and the remaining $250x that C received from CD. E also is considered to have contributed to CD, in E's capacity as a partner, $250x ($500x contribution − $250x amount of sale), to which section 721 applies.

Example 8. Treatment of simultaneous transfers as a sale where partnership has nonrecourse liabilities. (i) A and B each owns a 50% interest in partnership AB. The partnership agreement states that the partners agree to share profits in proportion to the partners' booked-up capital accounts. AB holds $100x cash and Orangeacre, a parcel of raw land with a fair market value of $860x. Orangeacre is encumbered by a $360x nonrecourse liability incurred by AB in 1998 in connection with the purchase of Orangeacre. The liability, which has an issue price of $360x, has a term of 10 years and all principal is payable at maturity. The liability provides for adequate stated interest, all of which is qualified stated interest. On January 1, 2007, C contributes $100x to AB in exchange for an interest in AB. On the same date, A receives a transfer of $200x from AB.

(ii) For purposes of determining whether the transfers constitute a disguised sale of A's or B's interest in AB, the $360x liability is ignored because no partner assumes the liability. Because C's transfer of $100x to AB and AB's transfer of $200x to A occurred within two years, the transfers are presumed to be a sale of a portion of A's partnership interest in AB to C, under paragraph (c) of this section, unless the facts and circumstances clearly establish otherwise. There are no facts that rebut the presumption of sale treatment or that support the application of either of the presumptions against sale treatment provided in paragraphs (e) or (f) or the exception provided in paragraph (g) of this section. Thus, the transfers are treated as a sale of a portion of A's partnership interest in AB to C. Under paragraph (a)(3)(i) of this section, the value of the partnership interest that A is treated as selling to C equals the lesser of the consideration transferred by AB to A, or the consideration transferred by C to AB. C transferred $100x to AB, and A received $200x from AB. Thus, A is treated as having sold an interest in AB with a value of $100x to C. Under paragraph (a)(4) of this section, the amount realized by A on the sale of its partnership interest includes any reduction in A's share of the $360x partnership liability that is treated as occurring as a result of the sale. Before the sale, A's share of the nonrecourse liability under § 1.752–3(a)(3) was $180x (50% of the $360x liability). As a result of A's sale of its $100x partnership interest in AB to C, A's share of the nonrecourse liability under § 1.752–3(a)(3) was reduced to $120x (because A's partnership interest was 33% after the sale but immediately before the $100x distribution from AB that reduced A's interest in AB to 20%). Thus, A's amount realized on the sale of its partnership interest equals $100x plus the reduction in A's share of the $360x partnership liability of $60x ($180x − $120x), or $160x. A also is treated as receiving, in its capacity as a partner, and without regard to any deemed distributions under section 752(b), a distribution from AB to which section 731 applies of $100x ($200x transfer − $100x amount of sale). Under paragraph (a)(5) of this section, the distribution is treated as occurring immediately following the sale.

Example 9. Treatment of simultaneous transfers as a sale where selling partner has recourse liabilities that are assumed by the partnership. (i) The facts are the same as those in *Example 8,* except that AB does not make a transfer to A but AB does assume a

personal $80x recourse liability of A's, on January 1, 2007. Immediately after AB's assumption of A's personal $80x recourse liability, A is completely released from liability, and only B and C are ultimately liable on the $80x recourse debt.

(ii) As in *Example 8*, the $360x liability is ignored for purposes of determining whether the transfers constitute a sale of A's or B's interest in AB because no partner assumes the $360x liability. However, AB's assumption of A's $80x recourse liability is treated as a transfer of consideration to A to the extent that the amount of the liability exceeds A's share of that liability immediately after AB assumes the liability, determined as provided in paragraph (j)(4)(i) of this section. Under paragraph (j)(4)(i) of this section, A's share of the recourse liability immediately following the assumption is zero. Thus, the assumption is treated as a transfer of $80x to A by AB on January 1, 2007. Because C's transfer of $100x to AB, and AB's transfer of $80x to A, occurred within two years, the transfers are presumed to be a sale of a portion of A's partnership interest in AB to C, under paragraph (c) of this section, unless the facts and circumstances clearly establish otherwise. There are no facts that rebut the presumption of sale treatment or that support the application of either of the presumptions against sale treatment provided in paragraphs (e) or (f) or the exception provided in paragraph (g) of this section. Thus, the transfers are treated as a sale of a portion of A's partnership interest in AB to C. Under paragraph (a)(3)(i) of this section, the value of the partnership interest that A is treated as selling to C equals the lesser of the consideration transferred by AB to A, or the consideration transferred by C to AB. C transferred $100x to AB, and A received $80x from AB. Thus, A is treated as having sold a partnership interest in AB with a value of $80x to C. Under paragraph (a)(4) of this section, the amount realized by A on the sale of its partnership interest includes any reduction in A's share of the $360x partnership liability that is treated as occurring as a result of the sale. Before the sale, A's share of the nonrecourse liability under § 1.752–3(a)(3) was $180x (50% of the $360x liability). As a result of A's sale of its $80x partnership interest in AB to C, A's share of the nonrecourse liability under § 1.752–3(a)(3) was reduced to $133x (because A's partnership interest was 37% after the sale). Thus, A's amount realized on the sale of its partnership interest equals $80x plus the reduction in A's share of the $360x partnership liability of $47x ($180x − $133x), or $127x. C also is treated as making, in its capacity as a partner, and without regard to any deemed contributions under section 752(a), a contribution to AB to which section 721 applies of $20x ($100x contribution − $80x amount of sale).

Par. 7. Section 1.707–8 is amended as follows:

1. Revising paragraph (a).

2. Revising paragraph (c).

The revisions read as follows:

§ 1.707–8 Disclosure of certain information.

(a) *In general.* The disclosure referred to in § 1.707–3(c)(2) (regarding certain transfers made within seven years of each other), § 1.707–5(a)(7)(ii) (regarding a liability incurred within two years prior to a transfer of property), § 1.707–5(a)(8) (relating to liabilities assumed within seven years of the transfer), § 1.707–6(c) (relating to transfers of property from a partnership to a partner in situations analogous to those listed above), and § 1.707–7(k) (relating to certain transfers made within seven years of each other) is to be made in accordance with paragraphs (b) and (c) of this section.

* * * * *

(c) *Parties required to disclose.* The disclosure required by this section must be made by any person who makes a transfer that is required to be disclosed. The persons who are required to disclose may designate by written agreement a single person to make the disclosure. The designation of one person to make the disclosure does not relieve the other persons required to disclose from their obligation to make the disclosure if the designated person fails to make the disclosure in accordance with paragraph (b) of this section.

Par. 8. Section 1.707–9 is amended as follows:

1. Revising the heading for paragraph (a).

2. Revising paragraph (a)(1).

3. Revising the heading for paragraph (a)(2), and adding a sentence at the end of the paragraph.

4. Amending paragraph (a)(3) by removing the language ''1.707–6'' and adding ''1.707–7'' in its place.

5. Revising paragraph (b).

The revisions and addition read as follows:

§ 1.707–9 Effective dates and transitional rules.

(a) *Sections 1.707–3 through 1.707–7*—(1) *In general.* Except as provided in paragraph (a)(3) of this section, §§ 1.707–3 through 1.707–7 apply to any transaction with respect to which all transfers that are part of a sale of an item of property or of a partnership interest occur on or after the date these regulations are published as final regulations in the **Federal Register**. For any transaction with respect to which all transfers that are part of a sale of an item of property occur after April 24, 1991, but before the date these regulations are published as final regulations in the **Federal Register**, §§ 1.707–3 through 1.707–6 as contained in 26 CFR edition revised April 1, 2004, (TD 8439) apply, except as provided in paragraph (a)(3) of this section.

(2) *Transfers occurring before effective dates.* * * * In addition, except as provided in paragraph (a)(3) of this section, in the case of any transaction with respect to which one or more of the transfers occurs after April 24, 1991, but before the date these regulations are published as final regulations in the **Federal Register**, the determination of whether the transaction is a disguised sale of a partnership interest under section 707(a)(2)(B) is to be made on the same basis.

* * * * *

(b) * * * The disclosure provisions described in § 1.707–8 apply to transactions with respect to which all transfers that are part of a sale of property occur on and after the date these regulations are published as final regulations in the **Federal Register**. For transactions with respect to which all transfers that are part of a sale of property occur after September 30, 1992, but before the date these regulations are published as final regulations in the **Federal Register**, the disclosure provisions as described in § 1.707–8 as contained in the 26 CFR edition revised April 1, 2004, (TD 8439) apply.

* * * * *

§ 1.752–3 [Amended]

Par. 9. Section 1.752–3 is amended in the sixth sentence of paragraph (a)(3) by revising the sentence ''This additional method does not apply for purposes of § 1.707–5(a)(2)(ii)'' to read ''This additional method does not apply for purposes of §§ 1.707–5(a)(2)(ii) and 1.707–7(j)(4)(ii).''

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 04–26112 Filed 11–24–04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–7842–9]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA, also ''the Agency'' or ''we'' in this preamble) is proposing to modify a conditional exclusion (or ''delisting'') from the lists of hazardous waste, previously granted to BMW Manufacturing Co., LLC (BMW), in Greer, South Carolina. This action responds to a petition for amendment requested by BMW to eliminate the total concentration limits its wastewater treatment sludge covered by its current conditional exclusion.

The Agency is basing its tentative decision to grant the petition for amendment on a re-evaluation of the specific information initially provided by the petitioner in its original request and on an evaluation of delistings granted to other automobile manufactures for its F019 waste. This tentative decision, if finalized, would eliminate the total concentration limits of barium, cadmium, chromium, lead, nickel, and cyanide from its conditionally excluded wastewater treatment sludge from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA). The waste will still be subject to local, State, and Federal regulations for nonhazardous solid wastes.

DATES: EPA is requesting public comments on this proposed amendment. We will accept comments on this proposal until January 10, 2005. Comments postmarked after the close of the comment period will be stamped ''late.'' These late comments may not be considered in formulating a final decision.

Any person may request a hearing on this proposed decision by filing a request by December 13, 2004.

ADDRESSES: Send two copies of your comments to Narindar Kumar, Chief, RCRA Enforcement and Compliance Branch, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303. Send one copy to Cindy Carter, Appalachia III District, South Carolina Department of Health and Environmental Control, 975C North Church Street, Spartanburg, South Carolina 29303.

Requests for a hearing should be addressed to Winston A. Smith, Director, Waste Management Division, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303. The request must contain the information prescribed in 40 CFR 260.20(d).

The RCRA regulatory docket for this proposed rule is located at the EPA Library, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The docket contains the petition, all information submitted by the petitioner, and all information used by EPA to evaluate the petition.

The public may copy material from any regulatory docket at no cost for the first 100 pages, and at a cost of $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For general and technical information about this proposed amendment, contact Kris Lippert, North Enforcement and Compliance Section, (Mail Code 4WD–RCRA), RCRA Enforcement and Compliance Branch, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8605.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background

A. What Laws and Regulations Give EPA the Authority To Delist Wastes?

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (*i.e.*, ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in § 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating [1] facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show, first, that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See § 260.22(a) and the background documents for the listed wastes. Second, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the EPA to determine whether the waste contains any other toxicants at hazardous levels. See § 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are ''delisted'' (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their wastes continue to be nonhazardous based on the hazardous waste characteristics (*i.e.*, characteristics which may be

[1] Although no one produces hazardous waste intentionally, many industrial processes result in the production of hazardous waste, as well as useful products and services. A ''generating facility'' is a facility in which hazardous waste is produced, and a ''generator'' is a person who produces hazardous waste or causes hazardous waste to be produced at a particular place. Please see 40 CFR 260.10 for regulatory definitions of ''generator,'' ''facility,'' ''person,'' and other terms related to hazardous waste, and 40 CFR part 262 for regulatory requirements for generators.

promulgated subsequent to a delisting decision.)

In addition, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes are also considered hazardous wastes. See § 261.3(a)(2)(iv) and (c)(2)(i), referred to as the ''mixture'' and ''derived-from'' rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the ''mixture/derived-from'' rules and remanded them to the EPA on procedural grounds. *Shell Oil Co.* v. *EPA*, 950 F.2d 741 (D.C. Cir. 1991). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues (57 FR 7628). These rules became final on October 30, 1992, 57 FR 49278, and should be consulted for more information regarding waste mixtures and solid wastes derived from treatment, storage, or disposal of a hazardous waste. The mixture and derived-from rules are codified in 40 CFR 261.3 (b)(2) and (c)(2)(i). EPA plans to address waste mixtures and residues when the final portion of the Hazardous Waste Identification Rule (HWIR) is promulgated.

On October 10, 1995, the Administrator delegated to the Regional Administrators the authority to evaluate and approve or deny petitions submitted in accordance with §§ 260.20 and 260.22, by generators within their Regions (National Delegation of Authority 8–19), in States not yet authorized to administer a delisting program in lieu of the Federal program. On March 11, 1996, the Regional Administrator of EPA, Region 4, redelegated delisting authority to the Director of the Waste Management Division (Regional Delegation of Authority 8–19).

B. What Is Currently Delisted at BMW?

BMW manufactures BMW automobiles at its facility in Greer, South Carolina. On June 2, 2000, BMW petitioned EPA under the provisions in 40 CFR 260.20 and 260.22 to exclude from hazardous waste regulations its F019 wastewater treatment sludge.

In support of its petition, BMW submitted sufficient information to EPA to allow us to determine that the waste was not hazardous based upon the criteria for which it was listed and that no other hazardous constituents were present in the waste at levels of regulatory concern.

A full description of this waste and the Agency's evaluation of the 2000 BMW's petition are contained in the proposed rule and request for comments published in the **Federal Register** on February 12, 2001, (66 FR 9781–9798).

After evaluating public comment on the proposed rule, we published a final decision in the **Federal Register** on May 2, 2001, (66 FR 21877–21886), to exclude BMW's wastewater treatment sludge derived from the treatment of EPA Hazardous Waste No. F019 from the list of hazardous wastes found in 40 CFR 261.31.

EPA's final decision in 2001 was conditional on the TCLP and total concentration limits of barium, cadmium, chromium, cyanide, lead, and nickel. If the sludge exceeds the TCLP or total concentration limits, then that sludge would have to be managed as hazardous waste.

C. What Does BMW Request in Its Petition for Amendment?

As a result of delistings granted to other automobile manufactures by EPA, BMW petitioned EPA on December 11, 2003, for an amendment to its May 2, 2001, final exclusion.

In its petition, BMW requested to eliminate the total concentration limits.

II. Disposition of Delisting Petition

A. What Information Did BMW Submit To Support Its Petition for Amendment?

BMW petitioned EPA, Region 4, on June 2, 2000, to exclude its F019 waste, on a generator-specific basis, from the lists of hazardous wastes in 40 CFR part 261, subpart D. BMW requested EPA to review its original submittals to support its 2000 petition for this petition amendment to eliminate all total concentration limits. BMW also requested EPA to review other delisting petitions granted by EPA to automobile manufactures for the F019 waste to support this petition for amendment.

In support of its 2000 petition, BMW submitted: (1) Descriptions of its manufacturing and wastewater treatment processes, the generation point of the petitioned waste, and the manufacturing steps that will contribute to its generation; (2) Material Safety Data Sheets (MSDSs) for materials used to manufacture automobiles and to treat wastewater; (3) the minimum and maximum annual amounts of wastewater treatment sludge generated from 1996 through 1999, and an estimate of the maximum annual amount expected to be generated in the future; (4) results of analysis for metals, cyanide, sulfide, fluoride, and volatile organic compounds in the currently generated waste at the BMW plants in Greer, South Carolina, and Dingolfing, Germany; (5) results of the analysis of leachate from these wastes, obtained by means of the Toxicity Characteristic Leaching Procedure ((TCLP), SW–846 Method 1311 [2]); (6) results of the determinations for the hazardous characteristics of ignitability, corrosivity, and reactivity in these wastes; (7) results of determinations of dry weight percent, bulk density, and free liquids in these wastes; and (8) results of the analysis of the waste currently generated at the plant in Greer, South Carolina, by means of the Multiple Extraction Procedure (MEP), SW–846 Method 1320, in order to evaluate the long-term resistance of the waste to leaching in a landfill.

B. How Did EPA Evaluate This Petition?

1. How Did EPA Evaluate the 2000 BMW's Petition?

In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11 (a)(2) and (a)(3). Based on this review, EPA agreed with the petitioner that the waste was nonhazardous with respect to the original listing criteria. (If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) EPA then evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. See § 260.22 (a) and (d). EPA considered whether the waste was acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability.

BMW submitted to EPA analytical data from its Greer, South Carolina plant and from the BMW plant in Dingolfing, Germany. Four composite samples of wastewater treatment sludge, from approximately 60 batches of wastewater, were collected from each plant over a three-week period. After reviewing this analytical data and information on

[2] ''SW–846'' means EPA Publication SW–846, ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods.'' Methods in this publication are referred to in today's proposed rule as ''SW–846,'' followed by the appropriate method number.

processes and raw materials, EPA identified the following constituents of concern: barium, cadmium, chromium, cyanide, lead, and nickel. The maximum reported concentrations of the toxicity characteristic (TC) metals barium, cadmium, chromium, and lead in the TCLP extracts of the samples were below the TC regulatory levels. The maximum reported concentration of total cyanide in unextracted waste was 3.35 milligrams per kilogram (mg/kg), which is greater than the generic exclusion level of 1.8 mg/kg for high temperature metal recovery (HTMR) residues in 40 CFR 261.3(c)(2)(ii)(C)(*1*), and less than 590 mg/kg, the Land Disposal Restrictions (LDR) Universal Treatment Standards (UTS) level, in 40 CFR 268.48. Chromium was undetected in the TCLP extract of any sample. The maximum reported concentration of barium in unextracted samples was 144 mg/kg for the German plant and 402 mg/kg for the Greer, South Carolina plant. The maximum reported concentration of chromium in unextracted samples was 100 mg/kg for the German plant and 222 mg/kg for the Greer, South Carolina plant. The maximum concentration of nickel in the TCLP extract of any sample was 0.73 milligrams per liter (mg/l) for the German plant and 6.25 mg/l for the Greer, South Carolina plant. The maximum reported concentration of nickel in unextracted samples was 6,500 mg/kg for the German plant and 1,700 mg/kg for the Greer, South Carolina plant. See the proposed rule, 66 FR 9781–9798, February 12, 2001, for details on BMW's analytical data, production process, and generation process for the petitioned waste.

After developing the list of constituents of concern, EPA calculated delisting levels for each of them using Maximum Contaminant Levels (MCLs) and EPA Composite Model for Landfills (EPACML) Dilution Attenuation Factors (DAFs) and calculated delisting levels and risks using Delisting Risk Assessment Software (DRAS) and EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP) DAFs.

EPA also used three additional methods of evaluating BMW's delisting petition and determining delisting levels: (1) Use of the Multiple Extraction Procedure (MEP), SW–846 Method 1320,[3] to evaluate the long-term resistance of the waste to leaching in a landfill; (2) setting limits on total concentrations of constituents in the waste that are more conservative than results of calculations of constituent release from waste in a landfill to surface water and air, and release during waste transport; and (3) setting delisting levels at the Land Disposal Restrictions (LDR) Universal Treatment Standards (UTS) levels in 40 CFR 268.48. The UTS levels for BMW's constituents of concern are the following: Barium: 21 mg/l TCLP; Cadmium: 0.11 mg/l TCLP; Chromium: 0.60 mg/l TCLP; Cyanide Total: 590 mg/kg; Cyanide Amenable 30 mg/kg; Lead: 0.75 mg/l TCLP; Nickel: 11 mg/l TCLP.

After considering all public comments on the February 12, 2001, Proposed Rule, and the MEP analysis of the petitioned waste which indicated long-term resistance to leaching (*see* 66 FR 9793–9794, February 12, 2001), EPA granted BMW, in the May 2, 2001, Final Rule, an exclusion from the lists of hazardous wastes in subpart D of 40 CFR part 261 for its petitioned waste when disposed in a Subtitle D[4] landfill. In the 2001 Final Rule, BMW was required to meet delisting conditions based on the DRAS EPACMTP model in order for this exclusion to be valid. For details, *see* the following **Federal Registers**: 65 FR 75637–75651, December 4, 2000; 65 FR 58015–58031, September 27, 2000; the proposed rule for BMW's petitioned waste, 66 FR 9792–9793, February 12, 2001, and Final Rule for BMW's petitioned waste, 66 FR 21877–21886, May 2, 2001.

Delisting levels and risk levels calculated by DRAS, using the EPACMTP model, are presented in Table 1 below. DRAS found that the major pathway for human exposure to this waste is groundwater ingestion, and calculated delisting and risk levels based on that pathway. The input values required by DRAS were the chemical constituents in BMW's petitioned waste; their maximum reported concentrations in the TCLP extract of the waste and in the unextracted waste; the maximum annual volume to be disposed (2,850 cubic yards) in a landfill; the desired risk level, which was chosen to be no worse than 10^{-6} for carcinogens; and a hazard quotient of no greater than 1 for non-carcinogens. The only carcinogenic constituent in the waste is cadmium, and cadmium also has non-carcinogenic toxic effects. Allowable total concentrations in the waste, as calculated by DRAS for the waste, itself, not the TCLP leachate, were all at least 1,000 times greater than the actual maximum total concentrations found in the waste, and are not included in Table 1, since many amount to metal or cyanide concentrations of several percent. However, in addition to limits on the concentrations of constituents in the TCLP leachate of the petitioned waste, EPA did set the following limits on total concentrations, in units of milligrams of constituent per kilogram of unextracted waste (mg/kg): Barium: 2,000; Cadmium: 500; Chromium: 1,000; Cyanide (Total, not Amenable): 200; Lead: 2,000; and Nickel: 20,000. The maximum reported total concentrations for BMW's petitioned waste were all below these limits. The limit for cyanide was chosen so that the waste could not exhibit the reactivity characteristic for cyanide by exceeding the interim guidance for reactive cyanide of 250 mg/kg of releasable hydrogen cyanide (SW–846, Chapter Seven, Section 7.3.3.)

TABLE 1.—DELISTING AND RISK LEVELS CALCULATED BY DRAS WITH EPACMTP MODEL FOR BMW PETITIONED WASTE

Constituent	Delisting level (mg/l TCLP)	DAF	DRAS-calculated risk for maximum concentration of carcinogen in waste	DRAS-calculated hazard quotient for maximum concentration of non-carcinogen in waste
Barium	182[a]	69.2		4.87×10^{-2}
Cadmium	1.4[a]	74.6	1.62×10^{-13}	3.57×10^{-2}

[3] ''SW–846'' means EPA Publication SW–846, ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods.'' Methods in this publication are referred to in today's proposed rule as ''SW–846,'' followed by the appropriate method number.

[4] The term, ''Subtitle D landfill,'' refers to a landfill that is licensed to land dispose nonhazardous wastes, that is, wastes that are not RCRA hazardous wastes. A Subtitle D landfill is subject to federal standards in 40 CFR parts 257 and 258 and to state and local regulations for nonhazardous wastes and nonhazardous waste landfills.

TABLE 1.—DELISTING AND RISK LEVELS CALCULATED BY DRAS WITH EPACMTP MODEL FOR BMW PETITIONED WASTE—Continued

Constituent	Delisting level (mg/l TCLP)	DAF	DRAS-calculated risk for maximum concentration of carcinogen in waste	DRAS-calculated hazard quotient for maximum concentration of non-carcinogen in waste
Chromium	5.39×10^{5} [a]	9,580		5.8×10^{-7}
Cyanide	33.6	44.8		1.49×10^{-3}
Lead	187[a]	1.24×10^{4}		Not Calculable; No Reference Dose for Lead.
Nickel	70.3	93.5		8.9×10^{-2}
Total Hazard Quotient for All Waste Constituents				0.187
Total Carcinogenic Risk for the Waste (due to Cadmium)			1.62×10^{-13}	

[a] These levels are all greater than the Toxicity Characteristic (TC) regulatory level in 40 CFR 261.24. A waste cannot be delisted if it exhibits a hazardous characteristic; therefore, the delisting level for each of these constituents could not be greater than the TC level of 100 for Barium; 1.0 for Cadmium; 5.0 for Chromium; and 5.0 for Lead.

2. How Did EPA Evaluate This Proposed Amendment?

EPA reviewed the allowable total concentrations in the waste, as calculated by DRAS for the waste, to determine if increasing the barium total concentration limit would be still protective to human health and the environment. The allowable total concentrations, according to the DRAS, were all at least 1,000 times greater than the actual maximum total concentrations found in the waste. Based on the DRAS results, EPA proposes to grant BMW's petition for amendment to eliminate all total concentration limits. EPA asks for public comment on this new totals limit set for barium which has been calculated to be both protective of human health and the environment and realistic, attainable values for BMW's wastewater treatment sludge.

C. What Conclusions Did EPA Reach?

EPA believes that the information provided by BMW provides a reasonable basis to eliminate all total concentration limits. We, therefore, propose to grant BMW an amendment to its current delisting for an elimination of all total concentration limits on its delisted wastewater treatment sludge and are requesting comments solely on eliminating all total concentration limits.

EPA believes that this proposal to eliminate all concentration limits will not harm human health and the environment when disposed in a nonhazardous waste landfill, if the proposed delisting levels are met.

EPA proposes to eliminate all total concentration limits, based on descriptions of waste management and waste history, evaluation of the results of waste sample analysis, and on the requirement that BMW's petitioned waste must meet this proposed amendment delisting level of all the constituents of concern concentration limits as state in the May 2, 2001, Final Rule before disposal. If this proposed amendment becomes final, the petitioned waste would not be subject to regulation under 40 CFR parts 262 through 268 and the permitting standards of 40 CFR part 270. Although management of the waste covered by this petition would, upon final promulgation, be relieved from Subtitle C jurisdiction, the waste would remain a solid waste under RCRA. As such, the waste must be handled in accordance with all applicable Federal, State, and local solid waste management regulations. Pursuant to RCRA section 3007, EPA may also sample and analyze the waste to determine if delisting conditions are met.

EPA believes that BMW's petitioned waste will not harm human health and the environment when disposed in a nonhazardous waste landfill if the delisting levels are met as granted in the May 2, 2001, Final Rule and amended in this petition.

What Are the Terms of This Exclusion?

The following summarizes the maximum allowable constituent concentrations (delisting levels) for BMW's waste. We calculated these delisting levels for each constituent that is part of BMW's current delisting based on the DRAS EPACMTP model, which grants BMW an exclusion from the lists of hazardous wastes in subpart D of 40 CFR part 261 for its petitioned waste when disposed in a Subtitle D[5] landfill. BMW must meet all of the following delisting conditions in order for this exclusion to be valid: delisting levels in mg/l in the TCLP extract of the waste of 100.0[6] for Barium, 1.0 for Cadmium, 5.0 for Chromium, 33.6 for Cyanide, 5.0 for Lead, and 70.3 for Nickel.

III. Limited Effect of Federal Exclusion

Will This Rule Apply in All States?

This proposed rule, if promulgated, would be issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a federally issued exclusion from taking effect in the States. Because a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal and State programs), petitioners are urged to contact State

[5] The term, ''Subtitle D landfill,'' refers to a landfill that is licensed to land dispose nonhazardous wastes, that is, wastes that are not RCRA hazardous wastes. A Subtitle D landfill is subject to federal standards in 40 CFR parts 257 and 258 and to state and local regulations for nonhazardous wastes and nonhazardous waste landfills.

[6] Delisting levels cannot exceed the Toxicity Characteristic (TC) regulatory levels. Therefore, although the DRAS EPACMTP calculates higher concentrations (*see* the proposed rule, 66 FR 9793, February 12, 2001, and Table 1, below), the delisting levels in the final rule are set at the TC levels for barium, cadmium, chromium, and lead. In order for the waste to be delisted, concentrations in the TCLP extract of the waste must be less than the TC levels. *See* the regulatory definition of a TC waste in 40 CFR 261.24.

regulatory authorities to determine the current status of their wastes under the State laws. Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program, *i.e.*, to make their own delisting decisions. Therefore, this proposed exclusion, if promulgated, would not apply in those authorized States. If the petitioned waste will be transported to any State with delisting authorization, BMW must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

IV. Effective Date

This rule, if made final, will become effective immediately upon final publication. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for the petitioner. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon final publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

V. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VI. National Technology Transfer and Advancement Act

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

This proposed rulemaking involves environmental monitoring or measurement. Consistent with the Agency's Performance Based measurement System (''PBMS''), EPA proposes not to require the use of specific, prescribed analytical methods, except when required by regulation in 40 CFR parts 260 through 270. Rather the Agency plans to allow the use of any method that meets the prescribed performance criteria. The PBMS approach is intended to be more flexible and cost-effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified.

VII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''UMRA''), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local, or tribal governments or the private sector. EPA finds that today's proposed delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed delisting does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

VIII. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement and Fairness Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This rule, if promulgated, will not have an adverse economic impact on any small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

IX. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition , jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal of policy issues arising out of legal mandates, the President's priorities or the principles set forth in the Executive Order.

OMB has exempted this proposed rule from the requirement for OMB review under section (6) of Executive Order 12866.

X. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

XI. Executive Order 13045

The Executive Order 13045 is entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XII. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to meaningful and timely input'' in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. Today's proposed rulemaking does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of Section 3(b) of Executive Order 13084 do not apply to this proposed rule.

XIII. Submission to Congress and General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States.

The EPA is not required to submit a rule report regarding today's action under Section 801 because this is a rule of particular applicability, etc. Section 804 exempts from Section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedures, or practice that do not substantially affect the rights or obligations of non-agency parties. *See* 5 U.S.C. 804(3). This rule will become effective on the date of publication as a final rule in the **Federal Register**.

XIV. Executive Order 13132

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.''

''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that impose substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implication. It will not have a substantial direct effect on 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, as specified in Executive Order 13132, because it affects only one facility.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: November 10, 2004.

Winston A. Smith,

Director, Waste Management Division.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

2. In Table 1 of Appendix IX, Part 261 revise the entry for BMW Manufacturing Co., LLC to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste Description
*	*	* * * * *
BMW Manufacturing Co., LLC.	Greer, South Carolina	Wastewater treatment sludge (EPA Hazardous Waste No. F019) that BMW Manufacturing Corporation (BMW) generates by treating wastewater from automobile assembly plant located on Highway 101 South in Greer, SouthCarolina. This is a conditional exclusion for up to 2,850 cubic yards of waste(hereinafter referred to as ''BMW Sludge'') that will be generated each year and disposed in a Subtitle D landfill after [date of final rule]. With prior approval by the EPA, following a public comment period,BMW may also beneficially reuse the sludge. BMW must demonstrate that the following conditions are met for the exclusion to be valid. (1) *Delisting Levels:* All leachable concentrations for these metals and cyanide must not exceed the following levels (ppm): Barium–100; Cadmium–1; Chromium–5; Cyanide–33.6, Lead–5; and Nickel–70.3. These metal and cyanide concentrations must be measured in the waste leachate obtained by the method specified in 40 CFR 261.24, except that for cyanide, deionized water must be the leaching medium. Cyanide concentrations in waste or leachate must be measured by the method specified in 40 CFR 268.40, Note 7. (2) *Annual Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to SW–846 methodologies, where specified by regulations in 40 CFR parts 260—270. Otherwise, methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that representative samples of the BMW Sludge meet the delisting levels in Condition (1). (A) *Annual Verification Testing:* BMW must implement an annual testing program to demonstrate that constituent concentrations measured in the TCLP extract do not exceed the delisting levels established in Condition (1). (3) *Waste Holding and Handling:* BMW must hold sludge containers utilized for verification sampling until composite sample results are obtained. If the levels of constituents measured in the composite samples of BMW Sludge do not exceed the levels set forth in Condition (1), then the BMW Sludge is non-hazardous and must be managed in accordance with all applicable solid waste regulations. If constituent levels in a composite sample exceed any of the delisting levels set forth in Condition (1), the batch of BMW Sludge generated during the time period corresponding to this sample must be managed and disposed of in accordance with Subtitle C of RCRA. (4) *Changes in Operating Conditions:* BMW must notify EPA in writing when significant changes in the manufacturing or wastewater treatment processes are implemented. EPA will determine whether these changes will result in additional constituents of concern. If so, EPA will notify BMW in writing that the BMW Sludge must be managed as hazardous waste F019 until BMW has demonstrated that the wastes meet the delisting levels set forth in Condition (1) and any levels established by EPA for the additional constituents of concern, and BMW has received written approval from EPA. IfEPA determines that the changes do not result in additional constituents of concern, EPA will notify BMW, in writing, that BMW must verify that the BMW Sludge continues to meet Condition (1) delisting levels. (5) *Data Retention:* Records of analytical data from Condition (2) must be compiled, summarized, and maintained by BMW for a minimum of three years, and must be furnished upon request by EPA or the State of South Carolina, and made available for inspection. Failure to maintain the required records for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste Description
		(6) *Reopener Language:* (A) If, at any time after disposal of the delisted waste, BMW possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified in the delisting verification testing is at a level higher than the delisting level allowed by EPA in granting the petition, BMW must report the data, in writing, to EPA and South Carolina within 10 days of first possessing or being made aware of that data. (B) If the testing of the waste, as required by Condition (2)(A), does not meet the delisting requirements of Condition (1), BMW must report the data, in writing, to EPA and South Carolina within 10 days of first possessing or being made aware of that data. (C) Based on the information described in paragraphs (6)(A) or (6)(B) and any other information received from any source, EPA will make a preliminary determination as to whether the reported information requires that EPA take action to protect human health or the environment. Further action may include suspending or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If EPA determines that the reported information does require Agency action, EPA will notify the facility in writing of the action believed necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing BMW with an opportunity to present information as to why the proposed action is not necessary. BMW shall have 10 days from the date of EPA's notice to present such information. (E) Following the receipt of information from BMW, as described in paragraph (6)(D), or if no such information is received within 10 days, EPA will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment, given the information received in accordance with paragraphs (6)(A) or (6)(B). Any required action described in EPA's determination shall become effective immediately, unless EPA provides otherwise. (7) *Notification Requirements:* BMW must provide a one-time written notification to any State Regulatory Agency in a State to which or through which the delisted waste described above will be transported, at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting conditions and a possible revocation of the decision to delist.
* * *	* * * *	

[FR Doc. 04–26166 Filed 11–24–04; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 531

[Docket No. 04–12]

RIN 3072–AC30

Non-Vessel Operating Common Carrier Service Arrangements

AGENCY: Federal Maritime Commission.

ACTION: Proposed rulemaking; extension of time.

SUMMARY: The Commission by Notice of Proposed Rulemaking published November 3, 2004 (69 FR 63981) proposed an exemption from the tariff publication requirements of the Shipping Act of 1984 for service arrangements made by non-vessel-operating common carriers, subject to the conditional filing requirements set forth in this new Part. The Commission has received and determined to grant a request from the Department of Justice, for an extension of time to November 30, 2004 to file comments in this proceeding.

DATES: Comments are now due November 30, 2004. Submit an original and 15 copies of comments (paper), or e-mail comments as an attachment in WordPerfect 10, Microsoft Word 2003, or earlier versions of these applications.

ADDRESSES: Address all comments concerning this proposed rule to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1046, Washington, DC 20573–0001; (202) 523–5725, e-mail: *Secretary@fmc.gov*.

FOR FURTHER INFORMATION CONTACT: Amy W. Larson, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1018, Washington, DC 20573–0001; (202) 523–5740, e-mail: *GeneralCounsel@fmc.gov;* and Austin L. Schmitt, Director, Office of Operations, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1078, Washington, DC 20573–0001, (202) 523–0988.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–26125 Filed 11–24–04; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 4

[ET Docket No. 04–35; FCC 04–188]

Disruptions to Communications

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document expands the record in this proceeding to focus specifically on the unique communications needs of airports, including wireless and satellite communications. In this regard, we request comment on the additional types of airport communications (*e.g.*,

wireless, satellite) that should be required to file service disruption reports—particularly from a homeland security and defense perspective. These types of airport communications may include, for example, communications that are provided by ARINC as well as commercial communications (*e.g.*, air-to-ground and ground-to-air telephone communications) as well as intra-airline commercial links. We also seek comment on whether the outage-reporting requirements for special facilities should be extended to cover general aviation airports (GA) and, if so, what the applicable threshold criteria should be.

DATES: Comments must be filed on or before January 25, 2005, and reply comments February 24, 2005.

FOR FURTHER INFORMATION CONTACT: Charles Iseman at (202) 418–2444, *charles.iseman@fcc.gov*, Office of Engineering and Technology, TTY (202) 418–2989.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Notice of Proposed Rulemaking,* portion of the Report and Order and Further Notice of Proposed, ET Docket No. 04–35, FCC 04–188, adopted August 4, 2004, and released August 19, 2004. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded from the Commission's Web site: *http://hraunfoss.fcc.gov/edocspublic/attachmatch/FCC–04–30A1.doc.* Alternate formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before January 25, 2005, and reply comments on or before February 24, 2005. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. All paper filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

Summary of Further Notice of Proposed Rulemaking

1. The Further Notice of Proposed Rulemaking (FNPRM) was initiated to expand the record in this proceeding to focus specifically on the unique communications needs of airports. In this regard, we request comment on the additional types of airport communications (*e.g.*, wireless, satellite) that should be subject to service disruption reports, particularly from the perspective of homeland security and national defense. These communications may include, for example, communications that are provided by ARINC as well as commercial communications (*e.g.*, air-to-ground and ground-to-air telephone communications) as well as intra-airline commercial links. We also seek comment on whether the outage-reporting requirements for special facilities should be extended to cover general aviation airports and, if so, what the applicable threshold criteria should be. Based on the comments that the Commission receives in this proceeding and on its analysis of the information that is before it, the Commission may make such additional modifications to its communications outage-reporting requirements for special offices and facilities, with respect to airports, as may be necessary or desirable to fulfill, more fully, the objectives that are set forth in the Communications Act.

2. *Airports that Qualify as Special Offices and Facilities, Pertinent Outage-Reporting Criteria, and Proposed Revisions.* Section 4.5(b) of the Commission's rules (adopted by the Report and Order in this proceeding, but not yet in effect) includes as ''special offices and facilities'' those airports that are listed as current primary (PR), commercial service (CM), and reliever (RL) airports in the FAA's National Plan of Integrated Airports Systems (NPIAS) (as issued at least one calendar year prior to the outage). Section 4.9 of the Commission's rules (also not yet in effect) requires communications providers to report outages of at least 30 minutes duration that potentially affect special offices and facilities. Satellite communications providers and wireless communications providers, however, are exempt from this requirement to the extent that it applies to airports. This Further Notice of Proposed Rulemaking is initiated to expand the record in this proceeding to focus specifically on the unique communications needs of airports, particularly from the perspective of homeland security and national defense. In this regard, we request comment on the additional types of airport communications (*e.g.*, wireless, satellite) that should be subject to service disruption reports. These communications may include, for example, communications that are provided by ARINC as well as commercial communications (*e.g.*, air-to-ground and ground-to-air telephone communications) as well as intra-airline commercial links. We also seek comment on whether the outage-reporting requirements for special facilities should be extended to cover general aviation airports (GA) and, if so, what the applicable threshold criteria should be.

Initial Regulatory Flexibility Act Analysis

3. As required by the Regulatory Flexibility Act (''RFA''),[1] the Commission has prepared this Initial

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1966 (SBREFA), Public Law 104–121, 110 Stat. 847 (1996).

Regulatory Flexibility Act Analysis (''IRFA'') of the possible significant economic impact on small entities by the policies and rules proposed in this *Further Notice of Proposed Rulemaking* (''*FNPRM*''). Written public comments are requested on this IRFA and must be filed by the January 25, 2005. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[2] In addition, the *FNPRM* including the IRFA (or summaries thereof) will be published in the **Federal Register**.[3]

A. *Need for and Objectives of the Proposed Rules.* The Commission seeks to expand the record in this proceeding in order to focus specifically on the unique communications needs of airports. In this regard, the Commission requests comment on the additional types of airport communications (*e.g.*, wireless, satellite) that should be subject to service disruption reports, particularly from the perspective of homeland security and national defense. These communications may include, for example, communications that are provided by ARINC as well as commercial communications (*e.g.*, air-to-ground and ground-to-air telephone communications) as well as intra-airline commercial links. The Commission also seeks comment on whether the outage-reporting requirements for special facilities should be extended to cover general aviation airports and, if so, what the applicable threshold criteria should be. Potentially, all of the airports in the United States may need to be used by aircraft for emergency landings. The potential loss life or property through commercial aircraft crashes can be catastrophic. The need, however, for communications among non-commercial (as well as commercial) airports and the rest of the United States becomes more apparent in the contexts of general aviation and government aviation in which many non-commercial planes carry, for example, personnel who are essential to national defense and homeland security, as well as government officials from Federal, State, local, and foreign governments. Moreover, all of the airports in the United States are potential launching pads for terrorist activities. As a consequence, it is essential that all personnel at airports throughout the United States be able to access appropriate government and civilian personnel to avert acts of terrorism. Finally, commercial communications links are used by airports to support navigation, traffic control, maintenance, and restoration. Those commercial communications links need to be functioning continuously. The requirements for which we seek comment would be in addition to those adopted in the *Report and Order* in this proceeding. Those requirements apply to wireline and cable circuit-switched telecommunications with airports that are listed as current primary (PR), commercial service (CM), and reliever (RL) airports in the FAA's National Plan of Integrated Airport Systems (NPIAS) (as issued at least one calendar year prior to the outage). Outages affecting any of these airports for 30 minutes or more must be reported.

B. Legal Basis. The legal basis for the rule changes proposed in the *FNPRM* are contained in sections 1, 4(i), 4(k), 4(o), 218, 219, 230, 256, 301, 302(a), 303(f), 303(g), 303(j), 303(r), 303(v), 403, 621(b)(3), and 621(d) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(k), 154(o), 218, 219, 230, 256, 301, 302(a), 303(f), 303(g), 303(j), 303(r), 303(v), 403, 621(b)(3), and 621(d), and in § 1704 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1998, 44 U.S.C. 1704.

C. *Description and Estimates of the Number of Small Entities to Which the Rules Adopted in This Further Notice May Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules.[4] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[5] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[6] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[7]

The Commission further describes and estimates the number of small entity licensees and regulatees that may be affected by rules adopted pursuant to this Report and Order. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report.[8] The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers,[9] Paging,[10] and Cellular and Other Wireless Telecommunications.[11] Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

We have included small incumbent local exchange carriers in this present RFA analysis. As noted, a ''small business'' under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' [12] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope.[13] We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

Wired Telecommunications Carriers. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which

[2] 5 U.S.C. 603(a).

[3] *Id.*

[4] 5 U.S.C. 603(b) (3), 604(a) (3).

[5] *Id.* at 601(6).

[6] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such terms which are appropriate to the activities of the agency and publishes such definitions(s) in the **Federal Register**.''

[7] 15 U.S.C. 632.

[8] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, ''Trends in Telephone Service'' at Table 5.3, Page 5–5 (Aug. 2003) (hereinafter ''Trends in Telephone Service''). This source uses data that are current as of December 31, 2001.

[9] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517110.

[10] 13 CFR 121.201, NAICS code 517211.

[11] 13 CFR 121.201, NAICS code 517212.

[12] 15 U.S.C. 632.

[13] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of ''small-business concern,'' which the RFA incorporates into its own definition of ''small business.'' *See* 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. 13 CFR 121.102(b).

consists of all such companies having 1,500 or fewer employees.[14] According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year.[15] Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more.[16] Thus, under this size standard, the majority of firms can be considered small.

Incumbent Local Exchange Carriers (LECs). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[17] According to Commission data,[18] 1,337 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.'' Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[19] According to Commission data,[20] 609 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 carriers, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees. In addition, 16 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1,500 or fewer employees. In addition, 35 carriers have reported that they are ''Other Local Service Providers.'' Of the 35, an estimated 34 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by our action.

Interexchange Carriers (IXCs). Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[21] According to Commission data,[22] 261 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 223 have 1,500 or fewer employees and 38 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our action.

Wireless Service Providers. The SBA has developed a small business size standard for wireless small businesses within the two separate categories of Paging[23] and Cellular and Other Wireless Telecommunications.[24] Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. According to the Commission's most recent data,[25] 1,387 companies reported that they were engaged in the provision of wireless service. Of these 1,387 companies, an estimated 945 have 1,500 or fewer employees and 442 have more than 1,500 employees.[26] Consequently, the Commission estimates that most wireless service providers are small entities that may be affected by the rules and policies adopted.

Broadband Personal Communications Service. The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years.[27] For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.'' [28] These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA.[29] No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.[30] On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Based on this information, the Commission concludes that the number of small broadband PCS licenses would have included the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F Block auctions, the 48 winning bidders in the 1999 re-auction, and the 29 winning bidders in the 2001 re-auction, for a total of 260 small entity broadband PCS providers, as defined by the SBA small business size standards and the Commission's auction rules. Consequently, the Commission estimates that 260 broadband PCS providers would have been small

[14] 13 CFR 121.201 (1997), NAICS code 513310 (changed to 517110 in October 2002).

[15] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 5, NAICS code 513310 (issued October 2000).

[16] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1,000 employees or more.''

[17] 13 CFR 121.201, NAICS code 517110 (changed from 513310 in Oct. 2002).

[18] ''Trends in Telephone Service'' at Table 5.3.

[19] 13 CFR 121.201, NAICS code 517110 (changed from 513310 in Oct. 2002).

[20] ''Trends in Telephone Service'' at Table 5.3.

[21] 13 CFR 121.201, NAICS code 517110 (changed from 513310 in Oct. 2002).

[22] ''Trends in Telephone Service'' at Table 5.3.

[23] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517211.

[24] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517212.

[25] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service, Table 5.3, (August 2002).

[26] *Id.*

[27] *See* Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96–59, Report and Order, 61 FR 33859 (July 1, 1996); *see also* 47 CFR 24.720(b).

[28] *See* Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96–59, Report and Order, 61 FR 33859 (July 1, 1996).

[29] *See, e.g.*, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, Fifth Report and Order, 59 FR 37566 (July 22, 1994).

[30] FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (released January 14, 1997). *See also* Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97–82, Second Report and Order, 62 FR 55348 (Oct. 24, 1997).

entities that could be affected by the rules and policies adopted herein. The results of Auction No. 35, however, were set aside and the licenses previously awarded to NextWave, which had qualified as a small entity, were reinstated. In addition, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

Narrowband Personal Communications Services. To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*.[31] A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards.[32] In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future auctions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this analysis that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

800 MHz and 900 MHz Specialized Mobile Radio Licenses. The Commission awards ''small entity'' and ''very small entity'' bidding credits in auctions for SpecializedMobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the previous calendar years, respectively.[33] These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities. In addition, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

Paging. The SBA has developed a small business size standard for Paging, which consists of all such firms having 1,500 or fewer employees.[34] According to Census Bureau data for 1997, in this category there was a total of 1,320 firms that operated for the entire year.[35] Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional seventeen firms had employment of 1,000 employees or more.[36] Thus, under this size standard, the majority of firms can be considered small.

Rural Radiotelephone Service. The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.[37] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).[38] The Commission uses the SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons.[39] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted in the Report and Order.

Cable and Other Program Distribution.[40] This category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year.[41] Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, the Commission

[31] In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, ET Docket No. 92–100, PP Docket No. 93–253, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 65 FR 35875 (June 6, 2000).

[32] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

[33] 47 CFR 90.814(b)(1).

[34] 13 CFR 121.201, NAICS code 517211 (changed from 513321 in October 2002).

[35] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 5, NAICS code 513321 (issued October 2000).

[36] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1,000 employees or more.''

[37] The service is defined in 22.99 of the Commission's rules, 47 CFR 22.99.

[38] BETRS is defined in 22.757 and 22.759 of the Commission's rules, 47 CFR 22.757 and 22.759.

[39] 13 CFR 121.201, NAICS code 517212.

[40] 13 CFR 121.201, North American Industry Classification System (NAICS) code 513220 (changed to 517510 in October 2002).

[41] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization)'', Table 4, NAICS code 513220 (issued October 2000).

estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein.

Cable System Operators (Rate Regulation Standard). The Commission has developed a size standard for small cable system operators for the purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide.[42] Based on our most recent information, we estimate that there were 1439 cable operators that qualified as small cable companies at the end of 1995.[43] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. The Commission's rules define a ''small system,'' for the purposes of rate regulation, as a cable system with 15,000 or fewer subscribers.[44] The Commission does not request nor does the Commission collect information concerning cable systems serving 15,000 or fewer subscribers and thus is unable to estimate, at this time, the number of small cable systems nationwide.

Cable System Operators (Telecom Act Standard). The Communications Act of 1934, as amended, also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [45] The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, a cable operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[46] Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals approximately 1450.[47] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators as defined in the Communications Act of 1934.

Satellite Telecommunications Providers. The appropriate size standards under SBA rules are for the two broad categories of Satellite Telecommunications and Other Telecommunications. Under both categories, such a business is small if it has $12.5 or less in average annual receipts.[48] For the first category of Satellite Telecommunications, Census Bureau data for 1997 show that there were a total of 324 firms that operated for the entire year.[49] Of this total, 273 firms had annual receipts of under $10 million, and an additional twenty-four firms had receipts of $10 million to $24,999,999. Thus, the majority of Satellite Telecommunications firms can be considered small.

Signaling System 7 (SS7) Providers. The Commission has not developed a definition of small entities applicable to Signaling System 7 providers. We shall apply the SBA's small business size standard for Other Telecommunications, which identifies as small all such companies having $12.5 million or less in annual receipts.[50] We believe that there are no more than half-a-dozen SS7 providers and doubt that any of them have annual receipts less then $12.5 million. In the IRFA to the original *Notice of Proposed Rulemaking* in this proceeding, we had assumed that there may be several SS7 providers that are small businesses which could be affected by the proposed rules and had requested comment on how many SS7 providers exist and on how many of these are small businesses that may be affected by our proposed rules. No comments provided this information. Therefore, we conclude that none of these providers were small businesses.Nonetheless, the Commission shall assume that there may now be several SS7 providers that are small businesses that could be affected by the proposed rules. The Commission requests comment on how many SS7 providers exist and on how many of these are small businesses that may be affected by our proposed rules.

D. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.* The rule revisions considered in this *FNPRM* could expand the number of airports included as ''special offices and facilities'' within the Commission's requirements that communications providers report those outages of at least 30 minutes duration that potentially affect special offices and facilities. The *FNPRM* also seeks comment, if the rules are expanded to cover general aviation airports, on what the pertinent threshold reporting criteria should be. Satellite communications and wireless communications are currently exempt from the requirement to report outages potentially affecting those airports that are special offices and facilities. The *FNPRM* therefore seeks comment on what additional types of airport communications (*e.g.*, wireless, satellite) should be subject to service disruption reports, particularly from the perspective of homeland security and national defense. The Commission anticipates that more than 200 outage reports will be filed annually, but estimates that the total number of reports from all reporting sources combined will be substantially less than 1,000 annually. The Commission notes that, occasionally, the proposed outage reporting requirements could require the use of professional skills, including legal and engineering expertise. Without more data, it cannot accurately estimate the cost of compliance by small telecommunications providers. But irrespective of any of the reporting requirements that are proposed here, the Commission expects that telecommunications providers will track, investigate, and correct all of their service disruptions as an ordinary part of conducting their business operations—and will do so for all service disruptions that potentially affect special offices and facilities. As a consequence, the Commission believes that in the usual case, the only burden associated with the reporting requirements contained in this *FNPRM* will be the time required to notify the Commission and complete the initial and final reports. The Commission anticipates that electronic filing, as adopted in the *Report and Order* in this proceeding, should minimize the amount of time and effort that will be required to comply with the rules that are proposed in this proceeding. In this IFRA, the Commission therefore seeks comment on the types of burdens

[42] 47 CFR 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, MM Docket No. 92–266 and 93–215, 10 FCC Rcd 7393 (1995), 60 FR 10534 (February 27, 1995).

[43] Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[44] 47 CFR 76.901(c).

[45] 47 U.S.C. 543(m)(2).

[46] 47 CFR 76.1403(b).

[47] *Cable TV Investor, supra* note 43.

[48] 13 CFR 121.201, NAICS codes 517410 and 517910 (changed from 513340 and 513390 in Oct. 2002).

[49] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4, NAICS code 513340 (issued Oct. 2000).

[50] 13 CFR 121.201, NAICS code 517910.

telecommunications providers will face in complying with the proposed requirements. Entities, especially small businesses and small entities, more generally, are encouraged to quantify the costs and benefits of the proposed reporting requirements.

E. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* Since the inception of the outage-reporting requirements in 1992, the average number of outages reported each year has remained relatively constant at about 200. Since 1992, the substitutability of telecommunications through different media has increased substantially, and our Nation increasingly relies on these substitutes for Homeland Defense and National Security. The Commission believes that the proposed telecommunications outage reporting requirements are minimally necessary to assure that it receives adequate information to perform its statutory responsibilities with respect to the reliability of telecommunications and their infrastructures. Finally, the Commission believes that the proposed requirement that outage reports be filed electronically would significantly reduce the burdens and costs currently associated with manual filing processes.

F. *Federal Rules That Might Duplicate, Overlap, or Conflict With the Proposed Rules.* None.

Ordering Clauses

4. Pursuant to the authority contained in sections 1, 4(i)–(j), 4(k), 4(o), 218, 219, 230, 256, 301, 302(a), 303(f), 303(g), 303(j), 303(r), 403, 621(b)(3), and 621(d) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j), 154(k), 154(o), 218, 219, 230, 256, 301, 302(a), 303(f), 303(g), 303(j), 303(r), 403, 621(b)(3), and 621(d), and in Section 1704 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1998, 44 U.S.C. 3504, the Notice of Proposed Rulemaking *is adopted.*

5. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 4

Airports, Communications common carrier, Disruption reports, Reporting and recordkeeping requirements, Special Offices and Facilities, Telecommunication.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 04–26161 Filed 11–24–04; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic Atmospheric Administration

50 CFR Part 679

[Docket No. 041110318–4318–01; I.D. 110504E]

RIN 0648–AS00

Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to Western Alaska Community Development Quota (CDQ) Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to revise regulations governing the Western Alaska Community Development Quota (CDQ) Program. These regulatory amendments would simplify the processes for making quota transfers, for authorizing vessels as eligible to participate in the CDQ fisheries, and for obtaining approval of alternative fishing plans. This proposed action is necessary to improve NMFS's ability to administer the CDQ Program effectively and it is intended to further the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP).

DATES: Written comments on this proposed rule must be received by December 27, 2004.

ADDRESSES: Send written comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

- Mail to P.O. Box 21668, Juneau, AK 99802–1668;
- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, AK;
- Fax to 907–586–7557;
- E-mail to *CDQ-ADM–0648–AS00@noaa.gov* and include in the subject line of the e-mail comment the document identifier: 0468–AS00;
- Website to the Federal eRulemaking Portal at *http://www.Regulations.gov* and following the instructions at that site for submitting comments.

Copies of the Categorical Exclusion and Regulatory Impact Review/Initial Regulatory Flexibility Analysis prepared for this action may be obtained from any of the addresses stated above.

Send comments on collection-of-information requirements to the same NMFS address and also to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer). Also, send comments to David Rostker, OMB, by e-mail at *DRostker@omb.eop.gov* or by facsimile to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Becky Carls, 907–586–7228 or *becky.carls@noaa.gov*.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands Area (BSAI) are managed under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

Background and Need for Action

By design of the Council, the CDQ Program is jointly managed by NMFS and the State of Alaska (State). The CDQ Program provides participating western Alaska fishing communities allocations of groundfish, halibut, and crab, as well as allowances for bycatch of prohibited species (salmon, halibut, and crab) while prosecuting CDQ target fisheries. These communities have formed six non-profit corporations (also known as CDQ groups) to manage and administer the CDQ allocations and economic development projects. The CDQ groups prepare Community Development Plans (CDPs) that describe how CDQ allocations will be used to benefit the participating communities. The CDPs are submitted to the State and NMFS as part of the process for allocating quota among the CDQ groups. Modifications to CDPs for new CDQ projects or other revisions are made through substantial and technical amendments, both of which must be reviewed by the State and approved by NMFS.

As a result of the CDQ Program's expansion and maturation since its implementation in 1992, the Council undertook a comprehensive evaluation of the CDQ Program. In response to that evaluation, the Council recommended Amendment 71 to the FMP in June

2002. Amendment 71 included eight issues related to the administration and oversight of the economic development aspects of the CDQ Program and the process through which allocations to CDQ groups are made. This proposed rule addresses the regulatory changes recommended by the Council in Issue 8 under Amendment 71: to simplify the processes for making quota transfers and for obtaining approval of alternative fishing plans by removing the State from the review process. This proposed rule also would revise the authorization process for vessels eligible to participate in the CDQ fisheries. Although not directly considered by the Council as part of Amendment 71, the revisions to the eligible vessel approval process are proposed by NMFS as part of this action because they are related in nature and scope to the Council's recommendations concerning alternative fishing plans. The remaining seven issues under Amendment 71 will be addressed in upcoming FMP amendments.

Description of the Proposed Action

This proposed rule would make the following revisions to NMFS's CDQ regulations:

1. Allow CDQ groups to transfer groundfish CDQ and halibut CDQ by submitting transfer requests directly to NMFS and remove the requirement that the transfers are made through amendments to the CDPs and that they are submitted to the State for review before being submitted to NMFS.
2. Allow CDQ groups to transfer prohibited species quota (PSQ) by submitting transfer requests directly to NMFS and remove the requirement that the transfers are made through amendments to the CDPs and that they are submitted to the State for review before being submitted to NMFS. In addition, the proposed rule would allow the transfer of PSQ during any month of the year and allow PSQ transfer without an associated transfer of CDQ.
3. Remove the requirement that ''fishing plan'' forms are part of a group's CDP, but continue to require that CDQ groups request and obtain approval from NMFS for all vessels groundfish CDQ fishing and for vessels equal to or greater than 60 feet (18.3 meters) length overall (LOA) that are halibut CDQ fishing before these vessels participate in any CDQ fisheries. Additionally, a CDQ group would be required to provide a copy of the NMFS-approved eligible vessel request to the vessel operator; the vessel operator would be required to maintain a copy of the NMFS-approved request onboard the vessel at all times while harvesting, transporting, or offloading CDQ; and a CDQ group would be required to notify the vessel operator if the vessel is removed from eligibility to fish for CDQ.
4. Remove the requirement that a CDQ group obtain prior approval by the State and NMFS for all processors taking deliveries of groundfish CDQ.
5. Allow CDQ groups to submit alternative fishing plans directly to NMFS rather than as amendments to the CDP. An alternative fishing plan would be an attachment to the eligible vessel request. Additionally, CDQ groups would be required to provide a copy of the NMFS-approved alternative fishing plan to vessel operators and vessel operators would be required to maintain a copy of the alternative fishing plan approved by NMFS onboard the vessel at all times while harvesting, transporting, or offloading CDQ.
6. Remove requirements that CDQ groups must ensure their respective fishing and processing partners' compliance with regulations in 50 CFR part 679.
7. Implement other revisions to the regulations to update and clarify definitions and cross references needed to support the primary regulatory amendments in this proposed rule.

Further explanation of these revisions and the rationale for them are provided below.

CDQ Transfers

A CDQ group may transfer all or part of its annual CDQ to another group in response to: changes in, or the non-availability of, a group's harvesting partner; the length of a particular non-CDQ fishery season; availability of a given target species; and weather or seasonal conditions impacting smaller vessels. Currently, quota transfers must be approved via amendment to a group's CDP. Amounts that are ten percent or less of a group's annual CDQ may be transferred through the technical amendment process as described in 50 CFR 679.30(g)(5). Amounts in excess of ten percent may be transferred through the substantial amendment process as described in § 679.30(g)(4). Transfers are effective for the remainder of the calendar year in which a transfer occurs. In general, a transfer of quota involves the following steps: each CDQ group requesting a transfer must notify the State in writing that it wishes to make a transfer; the State must forward the proposed transfer to NMFS with its recommendations for approval or disapproval; and, finally, the transfer becomes effective when NMFS notifies the State in writing that the transfer has been reviewed and approved. These transfer provisions were recommended by the State and supported by NMFS when the multispecies CDQ Program was implemented in 1998. At that time, the Council, NMFS, and the State believed that a process involving both agencies in the review of quota transfers was necessary to provide the State with information about proposed CDQ and PSQ transfers. This process allows the State to remain informed about fishery management actions taken by each CDQ group and for the State to determine if these transfers would significantly change a CDQ group's ability to implement its CDP.

Between 2001 and 2003, the CDP amendment process was used to transfer CDQ 72 times, requiring 144 CDP modifications (two for each transfer: one for the CDQ group conferring the quota and one for the CDQ group receiving the quota). Slightly less than half the transfers represented more than 10 percent of a CDQ group's quota and thus required substantial amendments to the CDPs. Technical amendments generally are processed in a relatively short period of time, although coordination is still necessary between the State and NMFS. However, if a substantial amendment is required, six copies of the amendment must be delivered to the State and the State's CDQ team (comprised of several State officials and employees) must review the amendment before the State sends its recommendation to NMFS. CDQ groups often wish to transfer quota on fairly short notice during the fishing season. The time necessary for the current review process is frequently at odds with the fast-paced nature of some groundfish fisheries or the availability of a CDQ harvesting partner. As part of its action on Amendment 71, the Council recommended that CDQ groups be allowed to transfer quota by submitting a transfer request directly to NMFS.

The proposed rule would revise regulations at § 679.30(e) to require CDQ groups to submit CDQ transfer requests directly to NMFS without going through the technical or substantial amendment processes. NMFS would review each request to ensure that the group providing CDQ has adequate quota available to transfer. The transfer process would become an in-season management function of NMFS, rather than a joint State-NMFS CDP-modification approval process. NMFS would provide the State with a copy of each approved transfer so that the State would continue to have information about the CDQ groups' fisheries management activities. Transfers would continue to be effective only for the remainder of the calendar year in which the transfer occurs.

Because the CDQ groups would make their quota transfer requests directly to NMFS, the time required for the approval or disapproval of a transfer request would be reduced. To make a transfer request, each group would submit a brief form to NMFS rather than the more complex and detailed submission required for a substantial or technical amendment to a CDP. This form is described in detail under proposed regulations at § 679.5(n). This form would request contact information for each group involved in the transfer and the amounts of quota being transferred. By reducing the time and paperwork required for the approval or disapproval of a CDQ transfer request, this measure would reduce costs for the CDQ groups, the State, and NMFS.

PSQ Transfers

In addition to being allocated a portion of each CDQ reserve, each CDQ group is allocated a portion of each Prohibited Species Catch (PSC) limit for crab, salmon, and halibut as a PSQ. The crab and salmon PSQ allocations rarely restrict the groundfish CDQ fisheries and generally only prevent CDQ fishing in limited areas under limited circumstances. Halibut PSQ allocations, however, do have the potential to prevent a group from fully harvesting its groundfish CDQ target species. For example, a group that caught all its chinook salmon PSQ would be prohibited from trawling during certain times of the year in specific areas of the Bering Sea set aside to reduce bycatch of salmon. On the other hand, a group that caught all its halibut PSQ prior to fully harvesting its groundfish would have to cease all its fishing activities or risk exceeding its halibut PSQ.

Based on the recommendations of the State and the Council, NMFS implemented strict regulations for the transfer of PSQ among groups. When the CDQ Program was implemented, the State believed these regulations were necessary to hold the groups strictly accountable to their allocations to minimize bycatch, and to prevent CDQ groups from circumventing the allocation process by transferring so much PSQ that the basis for the allocations was undermined. Currently, a request for a PSQ transfer may be made only during the month of January. The request to transfer PSQ also must be part of a request to transfer CDQ and represent an amount of PSQ reasonably required as bycatch for the associated CDQ transfer. A PSQ transfer of any amount requires a substantial amendment to a group's CDP. This effectively eliminates the possibility that CDQ groups can transfer PSQ among themselves during the fishing year in response to needs arising from their actual harvesting performance or planned inter-group transfers of other groundfish CDQ species.

Halibut PSQ is intended to provide for the bycatch needs of directed groundfish fisheries and is allocated and accounted for separately from halibut CDQ. Most halibut bycatch occurs in the Pacific cod and flatfish fisheries and secondarily in the pollock, Atka mackerel, and Greenland turbot fisheries. Because none of the CDQ groups have harvested significant amounts of their flatfish quotas, they have needed only a portion of their halibut PSQ. Since the inception of the multispecies CDQ Program, 38 to 75 percent of halibut PSQ has remained unharvested each year and no PSQ has been transferred among groups. In general, flatfish prices have been low and the non-CDQ flatfish seasons have been open through much or all of the fishing year. Thus, the CDQ groups have probably been unable to develop their flatfish fisheries primarily due to factors external to the CDQ Program. Nonetheless, an inability to transfer PSQ among groups during the season may constrain CDQ fisheries in the future, especially to the extent that the CDQ groups can increase harvest of their flatfish quota.

As part of its final action on Amendment 71, the Council recommended that PSQ transfers be submitted directly to NMFS, that transfer of PSQ be allowed during any month of the year, and that PSQ transfers be allowed without an associated transfer of CDQ.

The proposed rule would revise regulations at § 679.30(e) concerning PSQ transfers to require CDQ groups to submit PSQ transfer requests directly to NMFS. PSQ transfer requests could occur at any time during a given year. Additionally, a CDQ group could request the transfer of PSQ without an associated transfer of CDQ. To make a transfer request, each group would submit a transfer request form directly to NMFS rather than the more complex submission required for a substantial amendment. This new form is discussed above in ''CDQ transfers'' and is described in detail in proposed regulations under § 679.5(n). This measure would reduce the time and documentation required for the approval or disapproval of a PSQ transfer request, and, thus reduce the cost to the CDQ groups, the State, and NMFS. NMFS would review and take action on each PSQ transfer request and would provide the State with a copy of all approved PSQ transfers so that the State would continue to have information about the CDQ groups' fisheries management activities. Transfers would still be effective only for the remainder of the calendar year in which a transfer occurs.

Allowing the transfer of PSQ during months other than January and without association with a transfer of CDQ would not be expected to allow the CDQ groups to circumvent the allocation process. No reason would exist to transfer significant amounts of PSQ other than to meet the bycatch needs associated with a CDQ transfer or the in-season requirements of a particular CDQ fishery. Rather, additional collaborative CDQ fisheries could be developed by the CDQ groups in a manner similar to the Atka mackerel and Pacific ocean perch CDQ fisheries. In these fisheries, target species CDQ and associated bycatch CDQ are consolidated by transfers to one or two CDQ groups that have partners interested in harvesting the target species.

Transfers of CDQ and PSQ Percentage Allocations

NMFS is not proposing to change the regulations governing the transfer of CDQ or PSQ percentage allocations which are assigned to each CDQ group when the CDPs are approved and which can be transferred. Transfer of percentage allocations are allowed under current regulations at § 679.30(e) as a substantial amendment to the CDP. If approved, a transfer of a percentage allocation of CDQ or PSQ would continue to be effective for the remainder of the CDP cycle. To date, no CDQ group has requested the transfer of a percentage allocation of any CDQ or PSQ category.

Eligible Vessels and Processors

CDQ allocations are made to the CDQ groups and not to individual vessels participating in the CDQ fisheries. Currently, to harvest CDQ, a vessel must have authorization from a CDQ group, the State, and NMFS. Before the operator of a vessel catches groundfish or halibut on behalf of a CDQ group, NMFS requires that each vessel of any length that will be fishing for groundfish CDQ, and each vessel equal to or greater than 60 feet (18.3 meters) LOA that will be halibut CDQ fishing, be listed as an eligible vessel in the group's CDP by the group submitting a proposed fishing plan. In addition, NMFS requires that all shoreside processing plants or floating processors that will take delivery of groundfish CDQ be listed in a group's CDP on a proposed fishing plan. A CDQ group must select from among six different forms depending on

the type of vessel or processor, adding complexity to the process. Currently, NMFS does not require that a copy of the approved fishing plan be maintained onboard a vessel fishing for CDQ or in a processing plant taking deliveries of CDQ groundfish.

These requirements, which are codified at § 679.30(a)(5), were implemented to provide very specific information about a CDQ group's fishing plans in its CDP and to provide NMFS information to better manage the CDQ fisheries. In the first few years of the multispecies groundfish CDQ fisheries (1998 through 2000), NMFS used some of the more detailed information on the fishing plan forms to determine if the vessel or processor participating in the CDQ fisheries was complying with new observer coverage and catch reporting requirements.

CDQ groups can make changes to the lists of eligible vessels and eligible processors only by substantial or technical amendments to their CDPs. These amendments must first be submitted to the State which reviews and submits them to NMFS for action. Between 2001 and 2003, 6 substantial amendments and 54 technical amendments to CDPs were submitted requesting changes to the lists of eligible vessels and eligible processors.

The proposed rule would move regulations about eligible vessels and processors from § 679.30 to § 679.32 and revise them. NMFS proposes to remove entirely the requirement for prior approval of processors taking delivery of groundfish CDQ. This requirement was intended to provide the State and NMFS information about the processors that would be participating in the CDQ fisheries to ensure that they complied with observer coverage, and catch accounting and reporting requirements. However, NMFS has found that information provided through the CDPs about the eligible shoreside processors is no longer necessary because this information exists in reports collected from observers and directly from the shoreside processors (e.g., the shoreside processor's logbook and CDQ delivery reports). NMFS would continue to provide the State with information about processors that take CDQ deliveries through summary reports created from observer data, shoreside logbooks, and CDQ delivery reports.

NMFS proposes to maintain the requirement that all vessels groundfish CDQ fishing and vessels equal to or greater than 60 feet (18.3 meters) LOA that are halibut CDQ fishing be authorized by the CDQ group and approved by NMFS prior to participating in CDQ fisheries. However, under the proposed rule, NMFS would no longer require that vessels participating in the CDQ fisheries be listed in the CDPs, and changes to a CDQ group's list of eligible vessels would no longer be made by amendment to the CDPs. Instead, requests for approval of eligible vessels would be submitted by the CDQ groups directly to NMFS and used to generate a list of eligible vessels for each CDQ group. A request for approval would be required for each vessel a CDQ group intends to use. Each group could remove a vessel at any time by notifying NMFS by letter of its intent to do so. Information requirements for the approval request would be codified at § 679.5(n)(4) and are based on current information requirements for the fishing plans in the CDP. Requirements would include a description of the vessel; contact information for the vessel; the type of fishing gear the vessel would use; and the method to be used to determine CDQ or PSQ catch.

In addition, the CDQ groups would be required to provide a copy of NMFS's approval to the vessel operators, and the vessel operators would be required to maintain a copy of NMFS's approval onboard the vessel at all times while harvesting, transporting, or offloading CDQ. Also, a CDQ group would be required to notify the vessel operator if the vessel is removed from eligibility to fish for CDQ. This documentation would provide U.S. Coast Guard and NMFS enforcement officers with verification that a vessel that claimed to be CDQ fishing was in fact authorized to do so by the CDQ group (the quota holder) and NMFS. CDQ fisheries often occur at times when other fisheries are closed, so a vessel operator that is CDQ fishing must be able to document his or her status when other vessels are prohibited from fishing.

The following information would no longer be required: information about processors that would be taking deliveries of CDQ; information about the expected target fisheries, average and maximum number of hauls or sets expected, average and maximum weight of hauls, average number of hooks expected per set, time expected to set and retrieve the gear; the number of observers that will be aboard the vessels; name and location of the processor that the catcher vessel will be delivering to; vessel type (e.g., catcher vessel, catcher/processor, or mothership); and whether the vessel operator also will be halibut CDQ or halibut IFQ fishing while groundfish CDQ fishing. Removing these requirements would reduce the information required to be collected and submitted for each vessel and processor, and, thus, would reduce the associated costs to the CDQ groups, vessel owners, and processors.

The CDQ groups would continue to be required to provide information in their CDPs about their general plans for harvesting the CDQ allocations. They would be required to provide a narrative description of how the CDQ group intends to harvest and process its CDQ allocations, including a description of the target fisheries, the types of vessels and processors that would be used, the locations and methods of processing, and the CDQ group's proposed partners. The CDQ groups also would continue to be required to provide in their CDPs a description of all business relationships, which would include contracts with vessel owners and processors for harvesting and processing CDQ. New contracts or changes in existing contracts also would continue to be required to be submitted as amendments to the CDP, but these rarely would be affected by updates to the lists of eligible vessels.

Alternative Fishing Plans

Accurate catch accounting is important to NMFS and the CDQ groups because each CDQ group is allocated a specific quota amount for most TAC and PSC categories. The need for accurate accounting led NMFS and the Council to develop very specific regulations for the CDQ Program concerning observer coverage and the standard sources of data that can be used to determine how much of a given quota had been harvested. However, NMFS and the Council intended to ensure that alternative methods of catch accounting could be proposed by CDQ groups and considered by NMFS. In order to allow this flexibility, a CDQ group is allowed to propose an alternative fishing plan for a given vessel as part of its CDP. A group may suggest the use of non-standard sources of data for catch accounting purposes if these data provide equivalent or better estimates of CDQ harvest. A group may also propose the use of one, level 2 observer on a catcher/processor using nontrawl gear, rather than the standard two observers, provided such an alternative fishing plan can demonstrate that a single observer will be able to sample all CDQ sets within the constraints on an observer's duty schedule.

Alternative fishing plans are proposed in the initial CDPs or as subsequent substantial amendments to the CDPs. Since the beginning of 2003 (the start of the last CDP cycle), 13 alternative fishing plans have been approved by NMFS. Each alternative fishing plan

must be reviewed by the State as well as reviewed and approved by NMFS.

This proposed rule requires CDQ groups to submit alternative fishing plans directly to NMFS, rather than submitting them for review and approval by both the State and NMFS through their CDPs or amendments to their CDPs. An alternative fishing plan would be an attachment to a CDQ group's request for approval of an eligible vessel. The proposed rule would move regulations about alternative fishing plans from § 679.30 to § 679.32 and would add the requirement that the approved alternative fishing plan be provided to the operator of the vessel who must maintain a copy of the approved alternative plan onboard the vessel when operating under the alternative fishing plan. None of the information requirements associated with alternative fishing plans would be changed by this proposed rule, only the process for submission, review, and approval.

Similar to what is described for CDQ and PSQ transfers above, this measure would reduce the time required for the approval or disapproval of an alternative fishing plan, and, thus, the associated costs to the CDQ groups, the State, and NMFS. The content of proposed alternative fishing plans relates to catch accounting and observer coverage aspects of the CDQ Program, items which are directly under NMFS's purview. NMFS would assume the entire responsibility for the review and approval of each alternative fishing plan. Alternative fishing plans would be valid through the end of the year in which they were approved.

Other Revisions

There are several minor changes to §§ 679.2, 679.5, 679.7, 679.22, 679.32 and 679.50 that flow from the proposed changes to §§ 679.30 and 679.32. These include changes in wording, cross-referencing, and revisions and additions to definitions.

The definitions for ''CDQ group number'' and ''groundfish CDQ fishing'' are revised to remove references to approval of eligible vessels and processors as part of a CDP. The definition for ''CDQ representative'' is revised to allow more than one person to be authorized by a CDQ group to sign and submit documents to NMFS. In most cases, the executive director signs documents related to the CDPs, and the quota managers or other staff sign documents related to quota transfers, eligible vessels, and alternative fishing plans. A new definition for ''eligible vessel'' is added to support the use of that term elsewhere in 50 CFR part 679.

Additionally, NMFS proposes to revise several paragraphs within §§ 679.7, 679.30, and 679.32 to remove requirements that a CDQ group must ensure its respective fishing and processing partners' compliance with regulations in 50 CFR part 679. Although there are instances where a CDQ group may be held jointly responsible for violations of its respective fishing and processing partners, NMFS proposes to remove these regulations because the requirement was more specifically addressed in the substantive sections, and because the regulations appeared to hold the CDQ group responsible for some activities where the CDQ group was not able to direct, control, or otherwise affect the operations or action of its partners.

NMFS proposes to make the following revisions to clarify the responsibilities of the CDQ groups:

1. In § 679.7(d), remove paragraph (24) which states that it is unlawful for a CDQ group to fail to ensure that all vessels and processors listed as eligible on the CDQ group's approved CDP comply with all regulations in this part while fishing for CDQ.

2. In § 679.30(a), remove the sentence in the middle of the paragraph that reads ''In addition, the CDQ group is responsible to ensure that vessels and processors listed as eligible on the CDQ group's approved CDP comply with all requirements of this part while harvesting or processing CDQ species.''

3. In § 679.30(f), remove paragraph (6) which states that the CDQ groups are responsible for ensuring compliance by the CDQ harvesting vessels and CDQ processors of the activities listed.

4. In § 679.32(a), revise the paragraph to include a more general statement of applicability for the entire section. The individual paragraphs within the section would include the specific applicability of each topic to CDQ groups, vessel operators, and processors.

Classification

NMFS has determined that the proposed rule is consistent with the FMP and initially determined that the rule is consistent with the Magnuson-Stevens Act and other applicable laws.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the SUMMARY section of the preamble. A copy of the IRFA is available from NMFS (see **ADDRESSES**).

The following summary of the IRFA addresses the remaining requirements of section 603(b)(1) - (5) of the RFA:

The entities that would be directly regulated by this proposed action are the 6 CDQ groups that represent the 65 western Alaska communities that currently participate in the CDQ Program and the owners and operators of vessels harvesting CDQ on behalf of the CDQ groups. The CDQ groups include: Aleutian Pribilof Island Community Development Association, Bristol Bay Economic Development Corporation, Central Bering Sea Fishermen's Association, Coastal Villages Region Fund, Norton Sound Economic Development Corporation, and Yukon Delta Fisheries Development Association. Each of these groups is organized as a not-for-profit entity and none is dominant in its field. Consequently, each is a small entity under the RFA. Many of the 83 vessels and at least 3 of the 10 shoreside processors participating in the groundfish CDQ fisheries are small entities. The proposed action would revise CDQ regulations regarding the processes for transferring quota, identifying eligible vessels, and approving alternative fishing plans. These processes would be streamlined by removing some information requirements and the requirement that applications for these actions be reviewed by the State before submission to NMFS for action. These revisions would reduce the reporting burden on the CDQ groups, processors, and vessel owners. The proposed action also would relax restrictions on the transfer of PSQ among the CDQ groups. These revisions would allow the CDQ groups to transfer PSQ at any time during the year, instead of solely during the month of January. The groups also would be allowed to transfer PSQ alone, rather than being required to transfer PSQ together with other groundfish CDQ. Although the CDQ groups' fishing has not yet been significantly restricted by either of these requirements, the relaxation of these requirements may allow the CDQ groups the added flexibility that would be needed to increase the harvest of target species allocations in the future. Finally, the proposed action would add three new requirements. First, a CDQ group would be required to provide a copy of an eligible vessel request approved by NMFS, and alternative fishing plan if applicable, to the vessel operator. Second, the vessel operator would be required to maintain a copy of

the eligible vessel request, and alternative fishing plan if applicable, onboard the vessel at all times while harvesting, transporting, or offloading CDQ. Third, a CDQ group would be required to notify the vessel operator if the vessel is removed from eligibility to fish for CDQ. Overall, the proposed action would have no known adverse impacts on the profitability or competitiveness of small, directly regulated entities.

All of the proposed revisions in the proposed action are related to recordkeeping and reporting requirements. These requirements apply primarily to the CDQ groups, because these groups submit the CDQ and PSQ transfer request forms, the request for approval of an eligible vessel forms, and the alternative fishing plans. The professional skills that are necessary to prepare and submit the forms required from a CDQ group and to provide a copy of the signed form and alternative fishing plan, if applicable, to vessel operators include: (1) the ability to read, write, and speak in English, (2) the ability to use computer and communications equipment, (3) knowledge of the CDQ group's fishing activities, including contractual arrangements with vessel operators and processing plants, and quota balances, and (4) the authority to sign and submit documents to NMFS on behalf of the CDQ group. These responsibilities generally are fulfilled by a member of the CDQ group's professional staff. The professional skills necessary for a vessel operator to maintain a copy of the signed authorization form and alternative fishing plan, if applicable, onboard the vessel include the ability to read or understand verbal instructions in English, and the organizational skills necessary to receive a document from the CDQ group and maintain it in good, readable condition in a place on the vessel where it can be retrieved if requested by U.S. Coast Guard or NMFS enforcement officers.

The analysis did not reveal any Federal rules that duplicate, overlap, or conflict with the proposed action.

An IRFA must include a description of any significant alternatives to the proposed rule which accomplish the stated objectives of the applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

The objective of the recordkeeping and reporting requirements for the CDQ Program is to appropriately balance the requirements for conservation and management of the groundfish CDQ fisheries under the Magnuson-Stevens Act, with the requirements to minimize economic burdens under both the Magnuson-Stevens Act National Standard 7 (to minimize costs and avoid unnecessary duplication) and the Paperwork Reduction Act (to minimize the economic burden of recordkeeping and reporting requirements). The Council, NMFS, and the State evaluated these current recordkeeping and reporting requirements and identified several areas where the requirements could be reduced and three areas where additional requirements are needed. These revisions were incorporated as elements in a single preferred alternative which is summarized in section 1.6.1 of this analysis.

NMFS considered but did not identify any alternative to the preferred alternative (the proposed rule) that would meet both elements of the RFA's definition of a significant alternative, that is, an alternative that both accomplishes the stated objectives of applicable statutes and minimizes any significant economic impact on small entities. For example, NMFS could have proposed an alternative to remove all recordkeeping and reporting requirements related to quota transfers, eligible vessels, and alternative fishing plans. Removing reporting requirements theoretically could reduce reporting costs, but the lack of standardized reporting requirements to affect quota transfers, to identify vessels fishing in the CDQ fisheries, and to provide information to NMFS about proposed alternative fishing plans would not be consistent with NMFS's interpretation of its fishery conservation and management responsibilities under the Magnuson-Stevens Act.

As another example, under an alternative removing reporting requirements, NMFS would have regulations that authorize quota transfers, but no regulations defining what information must be submitted to NMFS to make the necessary changes to the CDQ groups' quota accounts. Quota transfer requests could come in by telephone or in writing and might not include all the information that NMFS would need to make the revisions to computer programs establishing quota account balances. NMFS could not make the quota transfers that the groups request without this information. Without information about the vessels that the CDQ groups authorize to fish on their behalf (the eligible vessels), NMFS would not have the information it needs to ensure that catch made on behalf of a CDQ group was properly accounted for against the group's allocation. This situation could undermine NMFS's ability to manage CDQ catch within CDQ allocations, which would be in conflict with NMFS's conservation and management responsibilities under the Magnuson-Stevens Act. Without regulations defining the information NMFS needs in an alternative fishing plan, NMFS would have regulations authorizing a CDQ group to submit an alternative fishing plan for NMFS's review and approval, but no guidelines about what information must be submitted in order for NMFS to approve an alternative fishing plan. This situation would create confusion and reduce the CDQ group's ability to effectively apply for a cost-saving benefit available under NMFS's regulations.

NMFS could have also proposed only the elements of the preferred alternative (the proposed rule) that reduce reporting requirements without proposing the three new requirements that CDQ groups provide a copy of the approved eligible vessel form, and alternative fishing plan if applicable, to each approved eligible vessel; that the vessel operator maintain a copy of the approved form, and alternative fishing plan if applicable, onboard the vessel; and that a CDQ group notify the vessel operator if the vessel is removed from eligibility to fish for CDQ. While this alternative might reduce the recordkeeping and reporting costs for the CDQ groups more than the preferred alternative, it would not include important elements needed for enforcement of the CDQ Program regulations, which would be inconsistent with NMFS's conservation and management responsibilities under the Magnuson-Stevens Act.

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval under OMB Control Number 0648–0269. The public reporting burden is estimated to average: 520 hours for a Community Development Plan; 40 hours for a Substantial Amendment; 8 hours for a Technical Amendment; 30 minutes for a CDQ or PSQ Transfer Request; 1 hour for a Request for Approval of an Eligible Vessel; and 4 hours for an Alternative Fishing Plan. The estimated time to respond to each requirement includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding the following issues: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS Alaska Region (see **ADDRESSES**), and by e-mail to *DRostker@omb.eop.gov*, or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: November 19, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set forth in the preamble, NMFS proposes to amend 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; 16 U.S.C. 1540(f); Pub. L. 105–277, Title II of Division C; Pub. L. 106–31, Sec. 3027; and Pub. L.106–554, Sec. 209.

2. In § 679.2, revise the definitions for ''CDQ group number,'' ''CDQ representative,'' and ''Groundfish CDQ fishing'' and add the definition for ''Eligible vessel,'' in alphabetical order, to read as follows:

§ 679.2 Definitions.

* * * * *

CDQ group number means a number assigned to a CDQ group by NMFS that must be recorded and is required in all logbooks and all reports submitted by the CDQ group, vessels harvesting CDQ, or processors taking deliveries of CDQ.

* * * * *

CDQ representative means any individual who is authorized by a CDQ group to sign documents submitted to NMFS on behalf of the CDQ group.

* * * * *

Eligible vessel means, for the purposes of the CDQ program, a fishing vessel designated by a CDQ group to harvest part or all of its CDQ allocation and approved by NMFS under § 679.32(c).

* * * * *

Groundfish CDQ fishing means fishing by an eligible vessel that results in the catch of any groundfish CDQ species, but that does not meet the definition of halibut CDQ fishing.

* * * * *

3. In § 679.5, add paragraphs (n)(3) and (n)(4) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(n) * * *

(3) *CDQ or PSQ transfer request*—(i) *Who must submit a CDQ or PSQ transfer request?* A CDQ group requesting transfer of CDQ or PSQ to or from another CDQ group must submit a complete CDQ or PSQ transfer request to NMFS.

(ii) *Information required*—(A) *Transferring CDQ group information.* For the group transferring CDQ, enter: the CDQ group name or initials; the CDQ group number as defined at § 679.2; and the telephone and fax numbers, and the printed name and signature of the CDQ group representative.

(B) *Receiving CDQ group information.* For the group receiving CDQ, enter: the CDQ group name or initials; the CDQ group number as defined at § 679.2; and the telephone and fax numbers, and the printed name and signature of the CDQ group representative.

(C) *CDQ amount transferred*—(*1*) *Species or Species Category.* For each species for which a transfer is being requested, enter the species name or species category.

(*2*) *Area.* Enter the management area associated with a species category, if applicable.

(*3*) *Amount transferred.* Specify the amount being transferred. For groundfish, specify transfer amounts to the nearest 0.001 mt. For halibut CDQ, specify the amount in pounds (net weight).

(D) *PSQ amount transferred*—(*1*) *Species or Species Category.* For each species for which a transfer is being requested, enter the species name or species category.

(*2*) *Crab zone.* For crab only, designate the appropriate zone for each PSQ being transferred, if applicable.

(*3*) *Amount transferred.* Specify the amount being transferred. For crab and salmon, specify transfer amounts in numbers of animals. For halibut, specify the amount to the nearest 0.001 mt.

(4) *Request for approval of an eligible vessel*—(i) *Who must submit a request for approval of an eligible vessel?* A CDQ group must submit a complete request for approval of an eligible vessel to NMFS for each vessel that will be groundfish CDQ fishing and for each vessel equal to or greater than 60 ft (18.3 m) LOA that will be halibut CDQ fishing. See § 679.32(c) for more information about this requirement.

(ii) *Information required*—(A) *Vessel information.* Enter the vessel name, Federal fisheries permit number, if applicable, ADF&G vessel registration number, and LOA. Indicate all the gear types that will be used to catch CDQ.

(B) *Vessel contact information.* Enter the name, mailing address, telephone number, and e-mail address (if available) of a contact person representing the vessel.

(C) *Method to determine CDQ and PSQ catch.* Select the method that will be used to determine CDQ and PSQ catch, either NMFS standard sources of data or an alternative method. If the selection is ''NMFS standard sources of data,'' select either ''all trawl vessels greater than or equal to 60 ft (18.3 m) LOA using non-trawl gear'' or ''catcher vessels greater than or equal to 60 ft (18.3 m) LOA using non-trawl gear.'' If the selection is ''catcher vessels greater than or equal to 60 ft (18.3 m) LOA using non-trawl gear,'' select either Option 1 or Option 2, described at § 679.32(e)(2)(iv). If an alternative method (fishing plan) is proposed, it must be attached to the request for approval of an eligible vessel.

(D) *Notice of submission and review.* Enter the name, telephone number, and fax number of the CDQ group's CDQ representative; the date submitted to NMFS; and signature of the CDQ group's CDQ representative.

* * * * *

§ 679.7 [Amended]

4. In § 679.7, remove paragraph (d)(24) and redesignate paragraph (d)(25) as (d)(24).

5. In § 679.30, remove paragraphs (e)(3), (e)(4), (f)(6), and (g)(4)(iv)(H); redesignate paragraph (f)(7) as (f)(6); and revise paragraph (a) introductory text, paragraphs (a)(5), (e), newly redesignated paragraph (f)(6), and paragraphs (g)(4)(ii), (g)(4)(iv)(G), to read as follows:

§ 679.30 General CDQ regulations.

(a) *Application procedure.* The CDQ program is a voluntary program. Allocations of CDQ and PSQ are made to CDQ groups and not to vessels or processors fishing under contract with any CDQ group. Any vessel or processor

harvesting or processing CDQ or PSQ on behalf of a CDQ group must comply with all other requirements of this part. Allocations of CDQ and PSQ are harvest privileges that expire upon the expiration of the CDP. When a CDP expires, further CDQ allocations are not implied or guaranteed, and a qualified applicant must re-apply for further allocations on a competitive basis with other qualified applicants. The CDQ allocations provide the means for CDQ groups to complete their CDQ projects. A qualified applicant may apply for CDQ and PSQ allocations by submitting a proposed CDP to the State during the CDQ application period that is announced by the State. A proposed CDP must include the following information:

* * * * *

(5) *Harvesting plans.* A narrative description of how the CDQ group intends to harvest and process its CDQ allocations, including a description of the target fisheries, the types of vessels and processors that will be used, the locations and methods of processing, and the CDQ group's proposed partners.

* * * * *

(e) *Transfers*—(1) *Transfer of annual CDQ and PSQ.* CDQ groups may request that NMFS transfer CDQ or PSQ from one group to another group by each group submitting a completed transfer request as described in § 679.5(n)(3). NMFS will approve the transfer request if the CDQ group transferring quota to another CDQ group has sufficient quota available for transfer. If NMFS approves the request, NMFS will make the requested transfer(s) by decreasing the account balance of the CDQ group from which the CDQ or PSQ species is transferred and by increasing the account balance of the CDQ group receiving the transferred CDQ or PSQ species. NMFS will not approve transfers to cover overages of CDQ or PSQ. The CDQ or PSQ will be transferred as of the date NMFS approves the transfer request and is effective only for the remainder of the calendar year in which the transfer occurs.

(2) *Transfer of CDQ and PSQ allocation.* CDQ groups may request that some or all of one group's CDQ or PSQ allocation, as defined at § 679.2, be transferred by NMFS to another group by each group filing an amendment to its respective CDP through the CDP substantial amendment process set forth at paragraph (g)(4) of this section. The CDQ or PSQ allocation will be transferred as of January 1 of the calendar year following the calendar year NMFS approves the amendments of both groups and is effective for the duration of the CDPs. Transfers of CDQ and PSQ allocations must be in whole integer percentages.

(f) * * *

(6) Comply with all requirements of this part.

(g) * * *

(4) * * *

(ii) NMFS will notify the State in writing of the approval or disapproval of the amendment within 30 days of receipt of both the amendment and the State's recommendation. Once a substantial amendment is approved by NMFS, the amendment will be effective for the duration of the CDP.

* * * * *

(iv) * * *

(G) Any transfer of a CDQ allocation or a PSQ allocation.

* * * * *

6. In § 679.32, redesignate paragraph (d) as (e), and paragraph (c) as (d); revise paragraphs (a) and newly redesignated paragraph (e)(2) introductory text; and add new paragraphs (c) and (e)(3) to read as follows:

§ 679.32 Groundfish and halibut CDQ catch monitoring.

(a) *Applicability.* This section contains requirements for CDQ groups and operators of vessels, or managers of processors that harvest and/or process groundfish CDQ, including vessels equal to or greater than 60 ft (18.3 m) LOA that are halibut CDQ fishing.

* * * * *

(c) *Vessels eligible for groundfish and halibut CDQ fisheries.* The following information must be provided by the CDQ group for all vessels that are groundfish CDQ fishing and all vessels equal to or greater than 60 ft (18.3 m) LOA that are halibut CDQ fishing.

(1) *Request for approval of an eligible vessel.* Prior to a vessel participating in the CDQ fishery, a CDQ group must submit to NMFS a completed request for approval of an eligible vessel as described at § 679.5(n)(4). NMFS will approve all vessels for which a completed request is submitted. Once approved, a vessel will remain eligible until December 31 of the last year in the current CDQ allocation cycle under § 679.30(d), or until the CDQ group removes the vessel from eligibility under paragraph (c)(2) of this section. A list of eligible vessels for each CDQ group will be publicly available from the Alaska Regional Office or on the NMFS website at *http://www.fakr.noaa.gov*. The CDQ group must provide a copy of the NMFS-approved eligible vessel request to the operator of the approved vessel. The vessel operator must maintain a copy of the eligible vessel request approved by NMFS onboard the vessel at all times while harvesting, transporting, or offloading CDQ.

(2) *Removing a vessel from eligibility.* A CDQ group may remove a vessel from eligibility to harvest CDQ on its behalf by advising NMFS by letter of the removal. Removal of a vessel from eligibility to harvest CDQ will be effective on the date that NMFS approves the request and notifies the CDQ group of NMFS's approval. Upon receipt of notification of NMFS's approval, the CDQ group must notify the operator of the vessel of the vessel's removal from eligibility to harvest CDQ on behalf of the CDQ group.

* * * * *

(e) * * *

(2) *Verification of CDQ and PSQ catch reports.* CDQ groups may specify the sources of data listed below as the sources they will use to determine CDQ and PSQ catch on the CDQ catch report by specifying ''NMFS standard sources of data'' on their request for approval of an eligible vessel. In the case of a catcher vessel using nontrawl gear, the CDQ group must specify on their request for approval of an eligible vessel whether the vessel will be retaining all groundfish CDQ (Option 1) or discarding some groundfish CDQ species at sea (Option 2). CDQ species may be discarded at sea by these vessels only if the requirements of paragraph (d)(2)(ii)(B) of this section are met. NMFS will use the following sources to verify the CDQ catch reports, unless an alternative catch estimation procedure is approved by NMFS under paragraph (e)(3) of this section.

* * * * *

(3) *Alternative methods for verification of CDQ and PSQ catch.* The method to be used to determine CDQ and PSQ catch for each vessel must be listed by a CDQ group on the request for approval of an eligible vessel. A CDQ group may propose the use of an alternative method, such as using only one observer where normally two would be required, sorting and weighing of all catch by species on processor vessels, or using larger sample sizes than could be collected by one observer, by submitting an alternative fishing plan attached to its request for approval of an eligible vessel. NMFS will review the alternative fishing plan and approve it or notify the qualified applicant in writing if the proposed alternative does not meet the requirements listed under paragraphs (e)(3)(i) through (iv) of this section. The CDQ group must provide a copy of the approved alternative fishing plan to the

operator of the approved vessel. A copy of the alternative fishing plan approved by NMFS must be maintained onboard the vessel at all times while it is operating under the alternative fishing plan. Alternative fishing plans are valid for the remainder of the calendar year in which they are approved. Alternatives to the requirement for a certified scale or an observer sampling station will not be approved. NMFS will review the alternative fishing plan to determine if it meets all of the following requirements:

(i) The alternative proposed must provide equivalent or better estimates than use of the NMFS standard data source would provide and the estimates must be independently verifiable;

(ii) Each haul or set on an observed vessel must be able to be sampled by an observer for species composition;

(iii) Any proposal to sort catch before it is weighed must ensure that the sorting and weighing process will be monitored by an observer; and

(iv) The time required for the level 2 observer to complete sampling, data recording, and data communication duties must not exceed 12 hours in each 24-hour period and the level 2 observer must not be required to sample more than 9 hours in each 24-hour period.

* * * * *

§§ 679.5, 679.7, 679.22, 679.32, and 679.50 [Amended]

7. In the table below, for each of the paragraphs shown under the ''Paragraph'' column, remove the phrase indicated under the ''Remove'' column and replace it with the phrase indicated under the ''Add'' column for the number of times indicated in the ''Frequency'' column.

Paragraph(s)	Remove	Add	Frequency
§ 679.5(n)(2)(iv) introductory text	(Option 1 in the CDP).	(Option 1 under § 679.32(d)(2)(ii)).	1
§ 679.5(n)(2)(v) introductory text	(Option 2 in the CDP).	(Option 2 under § 679.32(d)(2)(ii)).	1
§ 679.7(d)(4)	eligible vessel on an approved CDP for	eligible vessel for	1
§ 679.7(d)(6) through (10)	eligible vessel listed on an approved CDP, use	eligible vessel, use	1
§ 679.7(d)(11)	to an eligible processor listed on an approved CDP unless	to a processor unless	1
§ 679.7(d)(21)	approved in the CDP to	approved by NMFS to	1
§ 679.7(f)(3)(ii)	aboard, except as provided under an approved CDP.	aboard, unless fishing on behalf of a CDQ group and authorized under § 679.32(c).	1
§ 679.22(a)(5)(ii)	it is operating under a CDP approved by NMFS.	it is directed fishing for pollock CDQ.	1
§ 679.32(d)(1)(i)	paragraph (c)(3) or (c) (4) of this section,	paragraph (d)(3) or (d)(4) of this section,	1
§ 679.32(d)(1)(ii)	paragraph (c)(4) of this section.	paragraph (d)(4) of this section.	1
§ 679.32(d)(2)(i)(A)	paragraph (c)(3) or (c) (4) of this section	paragraph (d)(3) or (d)(4) of this section	1
§ 679.32(d)(2)(ii)(A)	paragraph (c)(3) or (c) (4) of this section	paragraph (d)(3) or (d)(4) of this section	1
§ 679.32(d)(4)(iv)	for the vessel in the CDP. Each	for the vessel. Each	1
§ 679.32(e)(2)(i)	the vessel, delivered to a shoreside processor listed as eligible in the CDP, and sorted and weighed in compliance with paragraph (c)(3) of this section.	the vessel until delivered to a processor, and sorted and weighed in compliance with paragraph (d)(3) of this section.	1
§ 679.32(e)(2)(iii)	processor listed as eligible in the CDP, and sorted and weighed in compliance with paragraph (c)(3) of this section.	processor, and sorted and weighed in compliance with paragraph (d)(3) of this section.	1
§ 679.32(e)(2)(iv)(A)	paragraph (c)(3) of this section	paragraph (d)(3) of this section	1
§ 679.32(f)(3)	paragraphs (b) through (d) of this section, including the retention of all groundfish CDQ, if option 1 under § 679.32(c)(2)(ii) is selected in the CDP. CDQ	paragraphs (b) through (e) of this section, including the retention of all groundfish CDQ, if Option 1 under § 679.32(d)(2)(ii) is selected. CDQ	1
§ 679.50(c)(4)(ii)	unless NMFS approves a CDP authorizing	unless NMFS approves an alternative fishing plan under § 679.32(e)(3) authorizing	1
§ 679.50(c)(4)(ii)	NMFS may approve a CDP authorizing	NMFS may approve an alternative fishing plan authorizing	1

Paragraph(s)	Remove	Add	Frequency
§ 679.50(c)(4)(ii)	NMFS will not approve a CDP that	NMFS will not approve an alternative fishing plan that	1
§ 679.50(c)(4)(v)(A)	described at § 679.32(c)(2)(ii)(A)) for	described at § 679.32(d)(2)(ii)(A)) for	1
§ 679.50(c)(4)(v)(B)	described at § 679.32(c)(2)(ii)(B)) for	described at § 679.32(d)(2)(ii)(B)) for	1
§ 679.50(d)(5)(ii)(B)	described at § 679.32(c)(2)(ii)(A)) for	described at § 679.32(d)(2)(ii)(A)) for	1
§ 679.50(d)(5)(ii)(C)	described at § 679.32(c)(2)(ii)(B)) for	described at § 679.32(d)(2)(ii)(B)) for	1

[FR Doc. 04–26177 Filed 11–24–04; 8:45 am]
BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 69, No. 227

Friday, November 26, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee will meet in Yreka, California, December 13, 2004. The meeting will include routine business, presentations of larger scale project concept papers, and the review and recommendation for implementation of submitted project proposals.

DATES: The meeting will be held December 13, 2004, from 4:30 p.m. until 7 p.m.

ADDRESSES: The meeting will be held at the Yreka High School Library, Preece Way, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Don Hall, RAC Coordinator, Klamath National Forest, (530) 841–4468 or electronically at *donaldhall@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: November 19, 2004.

Margaret J. Boland,

Designated Federal Official.

[FR Doc. 04–26180 Filed 11–24–04; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition and Deletion

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to and deletion from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a service previously furnished by such agencies.

DATES: Comments must be received on or before December 26, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Addition

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

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. If approved, 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 products to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products to the Government.

3. 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 products 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.

End of Certification

The following products are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Binder, Loose-leaf, 7510–01–272–3231, 7510–01–283–5273.

NPA: South Texas Lighthouse for the Blind, Corpus Christi, Texas.

Contract Activity: Office Supplies & Paper Product Acquisition Center, New York, New York.

Deletion

Regulatory Flexibility Act Certification

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. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the service to the Government.

3. 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 service proposed for deletion from the Procurement List.

End of Certification

The following service is proposed for deletion from the Procurement List:

Service

Service Type/Location: Janitorial/Custodial, Department of Agriculture, Animal Plant Health Inspection Services (APHIS), Orlando, Florida.

NPA: Lakeview Center, Inc., Pensacola, Florida.

Contract Activity: Animal & Plant Health Inspection Service, Minneapolis,

Minnesota.

G. John Heyer,

General Counsel.

[FR Doc. 04–26157 Filed 11–24–04; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Deletions from Procurement List.

SUMMARY: This action deletes from the Procurement List services previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 26, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Deletions

On March 26, 2004, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (69 FR 15786–87) of proposed deletions to the Procurement List. After consideration of the relevant matter presented, the Committee has determined that the services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

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 may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the services to the Government.

3. 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 services deleted from the Procurement List.

End of Certification

Accordingly, the following services are deleted from the Procurement List:

Services

Service Type/Location: Janitorial/Custodial, Carl Albert Federal Building and U.S. Courthouse, McAlester, Oklahoma.
NPA: None currently authorized.
Contract Activity: General Services Administration.
Service Type/Location: Janitorial/Custodial, J. Marvin Jones Federal Building & U.S. Courthouse, Amarillo, Texas.
NPA: None currently authorized.
Contract Activity: GSA, PBS.
Service Type/Location: Janitorial/Custodial, U.S. Federal Building, Courthouse and Post Office, Batesville, Arkansas.
NPA: None currently authorized.
Contract Activity: General Services Administration.
Service Type/Location: Janitorial/Custodial, U.S. Federal Building, Courthouse and Post Office, Pine Bluff, Arkansas.
NPA: None currently authorized.
Contract Activity: General Services Administration.
Service Type/Location: Janitorial/Custodial, U.S. Federal Building, Gallup, New Mexico.
NPA: None currently authorized.
Contract Activity: GSA, PBS.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 04–26159 Filed 11–24–04; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–892]

Notice of Correction to the Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Correction to final determination of sales at less than fair value.

EFFECTIVE DATE: November 26, 2004.

FOR FURTHER INFORMATION CONTACT: Tisha Loeper-Viti or Marin Weaver at (202) 482–7425 or (202) 482–2336, respectively; AD/CVD Operations, Office 8, China/NME Unit, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230.

Background: On November 17, 2004, the Department of Commerce (the Department) published in the **Federal Register** the final determination of sales at less than fair value of carbazole violet pigment 23 from the People's Republic of China (PRC). *See Carbozole Violet Pigment 23 from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 69 FR 67304 (November 17, 2004). The Department has discovered a typographical error in the molecular formula of the Scope of Investigation section.

We now correct the final determination of sales at less than fair value of carbazole violet pigment 23 from the PRC as noted above. As a result of this correction, the molecular formula should read $C_{34}H_{22}Cl_2N_4O_2$.

This amended determination is issued and published in accordance with sections 751 and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: November 19, 2004.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E4–3342 Filed 11–24–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–824]

Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review and Intent To Revoke, in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of antidumping duty changed circumstances review and intent to revoke order, in part.

SUMMARY: In accordance with 19 CFR 351.216(b), SteelSummit International (SteelSummit), a U.S. importer of the subject merchandise and an interested party in this proceeding, filed a request for a changed circumstances review of the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. In response to this request, the Department of Commerce is initiating a changed circumstances review and issuing a notice of preliminary intent to revoke in part the order on certain corrosion-resistant carbon steel flat products from Japan with respect to nickel-plated steel foil. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 26, 2004.

FOR FURTHER INFORMATION CONTACT: George McMahon, Christopher Hargett, or James Terpstra, AD/DCVD Operations Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street, and Constitution Avenue, NW., Washington, DC 20230, telephone (202) 4382–1167, (202) 482–4161, or (202) 482–3965, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 1993, the Department of Commerce (the Department) published an antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. *See Antidumping Duty Orders: Certain Corrosion-Resistant Carbon Steel Flat Products From Japan*, 58 FR 44163 (August 19, 1993). On October 5, 2004, SteelSummit, an importer of certain corrosion-resistant carbon steel flat products from Japan and an interested party in this proceeding, requested that the Department revoke the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan with respect to nickel-plated steel foil through the initiation of a changed circumstances review.

According to SteelSummit, revocation with respect to nickel-plated steel foil is warranted because there is no longer any domestic interest in the continuation of the order with respect to the specified nickel-plated steel foil. SteelSummit asserts that the successors to the petitioners, U.S. Steel Group and International Steel Group (ISG) both have indicated through counsel that they do not have any interest in the continuation of the order with respect to the specified nickel-plated steel foil. Additionally, SteelSummit asserts that counsel for the domestic producers indicated that they would separately submit letters attesting to the lack of interest by the domestic industry.

The Department received letters from U.S. Steel Group and ISG on November 1, 2004, and November 16, 2004, respectively, attesting to the lack of interest by the domestic industry regarding continuation of the order with respect to the specified nickel-plated steel foil.

Scope of the Order

The products subject to this order include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetalic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090.

Included in the order are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been bevelled or rounded at the edges.

Excluded from the scope of the order are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetalic substances in addition to the metallic coating. Also excluded from the scope of the order are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio. *See Antidumping Duty Orders: Certain Corrosion-Resistant Carbon Steel Flat Products From Japan*, 58 FR 44163 (August 19, 1993).

Also excluded from the scope of this order are imports of certain corrosion-resistant carbon steel flat products meeting the following specifications: widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of three evenly applied layers, the first layer consisting of 99%, zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, and finally a layer consisting of silicate. *See Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order*, 62 FR 55848 (December 22, 1997).

Also excluded from the scope of this order are imports of subject merchandise meeting all of the following criteria: (1) Widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of chromate, and finally a layer consisting of silicate. *See Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order*, 64 FR 14861 (March 29, 1999).

Also excluded from the scope of this order are: (1) Carbon steel flat products measuring 1.84 mm in thickness and 43.6 mm or 16.1 mm in width consisting of carbon steel coil (SAE 1008) clad with an aluminum alloy that is balance aluminum, 20% tin, 1% copper, 0.3% silicon, 0.15% nickel, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys; and (2) carbon steel flat products measuring 0.97 mm in thickness and 20 mm in width consisting of carbon steel coil (SAE 1008) with a two-layer lining, the first layer consisting of a copper-lead alloy powder that is balance copper, 9% to 11% tin, 9% to 11% lead, less than 1% zinc, less than 1% other materials and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consisting of 45% to 55% lead, 38% to 50% PTFE,

3% to 5% molybdenum disulfide and less than 2% other materials. *See Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order,* 64 FR 57032 (October 22, 1999).

Also excluded from the scope of the order are imports of doctor blades meeting the following specifications: carbon steel coil or strip, plated with nickel phosphorous, having a thickness of 0.1524 millimeters (0.006 inches), a width between 31.75 millimeters (1.25 inches) and 50.80 millimeters (2.00 inches), a core hardness between 580 to 630 HV, a surface hardness between 900–990 HV; the carbon steel coil or strip consists of the following elements identified in percentage by weight: 0.90% to 1.05% carbon; 0.15% to 0.35% silicon; 0.30% to 0.50% manganese; less than or equal to 0.03% of phosphorous; less than or equal to 0.006% of sulfur; other elements representing 0.24%; and the remainder of iron. *See Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order,* 65 FR 53983 (September 6, 2000).

Also excluded from the scope of the order are imports of carbon steel flat products meeting the following specifications: carbon steel flat products measuring 1.64 millimeters in thickness and 19.5 millimeters in width consisting of carbon steel coil (SAE 1008) with a lining clad with an aluminum alloy that is balance aluminum; 10 to 15% tin; 1 to 3% lead; 0.7 to 1.3% copper; 1.8 to 3.5% silicon; 0.1 to 0.7% chromium; less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys. *See Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order,* 66 FR 8778 (February 2, 2001).

Also excluded from the scope of the order are carbon steel flat products meeting the following specifications: (1) Carbon steel flat products measuring 0.975 millimeters in thickness and 8.8 millimeters in width consisting of carbon steel coil (SAE 1012) clad with a two-layer lining, the first layer consisting of a copper-lead alloy powder that is balance copper, 9%–11% tin, 9%–11% lead, maximum 1% other materials and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consisting of 13%–17% carbon, 13%–17% aromatic polyester, with a balance (approx. 66%–74%) of polytetrafluorethylene (PTFE); and (2) carbon steel flat products measuring 1.02 millimeters in thickness and 10.7 millimeters in width consisting of carbon steel coil (SAE 1008) with a two-layer lining, the first layer consisting of a copper-lead alloy powder that is balance copper, 9%–11% tin, 9%–11% lead, less than 0.35% iron, and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consisting of 45%–55% lead, 3%–5% molybdenum disulfide, with a balance (approx. 40%–52%) of polytetrafluorethylene (PTFE). *See Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order,* 66 FR 15075 (March 15, 2001).

Merchandise Subject to This Review

SteelSummit defines certain nickel-plated steel foil as meeting the following specifications:

Property	Specification
Base metal	Aluminum Killed, Continuous Cast, Carbon Steel SAE 1008.
Chemical composition	C: 0.08% max. Si: 0.03% max. Mn: 0.40% max. P: 0.020% max. S: 0.020% max.
Nominal thickness	0.054 mm.
Thickness tolerance	Minimum 0.0513 mm; maximum 0.0567 mm.
Width	600 mm or greater.
Nickel plate	Min. 2.45 microns per side.

Initiation of Changed Circumstances Review, Preliminary Results, and Intent To Revoke Antidumping Duty Order, in Part

Pursuant to sections 751(d)(1) and 782(h)(2) of the Tariff Act of 1930, as amended (''the Act''), the Department may revoke an antidumping or countervailing duty order based on a review under section 751(b) of the Act (*i.e.,* a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review.

Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances review under 19 CFR 351.216, and may revoke an order (in whole or in part), if it determines that producers accounting for substantially all of the production of the domestic like produce to which the order (or the part of the order to be revoked) pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or if changed circumstances exist sufficient to warrant revocation. Furthermore, 19 CFR 351.221(c)(3)(ii) permits the Department to combine the notice of initiation of a changed circumstances review and the notice of preliminary results in a single notice, if the Department concludes that expedited action is warranted.

In this case, the Department finds that the information submitted provides sufficient evidence of changed circumstances to warrant a review. Therefore, in accordance with sections 751(d)(1) and 782(h)(2) of the Act, and 19 CFR 351.216 and 351.222(g), based on the information provided by SteelSummit, U.S. Steel Group, and ISG, we are initiating this changed circumstances review. Furthermore, based on the affirmative statements by domestic producers that there is no longer any interest in continuation of the order with respect to nickel-plated steel, we determine that expedited action is warranted and we preliminarily find that the continued relief provided by the order with respect to nickel-plated steel foil from Japan is no longer of interest to the domestic industry. Because we have concluded that expedited action is warranted, we are combining these notices of initiation and preliminary results. Therefore, we preliminarily find that the request from SteelSummit meets all of the criteria under 19 CFR 351.222(g) and thus, we intend to revoke the order on certain corrosion-resistant carbon steel flat products from Japan with respect to imports of nickel-plated steel foil.

If the final revocation, in part, occurs, we intend to instruct U.S. Customs and Border Protection (CBP) to liquidate without regard to antidumping duties all unliquidated entries of nickel-plated steel foil not subject to final results of an administrative review and entered or withdrawn from warehouse, for consumption, on or after the date of

publication of this notice in the **Federal Register**. The Department will further instruct CBP to refund with interest any estimated antidumping duties collected with respect to unliquidated entries of nickel-plated steel foil entered, or withdrawn from warehouse for consumption on or after the publication date of the final results of this changed circumstances review, in accordance with section 778 of the Act and 19 CFR 351.222(g)(4). The current requirement for a cash deposit of estimated antidumping duties on nickel-plated steel foil from Japan will continue unless and until we publish a final decision to revoke.

Public Comment

Interested parties may submit case briefs not later than 21 days after the date of publication of this notice. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs, which must be limited to issues raised in such case briefs, may be filed not later than 26 days after the date of publication of this notice. *See* 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Any interested party may request a hearing within 14 days of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, may be held 22 days after the date of publication of this notice, or the first working day thereafter, as practicable. Consistent with section 351.216(e) of the Department's regulations, we will issue the final results of this changed circumstances review not later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary funding.

We are issuing and publishing this finding and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and section 351.216 of the Department's regulations.

Dated: November 19, 2004.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 04–26194 Filed 11–24–04; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–825]

Sebacic Acid From the People's Republic of China: Preliminary Results of Changed Circumstances Review and Intent To Reinstate the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of changed circumstances review.

SUMMARY: In November 2002, the Department of Commerce (the Department) revoked the antidumping duty order on sebacic acid from the People's Republic of China (PRC) in part with respect to subject merchandise exported by Tianjin Chemicals Import and Export Corporation (Tianjin) and produced by Hengshui Dongfeng Chemical Co., Ltd. (Hengshui). *See Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Determination To Revoke Order in Part*, 67 FR 69719, 69720 (Nov. 19, 2002) (*2000–2001 Final Results*). As the result of an adequate allegation from a domestic interested party in this proceeding, the Department, pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), is now conducting a changed circumstances review to determine whether Tianjin has resumed dumping and whether the antidumping order should be reinstated for subject merchandise exported by Tianjin and produced by Hengshui. *See Sebacic Acid From the People's Republic of China: Notice of Initiation of Changed Circumstances Review*, 69 FR 39906 (July 1, 2004) (CCR Initiation). We preliminarily determine that Tianjin has sold subject merchandise at less than normal value (NV) and that the order should be reinstated on sebacic acid from the PRC related to subject merchandise exported by Tianjin and produced by Hengshui. We will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of subject merchandise exported by Tianjin and manufactured by Hengshui, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

EFFECTIVE DATE: November 26, 2004.

FOR FURTHER INFORMATION CONTACT: Jennifer Moats or Brian Ledgerwood, China/NME Group, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5047 or (202) 482–3836, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 1994, the Department published in the **Federal Register** the antidumping duty order on sebacic acid from the PRC. *See Antidumping Duty Order: Sebacic Acid From the People's Republic of China*, 59 FR 35909 (July 14, 1994). In the 2000–2001 administrative review of the order, we found that one of the respondent companies, Tianjin, and its supplier, Hengshui, met the requirements for revocation from the order under 19 CFR 351.222(b)(2) and (3). *See 2000–2001 Final Results.* As part of its request for revocation, pursuant to 19 CFR 351.222(b)(2)(i)(B), Tianjin agreed to the immediate reinstatement of the antidumping duty order if the Department concludes that, subsequent to the revocation, Tianjin sold the subject merchandise at less than NV. *Id.* Due to allegations of resumed dumping submitted by SST Materials, Inc. d/b/a Genesis Chemicals, Inc. (Genesis), we initiated a changed circumstance review on June 25, 2004, to determine whether Tianjin has resumed dumping and whether we should reinstate the antidumping order for subject merchandise produced by Hengshui and exported by Tianjin. *See CCR Initiation.* On June 25, 2004, we documented our analysis regarding the reasonableness of the data presented by Genesis in its allegations. See the June 25, 2004, Memorandum to the File from Greg Kalbaugh entitled ''Calculations Performed for Assessing the Reasonableness of SST Materials, Inc.'s Allegation of the Resumption of Dumping by Tianjin Chemicals Imports and Export Corporation and its Producer Hengshui Dongfeng Chemcials Co., Ltd. for the Changed Circumstances Review of Sebacic Acid from the PRC.'' On June 30, 2004, we issued a questionnaire to Tianjin; a response was received on August 18, 2004. Based on our review of the response, we preliminarily determine that Tianjin sold the subject merchandise at less than NV during the July 1, 2002, through June 30, 2003, period of review.

Scope of the Review

The products covered by this order are all grades of sebacic acid, a dicarboxylic acid with the formula $(CH2)_8(COOH)_2$, which include but are not limited to CP Grade (500 ppm

maximum ash, 25 maximum APHA color), Purified Grade (1000 ppm maximum ash, 50 maximum APHA color), and Nylon Grade (500 ppm maximum ash, 70 maximum ICV color). The principle difference between the grades is the quantity of ash and color. Sebacic acid contains a minimum of 85 percent dibasic acids of which the predominant species is the C_{10} dibasic acid. Sebacic acid is sold generally as a free-flowing powder/flake.

Sebacic acid has numerous industrial uses, including the production of nylon 6/10 (a polymer used for paintbrush and toothbrush bristles and paper machine felts), plasticizers, esters, automotive coolants, polyamides, polyester castings and films, inks and adhesives, lubricants, and polyurethane castings and coatings.

Sebacic acid is currently classifiable under subheading 2917.13.00.30 of the *Harmonized Tariff Schedule of the United States (HTSUS).* Although the *HTSUS* subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Basis for Reinstatement

Section 351.222(b)(2) of the Department's regulations provides that the Department may revoke an antidumping duty order, in part, if the Secretary concludes, *inter alia*, that one or more exporters or producers covered by the order have sold the merchandise at not less than NV for a period of at least three consecutive years. To obtain a company-specific revocation under section 351.222(b)(2) for any exporter or producer which the Department determined previously to have sold the subject merchandise at less than NV, that exporter or producer must agree to immediate reinstatement in the antidumping duty order if the Department concludes that, subsequent to the revocation, that exporter or producer sold the subject merchandise at less than NV. *See* 19 CFR 351.222(b)(2)(i)(B). In addition, section 351.222(b)(3) provides that, for any exporter that is not a producer of subject merchandise, the Department will normally revoke the order only with respect to subject merchandise produced or supplied by those companies that supplied the exporter. Thus, under the Department's regulations, as long as an antidumping duty order remains in force, an entity previously granted a revocation may be reinstated under that order if it is established that the entity has resumed the dumping of subject merchandise.

In this case, because another exporter in the PRC remains subject to the antidumping duty order on sebacic acid from the PRC, the order remains in effect, and the exporter-producer combination of Tianjin and Hengshui can be reinstated in the order. *See 2000–2001 Final Results.* Tianjin was found to have sold the subject merchandise at less than NV previously. *See Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 64 FR 69503 (December 13, 1999) (*1997–1998 Final Results*). Accordingly, after the exporter-producer combination of Tianjin and Hengshui met the revocation requirements under 351.222(b) of the Department's regulations, the Department granted Tianjin revocation based upon its agreement to immediate reinstatement in the antidumping duty order if the Department were to find that the company resumed dumping of sebacic acid from the PRC. *See 2000–2001 Final Results* at 69720.

As described in the ''Export Price'' and ''Normal Value'' sections, below, we have examined Tianjin's response and have preliminarily found that Tianjin's dumping margin for the review period is greater than *de minimis.*

Separate Rates

We initiated this changed circumstance review for the sole purpose of determining whether Tianjin has resumed dumping of sebacic acid from the PRC. We did not require Tianjin to answer questions related to separate rates because no administrative review has been initiated that would require Tianjin to substantiate a *de facto* and *de jure* absence of government control of its export activities and no interested party in this review has made an allegation that Tianjin is not eligible for a separate rate. Additionally, we found in the 2000–2001 administrative review that Tianjin was a company that merited a separate rate. *See 2000–2001 Final Results.* Thus, we did not examine the issue of whether Tianjin continues to merit a separate rate absent information indicating otherwise. Accordingly, we will examine Tianjin's entitlement to a separate rate in the context of any future administrative review in which Tianjin may participate.

Export Price

We calculated export price (EP) in accordance with section 772(a) of the Act because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and constructed-export-price methodology was not otherwise warranted. As appropriate, we calculated EP based on packed, free-on-board, PRC-port prices to unaffiliated purchasers in the United States. We deducted from the starting price amounts for foreign inland truck freight and foreign brokerage and handling. As these movement services were provided by nonmarket-economy (NME) suppliers, we valued them using surrogate values from Indian suppliers. For further discussion of our use of surrogate data in an NME proceeding, as well as the selection of India as the appropriate surrogate country, see the ''Normal Value'' section of this notice, below.

For foreign inland freight, we obtained publicly available information which was published in the October 2002 through March 2003 editions of *Chemical Weekly.* For foreign brokerage and handling expenses, we used a publicly summarized version of the average value for brokerage and handling expenses reported in the *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from India,* 67 FR 50406 (Oct. 3, 2001), and used in the 2000–2001 administrative review of freshwater crawfish tail meat from the PRC. *See* the Memorandum to the File from Jennifer Moats entitled ''Preliminary Valuation of Factors of Production for the Preliminary Results of the 2002–2003 Changed Circumstances Review of Sebacic Acid from the People's Republic of China,'' dated November 15, 2004 (*FOP Memo*). We inflated the per-kilogram price (in rupees) to the POR using wholesale price index (WPI) data from the International Monetary Fund (IMF). For further discussion, *see* the *FOP Memo,* which is on the record of this review and is on file in the Central Records Unit (CRU), Room B–099 of the main Commerce building.

Normal Value

A. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value an NME producer's factors of production, to the extent possible, in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise.

For purposes of the most recent administrative review of the antidumping duty order on sebacic acid, we found that India is a producer of oxalic acid, a product comparable to sebacic acid. *See 2000–2001 Final Results.* For purposes of the preliminary results, we continue to find that India is

a significant producer of oxalic acid. See the November 15, 2004, Memorandum to the File from Jennifer Moats entitled ''Oxalic Acid Production in India During the Period of Review,'' which is on the record of this review and is on file in the CRU, Room B–099 of the main Commerce building. Accordingly, as India is at a level of economic development comparable to that of the PRC and a significant producer of a product comparable to the subject merchandise, we find that India fulfills both statutory requirements for use as a surrogate country and have continued to use India as the surrogate country in this administrative review. Accordingly, we have calculated NV using Indian surrogate values for the PRC producer's factors of production. We have obtained and relied upon publicly available information wherever possible.

B. Factors of Production

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to value the factors of production. The Department's regulations also provide that, where a producer purchases an input from a market-economy supplier and pays for it in a market-economy currency, the Department employs the actual price paid for the input to the market-economy supplier to calculate the factors-based NV. *Id.; see also Lasko Metal Products* v. *United States*, 43 F. 3d 1442, 1445–1446 (Fed. Cir. 1994).

In accordance with section 773(c) of the Act, we calculated NV based on the factors of production for the POR which Tianjin reported. To calculate NV, we multiplied the reported per-unit factor quantities by publicly available Indian surrogate values. Factors of production include, but are not limited to the following elements: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; (4) representative capital cost, including depreciation. In examining surrogate values, we selected, where possible, the publicly available value which was an average non-export value, representative of a range of prices within the POR or most contemporaneous with the POR, product-specific, and tax-exclusive. For a more detailed explanation of the methodology used in calculating various surrogate values, *see* the *FOP Memo.*

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. For those Indian rupee values not contemporaneous with the POR, we adjusted for inflation using wholesale price indices for India published in the International Monetary Fund's *International Financial Statistics.* We also used these surrogate values in the preliminary results of the 2002–2003 administrative review of the antidumping duty order on sebacic acid from the PRC. *See* the July 30, 2004, Memorandum to the File from Gregory Kalbaugh entitled ''Preliminary Valuation of Factors of Production,'' which is on the record of the 2002–2003 administrative review of the antidumping duty order on sebacic acid from the PRC and is on file in the CRU. In accordance with this methodology, we valued the factors of production as follows:

To value caustic soda, cresol, phenol, sulfuric acid, and zinc oxide, we obtained information from the Indian publication *Chemical Weekly.* Where necessary, we adjusted the values reported in *Chemical Weekly* to exclude sales and excise taxes. To value activated carbon, inner polyethylene bags, woven plastic bags, jumbo plastic bags, and bag-closing thread, we obtained import prices from the *Government of India's Department of Commerce Import/Export Data* for the period April 2002 through March 2003. To value steam coal, we obtained import prices from the *Monthly Statistics of the Foreign Trade of India (MSFTI)* and from in the *World Trade Atlas* for the period April 2002 through March 2003.

Consistent with the methodology we have employed in previous administrative reviews, we have determined that capryl alcohol is a co-product and have allocated the factor inputs based on the relative surrogate values for this product and sebacic acid. *See 2000–2001 Final Results.* Additionally, we have used the production times necessary to complete each production stage of sebacic acid as a basis for allocating the amount of labor, energy usage, and factory overhead among the co-product(s). This treatment of co-products is consistent with generally accepted accounting principles. *See Cost Accounting: A Managerial Emphasis* (1991) at pages 528–533. To value capryl alcohol, we used data published in *Government of India's Department of Commerce Import/Export Data.*

Consistent with the methodology we employed in the *2000–2001 Final Results,* we have determined that fatty acid and glycerine are by-products. Because they are by-products, we subtracted the sales revenue of fatty acid and glycerine from the estimated production costs of sebacic acid. This treatment of by-products is also consistent with generally accepted accounting principles. *See Cost Accounting: A Managerial Emphasis* (1991) at pages 539–544. To value glycerine, we used data published in *Chemical Weekly.* Consistent with our calculation methodology in past segments of this proceeding, we allocated this offset between sebacic acid and capryl alcohol based on the ratio of the value of sebacic acid to the total value of both sebacic acid and capryl alcohol prior to applying the by-product offset for glycerine. *See 2000–2001 Final Results.* To value fatty acid, we used data published in *Government of India's Department of Commerce Import/Export Data.*

To value electricity, we used data from the *International Energy Agency's Key World Energy Statistics 2003* report. For further discussion, *see* the *FOP Memo.*

We made adjustments to account for freight costs between the suppliers and the respective manufacturing facilities for each of the factors of production identified above. In accordance with our practice, for inputs for which we used cost-insurance-freight import values from India, we calculated a surrogate freight cost using the shorter of the reported distances either from the closest PRC ocean port to the factory or from the domestic supplier to the factory. *See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China,* 62 FR 61964, 61977 (Nov. 20, 1997); *see also Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–1408 (Fed. Cir. 1997).

For truck freight, we obtained publicly available information which was published in the October 2002 through March 2003 editions of *Chemical Weekly. See* the *FOP Memo.* To value rail freight, we relied upon price quotes obtained from Indian rail freight companies in November 1999. The Department used these quotes in the investigation of bulk aspirin from the PRC and the 1999–2000 administrative review of tapered roller bearings from the PRC. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China,* 65 FR 116, 119 (Jan. 3, 2000); and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Notice of Intent Not To Revoke Order in Part,* 66 FR 35937, 35941 (July 10, 2001). We averaged these quotes and then inflated this average value to be contemporaneous with the POR using the WPI data published by the IMF.

We valued labor based on a regression-based wage rate in accordance with 19 CFR 351.408(c)(3). This information is available on the Department's Web site at *http://www.ia.ita.doc.gov/wages/01wages/01wages.html*.

To value factory overhead, selling, general, and administrative expenses, and profit, we used rates based on data obtained from the Reserve Bank of India Bulletin.

Preliminary Results of Review

We preliminarily determine that the following margin exists for the period July 1, 2002, through June 30, 2003:

Manufacturer/Exporter

	Margin (percent)
Tianjin Chemicals Import and Export Corporation and produced by Hengshui Dongfeng Chemical Co., Ltd	36.74

The Department will disclose to parties the calculations performed in connection with these preliminary results within ten days of the date of publication of this notice. Interested parties may request a hearing within 30 days of the publication. Any hearing, if requested, will be held 44 days after the publication of this notice or the first workday thereafter. Interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication of this notice. Interested parties are also reminded that they have until 20 days after the date of publication of this notice to submit any surrogate-value information that they would like the Department to consider in the course of this review.

As these are preliminary results, the Department may still come to a conclusion that Tianjin has not resumed dumping. Since we have preliminarily established that sebacic acid produced by Hengshui and exported by Tianjin is being sold at less than NV, the antidumping duty order is hereby provisionally reinstated, and we will instruct CBP to suspend liquidation of all entries of subject merchandise exported by Tianjin and manufactured by Hengshui entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Furthermore, a cash-deposit requirement of 36.74 percent will be in effect for all shipments of the subject merchandise produced by Hengshui and exported by Tianjin that are entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice. This requirement shall remain in effect until publication of the final results of the next administrative review unless the Department finds that Tianjin has not resumed dumping in the final results of this changed circumstance review.

The Department will complete this review within 270 days of the date on which it initiated the changed circumstances review (*i.e.*, March 28, 2005). In accordance with 19 CFR 351.216(e), the final results of the changed circumstance review will set forth the factual and legal conclusions upon which our results are based and a description of any action proposed based on those results. This notice is in accordance with section 751(b)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: November 15, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–3339 Filed 11–24–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

Stainless Steel Sheet and Strip in Coils From Mexico; Antidumping Duty Administrative Review; Extension of Time Limit

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results of the 2002–2003 administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Mexico. This review covers one manufacturer/exporter of the subject merchandise to the United States, ThyssenKrupp Mexinox S.A. de C.V. (Mexinox), and the period July 1, 2002, through June 30, 2003.

EFFECTIVE DATE: November 26, 2004.

FOR FURTHER INFORMATION CONTACT: Angela Strom at (202) 482–2704, Maryanne Burke at (202) 482–5604 or Robert James at (202) 482–0649, Antidumping and Countervailing Duty Operations, Office Seven, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On August 6, 2004, we published the preliminary results of the administrative review of stainless steel sheet and strip in coils from Mexico for the period July 1, 2002, through June 30, 2003. *See Stainless Steel Sheet and Strip in Coils From Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 47905 (August 6, 2004). Pursuant to the time limits for administrative reviews set forth in section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act), currently the final results of this administrative review are due on December 4, 2004. It is not practicable to complete this review within the normal statutory time limit due to a number of significant case issues, including the calculation of general and administrative expenses, interest expenses and the value of direct materials used in the cost of production and constructed value figures. Furthermore, additional time is necessary for the Department to analyze certain adjustments made to normal value and to evaluate the commercial transactions between Mexinox and affiliated parties. Thus, it is not practicable to complete this review within the normal statutory time limit. Therefore, the Department is extending the time limit for completion of the final results until January 14, 2005, in accordance with section 751(a)(3)(A) of the Tariff Act.

Dated: November 19, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E4–3338 Filed 11–24–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–808]

Stainless Steel Wire Rod From India: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on stainless steel wire rod from India until December 30, 2004. This extension applies to the administrative review of three producers, Chandan Steel, Ltd.,

Isibars Steel, Ltd., and The Viraj Group. The period of review is December 1, 2002, through November 30, 2003.

EFFECTIVE DATE: November 26, 2004.

FOR FURTHER INFORMATION CONTACT: Edythe Artman or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3931 and (202) 482–1690, respectively.

Background

On January 22, 2004, the Department of Commerce (the Department) published a notice of initiation of the antidumping duty administrative review covering two companies, Isibars Steel Ltd. and The Viraj Group. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 3117 (Jan. 22, 2004). On February 24, 2004, the Department published a notice of initiation of the antidumping duty administrative review covering another company, Chandan Steel Ltd. (Chandan). See *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 69 FR 8379 (Feb. 24, 2004).[1] On July 15, 2004, the Department published a notice that extended the time limit for the preliminary results of review until December 10, 2004. See *Stainless Steel Wire Rod from India: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 69 FR 42421 (July 15, 2004).

Extension of Time Limit for Preliminary Results

The Tariff Act of 1930, as amended (the Act), at section 751(a)(3)(A), provides that the Department will issue the preliminary results of an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act provides further that if the Department determines that it is not practicable to complete the review within this time period, the Department may extend the 245-day period to 365 days.

The Department has determined that it is not practicable to complete the preliminary results by the current deadline of December 10, 2004. As stated in our first notice of extension, there are a number of complex factual questions pertaining to the sales practices and manufacturing costs which impact the calculation of the antidumping margins in the administrative review. The analysis of the questionnaire responses has required more time than initially anticipated and we must still conduct verifications. Therefore, in accordance with section 751(a)(3)(A) of the Act, and 19 CFR 351.213(h)(2), the Department is extending the time limit for the preliminary results by 20 days to December 30, 2004.

We are issuing this notice in accordance with section 751(a)(3)(A) of the Act.

Dated: November 19, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E4–3340 Filed 11–24–04; 8:45 am]

BILLING CODE 3510–DS–P

[1] The Department did not include Chandan in the initiation notice for December cases because the company requested evaluation as a new shipper. The Department denied this request after publication of the January 22, 2004, initiation notice for December cases. Because Chandan also made a timely request for an administrative review, the Department included Chandan in the 2002—2003 administrative review. Accordingly, all deadlines applicable to the companies included in the December initiation notice are applicable to Chandan.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–807]

Certain Steel Concrete Reinforcing Bars From Turkey; Corrected Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Correction to final results of antidumping duty administrative review.

EFFECTIVE DATE: November 26, 2004.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Elizabeth Eastwood, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone (202) 482–0656 and (202) 482–3874, respectively.

Background

On November 8, 2004, the Department of Commerce (the Department) published in the **Federal Register** its notice of final results of the antidumping duty administrative review on certain steel concrete reinforcing bars (rebar) from Turkey for the period April 1, 2002, through March 31, 2003. *See Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not To Revoke in Part*, 69 FR 64731 (Nov. 8, 2004) (*Final Results*). In the calculations for the final results, the Department determined that Colakoglu Metalurji A.S. (Colakoglu), a respondent in this administrative review, made no home market sales below the cost of production during the period of review (POR). However, the Department mistakenly stated in the *Final Results* that Colakoglu made below-cost sales not in the ordinary course of trade. *See Final Results*, 69 FR at 64733.

We now correct the final results of the 2002–2003 antidumping duty administrative review of rebar from Turkey as noted above. As a result of this correction, we find that Colakoglu made no sales below cost during the POR.

These corrected final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: November 19, 2004.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E4–3341 Filed 11–24–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111904B]

Gulf of Mexico Fishery Management Council; Public Hearings

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

ACTION: Notice of public hearing; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a public hearing to solicit comments on ''Draft Amendment 3 for Addressing EFH Requirements, Habitat Areas of Particular Concern (HAPCs), and Adverse Effects of Fishing in the Following Fishery Management Plans of the Gulf of Mexico: Shrimp, Red Drum, Reef fish, Stone Crab, Coral and Coral Reef in the Gulf of Mexico and Spiny Lobster and the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic.'' The Amendment contains proposed alternatives to further

identify EFH, establish HAPCs, and to the extent practicable prevent adverse impacts of fishing activities on coral in HAPCs.

DATES: The public hearing will be held December 7, 2004, beginning at 6 p.m. and concluding not later than 9 p.m. Public comments received by mail or e-mail that are received in the Council office by 5 p.m., December 8, 2004, will be presented to the Council.

ADDRESSES: The public hearing will be held at the DoubleTree Guest Suites Tampa Bay, 3050 North Rocky Point Drive West, Tampa, FL 33607 Phone: (813) 888–8800.

Send written comments to: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Rick Leard, Deputy Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: Following the judicial decision in *American Oceans Campaign* v. *Daley* (Civil Action No. 99–982), NOAA Fisheries and the Gulf of Mexico Fishery Management Council (Council) prepared a draft ''Environmental Impact Statement (EIS) for the Generic Essential Fish Habitat (EFH) Amendment to the Following Fishery Management Plans of the Gulf of Mexico: Shrimp, Red Drum, Reef fish, Stone Crab, Coral and Coral Reef in the Gulf of Mexico and Spiny Lobster and the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic.'' The draft EIS analyzes within each fishery a range of potential alternatives to: (1) describe and identify essential fish habitat for each fishery; (2) identify other actions to encourage the conservation and enhancement of such EFH; and (3) identify measures to minimize to the extent practicable any adverse effects of fishing on such EFH. Based on this EIS, the Council has subsequently developed ''Draft Amendment 3 for Addressing EFH Requirements, Habitat Areas of Particular Concern (HAPCs), and Adverse Effects of Fishing in the Following Fishery Management Plans of the Gulf of Mexico: Shrimp, Red Drum, Reef fish, Stone Crab, Coral and Coral Reef in the Gulf of Mexico and Spiny Lobster and the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic.'' The Amendment contains proposed alternatives to further identify EFH, establish HAPCs, and to the extent practicable prevent adverse impacts of fishing activities on coral in HAPCs.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dawn Aring at the Council (see **ADDRESSES**) by November 30, 2004.

Dated: November 19, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–3330 Filed 11–24–04; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

November 22, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: November 26, 2004.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Bureau of Customs and Border Protection website (http://www.cbp.gov), or call (202) 344-2650. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 666-S is being increased for the partial cancellation of special shift, reducing the limit for 666-P to account for the return of the special shift to 666-S.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 69 FR 4926, published on February 2, 2004). Also see 68 FR 68599, published on December 9, 2003.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 22, 2004.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 3, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 2004 and extends through December 31, 2004.

Effective on November 26, 2004, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month restraint limit [1]
Specific limits	
666–P [2]	1,379,684 kilograms.
666–S [3]	7,107,067 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2003.

[2] Category 666–P: only HTS numbers 6302.22.1010, 6302.22.1020, 6302.22.2010, 6302.32.1010, 6302.32.1020, 6302.32.2010 and 6302.32.2020.

[3] Category 666–S: only HTS numbers 6302.22.1030, 6302.22.1040, 6302.22.2020, 6302.32.1030, 6302.32.1040, 6302.32.2030 and 6302.32.2040.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 04–26305 Filed 11–24–04 8:45 am]

BILLING CODE 3510–DS–S

CONSUMER PRODUCT SAFETY COMMISSION

Civil Penalties; Notice of Adjusted Maximum Amounts

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of adjusted maximum civil penalty amounts.

SUMMARY: In 1990 Congress enacted statutory amendments that provided for periodic adjustments to the maximum civil penalty amounts authorized under

the Consumer Product Safety Act, the Federal Hazardous Substances Act, and the Flammable Fabrics Act. As calculated in accordance with the amendments, the new amounts are $8,000 for each violation and $1,825,000 for any related series of violations.

DATES: The new amounts will become effective on January 1, 2005.

FOR FURTHER INFORMATION CONTACT: Leonard H. Goldstein, Attorney, Office of the General Counsel, CPSC, Washington, DC 20207; telephone (301) 504–7635; e-mail *lgoldstein@cpsc.gov*.

SUPPLEMENTARY INFORMATION: The Consumer Product Safety Improvements Act of 1990 (Improvements Act), Pub. L. 101–608, 104 Stat. 3110 (November 16, 1990), amended the Consumer Product Safety Act (CPSA), the Federal Hazardous Substances Act (FHSA), and the Flammable Fabrics Act (FFA). First, the Improvements Act added civil penalty authority to the FHSA and FFA, which previously contained only criminal penalties. 15 U.S.C. 1264(c) and 1194(e). Second, the Improvements Act increased the maximum civil penalty amounts applicable to civil penalties under the CPSA, and set the same maximum amounts for the newly-created FHSA and FFA civil penalties. 15 U.S.C. 2069(a), 1264(c)(1), and 1194(e)(1).

Third, the Improvements Act directed the Commission to adjust the maximum civil penalty amounts periodically for inflation:

(A) The maximum penalty amounts authorized in paragraph (1) shall be adjusted for inflation as provided in this paragraph.

(B) Not later than December 1, 1994, and December 1 of each fifth calendar year thereafter, the Commission shall prescribe and publish in the **Federal Register** a schedule of maximum authorized penalties that shall apply for violations that occur after January 1 of the year immediately following such publication.

(C) The schedule of maximum authorized penalties shall be prescribed by increasing each of the amounts referred to in paragraph (1) by the cost-of-living adjustment for the preceding five years. Any increase determined under the preceding sentence shall be rounded to—

(i) In the case of penalties greater than $1,000 but less than or equal to $10,000, the nearest multiple of $1,000;

(ii) In the case of penalties greater than $10,000 but less than or equal to $100,000, the nearest multiple of $5,000;

(iii) In the case of penalties greater than $100,000 but less than or equal to $200,000, the nearest multiple of $10,000; and

(iv) In the case of penalties greater than $200,000, the nearest multiple of $25,000.

(D) For purposes of this subsection:

(i) The term ''Consumer Price Index'' means the Consumer Price Index for all-urban consumers, published by the Department of Labor.

(ii) The term ''cost-of-living adjustment for the preceding five years'' means the percentage by which—

(I) The Consumer Price Index for the month of June of the calendar year preceding the adjustment; exceeds

(II) The Consumer Price Index for the month of June preceding the date on which the maximum authorized penalty was last adjusted. 15 U.S.C. 2069(a)(3), 1264(c)(6), and 1194(e)(5).

The Commission's Directorate for Economics has calculated that the cost-of-living adjustment increases the maximum civil penalty amounts to $7,737 for each violation and to $1,823,736 for any related series of violations. Rounding off these numbers in accordance with the statutory directions, the adjusted maximum amounts are $8,000 for each violation and $1,825,000 for any related series of violations.

These new amounts will apply to violations that occur after January 1, 2005.

Dated: November 19, 2004.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 04–26088 Filed 11–24–04; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Active Duty Service Determinations for Civilians or Contractual Groups

On November 4, 2004, the Secretary of the Air Force, acting as Executive Agent of the Secretary of Defense, determined that the service of the group known as ''U.S. Civil Servants on Temporary Duty at Long Binh, Republic of Vietnam From about April 4, 1972, to about April 27, 1972, to Design a Commercial Carrier Commodity Tariff and Shipment Control System'' shall not be considered ''active duty'' for purposes of all laws administered by the Department of Veterans Affairs (VA).

FOR FURTHER INFORMATION CONTACT: Mr. James D. Johnston at the Secretary of the Air Force Personnel Council (SAFPC), 1535 Command Drive, EE Wing, 3d Fl., Andrews AFB, MD 20762–7002.

Albert Bodnar,

Air Force Federal Register Liaison Officer.

[FR Doc. 04–26182 Filed 11–24–04; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent

AGENCY: Air Combat Command, United States Air Force.

ACTION: Notice of intent.

SUMMARY: The United States Air Force is issuing this Notice of Intent (NOI) to announce that it is conducting an Environmental Impact Statement (EIS) to describe the proposed action for the Airspace Training Initiative. The proposed action would enhance the F–16 aircraft training mission for Shaw AFB and McEntire Air National Guard Station (ANGS). This NOI describes the Air Force's scoping process and identifies the Air Force's point of contact.

The Air Force conducted a series of scoping meetings in South Carolina and Georgia during September 2004 to receive public input on alternatives, concerns, and issues to be addressed in an environmental analysis. Based on the input received from the scoping meetings, the Air Force has determined that an EIS is required. The EIS will consider environmental issues identified by the public and agencies during the September meetings and received from correspondence during the scoping process. The Air Force has currently identified changes to airspace and aircraft noise as potential key issue requiring detailed analysis in the EIS.

No additional scoping meetings are scheduled. However, based upon interest expressed during community outreach scoping meetings, the public comment period has been extended through December 17, 2004. All written comments on the scope of alternatives and impacts received, as a result of the scoping meetings, or during the extended scoping period will be considered in the preparation of this EIS.

The proposed EIS will be prepared in compliance with the National Environmental Policy Act (NEPA) of 1969 (*42 U.S.C. 4321–4347*), the Council on Environmental Quality NEPA Regulations (40 CFR 1500–1508); and the Air Force's Environmental Impact Analysis Process (EIAP) (Air Force Instruction 32–7061 as promulgated at

32 CFR 989) to determine the potential environmental consequences of the Airspace Training Initiative. The Federal Aviation Administration is participating as a cooperating agency in this process.

As part of the Airspace Training Initiative proposal, the Air Force will analyze alternatives to modify Shaw AFB's airspace to enhance the ability of the 20th Fighter Wing at Shaw AFB and the 169th Fighter Squadron at McEntire ANGS to train as they need to fight in the evolving Global War on Terror. The proposed action includes the following:

—Creating a new Military Operations Area (MOA), that joins the western boundary of the existing Gamecock D MOA with the eastern boundary of existing Poinsett Electronic Combat Range (ECR).

—Lowering the floor of the existing Gamecock D MOA from 10,000 to 5,000 feet mean sea level (MSL) and combining and using Gamecock C and Gamecock D MOAs concurrently and simultaneously.

—Raising the ceiling on the existing Poinsett Low MOA from 2,500 feet MSL to 5,000 feet MSL.

—Modifying the boundary of the existing Bulldog A MOA to match that of Bulldog B MOA and lowering the current 11,000 foot MSL floor of the ''shelf area'' to 500 feet above ground level (AGL) to coincide with the Bulldog A floor.

—Extending the use of defensive training with training chaff and flares into the new and modified airspace. Developing training transmitter sites beneath the Bulldog and Gamecock MOAs and along the coast of South Carolina.

Alternatives to the proposed action include variations in altitude structure, special use airspace boundaries, extent and number of transmitter sites, and a no-action alternative.

The Air Force will accept comments at any time during the environmental analysis process. However, to ensure the Air Force has sufficient time to consider public input in the preparation of the Draft EIS, the scoping period has been extended. Comments should be submitted to the address below by December XX, 2004.

Point of Contact: Ms. Linda DeVine, HQ ACC/CEVP, 129 Andrews St., Suite 102, Langley AFB, VA 23665–2769, (757) 764–9434.

Albert Bodnar,

Air Force Federal Register Liaison Officer.

[FR Doc. 04–26144 Filed 11–24–04; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the 2004 Science and Technology Quality Review Panel. The purpose of the meeting is to allow the Air Force Scientific Advisory Board to assess the quality and long-term relevance of Air Force Research Laboratory research reviewed in Fall 2004. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: December 10, 2004.

ADDRESSES: 1560 Wilson Blvd, Suite 400, Arlington VA 22209–2404.

FOR FURTHER INFORMATION CONTACT: Major Kyle Gresham, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4808.

Albert Bodnar,

Air Force Federal Register Liaison Officer.

[FR Doc. 04–26181 Filed 11–24–04; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to delete systems of records.

SUMMARY: The Department of the Air Force is deleting a system of records notice from its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed actions will be effective without further notice on December 27, 2004, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, Office of the Chief Information Officer, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 696–6280.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: November 19, 2004.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

F061 AFMC A

SYSTEM NAME:

Aeromedical Research Data (June 11, 1997, 62 FR 31793).

Reason: Records are now being maintained under the system of records F044 AF SG E, entitled ''Medical Record System'' last published in the **Federal Register** December 9, 2003, 68 FR 68609.

[FR Doc. 04–26110 Filed 11–24–04; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability of the Draft Environmental Impact Statement for the Athens Navigation Project, Village of Athens, Greene County, NY

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability

SUMMARY: This announces the availability of the Draft Environmental Impact Statement (DEIS) which assesses the potential environmental impacts of the construction of deepening the navigation channel at Athens, NY. This DEIS has been prepared in accordance with the National Environmental Policy Act (NEPA), and U.S. Army Corps of Engineers (USACE) regulations for implementing NEPA.

DATES: The comment period for the DEIS will end 45 days after publication of the NOA in the **Federal Register** by the U.S. Environmental Protection Agency. The end date falls within the second week of January 2005.

ADDRESSES: To obtain copies of the DEIS or submit comments, contact Bonnie Hulkower, Environmental Coordinator, U.S. Army Corps of Engineers, New

York District, 26 Federal Plaza, Room 2146, New York, NY 10278–0090

FOR FURTHER INFORMATION CONTACT: Bonnie Hulkower, Planning Division—Environmental Branch, at (212) 264–5798 or *bonnie.hulkower@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The previous Notice of Intent, (69 FR 67711) published in the **Federal Register** on Friday, November 19, 2004, was sent out in error. This Notice of Availability officially begins a 45-day comment period. Please disregard the previous notice.

The purpose of this DEIS is to analyze significant issues and information relevant to environmental concerns regarding the proposed deepening and alternative actions at Athens, NY. The project is a modification to the Hudson River to Waterford project, authorized and directed by Section 110 of the Energy and Water Development Appropriations Act of 1997 (Pub. L. 104–206).

Deepening the Athens Navigation Channel to –24 ft MLW would allow safe and efficient passage of barges to commercial terminals along the waterfront at Athens. The plan entails deepening of the Athens Navigation Channel from its confluence with the Hudson Federal Channel north to the north dock at Union Street, Athens, NY. Currently, the barges entering the western portion of the Hudson River from the Federal Channel into the terminals at Athens cannot be fully loaded due to insufficient channel depth. The project also supports the Village of Athens Waterfront Revitalization Program.

Based upon information presently available, the USACE-New York District estimates that construction of the project to –24 ft MLW plus a 2-ft allowance for dredging tolerance would excavate approximately 935,000 cubic yards of clean unconsolidated sediments from the channel. The recommended plan is to beneficially use suitable dredge material to enhance or restore fisheries habitat and place the remaining excavated dredge material approximately 15 miles up river from Athens, on the southern portion of Houghtaling Island, the USACE maintenance dredge material placement site for projects in the Albany area.

The purpose of this DEIS is to analyze significant issues and information relevant to environmental concerns bearing on the proposed action or its anticipated impacts. The analysis indicates that short-term adverse environmental impacts, such as removal of benthic invertebrates in the dredged area, would be balanced by long-term beneficial impacts, such as contributions to the revitalization of the Athens waterfront.

Biological monitoring will be coordinated with the U.S. Fish and Wildlife, the National Marine Fisheries Service, and the New York State Department of Environmental Conservation. All activity associated with the project would be undertaken in a way to minimize adverse impacts to sensitive habitats and threatened and endangered species, and adjacent shorelines, as well as to minimize cumulative impacts.

A 404(b)(1) evaluation has been prepared for the project and is included in the DEIS. The proposed action and alternatives do not represent a significant threat of degradation to the aquatic environment, and are in compliance with the 404(b)(1) Guidelines.

A Public Scoping Meeting was held in May 2002 and the results were collected in a Public Scoping Document. Results from public and agency scoping coordination are addressed in the DEIS. Copies of the DEIS are also available at the Hudson Area Associated Library, 400 State Street, Hudson, NY 12534.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 04–26140 Filed 11–24–04; 8:45 am]

BILLING CODE 3710–06–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare an Environmental Impact Statement for the Chesapeake Bay Native Oyster Recovery Project, Maryland

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers (Corps), Baltimore District, is preparing a Draft Environmental Impact Statement (DEIS) for the upper Chesapeake Bay waters. This DEIS is a part of the 10 year plan for the Chesapeake Bay native oyster recovery project in cooperation with the Maryland Department of Natural Resources as the local sponsor. The feasibility study will include the final EIS.

ADDRESSES: Questions and comments about the meetings, feasibility study, and/or EIS can be addressed to Ms. Jean Kapusnick, Baltimore District, U.S. Army Corps of Engineers, ATTN: CENAB–PL–P, P.O. Box 1715, Baltimore, Maryland, 21203–1715. E-mail address: *jean.a.kapusnick@usace.army.mil.* Please include your name and address in your message.

The U.S. Army Corps of Engineers, Norfolk District will address activities in Virginia waters. Please contact Mr. Mark Mansfield, U.S. Army Corps of Engineers, 803 Front Street, Norfolk, VA 23510–1096. E-mail: *Mark.T.Mansfield@usace.army.mil.* Phone: 757–441–7500.

FOR FURTHER INFORMATION CONTACT: Ms. Jean Kapusnick, phone: (410) 962–4417 or (800) 295–1610.

SUPPLEMENTARY INFORMATION: Previously performed oyster restoration activities by the Baltimore District include the: creation of new oyster bars and rehabilitation of existing non-productive bars; construction of seed bars for production and collection of seed oysters or ''spat''; planting of hatchery-produced and seed bar spat on new and rehabilitated bars;a nd monitoring of implemented projects. The actions considered in the forthcoming oyster recovery study and DEIS may include those actions or other actions that are considered feasible to reach the projects restoration goals.

The decision to implement actions will be based on an evaluation of the probable impact of the proposed activities on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the proposal, will be balanced against its reasonablyt foreseeable costs and impacts. The Baltimore District is preparing a DEIS, which will describe the impacts of the proposed projects on environmental and cultural resources in the study area and on the overall public interest. The DEIS will be prepared in accordance with NEPA and will document all factors that may be relevant to the proposal, including the cumulative effects therof. Among these factors are habitat restoration, channel and erosion control, improvements to water quality, storm water management, conservation, economics, energy needs, general environmental concerns, fish and wildlife values, wetlands, historic and cultural values, navigation, shoreline erosion and accretion, flood hazards, flood plain values, land use, recreation, safety, food production, and, in general, the needs and welfare of the people. the work will not be accomplished unless it

is found to be in the public interests. If applicable, the DEIS will comply with the U.S. Environmental Protection Agency's Guidelines fo the Specification of Disposal Sites for Dredged or Fill Material issued under the authority of Seciton 404(b)(1) of the Clean Water Act of 1977 (Pub. L. 95–217).

Public involvement activities for the study will include coordination with interested private individuals and organizations, as well as with concerned Federal, state and local agencies. Coordination letters and newsletters will be sent to appropriate agencies, organizations, and individuals on an extensive mailing list. Additional public information will be provided through printed media, mailings, radio and television announcements. Public scoping meetings will be held in January 2005. Further information concerning dates and locations will be distributed at a later date.

In addition to the Corps, other participants that will be involved in the study and DEIS process include the following: Maryland Department of Natural Resources, National Oceanic and Atmospheric Administration (NOAA), EPA Region III, EPA Chesapeake Bay Program, U.S. Fish and Wildlife Service, national Marine Fisheries Service, Maryland Department of the Environment, Maryland Historical Trust, the Maryland Oyster Roundtable, and the oyster Recovery Partnership. The Baltimore District invites potentially affected Federal, State, and local agencies, and other organizations and entities to participate in this study.

The DEIS will be prepared in accordance with 91) The National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), and (3) USACE regulations implementing NEPA (ER–200–2–2).

Jean Kapusnick,

Study Manager.

[FR Doc. 04–26136 Filed 11–24–04; 8:45 am]

BILLING CODE 3710–41–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Grant of Partially Exclusive Licenses

AGENCY: Department of the Army, U.S. Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The Department of the Army, U.S. Army Corps of Engineers, announces the general availability of partially exclusive licenses under the following pending patents listed under **SUPPLEMENTARY INFORMATION.** Any license granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

DATES: Applications for an exclusive or partially exclusive license may be submitted at any time from the date of this notice. However, no exclusive or partially exclusive license shall be granted until February 24, 2005.

ADDRESSES: Humphreys Engineer Center Support Activity, Office of Counsel, 7701 Telegraph Road, Alexandria, VA 22315–3860.

FOR FURTHER INFORMATION CONTACT: Patricia L. Howland (703) 428–6672.

SUPPLEMENTARY INFORMATION: 1. *Title:* Corrosion-Resistant Structure Incorporating Zinc or Zinc-Alloy Plated Lead or Lead-Alloy Wires and Methods of Making Same. Structure incorporating lead is fabricated from specially prepared components such that mobility of the lead is impeded when the structure is exposed to an unprotected environment such as weathering outdoors or saltwater. In a preferred embodiment, a bullet or bullet core is swaged from a number of bunched electroplated fine lead or lead-alloy wires placed in a die. The lead or lead-alloy wires may be fabricated from lead or lead-alloy wool. The lead alloy may comprise zinc and antimony. The electroplating process plates zinc on the fine wires and may plate a zinc alloy such as zinc-aluminum. The plated surface may be coated with a corrosion resistant coating such as molybdenum phosphate. In addition to bullets and bullet cores, fishing weights, lead shielding, counterweights, ballast, and other lead containing structure may be fabricated or treated using methods and materials of the present invention.

Serial No.: 10/462,707.

Date: 6/17/2003.

2. *Title:* Deconvolution Technique Employing Hermite Functions. A procedure generates deconvolution algorithms by first solving a general convolution integral exactly. Results are transformed, yielding a linear relationship between actual (undistorted) and captured (distorted) data. Hermite functions and the Fourier-Hermite series represent the two data classes. It circumvents the need for solving incompatible systems of linear equations derived from ''numerically discretizing'' convolution integrals, *i.e.*, the convolution integral is not evaluated. It is executed by exploiting a mathematical coincidence that the most common Point spread Function (PSF) used to characterize a device is a Gaussian function that is also a Fourier-Hermite function of zero order. By expanding the undistorted data in a Fourier-Hermiteh series, the convolution integral becomes analytically integrable. It also avoids an inherent problem of dividing by decimal ''noisy data'' values in conventional ''combined deconvolution'' in that division is by a function of the PS parameters yielding divisors generally greater than one.

Serial No.: 10/658,285.

Date: 9/10/2003.

3. *Title:* Automated Resource Management System (ARMS™). The Automated Resource Management System (ARMS™) automates collection, integration, analysis, reporting and archiving of data in a variety of applications while insuring data accuracy and reliability not attainable conventionally. Applications include: environmental, safety, security, military, educational, emergency management, land use, fish and wildlife management, construction and maintenance of highways and waterways, mining, exploration, manufacturing, recreational management, urban restoration, and archaeological preservation. ARMS™ integrates a number of portable devices, employing digital technology and specialized software in these portable devices as well as analysis devices, such as PCs and servers. ARMS™ increases efficiency and reduces cost, while accurately and timely preserving and integrating information. It is useful for both post-processing and real-time reporting, analysis, and pro-active direction of ongoing investigations.

Serial No: 10/729,269.

Date: 12/8/2003.

4. *Title:* System Employing Wireless Means for Governing Operation of an Apparatus and Methods of use Therefor. A system employing principles of the present invention governs operation of an apparatus by an operator. An embodiment of the present invention comprises means for receiving at least one signal, portable means affixed to the operator for transmitting the signal, and means for inactivating or interrupting the operation of the apparatus should the operator be beyond a pre-specified distance from the controls of the apparatus. The means for inactivating communicates with both the means for receiving and the apparatus, while the means for transmitting sends the signal to the means for receiving during normal operation of the apparatus, *e.g.*, with the operator physically present. Without the presence of the signal,

operation of the apparatus is interrupted. One embodiment provides for an emergency override of the system to permit operation of the apparatus without the presence of the signal. Methods of using embodiments of the present invention are also provided.

Serial No: 10/778,706.

Date: 2/11/2004.

5. *Title:* A Portable Nuclear Detector. A portable nuclear material detector generally includes a scintillating fiber radiation sensor, a light detector, a conditioning circuit, a frequency shift keying (FSK) circuit, a fast Fourier transform (FFT) circuit, an electronic controller, an amplitude spectral addition circuit, and an output device. A high voltage direct current (HVDC) source is provided to excite the light detector, while a separate power supply may be provided to power the remaining components. Portability is facilitated by locating the components of the detector within a handheld-sized housing. When bombarded by gamma particles, the radiation sensor emits light, which is detected by the light detector and converted into electrical signals. These electrical signals are then conditioned and converted to spectral lines. The frequency of a give spectral line is associated with a particular radioactive isotope, while the cumulative amplitude of all spectral lines having a common frequency is indicative of the strength and location of the isotope. All or part of this information (identity, strength, direction and distance) may be provided on the output device.

Serial No: 10/795,363.

Date: 3/9/2004.

6. *Title:* Modular Barrier System for Satisfying Needs Unique to a Specific User. Components and system for limiting access and egress. A properly scaled barrier of the present invention meets varied requirements for applications that include: security, safety, order, privacy and discipline. In one embodiment, pre-manufactured panels and connectors are delivered to a site that has been prepared for installation of the system. Local materials may be used for the panels in some cases. The panels and connectors can be assembled quickly by unskilled labor and, in some embodiments, the barrier just as quickly dismantled or repaired as necessary. One embodiment may be used as a temporary or emergency solution to access control while another may employ in-fill material to provide a permanent barrier. Another embodiment may be used in a residential setting, providing storage in some installations. In all embodiments, accessories for enhancing effectiveness may be installed on or within the barrier.

Serial No: 10/795,364.

Date: 3/9/2004.

7. *Title:* Measurement Device and Method. Apparatus for determining the thickness of a configuration having flat, parallel surfaces that are transparent, or nearly so, to pre-specified types of energy. Embodiments comprise a mechanism for illuminating a front surface with an energy source and mechanisms for measuring reflections of the illumination from a parallel back surface. The energy is contained in a spectrum of wavelengths, the energy being refracted in components at unique wavelengths, *e.g.*, different colored light bands, and similarly reflected from the back surface. The measuring mechanisms, *e.g.*, spectrometers, determine the relative lateral displacement between two spectral lines in the refracted and reflected beams to enable determination of thickness. Other characteristics of the material of the configuration may be ascertained, *e.g.*, chemical composition is ascertained by measuring the intensity of responses at multiple wavelengths and comparing this to responses of known materials.

Serial No: 10/867,700.

Date: 6/16/2004.

8. *Title:* Knowledged-Based Condition Survey Inspection (KBCSI) Framework and Procedure. A knowledge-based condition survey inspection (KBSCI) framework and procedure for use with an engineering management system (EMS) that tailors types of condition survey inspections (CSIs) and inspection intervals to empirically-established life cycles of component-sections. Embodiments of the invention facilitate proactive life cycle management, scheduling appropriate types of CSIs only when needed. The frequency and type of inspection is tailored to items important to a facility manager, such as the importance to the operation of individual component-sections and their individual life cycle, not the overall life cycle of a system or facility. Further, additional useful information is available from the data collected to maintain embodiments of the KBCSI framework so that meaningful ''What-If'' analysis may be performed in support of decision makers. By tailoring CSIs to needs rather than an arbitrary inspection schedule designed to only catch deficiencies, significant life cycle cost savings are realized.

Serial No: 10/886,609.

Date: 8/24/2004.

9. *Title:* Self-Healing Coatings Using Microcapsules. Self-healing coatings incorporate microcapsules of about 60–150 microns diameter that contain film formers and dust suppression compounds suitable for controlling spalling of lead dust, for example. In one embodiment, a primer paint is mixed with these microcapsules and applied by brushing or rolling. After the coating has cured, any physical compromise of the coating results in microcapsules bursting to release liquid that fills and seals the compromised volume. The microcapsule contents protect the underlying substrate from damage and repair some of the outer coating. In one application, embodiments of these self-healing coatings seal existing lead-based paint for suppression of lead dust. In another embodiment, microcapsules are provided separately to enhance commercially available products. For example, if a paint formulation is known *a priori*, specifically configured microcapsules, packaged separately from the paint and designed for use with the paint formulation, are added to the paint just prior to application.

Serial No: 10/923,890.

Date: 8/24/2004.

10. *Title:* Perlite Sorbents for Vapor Phase Metals and Metal Compounds. Perlite, particularly, perlite in powdered form, is employed to adsorb metals and metal compounds from a fluid flow. In select embodiments, the perlite is treated to expand its surface area and injected into a fluid stream, such as flue gas, held for a specific retention period, and removed for subsequent disposal. In other embodiments the perlite is provided in a fixed adsorption bed and the fluid flow permitted to pass through the bed until the perlite surface is exhausted. The perlite in the fixed bed is then replaced, with the exhausted perlite disposed of as appropriate. Treatment of perlite by boiling with sulfuric acid or suspending in a suspension of sulfur in carbon disulfide has been shown to significantly expand the surface area of perlite.

Serial No: 10/931,232.

Date: 9/1/2004.

11. *Title:* Embedded Metal to Fluid Flow. A barrier to fluid passage is embedded within, instead of atop, porous material to retain the durability of the surface of the porous material. In one embodiment, a thin set mortar is applied to a concrete slab. A pleated metal foil is pressed into the wet mortar and a bond is established. The mortar is allowed to set and a top, or finish, section of concrete is then poured over the foil and finished conventionally.

Provisions are made for sealing expansion joints in concrete slab floors and at the juncture of floor and wall. The foil may be provided in multiple layers to provide a mechanical bond via the concrete or mortar oozing through perforation or along pleats in each of the top and bottoms layers of the multi-layer foil, while providing at least one solid layer through which a fluid will not pass, at least in one direction.

Serial No: 10/715,430.

Date: 11/19/2003.

Richard L. Frenette,

Counsel.

[FR Doc. 04–26137 Filed 11–24–04; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 25, 2005.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 18, 2004.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Extension.

Title: Lender's Application for Payment of Insurance Claim, ED Form 1207.

Frequency: On occasion.

Affected Public: State, local, or tribal gov't, SEAs or LEAs; Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden: Responses: 4,086. Burden Hours: 858.

Abstract: The ED Form 1207—Lender's Application for Payment of Insurance Claim is completed for each borrower for whom the lender is filing a Federal claim. Lenders must file for payment within 90 days of the default, depending on the type of claim filed.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2623. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–26231 Filed 11–24–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

RIN 1820 ZA40

National Institute on Disability and Rehabilitation Research—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Engineering Research Centers

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priorities.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes three funding priorities for the National Institute on Disability and Rehabilitation Research's (NIDRR) Disability and Rehabilitation Research Projects and Centers Program, Rehabilitation Engineering Research Centers (RERC) program. Each of these priorities may be used for competitions in fiscal year (FY) 2005 and later years. We take this action to focus research attention on areas of national need. We intend these priorities to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before December 27, 2004.

ADDRESSES: Address all comments about these proposed priorities to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20204–2700. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov.*

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 245–7462.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 4 p.m., eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed priorities. To

ensure that your comments have maximum effect in developing the notice of final priorities, we urge you to identify clearly the specific proposed priority that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these priorities in Room 6030, 550 12th Street SW., Potomac Center Plaza, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

We will announce the final priorities in a notice in the **Federal Register**. We will determine the final priorities after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these proposed priorities, we invite applications through a notice published in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows.

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the competitive priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Note: NIDRR supports the goals of President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/infocus/newfreedom/*.

The proposed priorities are in concert with NIDRR's Long-Range Plan (Plan). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. While applicants will find many sections throughout the Plan that support potential research to be conducted under the proposed priorities, a specific reference is included for each of the priorities presented in this notice. The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/rschstat/research/pubs/index.html*.

Through the implementation of the NFI and the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Rehabilitation Engineering Research Centers Program

We may make awards under this program for up to 60 months through grants or cooperative agreements to public and private agencies and 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. Each RERC must be operated by or in collaboration with an institution of higher education or a nonprofit organization. Additional information on the RERC program can be found at: *http://www.ed.gov/rschstat/research/pubs/index.html*.

General Requirements of Rehabilitation Engineering Research Centers

RERCs shall carry out research or demonstration activities in support of the Rehabilitation Act of 1973, as amended, by—

- Developing and disseminating innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge to (1) solve rehabilitation problems and remove environmental barriers and (2) study and evaluate new or emerging technologies, products, or environments and their effectiveness and benefits; or
- Demonstrating and disseminating (1) innovative models for the delivery of cost-effective rehabilitation technology services to rural and urban areas and (2) other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities; or
- Facilitating service delivery systems change through (1) the development, evaluation, and dissemination of consumer-responsive and individual and family-centered innovative models for the delivery to both rural and urban areas of innovative cost-effective rehabilitation technology services and (2) other scientific research to assist in meeting the employment and independence needs of individuals with severe disabilities.

Each RERC must provide training opportunities, in conjunction with institutions of higher education and nonprofit organizations, to assist individuals, including individuals with disabilities, to become rehabilitation technology researchers and practitioners.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. During the funding cycle of any RERC, NIDRR will conduct one or more reviews of the activities and achievements of the RERC. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

Priorities

Background

Technology plays a vital role in the lives of millions of disabled and older Americans. Advances in assistive technology and adoption of principles of universal design have significantly improved the quality of life for these individuals. Individuals with significant disabilities regularly use products developed as the result of rehabilitation and biomedical research to achieve and

maintain maximum physical function, live independently, study and learn, and attain gainful employment. The range of engineering research has broadened to encompass not only assistive technology but also technology at the systems level (*i.e.*, the built environment, information and communication technologies, transportation, etc.) and technology that interfaces between the individual and systems technology and is basic to community integration.

The NIDRR RERC program has been a major force in the development of technology to enhance independent function for individuals with disabilities. The RERCs are recognized as national centers of excellence in their respective areas and collectively represent the largest federally supported program responsible for advancing rehabilitation engineering research. For example, the RERC program was an early pioneer in the development of augmentative communication and has been at the forefront of prosthetics and orthotics research for both children and adults. RERCs have played a major role in the development of voluntary standards that industry uses when developing wheelchairs, wheelchair restraint systems, information technologies, and the World Wide Web. The RERC on Low Vision and Blindness helped develop talking sign technologies that are currently being used in major cities in both the United States and Japan to help blind and visually impaired individuals navigate city streets and subways. RERCs have been a driving force in the development of universal design principles that can be applied to the built environment, information technology and telecommunications, transportation, and consumer products. RERC research activities also contributed to the clinical use of electromyography, gait analysis, and functional electrical stimulation.

Advancements in basic biomedical science and technology have resulted in new opportunities to enhance further the lives of people with disabilities. Recent advances in biomaterials research, composite technologies, information and telecommunication technologies, nanotechnologies, micro electro mechanical systems (MEMS), sensor technologies, and the neurosciences provide a wealth of opportunities for individuals with disabilities and should be incorporated into research focused on disability and rehabilitation.

Proposed Priorities

The Assistant Secretary proposes to fund RERCs, each of which must focus on one of the following priorities: (a) Technologies for Children with Orthopedic Disabilities, (b) Low Vision and Blindness, or (c) Universal Design and the Built Environment.

(a) *Technologies for Children with Orthopedic Disabilities:* This RERC must research and develop technologies that will help children with orthopedic disabilities overcome functional deficits and that will support their ability to learn, play, and interact socially. The reference for this topic can be found in the Plan, chapter 5, Technology for Access and Function: Research to Enhance Mobility, and Research to Improve Manipulation Ability.

(b) *Low Vision and Blindness:* This RERC must research and develop technologies that will improve assessment of vision impairments and promote independence for individuals with low vision and blindness, including those who are deaf/blind. The reference for this topic can be found in the Plan, chapter 5, Technology for Access and Function: Research to Improve or Substitute for Sensory Functioning.

(c) *Universal Design and the Built Environment:* This RERC must research, develop, and evaluate strategies and devices that will advance the field of universal design and assist designers, builders, and manufacturers with incorporating universal design in their products and buildings. The reference for this topic can be found in the Plan, chapter 5, Technology for Access and Function: Systems Technology: Universal Design and Accessibility.

Under any one of these priorities, RERCs must focus on innovative technological solutions, new knowledge, and concepts to promote the health, safety, independence, active engagement in daily activities, and quality of life of persons with disabilities. Accordingly, each RERC must:

(1) Contribute substantially to the technical and scientific knowledge-base relevant to the priority;

(2) Research, develop, and evaluate innovative technologies, products, environments, performance guidelines, and monitoring and assessment tools as applicable to the priority;

(3) Identify, implement, and evaluate, in collaboration with the relevant industry, professional associations, and institutions of higher education, innovative approaches to expand research capacity in the specific field of study;

(4) Monitor trends and evolving product concepts that represent and signify future directions for technologies in the specific area of research; and

(5) Provide technical assistance to public and private organizations responsible for developing policies, guidelines, and standards that affect the specific area of research.

In addition, the following requirements apply to each RERC priority:

- Each RERC must have the capability to design, build, and test prototype devices and assist in the transfer of successful solutions to relevant production and service delivery settings. Each RERC must evaluate the efficacy and safety of its new products, instrumentation, or assistive devices.
- Each RERC must develop and implement, in the first three months of the grant, a plan that describes how the RERC will include, as appropriate, individuals with disabilities or their representatives in all phases of its activities including research, development, training, dissemination, and evaluation;
- Each RERC must develop and implement, in the first year of the grant and in consultation with the NIDRR-funded National Center for the Dissemination of Disability Research (NCDDR), a plan to disseminate the RERC's research results to persons with disabilities, their representatives, disability organizations, service providers, professional journals, manufacturers, and other interested parties.
- Each RERC must develop and implement, in the first year of the grant and in consultation with the NIDRR-funded RERC on Technology Transfer, a plan for ensuring that all new and improved technologies developed by this RERC are successfully transferred to the marketplace.
- Each RERC must conduct a state-of-the-science conference on its respective area of research in the third year of the grant and publish a comprehensive report on the final outcomes of the conference in the fourth year of the grant.
- Each RERC must coordinate with research projects of mutual interest with relevant NIDRR-funded projects as identified through consultation with the NIDRR project officer.

Executive Order 12866

This notice of proposed priorities has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priorities are those resulting from statutory requirements and those we have

determined as necessary for administering this program effectively and efficiently. In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priorities, we have determined that the benefits of the proposed priorities justify the costs.

Summary of Potential Costs and Benefits

The potential costs associated with these proposed priorities are minimal while the benefits are significant. Grantees may anticipate costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

The benefits of the RERC Program have been well established over the years in that similar projects have been completed successfully. These proposed priorities will generate new knowledge and technologies through research, development, dissemination, utilization, and technical assistance projects.

The benefit of these priorities also will be the establishment of new RERCs that support the President's NFI and will improve the lives of persons with disabilities. The new RERCs will generate, disseminate, and promote the use of new information that will improve the options for individuals with disabilities to perform regular activities in the community.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number: 84.133E, Rehabilitation Engineering Research Centers Program)

Program Authority: 29 U.S.C. 762(g) and 764(b)(3).

Dated: November 22, 2004.

Troy R. Justesen,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 04–26168 Filed 11–24–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–18–000, et al.]

National Energy & Transmission, Inc., et al.; Electric Rate and Corporate Filings

November 16, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. National Energy & Gas Transmission, Inc.

[Docket No. EC05–18–000]

Take notice that on November 12, 2004, National Energy & Gas Transmission, Inc. (NEGT) filed an application pursuant to section 203 of the Federal Power Act for authorization to transfer in excess of 5 percent of the new NEGT common stock to Avenue Capital Group, which is a creditor of NEGT, in connection with NEGT's plan of reorganization approved by the United States Bankruptcy Court for the District of Maryland (Greenbelt Division) as more fully described in the Application.

Comment Date: 5 p.m. eastern time on December 3, 2004.

2. Southern California Water Company

[Docket No. EL02–129–003]

Take notice that on November 15, 2004, Southern California Water Company (SCWC) tendered for filing a refund report pursuant to the Commission's Order issued November 1, 2004, *Southern California Water Company,* 109 FERC ¶ 61, 121 (2004).

Comment Date: 5 p.m. eastern time on December 6, 2004.

3. CL Power Sales One, L.L.C., CL Power Sales Two, L.L.C., CL Power Sales Seven, L.L.C., CL Power Sales Eight, L.L.C., CL Power Sales Ten, L.L.C.

[Docket Nos. ER95–892–056 and ER96–2652–050]

Take notice that on November 9, 2004, Edison Mission Marketing & Trading, Inc. (EMMT), on behalf of its public utility affiliates listed above (CPS Entities), submitted their triennial market power analysis as required by *Acadia Power Partners, LLC,* 107 FERC ¶ 61,168 (2004). EMMT also filed an amendment to the CPS Entities' market-based rate tariffs to incorporate the Market Behavior Rules adopted by the Commission in *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations,* 105 FERC ¶ 61,218 (2003).

EMMT states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. eastern time on November 30, 2004.

4. Central Vermont Public Service Corporation

[Docket No. ER98–2329–004]

Take notice that on November 9, 2004, Central Vermont Public Service Corporation (Central Vermont) tendered for filing tariff sheets that modify its market-based rate tariff to add the Market Behavior Rules adopted by the Commission in *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations,* 105 FERC ¶ 61,218 (2003). Central Vermont requests an effective date of December 17, 2003.

Central Vermont states that a copy of the filing was served upon all parties to the Commission's official service lists in the above-captioned dockets, the Vermont Public Service Board, and the New Hampshire Public Utilities Commission.

Comment Date: 5 p.m. eastern time on November 30, 2004.

5. Hardee Power Partners Limited

[Docket No. ER99–2341–002]

Take notice that on November 9, 2004, Hardee Power Partners Limited (Hardee Power) submitted its triennial market power report) pursuant to *Acadia Power Partners LLC,* 107 FERC ¶ 61,168 (2004).

Hardee Power states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. eastern time on November 30, 2004.

6. Hardee Power Partners Limited

[Docket No. ER99–2341–003]

Take notice that on November 9, 2004, Hardee Power Partners Limited (Hardee Power) submitted revisions to its market-based rate tariff to include the Market Behavior Rules adopted by the Commission in *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations,* 105 FERC ¶ 61,218 (2003) and to make ministerial changes that reflect that it is no longer affiliated with Tampa Electric Company.

Hardee Power states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. eastern time on November 30, 2004.

7. Tampa Electric Company, Panda Gila River, L.P., Union Power Partners, L.P., TECO EnergySource, Inc., Commonwealth Chesapeake Company, L.L.C., TPS Dell, LLC, TPS McAdams, LLC, TECO–PANDA Generating Company, L.P.

[Docket Nos. ER99–2342–003, ER01–931–006, ER01–930–006, ER96–1563–019, ER99–415–005, ER02–510–002, ER02–507–002, and ER02–1000–003]

Take notice that on November 9, 2004, Tampa Electric Company, Panda Gila River, L.P., Union Power Partners, L.P., TECO Energy Source, Inc., Commonwealth Chesapeake Company, L.L.C., (Commonwealth Chesapeake), TPS Dell, LLC, TPS McAdams, LLC, and TECO–PANDA Generating Company, L.P. (collectively, the TECO Group) submitted their joint market power update pursuant to *Arcadia Power Partners, LLC,* 107 ¶ 61,168 (2004).

The TECO Group states that copies of the filing were served on parties on the official service in the captioned proceedings.

Comment Date: 5 p.m. eastern time on November 30, 2004.

8. PPL Montana, LLC, PPL Colstrip I, LLC , PPL Colstrip II, LLC

[Docket Nos. ER99–3491–003, ER00–2184–001, and ER00–2185–001]

Take notice that on November 9, 2004, PPL Montana, LLC, PPL Colstrip I, LLC, and PPL Colstrip II, LLC (collectively the PPL MT Parties) submitted their triennial market power analysis pursuant to *Arcadia Power Partners, LLC,* 107 FERC ¶ 61,168 (2004). The PPL MT Parties also submitted revisions to their market-based rate tariffs to incorporate the Market Behavior Rules adopted by the Commission in *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003).

The PPL MT Parties state that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. eastern time on November 30, 2004.

9. Midwest Generation, LLC, EME Homer City Generation, L.P. Edison Mission Marketing & Trading, Inc., Midwest Generation Energy Services, LLC, CP Power Sales Twelve, L.L.C., CP Power Sales Seventeen, L.L.C., CP Power Sales Nineteen, L.L.C., CP Power Sales Twenty, L.L.C

[Docket Nos. ER99–3693–002, ER99–666–003, ER99–852–007, ER00–30–001, ER99–893–008, ER99–4229–006, ER99–4228–006, and ER99–4231–005]

Take notice that on November 9, 2004, Edison Mission Energy (EME), on behalf of its public utility subsidiaries listed above, filed their updated triennial market power analysis pursuant to *Arcadia Power Partners, LLC,* 107 FERC ¶ 61,168 (2004). EME also filed on behalf of the above-listed subsidiaries amendments to their respective market-based rate tariffs to incorporate the Market Behavior Rules adopted by the Commission in *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations,* 105 FERC ¶ 61,218 (2003).

Comment Date: 5 p.m. eastern time on November 30, 2004.

10. Madison Gas and Electric Company

[Docket No. ER00–586–003]

Take notice that on November 9, 2004, Madison Gas and Electric Company (MGE) submitted for filing its updated market analysis pursuant to *Acadia Power Partners LLC,* 107 FERC ¶ 61,168 (2004).

Comment Date: 5 p.m. eastern time on November 30, 2004.

11. Indianapolis Power & Light Company

[Docket No. ER00–1026–008]

Take notice that on November 9, 2004, Indianapolis Power & Light Company (IPL) tendered for filing its triennial market power update pursuant to the Commission's orders in *AEP Power Marketing, Inc.,* et al., 107 FERC ¶ 61,018 (2004), order on reh'g, 108 FERC ¶ 61,026 (2004), and *Acadia Power Partners, LLC,* et al., 107 FERC ¶ 61,168 (2004).

IPL states that copies of the filing were served upon the parties designated on the official service list in this docket.

Comment Date: 5 p.m. eastern time on November 30, 2004.

12. Split Rock Energy LLC

[Docket No. ER00–1857–004]

Take notice that on November 9, 2004, Split Rock Energy LLC tendered for filing its triennial market power analysis as required by *Acadia Power Partners, LLC,* 107 FERC ¶ 61,168 (2004).

Comment Date: 5 p.m. eastern time on November 30, 2004.

13. Sempra Energy Resources, Sempra Energy Solutions

[Docket Nos. ER01–1178–004 and ER00–3444–004]

Take notice that on November 9, 2004, Sempra Energy Resources (Sempra Resources) and Sempra Energy Solutions (Sempra Solutions) tendered for filing a revised triennial market power analysis as required by *Acadia Power Partners, LLC,* 107 FERC ¶ 61,168 (2004).

Comment Date: 5 p.m. eastern time on November 30, 2004.

14. Mirant Americas Energy Marketing, LP, Mirant California, LLC, Mirant Delta, LLC, Mirant Potrero, LLC, Mirant New England, LLC, Mirant Canal, LLC, Mirant Kendall, LLC, Mirant Bowline, LLC, Mirant Lovett, LLC, Mirant NY-Gen, LLC, Mirant Chalk Point, LLC, Mirant Mid-Atlantic, LLC, Mirant Peaker, LLC, Mirant Potomac River, LLC, Mirant Zeeland, LLC, West Georgia Generating Company, LLC, Mirant Sugar Creek, LLC, Shady Hills Power Company, LLC, Wrighstville Power Facility, LLC, Mirant Energy Trading, LLC, Mirant Oregon, LLC, Mirant Las Vegas, LLC

[Docket Nos. ER01–1265–004, ER01–1267–005, ER01–1270–005, ER01–1278–005, ER01–1274–005, ER01–1268–005, ER01–1271–005, ER01–1266–004, ER01–1272–004, ER01–1275–004, ER01–1269–004, ER01–1273–004, ER01–1276–004, ER01–1277–004, ER01–1263–004, ER02–1052–003, ER02–900–003, ER02–537–004, ER02–1028–003, ER02–1213–003, ER02–1331–004, ER03–160–003]

Take notice that on November 9, 2004, the above-referenced entities tendered for filing a revised market-power analysis in compliance with the Commission's order in *Arcadia Power Partners, LLC,* 107 FERC ¶ 61,168 (2004).

Comment Date: 5 p.m. eastern time on November 30, 2004.

15. Mirant California, LLC, Mirant Delta, LLC, Mirant Potrero, LLC, Mirant Chalk Point, LLC, Mirant Mid-Atlantic, LLC, Mirant Peaker, LLC, Mirant Potomac River, LLC, Mirant Zeeland, LLCsea

[Docket Nos. ER01–1267–004, ER01–1270–004, ER01–1278–004, ER01–1269–003, ER01–1273–003, ER01–1276–003, ER01–1277–003, ER01–1263–003]

Take notice that on November 9, 2004, the above-referenced entities (collectively, the Mirant Entities) submitted revisions to their respective

market-based rate tariffs to incorporate the Market Behavior Rules adopted by the Commission in *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations,* 105 FERC ¶ 61,218 (2003).

Comment Date: 5 p.m. eastern time on November 30, 2004.

16. Sunrise Power Company, LLC

[Docket No. ER01–2217–003]

Take notice that on November 9, 2004, Sunrise Power Company, LLC (Sunrise) submitted its triennial market power analysis as required by *Acadia Power Partners, LLC,* 107 FERC ¶ 61,168 (2004). Sunrise also filed an amendment to its market-based rate tariff to incorporate the Market Behavior Rules adopted by the Commission in *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations,* 105 FERC ¶ 61,218 (2003).

Comment Date: 5 p.m. eastern time on November 30, 2004.

17. ALLETE, Inc., Rainy River Energy Corporation

[Docket Nos. ER01–2636–002, ER00–2177–001]

Take notice that on November 9, 2004, ALLETE, Inc. and Rainy River Energy Corporation filed an updated triennial market power analysis pursuant to *Arcadia Power Partners, LLC,* 107 FERC ¶ 61,168 (2004).

Comment Date: 5 p.m. eastern time on November 30, 2004.

18. Boston Edison Company

[Docket No. ER02–170–006]

Take notice that, on November 9, 2004, Boston Edison Company (BECo) tendered for filing Substitute Third Revised Rate Schedule No. 167 in compliance with the Commission's orders issued November 22, 2002 in Docket No. ER02–170–002, 101 FERC ¶ 61,218 (2002) and September 21, 2004 in Docket No. EL02–123–003, 108 FERC ¶ 61,276 (2004).

BECo states that copies of the filing were served upon the official service list in the above-captioned proceeding and the affected customers.

Comment Date: 5 p.m. eastern time on November 30, 2004.

19. Reliant Energy Coolwater, Inc., Reliant Energy Ellwood, Inc., Reliant Energy Etiwanda, Inc., Reliant Energy Mandalay, Inc., Reliant Energy Ormond Beach, Inc.

[Docket Nos. ER02–2453–001, ER02–2451–001, ER02–2450–001, ER02–2452–001, ER02–2449–001]

Take notice that on November 9, 2004, Reliant Energy Coolwater, Inc., Reliant Energy Ellwood, Inc., Reliant Energy Etiwanda, Inc., Reliant Energy Mandalay, Inc., and Reliant Energy Ormond Beach, Inc., (Reliant Energy Companies) subsidiaries of Reliant Energy, Inc., filed an updated market study and amendments to their market-based rate tariffs to add the Market Behavior Rules adopted by the Commission in *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations,* 105 FERC ¶ 61,218 (2003).

Comment Date: 5 p.m. eastern time on November 30, 2004.

20. New England Power Company

[Docket No. ER05–29–001]

Take notice that on November 10, 2004, New England Power Company (NEP) filed an amendment to its October 8, 2004 filing in Docket No. ER05–29–000. The amendment withdrew the Notice of Cancellation for Service Agreement No. 13 filed on October 8, 2004 and submitted a Notice of Cancellation for Original Service Agreement No. 107 between NEP and the Water and Light Department of the Town of Littleton, New Hampshire (Littleton).

NEP states that copies of the filing were served on Littleton and regulators in the State of New Hampshire.

Comment Date: 5 p.m. eastern time on December 1, 2004.

21. Avista Corporation

[Docket No. ER05–200–000]

Take notice that on November 10, 2004, Avista Corporation (Avista) filed a Notice of Termination of Avista's FERC Electric Tariff Original Volume No. 4, Service Agreement No. 139, an agreement between Avista and El Paso Electric Company. Avista requests an effective date of January 31, 2005.

Comment Date: 5 p.m. eastern time on December 1, 2004.

22. El Paso Electric Company

[Docket No. ER05–201–000]

Take notice that on November 10, 2004, El Paso Electric Company (EPE) tendered for filing a Large Generator Interconnection Agreement between EPE and the Public Service Company of New Mexico (PNM) for interconnection of the second unit of PNM's Afton power plant to the EPE transmission system. EPE requests an effective date of November 2, 2004.

Comment Date: 5 p.m. eastern time on December 1, 2004.

23. PECO Energy Company

[Docket No. ER05–202–000]

Take notice that on November 12, 2004, Exelon Corporation, on behalf of its subsidiary PECO Energy Company (PECO), tendered for filing Original Service Agreement No. 1192 under PJM Interconnection L.L.C.'s FERC Electric Tariff, Sixth Revised Volume No. 1, a Construction Agreement between PECO Energy Company and Delmarva Power and Light Company. PECO requests an effective date of June 28, 2004.

Comment Date: 5 p.m. eastern time on December 3, 2004.

24. American Transmission Systems, Incorporated

[Docket No. ER05–203–000]

Take notice that on November 12, 2004, American Transmission Systems, Incorporated (ATSI) filed Service Agreement No. 348 under ATSI's FERC Electric Tariff, Third Revised Volume No. 1, a Construction Agreement with the Village of Seville. ATSI requests an effective date of November 1, 2004.

ATSI states that copies of the filing have been served on the Village of Seville, American Municipal Power-Ohio, Inc., the Midwest ISO, and the public utility commissions of the Ohio and Pennsylvania.

Comment Date: 5 p.m. eastern time on December 3, 2004.

25. Portland General Electric Company

[Docket No. ER05–204–000]

Take notice that on November 12, 2004, Portland General Electric Company (PGE) tendered for filing revised tariff sheets to PGE's FERC Electric Tariff Volume No. 12. PGE states that it is seeking authority to sell Operating Reserves (Spinning and Supplemental) under PGE's Open Access Transmission Tariff to off-system customers. PGE requests an effective date that is no later than January 12, 2005.

Comment Date: 5 p.m. eastern time on December 3, 2004.

26. ISO New England, Inc.

[Docket Nos. RT04–2–006, ER04–116–006, EL01–39–006]

Take notice that on November 12, 2004, ISO New England Inc. (ISO) submitted revisions to NEPOOL Market Rule 1 in compliance with the directive reflected in the Commission's November 3, 2004 order in Docket No. RT04–2–001, *et al.*, to provide for implementation of a Pilot Program to test processes central to the establishment of Virtual Regional Dispatch.

The ISO states that copies of the filing have been served on all NEPOOL Participants, and the Governors and utility regulatory agencies of the New England States.

Comment Date: 5 p.m. eastern time on December 3, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). 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 notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E4–3307 Filed 11–23–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–37–000, CP04–44–000, CP04–45–000, and CP04–46–000]

Corpus Christi LNG, L.P., Cheniere Corpus Christi Pipeline Company; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Cheniere Corpus Christi LNG Project

November 18, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a draft Environmental Impact Statement (EIS) on the liquefied natural gas (LNG) import terminal and natural gas pipeline facilities in Nueces and San Patricio Counties, Texas proposed by Corpus Christi LNG, L.P. and Cheniere Corpus Christi Pipeline Company (collectively referred to as Cheniere) in the above-referenced dockets.

The draft EIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project with appropriate mitigating measures as recommended, would have limited adverse environmental impact. The draft EIS also evaluates alternatives to the proposal, including system alternatives, alternative sites for the LNG import terminal, and pipeline alternatives.

Cheniere's proposed facilities would have a nominal output of about 2.6 billion cubic feet of imported natural gas per day to the U.S. market. In order to provide LNG import, storage, and pipeline transportation services, Cheniere requests Commission authorization to construct, install, and operate the following LNG terminal and natural gas pipeline facilities:

- A new marine basin and dredged maneuvering area, together with 2 berths for LNG ships, and another dock for tugs and line boats;
- 3 LNG unloading arms and 1 vapor return arm at each LNG ship berth, and transfer pipelines extending from the docks to the storage tanks;
- 3 LNG storage tanks, each with a nominal working volume of approximately 160,000 cubic meters (1,006,400 barrels equivalent), 3 submerged vertical pumps within each tank, and earthen dikes around each tank capable of containing 110 percent of the gross tank volume;
- 16 LNG sendout pumps, 16 submerged combustion LNG vaporizers, 3 boil-off gas compressors and a boil-off gas condensing system, and natural gas metering;
- LNG terminal control instrumentation and safety systems, including hazard detection and fire response, and buildings housing administrative offices, warehouse/maintenance, utilities, and a gatehouse;
- 23 miles of 48-inch-diameter natural gas pipeline, three mainline valves, and launcher and receiving facilities; and
- 8 interconnects with existing intrastate and interstate pipelines, and associated metering facilities.

Comment Procedures and Public Meetings

Any person wishing to comment on the draft EIS may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Reference Docket No. CP04–37–000, *et al.*;
- Label one copy of your comments for the attention of Gas Branch 3, PJ11.3; and
- Mail your comments so that they will be received in Washington, DC on or before January 4, 2005.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of the project. However, the Commission strongly encourages electronic filing of any comments or interventions to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the FERC's Internet Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created online.

In addition to or in lieu of sending written comments, we invite you to attend the public comment meeting we will conduct in the project area. The location and time for the meeting is listed below: December 15, 2004, 7 p.m. (c.s.t.); Portland Community Center, 2000 Billy G Webb, Portland, TX 78374, Telephone: 361–777–3301.

The meeting will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information. Interested groups and individuals are encouraged to attend and present oral comments on the draft EIS. Transcripts of the meeting will be prepared.

After these comments are reviewed, any significant new issues would be investigated by the FERC staff. A final EIS incorporating appropriate modifications will be published and distributed. The final EIS will contain the staff's responses to timely comments received on the draft EIS.

Comments will be considered by the Commission but will not serve to make

the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

Anyone may intervene in this proceeding based on this draft EIS. You must file your request to intervene as specified above.[1] You do not need intervenor status to have your comments considered.

The draft EIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

A limited number of copies are available from the Public Reference Room identified above. In addition, copies of the draft EIS have been mailed to Federal, State, and local agencies; public interest groups; individuals and affected landowners who requested a copy of the draft EIS; libraries; newspapers; and parties to this proceeding.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to the eSubscription link on the FERC Internet Web site.

Linda Mitry,

Deputy Secretary.

[FR Doc. E4–3313 Filed 11–23–04; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD04–13–000]

Assessing the State of Wind Energy in Wholesale Electricity Markets; Notice of Technical Conference

November 18, 2004.

As announced in the Notice of Technical Conference issued on October 4, 2004, a technical conference will be held on December 1, 2004, to assess the state of wind energy in wholesale electricity markets. The goal of the technical conference is to explore possible policy changes that would better accommodate the participation of wind energy in wholesale markets. Members of the Commission will attend and participate in the discussion.

The conference will focus on the issues identified in the agenda, which is appended to this notice as Attachment A.

The conference will begin at 10 a.m. and end at approximately 6 p.m. (Mountain Standard Time) at the Adams Mark Denver Hotel, 1550 Court Place, Denver, Colorado. The conference is open for the public to attend, and registration is not required; however, in-person attendees are asked to register for the conference on-line by close of business on Monday, November 29, 2004, at *http://www.ferc.gov/whats-new/registration/wind-1201-form.asp*.

Transcripts of the conference will be immediately available from Ace Reporting Company (202) 347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the Commission's eLibrary system seven calendar days after FERC receives the transcript. Additionally, Capitol Connection offers the opportunity for remote listening of the conference via the Internet or a Phone Bridge Connection for a fee. Interested persons should make arrangements as soon as possible by visiting the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and clicking on ''FERC.'' If you have any questions contact David Reininger or Julia Morelli at the Capitol Connection (703) 993–3100).

For more information about the conference, please contact Sarah McKinley at (202) 502–8004, *sarah.mckinley@ferc.gov*.

Magalie R. Salas,

Secretary.

Attachment A

Agenda

10–11 a.m.: Opening Session

- Pat Wood III, Chairman, Federal Energy Regulatory Commission.
- Suedeen Kelly, Commissioner, Federal Energy Regulatory Commission.
- Nora Mead Brownell, Commissioner, Federal Energy Regulatory Commission.
- Bill Richardson, Governor, State of New Mexico.

11–12:30 p.m.: Overview of the Drivers and Issues to Wind Energy Participation in Wholesale Energy Markets

Panelists will discuss the current state of wind development, regulatory and policy initiatives, regional efforts and activities.

Questions intended to be addressed include:

- What is the current state of wind energy development?
- What is the potential for wind energy development?
- What are the drivers (economic, financial, technological, environmental, geographic, and legislative) of wind energy development?
- What are the overall economic challenges faced by wind developers in moving a project from paper to production?
- Are there certain issues/factors that are region-specific?
- How can wind development be viable in states that do not have a renewable portfolio mandate?

Panelists:

- Matthew Brown, National Conference of State Legislatures.
- Tom Kerr, Environmental Protection Agency.
- Mark Maher, PacifiCorp.
- Lee Otteni, Bureau of Land Management.
- Robert L. Sims, SeaWest Wind Power.
- Doug Larson, Western Interstate Energy Board.
- J. Charles Smith, NexGen Energy, LLC.

12:30–1:15 p.m.: Lunch

1:15–2:30 p.m.: Planning, Grid Operation and Utilization to Account for Wind and Other Emerging Technologies

Questions intended to be addressed include:

- What are the particular needs of intermittent resources, such as wind generators, and how should they be recognized and accommodated in the transmission and resource planning process?
- How can current planning practices be refocused to identify opportunities for increased utilization of the current transmission infrastructure?
- How can wind generation contribute to reserve requirements, and receive capacity credits in a capacity market?
- What are the reliability impacts of large-scale wind integration on the regional transmission grid?

Panelists:

- Steve Fausett, TriSate Generation and Transmission, on behalf of National Rural Electric Cooperative Association.
- Mark Smith, Florida Power and Light.
- Mollie Lampi, New York Independent System Operator.
- David Hawkins, California Independent System Operator.
- Bob Easton, Western Area Power Administration.
- Kevin Porter, Exeter Associates.
- Bob Markee, Upper Great Plains Transmission Coalition.
- Yakout Mansour, BC Transmission Corporation.
- John Krajewski, Municipal Energy Agency of Nebraska.

2:30–2:45 p.m.: Break

2:45–5 p.m.: Open Access Transmission Tariff Services and Pricing

The following session will cover issues related to the open access transmission tariffs. Panelists should address current practices, experiences, issues, near-term and longer-term solutions, and any impacts to others from potential solutions. Questions intended to be answered include:

- Can the existing pro forma tariff's transmission services (network and point-to-point), and the related ancillary services satisfy the needs of intermittent resources? What, if any, challenges and benefits do they present for intermittent resources?
- To what extent can transmission capacity reassignment address the needs of wind generation with respect to firm service availability, price, and terms?
- Can the terms and conditions of service of the pro forma tariff be modified to encourage the addition of intermittent resources to the grid, *e.g.*, new services or changes to existing rates or services?
- Will creation of new transmission services affect the uniformity and pricing of transmission services? Are there potential subsidization issues that arise from the creation of new transmission services?
- What are the operational issues and impacts to the transmission grid and existing transmission services from the addition of wind resources, both within control areas and across multiple systems?
- Are there experiences from the natural gas pipeline industry that can be related to the needs of intermittent resources, *e.g.*, handling of imbalance charges?

Panelists:

- Jim Byrne, Rocky Mountain Area Transmission Study.
- Beth Soholt, Wind on the Wires.
- Joe Kerecman, PJM Interconnection L.L.C.
- Janie Selby, Bonneville Power Administration.
- James Caldwell, PPM Energy on behalf of American Wind Energy Association.
- Robert Kennedy, Western Area Power Administration.
- Dan Klempel, Basin Electric Power Cooperative.
- John Meyer, Reliant Energy.
- Gregory Miller, Public Service Company of New Mexico.
- John Fielder, Southern California Edison.
- Jim Blatchford, California Independent System Operator.

5–6 p.m.: Open Discussion/Closing Remarks

[FR Doc. E4–3319 Filed 11–24–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2004–0013, FRL–7842–4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request: Facility Ground-Water Monitoring Requirements, EPA ICR Number 959.12, OMB Control Number 2050–0033

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request for an existing approved collection. This ICR is scheduled to expire on January 31, 2005. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 25, 2005.

ADDRESSES: Submit your comments, referencing docket ID number RCRA–2004–0013 to EPA online using EDOCKET (our preferred method), by e-mail to: *RCRA-docket@epa.gov*, or by mail to: EPA Docket Center, U.S. Environmental Protection Agency, OSWER Docket (5305T), 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Sara Rasmussen, Office of Solid Waste (5303W), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (703) 308–8399, or by e-mail *rasmussen.sara@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established an official public docket for this ICR under Docket ID number RCRA–2004–0013. Documents in the official public docket are listed in the index list in EPA's electronic public docket and comment system, EDOCKET. Documents may be available either electronically or in hard copy. Electronic documents may be viewed through EDOCKET. Hard copy documents may be viewed at the OSWER Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0270. An electronic version of the public docket is available through EDOCKET at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET.

Title: Facility Ground-water Monitoring Requirements, OMB Control Number 2050–0033, EPA ICR Number 0959.12, expiration date January 31, 2005.

Abstract: This ICR examines the ground-water monitoring standards for permitted and interim status facilities at 40 CFR parts 264 and 265, as specified. The ground-water monitoring requirements for regulated units follow a tiered approach whereby releases of hazardous contaminants are first detected (detection monitoring), then confirmed (compliance monitoring), and if necessary, are required to be cleaned up (corrective action). Each of these tiers requires collection and analysis of ground-water samples. Owners or

operators that conduct ground-water monitoring are required to report information to the oversight agencies on releases of contaminants and to maintain records of ground-water monitoring data at their facilities. The goal of the ground-water monitoring program is to prevent and quickly detect releases of hazardous contaminants to groundwater, and to establish a program whereby any contamination is expeditiously cleaned up as necessary to protect human health and environment. Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA) creates a comprehensive program for the safe management of hazardous waste. Section 3004 of RCRA requires owners and operators of facilities that treat, store, or dispose of hazardous waste to comply with standards established by EPA that are intended to protect the environment. Section 3005 provides for implementation of these standards under permits issued to owners and operators by EPA or authorized States. Section 3005 also allows owners and operators of facilities in existence when the regulations came into effect to comply with applicable notice requirements to operate until a permit is issued or denied. This statutory authorization to operate prior to permit determination is commonly known as ''interim status.'' Owners and operators of interim facilities also must comply with standards set under Section 3004.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 118 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities that operate surface impoundments, waste piles, land treatment units, and landfills which manage hazardous waste regulated under RCRA.

Estimated Number of Respondents: 824.

Frequency of Response: Semi annual monitoring; additional sampling and monitoring may be required if contaminants are detected.

Estimated Total Annual Hour Burden: 96,913.

Estimated Total Annualized Capital, O&M Cost Burden: $16,737,560.

Burden means the total time, effort, or financial resources expended to persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions, develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements, train personnel to be able to respond to a collection of information; search data sources, complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: November 15, 2004.

Maria Parisi Vickers,

Deputy Director, Office of Solid Waste.

[FR Doc. 04–26164 Filed 11–24–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6657–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements

Filed November 15, 2004 through November 19, 2004

Pursuant to 40 CFR 1506.9.

EIS No. 040536, Final Supplement, GSA, TX, Del Rio Port of Entry (POE), Increased Security Measures Associated with Phase II Expansion, Supplement to the 1992 Del Rio Border Patrol Station, Del Rio, Val Verde County, TX, Wait Period Ends: December 27, 2004, Contact: Lisa Schaub (817) 978–4233.

EIS No. 040537, Final EIS, FHW, WI, US–12 Highway Corridor Project, Improvement from 1H90/94 at Lake Delton south to Ski Hi Road, Selected Preferred Alternative, Funding and U.S. Army COE Section 404 Permit Issuance, Sauk County, WI, Wait Period Ends: December 27, 2004, Contact: Johnny Gerbitz (608) 829–7500.

EIS No. 040538, Draft EIS, FAA, FL, Panama City-Bay County International Airport (PFN), Proposed Relocation to a New Site, NPDES Permit and U.S. Army COE Section 404 Permit, Bay County, FL, Comment Period Ends: January 21, 2005, Contact: Virginia Lane (407) 812–6331 ext 129.

EIS No. 040539, Final EIS, FHW, TX, Eastern Extension of the President George Bush Turnpike (PGBT) from TX–78 to I–30, New Controlled Access Tollway Construction at a New Location, Cities of Garland, Sachse, Rowlett and Dallas, Dallas County, TX, Wait Period Ends: December 27, 2004, Contact: Dean Majzoub (512) 536–5955.

EIS No. 040540, Draft EIS, FRC, TX, Cheniere Corpus Christi Liquefied Natural Gas (LNG) Project, To Provide Facilities for the Importation, Storage and Vaporization of Liquefied Natural Gas, Nueces and San Patricio Counties, TX, Comment Period Ends: January 10, 2005, Contact: Thomas Russo (866) 208–3372.

EIS No. 040541, Draft EIS, FHW, MS, I–69 Section of Independent Utility # 11 Project, Construction of Multi-Lane, Interstate Highway from Benoit to Robinsonville, U.S. Army COE Section 404 Permit, Mississippi River Bridge, Bolivar, Coahoma, Tunica and Sunflower Counties, MS, Comment Period Ends: January 10, 2005, Contact: Cecil W. Vick, Jr. (601) 965–4217.

EIS No. 040542, Draft EIS, AFS, OR, Rogue River-Siskiyou National Forest, Special Use Permits for Outfitter and Guide Operations on the Lower Rogue and Lower Illinois Rivers, Gold Beach Ranger District, Rogue River-Siskiyou National Forest, Curry County, OR, Comment Period Ends: January 10, 2005, Contact: Jim Heck (541) 858–2303. This document is available on the Internet at: *http://wwwtest.fs.fed.us/r6/rogue-siskiyou/projects/special-use/outfitter-rogue-illinois-river/rr-deis-ll-04–04.pdf.*

Amended Notices

EIS No. 040472, Draft EIS, AFS, CO, Village at Wolf Creek Project, Application for Transportation and Utility Systems and Facilities, Proposed Development and Use of

Roads and Utility Corridors Crossing, National Forest System Lands to Access 287.5 Acres of Private Property Land, Mineral County, CO, Comment Period Ends: December 06, 2004, Contact: Robert Dalrymple (719) 852–5941. Revision of FR Notice Published on 10/08/04: CEQ Comment Period Ending 11/22/2004 has been Extended to 12/06/2004.

EIS No. 040500, Draft EIS, FHW, UT, Brown Park Road Project, Reconstruction (Paving) and Partial Re-alignment from Red Creek to Colorado State Line, Diamond Mountain Resource Management Plan Amendment (BLM), U.S. Army COE Section 404 Permit, Daggett County, UT, Comment Period Ends: January 10, 2005, Contact: Gregory S. Punske, P.E. (801) 963–0182. Revision of FR Notice Published on 10/29/2004: CEQ Comment Period Ending on 12/17/2004 has been Extended to 01/10/2005.

EIS No. 040532, Final EIS, FHW, IN, IN–25 Transportation Corridor Improvements from I–65 Interchange to U.S. 24, Funding, Right-of-Way and U.S. Army COE Section 404 Permit Issuance, Hoosier Heartland Highway, Tippecanoe, Carroll and Cass Counties, IN, Wait Period Ends: December 27, 2004, Contact: Matt Fuller (317) 226–5234. Revision of FR Notice Published on 11/19/2004: CEQ Wait Period Ending 12/20/2004 Corrected to12/27/2004.

EIS No. 040533, Final EIS, FHW, WA, WA–104/Edmonds Crossing Project, Connecting Ferries, Bus and Rail, Funding, NPDES Permit and COE Section 10 and 404 Permit, City of Edmonds, Snohomish County, WA, Wait Period Ends: December 20, 2004, Contact: Peter Eun (360) 753–9551. Revision of FR Notice published on 11/19/2004: The Department of Transportation's Federal Highway Administration and Federal Transit Administration are Joint Lead Agencies for the above Project. Also, Correction to Contact Person Telephone Number.

Dated: November 22, 2004.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 04–26160 Filed 11–24–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6658–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared 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) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 02, 2004 (69 FR 17403).

Draft EISs

ERP No. D–AFS–L65469–OR Rating EC2, West Maury Fuels and Vegetation Management Project, Prescribed Fire, Commercial and Noncommercial Thinning, Grapple Piling and Hand Piling, Implementation, Lookout Mountain Range District, Ochoco National Forest, Crook County, OR.

Summary: EPA expressed environmental concerns regarding road building; the effects of extensive vegetation removal and loss of canopy closure combined with continued cattle grazing on water quality and aquatics habitat; the need for further information and analysis concerning stream sedimentation; and impacts to late old succession stands, wildlife corridors, and security habitat. EPA recommended selection of a different or modified alternative that responds to these concerns.

ERP No. D–FHW–K40255–CA Rating EC2, Bautista Canyon Road Project, California Forest Highway 224, Improvements between Florida Avenue (CA–74) and CA–371, Special-Use-Permit, NPDES Permit, U.S. Army COE Section 10 and 404 Permit, Riverside County, CA.

Summary: EPA expressed concerns and recommended additional information in the final EIS concerning the range of alternatives, impacts to cultural, historical, and biological resources and analysis of indirect and cumulative impacts.

ERP No. D–FRA–K53011–CA Rating EC2, Los Angeles Union Station Run-Through Tracks Project, Pedestrian Access Improvement, Connectivity and Increase the Capacity, City Los Angeles, Los Angeles County, CA.

Summary: EPA expressed concerns and recommended additional information in the final EIS concerning air quality impacts, water resources, and mitigation.

ERP No. D–NPS–E61077–GA Rating LO, Chattahoochee River National Recreation Area General Management Plan, Implementation, Chattahoochee River, Atlanta, GA.

Summary: EPA's review did not identify any potential environmental impacts requiring changes to the proposal.

Final EISs

ERP No. F–AFS–L65453–ID North Sheep Allotments—Sheep and Goat Allotment Management Plans, Authorization for Continued Sheep Grazing for Fisher Creek, Smiley Creek, North Fork-Boulder and Baker Creek Sheep and Goat Grazing Allotments, Sawtooth National Forest, Ketchum Ranger District, Sawtooth National Recreation Area, Blaine and Custer Counties, ID.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–DOI–J39031–UT Utah Lake Drainage Basin Water Delivery System (ULS), Construction and Operation, Bonneville Unit of the Central Utah Project (CUP), Utah, Salt Lake, Wasatch and Juab Counties, UT.

Summary: EPA commented that the proposed project would be consistent with the Clean Water Act Section 404(b)(1) Guidelines, contingent on the mitigation conditions contained in the final EIS, the U.S. Fish and Wildlife Service's Coordination Act Report and Endangered Species Act Section 7 consultation, and the Utah Department of Environmental Quality's Clean Water Act Section 401 Water Quality Certification. EPA also provided suggestions for issues to be considered in the Record of Decision, including project purpose, alternatives analysis, definition of affected environment, water quality standards, potential impacts to aquatic resources, and water conservation.

ERP No. F–FHW–H40177–MO MO–17 Transportation Improvement Project, South of Route O to South of Howell County Line Bridge Replacement with Approaches, Funding, U.S. COE Section 404 Permit, Shannon, Texas, and Howell Counties, MO.

Summary: The final EIS provides adequate information to address 4(f), range of alternatives, and environmental justice concerns raised by EPA in the draft EIS review. Consequently, EPA has no objections to the project.

Dated: November 22, 2004.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 04–26155 Filed 11–24–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7842–5]

Science Advisory Board Staff Office; Notification of an Teleconference Meetings of the Ecological Effects Subcommittee of the Advisory Council on Clean Air Compliance Analysis

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces two public teleconference meetings of the Ecological Effects Subcommittee (EES) of the Advisory Council on Clean Air Compliance Analysis (Council). The EES will discuss the draft advisory report in response to EPA's charge questions related to the Agency's Benefits and Costs of the Clean Air Act, Revised Analytic Plan for EPA's Second Prospective Analysis, 1990–2020.

DATES: The public teleconference meetings of the Council EES will be held on December 9, 2004, from 11 a.m. to 1 p.m. (eastern time) and December 20, 2004, from 2 p.m.–4 p.m. (eastern time).

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain the teleconference call-in number and access code, or submit written or brief oral comments (three minutes or less) must contact Dr. Holly Stallworth, Designated Federal Officer, at telephone/voice mail: (202) 343–9867 or via e-mail at: *stallworth.holly@epa.gov.* Requests to provide oral comments must be in writing (e-mail, fax or mail) and received by Dr. Stallworth no later than five business days prior to the meeting in order to reserve time on the meeting agenda. It is the policy of the EPA Science Advisory Board Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. Any member of the public wishing further information regarding the SAB or the Council EES may also contact Dr. Stallworth, or visit the SAB Web site at: *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background: EPA's Office of Air and Radiation (OAR) conducts periodic, scientifically reviewed studies to assess the costs and benefits of regulations promulgated under the Clean Air Act. The Council is an outside body of recognized experts charged with reviewing the data, methods and cost-benefit analyses conducted by OAR for implementing its programs. The EES is one of the Council's three subcommittees. Additional information on the EES and its advisory activity was provided in a **Federal Register** notice published on October 14, 2004 (69 FR 60996). Additional background on the Council and on the statutorily mandated analyses of the costs and benefits of Clean Air Act programs was provided in a **Federal Register** notice published on February 14, 2003 (68 FR 7531–7534).

The December 9 and December 20 teleconference meetings will provide the Council EES an opportunity to discuss draft responses to the Agency's three charge questions pertaining to ecological issues and Clean Air Act regulations. These three charge questions (numbers 18–20) may be found at: *http://www.epa.gov/air/sect812/812chargequestions-070303finalrevised.pdf.* Meeting agendas will be posted on the SAB Web site prior to the teleconference meetings.

Procedures for Providing Public Comment: It is the policy of the SAB Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. The SAB Staff Office expects that public statements presented at any teleconference or face-to-face meeting will not be repetitive of previously submitted oral or written statements. *Oral Comments:* Requests to provide oral comments must be in writing (e-mail, fax or mail) and received by Dr. Stallworth no later than five business days prior to the teleconference in order to reserve time on the meeting agenda. For teleconferences, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. *Written Comments:* Although written comments are accepted until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least five business days prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 98/2000/XP format).

Dated: November 16, 2004.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 04–26163 Filed 11–24–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7842–6]

Science Advisory Board Staff Office Clean Air Scientific Advisory Committee (CASAC); Notification of Advisory Meeting of the CASAC Ambient Air Monitoring and Methods (AAMM) Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces a public meeting of the Clean Air Scientific Advisory Committee's (CASAC) Ambient Air Monitoring and Methods (AAMM) Subcommittee (Subcommittee) to conduct an advisory meeting for the purpose of providing advice and recommendations on the implementation aspects of the Agency's National Ambient Air Monitoring Strategy.

DATES: The meeting will be held on December 15, 2004, from 9 a.m. to 4 p.m. (eastern time).

Location: The meeting will take place at the SAB Conference Center, 1025 F Street, NW., Suite 3700, Washington, DC 20004. A publicly-accessible teleconference line will be available for the entire meeting.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to obtain the teleconference call-in numbers and access codes; would like to submit written or brief oral comments (5 minutes or less); or wants further information concerning this meeting, must contact Mr. Fred Butterfield, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail: (202) 343–9994; fax: (202) 233–0643; or e-mail at: *butterfield.fred@epa.gov.* General information concerning the CASAC or the EPA Science Advisory Board can be found on the EPA Web site at: *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: *CASAC and the AAMM Subcommittee:* The CASAC, which comprises seven

members appointed by the EPA Administrator, was established under section 109(d)(2) of the Clean Air Act (42 U.S.C. 7409) as an independent scientific advisory committee, in part to provide advice, information and recommendations on the scientific and technical aspects of issues related to air quality criteria and national ambient air quality standards (NAAQS) under sections 108 and 109 of the Act. The CASAC, which is administratively located under the SAB Staff Office, is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App.

The SAB Staff Office established the CASAC AAMM Subcommittee as a standing subcommittee to provide the EPA Administrator, through the CASAC, with advice and recommendations, as necessary, on topical areas related to ambient air monitoring, methods and networks. The Subcommittee complies with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: In late 2002, EPA's Office of Air Quality Planning and Standards (OAQPS), located within the Office of Air and Radiation (OAR), finalized its draft National Ambient Air Monitoring Strategy (NAAMS or Strategy). OAQPS subsequently requested that the CASAC review the draft NAAMS document and provide advice and recommendations to the Agency on the technical bases and design aspects of the Strategy. The SAB Staff Office announced the formation of the NAAMS Subcommittee of the CASAC on November 5, 2002 (67 FR 67403). The CASAC NAAMS Subcommittee held a public meeting in Research Triangle Park, North Carolina, on July 8–9, 2003 (68 FR 34945, June 11, 2003) to conduct this review of the draft Strategy document. The primary recommendations of the CASAC NAAMS Subcommittee, through the chartered CASAC, included a request for an implementation plan, and added emphasis on rural- and ecosystem-oriented monitoring, support for the National Core Monitoring Network (NCore) Level 1 program, and training and quality assurance to enhance data consistency across the Nation. The CASAC NAAMS Subcommittee's complete report from this review is found on the SAB Web page at URL: *http://www.epa.gov/sab/pdf/casacl04001.pdf.* OAQPS updated the NAAMS document after the CASAC's review of the Strategy. The revision incorporated EPA's responses to the CASAC NAAMS Subcommittee's recommendations.

Earlier this year, the SAB Staff Office announced (69 FR 19180, April 12, 2004) the formation of the CASAC AAMM Subcommittee. This subcommittee replaced the former CASAC NAAMS Subcommittee. Subsequently, OAQPS asked the CASAC AAMM Subcommittee to conduct an advisory meeting for the purpose of providing advice and recommendations on the implementation plan for its updated final draft NAAMS.

Any questions concerning EPA's National Ambient Air Monitoring Strategy or the draft implementation plan should be directed to Dr. Rich Scheffe, OAQPS, at phone: 919–541–4650, or e-mail at: *scheffe.rich@epa.gov;* or to Mr. Tim Hanley, OAQPS, at phone: (919) 541–4417; or e-mail: *hanley.tim@epa.gov.*

Availability of Meeting Materials: OAQPS has posted written review and supplementary materials for this advisory meeting of the CASAC AAMM Subcommittee on EPA's Ambient Monitoring Technology Information Center (AMTIC) Web site. The document to be reviewed by the Subcommittee, *i.e.,* the implementation plan found in Chapter 11 of the Agency's final draft National Ambient Air Monitoring Strategy document, is found at URL: *http://www.epa.gov/ttn/amtic/files/ambient/monitorstrat/section11.pdf.* The entire final draft NAAMS document itself, which was updated following the July 2003 meeting of the former CASAC NAAMS Subcommittee, is posted as supplementary information at the following URL: *http://www.epa.gov/ttn/amtic/files/ambient/monitorstrat/allstrat.pdf.* Additional background materials for this meeting are found on the ''CASAC File Area'' page of the AMTIC Web site at URL: *http://www.epa.gov/ttn/amtic/casacinf.html.* Furthermore, the SAB Staff Office will post a copy of the final agenda and charge to the Subcommittee for this advisory meeting on the SAB Web site at: *http://www.epa.gov/sab* (under ''Meeting Agendas''), and the CASAC AAMM Subcommittee page at: *http://www.epa.gov/sab/panels/casac_aamm_subcom.html,* respectively, in advance of the Subcommittee's meeting.

Providing Oral or Written Comments at SAB Meetings: It is the policy of the SAB Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. The SAB Staff Office expects that public statements presented at its meetings will not be repetitive of previously-submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a meeting or teleconference will be limited to a total time of five minutes (unless otherwise indicated). Requests to provide oral comments must be *in writing* (e-mail, fax or mail) and received by Mr. Butterfield no later than noon Eastern Time five business days prior to the meeting in order to reserve time on the meeting agenda. Speakers should bring at least 75 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB Staff Office accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office no later than noon Eastern Time five business days prior to the meeting so that the comments may be made available to the CASAC PM Review Panel for their consideration. Comments should be supplied to Mr. Butterfield (preferably via e-mail) at the address/contact information noted above, as follows: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 98/2000/XP format)). Those providing written comments and who attend the meeting in person are also asked to bring 75 copies of their comments for public distribution.

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Mr. Butterfield at the phone number or an e-mail address noted above at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: November 16, 2004.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 04–26165 Filed 11–24–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7843–1]

Clean Water Act Section 303(d): Availability of List Decisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This action announces the availability of EPA decisions identifying

water quality limited segments and associated pollutants in Arizona to be listed pursuant to Clean Water Act section 303(d)(2), and requests public comment. Section 303(d)(2) requires that states submit and EPA approve or disapprove lists of waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards and for which total maximum daily loads (TMDLs) must be prepared.

On November 16, 2004, EPA partially approved and partially disapproved Arizona's 2004 submittal. Specifically, EPA approved Arizona's listing of 53 waters, associated pollutants, and associated priority rankings. EPA disapproved Arizona's decisions not to list 19 water quality limited segments and associated pollutants, and additional pollutants for 8 water bodies already listed by the State. EPA identified these additional water bodies and pollutants along with priority rankings for inclusion on the 2004 Section 303(d) list.

EPA is providing the public the opportunity to review its decisions to add waters and pollutants to Arizona 2004 Section 303(d) list, as required by EPA's Public Participation regulations. EPA will consider public comments in reaching its final decisions on the additional water bodies and pollutants identified for inclusion on Arizona's final lists.

DATES: Comments must be submitted to EPA on or before December 27, 2004.

ADDRESSES: Comments on the proposed decisions should be sent to Peter Kozelka, TMDL Liaison, Water Division (WTR–2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105, telephone (415) 972–3448, facsimile (415) 947–3537, e-mail *kozelka.peter@epa.gov*. Oral comments will not be considered. Copies of the proposed decisions concerning Arizona which explain the rationale for EPA's decisions can be obtained at EPA Region 9's Web site at *http://www.epa.gov/region9/water/tmdl/303d.html* by writing or calling Mr. Kozelka at the above address. Underlying documentation comprising the record for these decisions are available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Peter Kozelka at (415) 972–3448 or *kozelka.peter@epa.gov*.

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act (CWA) requires that each state identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards. For those waters, states are required to establish TMDLs according to a priority ranking.

EPA's Water Quality Planning and Management regulations include requirements related to the implementation of section 303(d) of the CWA (40 CFR 130.7). The regulations require states to identify water quality limited waters still requiring TMDLs every two years. The lists of waters still needing TMDLs must also include priority rankings and must identify the waters targeted for TMDL development during the next two years (40 CFR 130.7). On March 31, 2000, EPA promulgated a revision to this regulation that waived the requirement for states to submit section 303(d) lists in 2000 except in cases where a court order, consent decree, or settlement agreement required EPA to take action on a list in 2000 (65 FR 17170).

Consistent with EPA's regulations, Arizona submitted to EPA its listing decisions under section 303(d)(2) on September 2, 2004. On November 16, 2004, EPA approved Arizona's listing of 53 waters and associated priority rankings. EPA disapproved Arizona's decisions not to list 19 water quality limited segments and associated pollutants, and additional pollutants for 8 water bodies already listed by the State. EPA identified these additional waters and pollutants along with priority rankings for inclusion on the 2004 Section 303(d) list. EPA solicits public comment on its identification of 19 additional waters and associated pollutants, and additional pollutants for 8 waters already listed by the State, for inclusion on Arizona's 2004 Section 303(d) list.

Dated: November 16, 2004.

Alexis Strauss,

Director, Water Division, Region IX.

[FR Doc. 04–26156 Filed 11–24–04; 8:45 am]

BILLING CODE 6560–50–P

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Administration; Notice of Meeting of the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction

ACTION: Notice.

SUMMARY: The Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction (''Commission'') will meet in closed session on Thursday, December 16, 2004, and Friday, December 17, 2004, in its offices in Arlington, Virginia.

Executive Order 13328 established the Commission for the purpose of assessing whether the Intelligence Community is sufficiently authorized, organized, equipped, trained, and resourced to identify and warn in a timely manner of, and to support the United States Government's efforts to respond to, the development of Weapons of Mass Destruction, related means of delivery, and other related threats of the 21st Century. This meeting will consist of briefings and discussions involving classified matters of national security, including classified briefings from representatives of agencies within the Intelligence Community; Commission discussions based upon the content of classified intelligence documents the Commission has received from agencies within the Intelligence Community; and presentations concerning the United States' intelligence capabilities that are based upon classified information. While the Commission does not concede that it is subject to the requirements of the Federal Advisory Committee Act (FACA), 5 United States Code Appendix 2, it has been determined that the December 16–17 meeting would fall within the scope of exceptions (c)(1) and (c)(9)(B) of the Sunshine Act, 5 United States Code, Sections 552b(c)(1) & (c)(9)(B), and thus could be closed to the public if FACA did apply to the Commission.

DATES: Thursday, December 16, 2004 (9 a.m. to 5 p.m.) and Friday, December 17, 2004. (9 a.m. to 2 p.m.).

ADDRESSES: Members of the public who wish to submit a written statement to the Commission are invited to do so by facsimile at (703) 414–1203, or by mail at the following address: Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, Washington, DC 20503. Comments also may be sent to the Commission by e-mail at *comments@wmd.gov*.

FOR FURTHER INFORMATION CONTACT: Contact Brett C. Gerry, Associate General Counsel, Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, by facsimile, or by telephone at (703) 414–1200.

Victor E. Bernson, Jr.,

Executive Office of the President, Office of Administration, General Counsel.

[FR Doc. 04–26147 Filed 11–24–04; 8:45 am]

BILLING CODE 3130–W5–P

EXPORT-IMPORT BANK

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Notice and request for comments.

SUMMARY: The Export-Import Bank, as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection as required by the Paperwork Reduction Act of 1995.

SUPPLEMENTARY INFORMATION: This notice is soliciting comments from the public concerning the proposed collection of information to (1) evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed information collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of collection of information on those who are to respond, including through the use of appropriated automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

DATES: Written comments should be received on or before January 25, 2005.

ADDRESSES: Direct all comments or requests for additional information to Kristine Wood, Export-Import Bank of the U.S., 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3913 or *kristine.wood@exim.gov*.

Titles and Form Numbers: Export-Import Bank of the United States Long-Term Preliminary Commitment and Final Commitment Application, EIB 95–10.

OMB Number: 3048–0014.

Type of Review: Revision and extension of a currently approved collection.

Need and Use: The information requested enables the applicant to provide Ex-Im Bank with the information necessary to determine eligibility for the loan and guarantee programs.

Affected Public: Business or other for-profit.

Respondents: Entities involved in the provision of financing or arranging of financing for foreign buyers of the U.S. exports.

Estimated Annual Respondents: 70.

Estimated Time per Respondent: 105 hours.

Estimated Annual Burden: 105 hours.

Frequency of Response: When applying for a long-term preliminary or final commitment.

Dated: November 19, 2004.

Solomon Bush,

Agency Clearance Officer.

BILLING CODE 6690–01–M

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Expires 11/30/2004

Export-Import Bank of the United States

APPLICATION FOR LONG-TERM LOAN OR GUARANTEE

This application is to be used for direct loan and guarantee transactions with financed amounts over $10 million (excluding financed premium), typically with tenors over seven years. It is also to be used for certain Ex-Im Bank products and programs regardless of transaction size or tenor including: Large Aircraft, Limited Recourse and Structured Financing, and Tied Aid. (To request a Credit Guarantee Facility, please complete the Medium-Term application)

Additional information on how to apply for Ex-Im Bank long-term loans and guarantees can be found at Ex-Im Bank's web site **http://www.exim.gov/tools/how_to_apply.html**

Send this completed application to Ex-Im Bank, 811 Vermont Avenue, NW, Washington, DC 20571. Ex-Im Bank will also accept e-mailed PDF and faxed applications. Please note that applications must be PDF scans of original applications and all required application attachments. (Fax number 202.565.3380, e-mail **exim.applications@exim.gov**). Hard copies of required supporting documentation may still be required for limited recourse and structured financing requests.

APPLICATION FORM

1. COMMITMENT OR FINANCING TYPE REQUESTED

A. Product

- ❒ Comprehensive Guarantee
- ❒ Political Risk Guarantee
- ❒ Direct Loan
- ❒ Preliminary Commitment - See Preliminary Commitment Fact Sheet for eligibility criteria. A justification for a Preliminary Commitment is to be attached. (http://www.exim.gov/pub81.html)

B Conversion of a Preliminary Commitment or a Letter of Interest

❒ No ❒ Yes. The Ex-Im Bank reference number is: .....

C. Resubmission ❒ Check if this is a resubmission of an application that was previously deemed incomplete or was withdrawn for other reasons. The Ex-Im Bank reference number is: .....

2. PARTICIPANTS:

Applicant name: ..... Duns #: .....

Contact person: ..... Phone #: .....

Position title: ..... Fax #: .....

Street address: ..... E-mail: .....

City: ..... State/Province: ..... Nine-digit zip code: .....

Country: ..... Taxpayer ID #: .....

Number of employees: .....

Applicant's role in the transaction: ❒exporter ❒buyer/ borrower ❒lender (if lender is applicant, lenders mandate must be attached)

Primary contact point for Ex-Im Bank inquiries on this transaction: ❒ exporter ❒ lender ❒ borrower

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Exporter. The exporter is the U.S. entity that contracts with the buyer for the sale of the U.S. goods and services.

❒ Check if the exporter is the applicant. Otherwise, complete the information below for each exporter, including ancillary service providers.

Exporter name:	Duns #:	
Contact person:	Phone #:	
Position title:		Fax #:
Street address:		E-mail:
City:	State/Province:	Nine digit zip code:
Taxpayer ID #:		
Number of employees:		

Supplier. The supplier is the U.S. company that manufactures the goods and/or performs the services to be exported.

❒ Check if the supplier is also the exporter. Otherwise, complete the information below for each supplier, including ancillary service providers.

Supplier name:	Duns #:	
Contact person:	Phone #:	
Position title:		Fax #:
Street address:		E-mail:
City:	State/Province:	Nine digit zip code:
Taxpayer ID #:		
Number of employees:		

Borrower. The borrower is the entity that agrees to repay the loan.

❒ Check if the borrower is the applicant. If not, complete the information below.

Borrower name:		Duns #:
Contact person:		Phone #:
Position title:		Fax #:
Street address:		E-mail:
City:	State/Province:	Postal code:
Taxpayer ID #:		
Country:		

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Guarantor. The guarantor is the person or entity that agrees to repay the credit if the borrower does not. Complete the information below for each guarantor if a guarantor is offered or required.

Guarantor name: Duns #:
Contact person: Phone #:
Position title: Fax #:
Street address: E-mail:
City: State/Province: Postal code:
Country

Buyer. The buyer is the entity that contracts with the exporter for the purchase of the U.S. goods and services. Check if the buyer is also the ❒ borrower or ❒ guarantor. Otherwise, complete the information below.

Buyer name: Duns #:
Contact person: Phone #:
Position title: Fax #:
Street address: E-mail:
City: State/Province: Postal code:
Country:

End-user. The end-user is the foreign entity that uses the U.S. goods and services. Check if end-user is also the ❒ borrower or ❒ guarantor or ❒ buyer. Otherwise, complete the information below.

End-user name: Duns #:
Contact person: Phone #:
Position title: Fax #:
Street address: E-mail:
City: State/Province: Postal code:
Country:

Lender. The lender is the company that extends the Ex-Im Bank guaranteed or insured loan to the Borrower. Check if the lender is the ❒ applicant. Otherwise, complete the information below.

Lender name: Duns #: MGA#
Contact person: Phone #:
Position title: Fax #:
Street address: E-mail:
City: State/Province: Nine digit zip code:
Country:

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3. DETAILS OF COVERAGE REQUESTED

A.. Special Features Requested

Check the boxes for the coverage that apply to the transaction. View the fact sheets describing the coverage on Ex-Im Bank's web site as noted below. Complete and attach the requested forms.

☐ Large Aircraft *Attachment A required*	☐ Project Finance *Attachment F required*	☐ Structured Finance *Attachment G required*
☐ Foreign Currency Guarantee (specify currency) **http://www.exim.gov/products/guarantee/foreign_curr.html**	☐ Local Cost Support *Attachment E required* **http://www.exim.gov/proucts/policies/local_cost.html**	☐ Co-Financing with Foreign Export Credit Agency *Attachment H required* **http://www.exim.gov/pub/txt/95-10aph.doc**
☐ Used Equipment *Attachment E required* **http://www.exim.gov/products/policies/used_equip.html**	☐ Nuclear **http://www.exim.gov/products/policies/nuclear/.html** Nuclear-screening document must be submitted with application	☐ Environmental Exports Program **http://www.exim.gov/products/special/environment.html**
☐ Ancillary Service Fees **http://www.exim.gov/products/ebd-m-13.html**	☐ 4-month interest rate hold (Direct loans only)	☐ Captialization of Interest During Construction
☐ Tied Aid Program *Attachment C required*	☐ Finance Lease Structure **http://www.exim.gov/products/insurance/leasing.html**	☐ Military/Security/Police **http://www.exim.gov/products/policies/military.html**
☐ Engineering Multiplier Program **http://www.exim.gov/ebd-m-13.html**	☐ Other _____	☐ Other _____

4. TRANSACTION DESCRIPTION

a) Describe Goods and Services. Include make, model, manufacturer/supplier, SIC codes or NAICS (if known) of goods and services, number of units, values, and estimated U.S. and foreign content. This section doesn not need to be completed if the exporter attached a Content Report.

b) Describe the purpose of the transaction. Include answers to the following: Will the goods be used to create or expand production capacity for an exportable product? Are the goods and services destined for an identifiable project? If so, provide information on the total estimated project cost in US dollars. Also provide information as to other sources of financing for the project, including working capital.

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c) Indicate whether an application for support of this export contract or a related project has been filed with the Agency for International Development, Maritime Administration, Overseas Private Investment Corporation, Trade Development Agency or a multilateral financing agency. If so, include a brief description of the additional support.

5. REQUESTED FINANCING AMOUNTS AND STRUCTURE

Ex-Im Bank support is based on the value of the eligible goods and services in the exporter's supply contract(s) or purchase order(s). The total level of support will be the lesser of: 85% of the value of all eligible goods and services; or 100% of the U.S. content included in all eligible goods and services in the exporter's supply contracts. In addition, Ex-Im Bank may also finance certain local costs, ancillary services as approved, and the exposure fee/premium. Fill out the chart below to determine estimated eligible amounts.

		Definition	US$
A	Supply Contracts or Purchase Orders	The aggregate price of all goods and services in all the supply contract(s) or purchase order(s), including local costs, ancillary services, and excluded goods and services. Break out ancillary services in Aii.	Ai Aii
B	Excluded Goods and Services	The aggregate price of all goods and services that are not eligible for or are excluded from Ex-Im Bank support (e.g. goods not shipped from the U.S. and excluded ancillary services). Local costs should not be included in this line.	
C	Total Local Costs	The aggregate price of all goods manufactured in the end-user's country and all services provided by residents of the purchaser's country. Ex-Im Bank may be able to finance these amounts up to 15% of D below.	
D	Net Contract Price	A minus B minus C	
E	Eligible Foreign content	The aggregate cost of any goods produced or manufactured outside the U.S, or services provided by third country personnel or foreign freight costs and foreign insurance included in the net contract price (line D), (e.g. foreign items shipped from the US)	
F	U.S. Content	D minus E	
G	Cash Payment	This amount must be the greater of E or 15% of D	
H	Local Cost Financing Requested	This can be no more than 15% of D	
I	**Financed Amount Requested** (Excluding Exposure Fee)	D minus G plus H	

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A. Exposure Fee . Check one box.

- ❒ Ex-Im Bank to finance the fee, which will be paid as the credit is drawn down.
- ❒ Ex-Im Bank to finance the fee, which will be paid up front.
- ❒ Ex-Im Bank will not finance the fee, and it will be paid as the credit is drawn down.
- ❒ Ex-Im Bank will not finance the fee, and it will be paid up front.

B. Transaction Structure.

i. Principal Repayment Term. _____(years). Unless otherwise requested, equal installments of principal will be repaid semi-annually beginning six months after the starting point.

ii Starting Point. The starting point is generally the event that marks the fulfillment of the exporter's contractual responsibility. See Ex-Im Bank's fact sheets on starting points and reach-back policies at **www.exim.gov**. (Check one box.)

- ❒ Shipment (single shipment)
- ❒ Final Shipment (multiple shipments)
- ❒ Mean Shipment (multiple shipments)
- ❒ Other
- ❒ Services Completion.
- ❒ Completion of Installation. Specify date: _____
- ❒ Project Completion. Specify date: _____

iii Shipment Period. Shipments will be completed and/or services will be performed from: [ ] (month/year) to [ ] (month/year) excluding any acceptance, retention, or warranty period.

iv. Interest rate.

The interest rate to be charged on the guaranteed loan is: _____

6. REASON FOR REQUESTING EX-IM BANK SUPPORT.

Ex-Im Bank will finance the export of U.S. goods and services if it can be demonstrated that Ex-Im Bank support is necessary for the transaction to proceed. Check one of the boxes below describing why support is necessary.

❒ The exporter is aware that foreign companies are competing, or are expected to compete for the sale. Provide company name, country, and (if known/applicable) the supporting export credit agency.

_____

_____

_____

❒ The exporter is aware that foreign companies manufacture comparable goods and services that are sold in the buyer's market with export credit agency support available. Provide company name, country, and (if known/applicable) the supporting export credit agency.

_____

_____

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❒ There is limited availability of private financing (from either external or domestic sources). Indicate how financing is constrained by checking the appropriate box.

❒ No availability of economically viable interest rates on terms over one to two years.
❒ Financial institution lending capacity limits reached for either borrower and/or country.
❒ Other (please describe) .....

7. CREDIT INFORMATION

The credit information outlined in the following is attached.

❒ Large Aircraft (*Attachment A)*
❒ Long-Term and Structured Transactions (*Attachment G)*
❒ Limited Recourse Project Finance (*Attachment F)*

8. OTHER INFORMATION AND CERTIFICATIONS

A. General Information - Provide the following:

❒ Credit Agency report(s) on the exporter(s). If exporter has a credit rating of BBB or better, this is not required.
❒ Annex A to the Master Guarantee Agreement (Guarantees only) at **http://www.exim.gov/pub/pdf/mt-anx-exec.pdf**
❒ Lender's mandate letter (required when applicant is a financial institution).
❒ Environmental Screening (attachment B).

B. Supply Contracts Between the Exporter and Buyer.

❒ Sales contract(s), pro forma invoice(s), or purchase order(s) are attached.
❒ No contract is attached. (Project Finance and Preliminary Commitments only)

C. Commitment Fee Agreement.

A commitment fee accrues starting 60 days after the authorization of a final commitment and is payable semiannually in arrears on a schedule determined at the time of authorization. The commitment fee is 1/8 of 1% per annum on the un-disbursed and un-cancelled balance of a guaranteed loan or 1/2 of 1% per annum for a direct loan. Choose one of the options below regarding the payment of the commitment fee:

❒ The applicant is the borrower, and by signing the application, is irrevocably committing to pay the commitment fee.
❒ The applicant is the guaranteed lender, and is (check one):
  ❒ signing the application which irrevocably commits it to pay the fee, or
  ❒ signing the application and enclosing with it an Ex-Im Bank standard form fee letter from the borrower (at **http://www.exim.gov/pub/pdf/mt-anx-exec.pdf**). This letter irrevocably commits the borrower to pay the fee.
❒ The applicant is the exporter, and is signing the application and enclosing with it an Ex-Im Bank standard form fee letter from the ❒ borrower or ❒ guaranteed lender (at **http://www.exim.gov/pub/pdf/mt-anx exec.pdf**). This letter irrevocably commits the borrower or guaranteed lender to pay the fee.

D. Content Report

Ex-Im Bank does not require the Content Report at the time of application. Processing of, and the decision on, the application will not be delayed or affected by the submission or absence of the report. A Cause Report EBD-M-55 is requested at the end of each calendar year to describe the nature and reason for the inclusion of any good and services with 50% or more foreign content in the good or service.

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E. Anti-Lobbying Disclosure form

Please refer to the Anti-Lobbying Declaration/Disclosure forms (at **http://www.exim.gov/pub/pdf/95-10apd.pdf**) and include a signed copy of the appropriate form(s) with your application.

F. Certifications

The undersigned certifies that the facts stated and the representations made in this application and any attachments to this application are true, to the best of the applicant's knowledge and belief after due diligence, that the applicant has not omitted any material facts. The undersigned certifies that neither it, nor its principals, have with in the past three years been a) debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in, a covered transaction, b) formally proposed for debarment, with a final determination still pending, (c) indicted, convicted or had a civil judgment rendered against it for any of the offenses listed in the Regulations, (d) delinquent on any substantial debts owed to the U.S. Government or its agencies or instrumentalities as of the date of execution of this application; or (e) the undersigned has received a written statement of exception from Ex-Im Bank attached to this certification, permitting participation in this Covered Transaction despite an inability to make certifications a) through d) in this paragraph. We further certify that we have not and will not knowingly enter into any agreements in connection with the Goods and Services with any individual or entity that has been debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in a Covered Transaction. All capitalized terms not defined herein shall have the meanings set forth in the Government-wide Non-procurement Suspension and Debarment Regulations - Common Rule (Regulations).

In addition, we further certify that we have not, and will not, engage in any activity in connection with this transaction that is a violation of a) the Foreign Corrupt Practices Act of 1977, 15 U.S.C. 78dd-1, et seq. (which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business), b) the Arms Export Control Act, 22 U.S.C. 2751 et seq., c) the International Emergency Economic Powers Act, 50 U.S.C. 1701 et seq., or d) the Export Administration Act of 1979, 50 U.S.C. 2401 et seq.; nor have we been found by a court of the United States to be in violation of any of these statutes within the preceding 12 months, and to the best of our knowledge, the performance by the parties to this transaction of their respective obligations does not violate any other applicable law.

The applicant certifies that the representations made and the facts stated in this application and its attachments are true, to the best of its knowledge and belief, and it has not misrepresented or omitted any material facts. It further understands that these certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001, et. seq.).

8. NOTICES

The applicant is hereby notified that information requested by this application is done so under authority of theExport-Import Bank Act of 1945, as amended (12 USC 635 et. seq.); provision of this information is mandatory and failure to provide the requested information may result in Ex-Im Bank being unable to determine eligibility for support. The information provided will be reviewed to determine the participants' ability to perform and pay under the transaction referenced in this application. Ex-Im Bank may not require the information and applicants are not required to proThe information provided will be held confidential subject to the Freedom of Information Act (5 USC 552) the Privacy Act of 1974 (5 USC 552a), and the Right to Financial Privacy Act of 1978 (12 USC 3401), except as otherwise required by law. Note that the Right to Financial Privacy Act of 1978 provides that Ex-Im Bank may transfer financial records included in an application for a loan or loan guarantee, or concerning a previously approved loan or loan guarantee, to another Government authority as necessary to process, service or foreclose on a loan or loan guarantee, or collect on a defaulted loan or loan guarantee.

Applicant (company) name: .....

Name and tittle of authorized officer: .....

Signature of authorized officer: .....

Date: .....

LONG-TERM LOAN OR GUARANTEE

OMB No. 3048-0013
Expires 11/30/2004

ATTACHMENT A: Large Aircraft Transactions

1. **Financing Type Requested.** Three financing options are available for new large aircraft transactions under the Large Aircraft Sector Understanding (LASU), contained in the OECD Arrangement. All three options may be requested for a PC. Only one option may be chosen for an AP. Check below the option(s) you are requesting. For ***used*** large aircraft transactions, complete No. 3 of the *Long-Term Loan or Guarantee Application*.

   ☐ **Option 1:** An Ex-Im Bank guarantee for up to 85% of the contract price.

   ☐ **Option 2:** An Ex-Im Bank guarantee for 42.5% of the contract price coupled with an Ex-Im Bank direct loan at the applicable LASU interest rate for 42.5% of the contract price. The Ex-Im Bank direct loan is repaid during the later maturities.

   ☐ **Option 3:** An Ex-Im Bank guarantee for 22.5% of the contract price coupled with an Ex-Im Bank direct loan at the applicable LASU interest rate for 62.5% of the contract price. The Ex-Im Bank guaranteed loan and direct loan are repaid on a pari-passu basis.

2. **Spare Parts Financing.** Indicate if any spare parts or spare engines are included in the export sale and provide the requested information on these items.

3. **Credit Information.** The information requested in this section is generally required for all applications. If the transaction is secured with a sovereign guarantee, all or part of the detailed operational information requested in items E, F, and G below may not be necessary. Likewise, if the airline is a repeat customer of Ex-Im Bank, much of the historical financial and operating information may already have been provided to Ex-Im Bank, and additional information could be limited to updating the existing information. In either situation, please contact the Transportation Division to discuss the possibility of limiting the amount of information required by Ex-Im Bank. If any of the information listed in this section is not obtainable, Ex-Im Bank can discuss other options for credit analysis with the applicant.

   a. Airline history and ownership, and background data on senior management/directors.

   b. Contract price of aircraft, net of all credit memoranda and other discounts extended by the suppliers of the airframe, engines, and other components.

   c. Amount of buyer furnished equipment (BFE) included in the contract price, description of BFE, and location where BFE will be installed.

   d. Reason for purchase (replacement or expansion of fleet), proposed routes, and suitability of aircraft model in terms of fleet make-up and intended routes.

   e. Description of each business segment of airline operations (passenger, freight, maintenance, catering, and other related businesses), and the portion of revenue and operating profit attributable to each segment.

   f. Identification of major geographic markets and description of competitive position, market share, and strategy regarding competition, yield management, and cost control in each market. Include the airline's marketing plan and details of affiliations and partnerships with other carriers.

   g. The operating statistics listed below or similar statistics containing the same general information for the most recent three years and, if available, up to five years. Provide the listed statistics for domestic and international operations, as well as for each geographic region or route type and each business segment.

ASKs (Available Seat Kilometers)	Load Factors
ATKs (Available Ton Kilometers)	Yield (passenger and cargo)
RPKs (Revenue Passenger Kilometers)	Aircraft Utilization Rate
RTKs (Revenue Ton Kilometers)	Number of Employees
Operating Expenses per Available Seat Kilometers	

   h. Present and projected route structure, including basis for selecting new or expanded routes.

   i. Audited balance sheet, income, and cash flow statements and annual reports for the three most recent fiscal years, and interim statements for the most recent period, if applicable. Annual statements must be prepared in accordance with internationally accepted accounting principles and audited in accordance with international standards.

   j. Projected balance sheet, income, and cash flow statements for a five-year period, accompanied by supporting assumptions.

   k. Moody's or Standard & Poors ratings, if available.

l. Lender's detailed term sheet of proposed financing structure (*not required for Preliminary Commitments*). Include relevant information on the special purpose vehicle (SPV) for lease structures, including the domicile and proposed ownership of the SPV. If a tax lease structure is contemplated, include a description and flow chart of the proposed tax lease structure.

4. **Security Requirements.** Ex-Im Bank will determine whether the security for a specific large aircraft transaction will be a sovereign guarantee, a lien on the aircraft, or both. For large aircraft transactions in which the security includes the aircraft, Ex-Im Bank will require that a valid and enforceable lien be placed on the aircraft to be financed. The information listed below concerning registration and mortgages is required if Ex-Im Bank has no prior experience with asset-based structures in the airline's country or if the laws pertaining to registration and mortgages have been amended. Please contact the Transportation Division to determine if such experience exists. Supplemental information on these issues may be required during the processing of the application and Ex-Im Bank may ask the applicant to pay for outside counsel or consultants selected by Ex-Im Bank to research particular issues. Include with the application any additional information that may facilitate Ex-Im Bank's determination of security.

a. Aircraft Registration

- Is the country of registration a party to the Chicago Convention of 1944 on International Civil Aviation?
- Are there statutes or regulations in the country dealing with the registration of aircraft? If so, provide an English translation of such statutes or regulations.
- Is there an aircraft registry? If so, describe how it operates.
- What specific steps (including any provisions that must be contained in the relevant documents) must be taken to register and deregister an aircraft?

b. Aircraft Mortgages

- Is the country of registration a party to the Convention of 1948 on International Recognition of Rights in Aircraft (the "Geneva Convention")?
- Describe the statutes or regulations in the country dealing with mortgages of aircraft.
- Can a valid and perfected first priority mortgage on the aircraft and engines be created for the benefit of Ex-Im Bank?
- What claims may have a "super" priority over a mortgagee or lessor of an aircraft?
- Following a default, can an aircraft be repossessed without judicial interference?
- Can a judgment be awarded in U.S. dollars and, if so, are any special approvals necessary?
- Will a foreign judgment or a judgment by an arbitrator be recognized in the airline's country?

If you have questions about this attachment, please contact the Transportation Division (Telephone: 202-565-3550 or Fax: 202-565-3558).

OMB No. 3048-0013
Expires 11/30/2004

LONG-TERM LOAN OR GUARANTEE
ATTACHMENT B: Environmental Screening Document

Must Accompany All Applications For Long-Term Financial Support

The information provided on this form is used to environmentally categorize the application and thereby determine the information needed (if any) for Ex-Im Bank to evaluate the environmental effects of the transaction, a process that is crucial to the appropriate and timely review of your application. Please check the boxes that apply.

Are the products or services covered in your application destined for an identified project?

☐ **No**, explain _____

☐ **Yes**, a) identify the project _____

b) provide a brief description, including output, capacity, size, etc. _____
_____
_____
_____

c) indicate whether new project, rehabilitation or expansion _____

Project Location

Is the project located in or near an environmentally sensitive site or area? (Check all applicable):

☐ Tropical Forest
☐ Nationally Designated Wetlands or Seashore / Protected Wildlands / Nationally Designated Refuges
☐ National Parks
☐ Coral Reefs or Mangrove Swamps
☐ Habitat of Endangered Species
☐ Location affecting indigenous or tribal populations
☐ Location having Historical / Archaeological Significance
☐ Large Scale Resettlement? (Potential Number of People Affected: _____)
☐ Properties on the World Heritage List

Project Sector Or Industry

Check classification(s) describing the project for which the exports are destined:

☐ Large infrastrucure:
- ☐ Airport
- ☐ Ports/harbors
- ☐ Pipelines
- ☐ Highways
- ☐ Other large infrastructure

☐ Agro-industries – large scale
☐ Forestry
☐ Mining & Mineral Processing Plant
☐ Oil & gas field development

☐ Hydropower Plant / Water Reservoir
☐ Thermal power plant
- ☐ over 140 MWe
- ☐ under 140 MWe

☐ Nuclear power plant
☐ Geothermal Power

☐ Waste management

☐ Iron & Steel Plant
☐ Smelter
☐ Pulp & Paper Plant
☐ Petroleum Refinery or Petrochemical Plant
☐ Chemical / Pharmaceutical
☐ Natural Gas Liquefaction Plants
☐ Industrial plants – large scale

☐ Transportation (Aircraft, Locomotives, Boats)
☐ Telecommunications or Satellites

☐ Air traffic control or navigational aids
☐ Railway signaling

☐ Hospitals and medical equipment

☐ Pre-project services, feasibility/environmental study
☐ Consulting services

☐ Other, specify: _____

Name of Applicant _____ **Date** _____

For inquiries and information please contact the Engineering & Environment Division at (202)565-3570.

Revised 11/04

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Expires 11/30/2004

LONG-TERM LOAN OR GUARANTEE APPLICATION

ATTACHMENT C: Tied Aid Capital Projects Fund

1. Check if you are requesting appropriate Ex-Im Bank support to preclude or counter foreign tied aid offers.

2. Check if one or more foreign governments are offering, or planning to offer, unusually long repayment periods, unusually low interest rates, and/or mixed grant-credit financing for ***the specific contract for which Ex-Im Bank support is sought***. Attach available documen-tary evidence of a foreign tied aid credit offer. If such evidence is not available, specify your reasons for suspecting foreign tied aid.

3. Check if you authorize Ex-Im Bank to ask the OECD Secretariat to issue a confidential "no aid" comm. on line request to OECD member governments. Acceptance of this request would preclude future foreign and U.S. aid financing for the project.

4. Check if you believe that loss of this contract will jeopardize follow-on sales opportunities for similar sales in the same market. Provide the type and estimated value of potential follow-on sales.

5. Provide the following information, if known, for each foreign government's tied aid offers.

	Foreign Offer #1	Foreign Offer #2
Donor government		
Foreign exporters supported		
Total offer amount		
Currency of offer		
Credit portion amount		
Credit portion interest rate		
Credit portion grace period		
Credit portion repayment period		
Grant portion, if any		

If you have questions about this attachment, please contact the Business Development Division (Telephone: 202-565-3946 or Fax: 202-565-3931).

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Expires 11/30/2004

Long-Term Loan or Guarantee Application

ATTACHMENT D: Anti-lobbying Declaration/Disclosure

This attachment applies only to applications for final commitments.

1. Anti-Lobbying Law.

Under a U.S. law (31 U.S.C. 1352), recipients of U.S. government loans, grants, contracts, and cooperative agreements are prohibited from spending Federally appropriated funds to influence certain U.S. government employees, including Ex-Im Bank employees, in connection with the awarding of those Federal awards.

Recipients of Federal loans, grants, guarantees, insurance, contracts and cooperative agreements may spend non-Federally appropriated funds for such lobbying purposes; however, they are required to report such lobbying expenditures.

The law applies to Ex-Im Bank loan, guarantee and insurance transactions. Declaration and Disclosure Forms are to be filed by applicants and recipients and certain exporters and suppliers, as defined below.

2. Compliance Procedures. 2a. Who Must File.

All applicants for final commitments from Ex-Im Bank must file a Declaration regardless of whether non-Federally appropriated funds have been spent for lobbying purposes. If non-Federally appropriated funds have been spent, a Disclosure Form must also be filed. Applicants include borrowers and lenders who are applicants for final commitments for medium-term and long-term direct loans and guarantees.

The Declaration and/or Disclosure Forms must be received by Ex-Im Bank from the applicant before Ex-Im Bank will consider the application for a final commitment.

All recipients under Ex-Im Bank programs, who are not the applicant for a final commitment, must file a Declaration and, if they have spent funds for lobbying purposes, a Disclosure Form. Recipients include borrowers who receive Ex-Im Bank direct loans and lenders who receive Ex-Im Bank guarantees.

The Declaration and/or Disclosure Forms must be received by Ex-Im Bank from the recipients before Ex-Im Bank will enter into a loan or guarantee agreement.

All suppliers who have entered into a contract in excess of $100,000 with the recipient of an Ex-Im Bank direct loan or grant must file a Declaration and, if funds have be en spent for lobbying purpose s, a Disclosure Form.

Such suppliers must file the Declaration and/or Disclosure Forms upon being awarded the supply contract.

2b. Exemptions.

The law has been interpreted so that it does not apply to foreign governments, their instrumentalities or their wholly-owned companies. Therefore, these entities are exempt from filing both the Declaration and Disclosure Forms.

The law's disclosure requirements do not apply to loan or guarantee transactions where the U.S. Government-financed portion is $150,000 or less.

2c. How To File.

Complete the appropriate Declaration Form on the following page. If you are required to file a Disclosure Form, it will be provided by Ex-Im Bank upon request. Any person who fails to file the required forms shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

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Long-Term Loan or Guarantee Application

ATTACHMENT D: Anti-lobbying Declaration/Disclosure

3. Certification for Contracts, Grants, Loans and Cooperative Agreements.

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was mad e or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Cod e. Any person w ho fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Applicant/Recipient Company
Signature
Name Title

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Long-Term Loan or Guarantee Application

ATTACHMENT D: Anti-lobbying De claration/Disclosure

4. Statement for Loan Guarantees and Loan Insurance.

The undersigned certifies, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be pa id to an y person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of a Congress in connection with this commitment providing for the Unit ed States t o insure o r guarantee a loan, the undersigned shall complete an d submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Applicant/Recipient Company

Signature

Name Title

LONG-TERM LOAN OR GUARANTEE APPLICATION
ATTACHEMENT E: USED EQUIPMENT

Equipment that has been previously owned or placed into service is generally eligible for support under Ex-Im Bank's loan, guarantee and insurance programs, provided certain criteria are met. To be eligible for Ex-Im Bank support, used equipment, including equipment that has been refurbished in the U.S., must meet the following **eligibility criteria:**

1. To be considered U.S. content, the used equipment must be of original U.S. manufacture, AND, if previously exported, must have been in use in the U.S. for at least one year prior to export.

2. The U.S. costs associated with the refurbishment of the equipment are eligible for Ex-Im Bank support, provided they meet Ex-Im Bank's foreign content policy parameters. Ex-Im Bank can support the lesser of 85 percent of the U.S. Contract Price of the item or 100% of the actual U.S. content of the item provided that (a) the item is shipped from the U.S. and (b) the foreign content of the item does not exceed 50 percent of the item's total production cost.

3. If the used equipment is of either original foreign manufacture or original U.S. manufacture, previously exported and has **not been in use in the U.S. for at least one year prior** to its proposed export, then Ex-Im Bank will treat it as **foreign content** and the following applies:

a. if the equipment is to be refurbished, the used equipment procurement cost is considered eligible foreign content provided that this cost is less than 50 percent of the total procurement and refurbishment cost.

b. if the foreign content of the used equipment exceeds 50 percent of the cost associated with the procurement and refurbishment of the equipment, then only the U.S. refurbishment portion will be considered eligible for Ex-Im Bank support.

4. Previously exported goods that benefitted from Ex-Im Bank financing in the past will be considered eligible for Ex-Im Bank support provided that the original financing has been **paid in full and** that the equipment has been **in use in the U.S. for at least one year.**

5. The **repayment term** that Ex-Im Bank offers for used and refurbished equipment will be consistent with Ex-Im Bank's international agreements for repayment terms based on contract value. Ex-Im Bank, at its sole discretion, will determine the remaining useful life of such equipment.

a. If the remaining **useful life** of the equipment is **at least half** the useful life of equivalent **new equipment**, then Ex-Im Bank may support a repayment term equal to that offered new equipment.

b. If the remaining **useful life** of the equipment is **less than half** the useful life of equivalent **new equipment**, then Ex-Im Bank may support a repayment term **equal to the useful life** remaining.

c. If the sale **includes** items some of which may have a **useful life of at least half** that of equivalent new equipment and **some** of which may have a **useful life of less than half** that of equivalent new equipment, a **weighted average** of the useful lives of all the items will be calculated to determine the payment term of the entire sale.

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LONG-TERM LOAN OR GUARANTEE APPLICATION
ATTACHEMENT E: USED EQUIPMENT

Used Equipment Questionnaire

Applicant: _____
Buyer: _____
Policy number (*for insurance program*): _____

Complete a separate questionnaire for each item of used equipment.

1. Product information

Name and description of used equipment: _____
Equipment History
a) year manufactured: _____ b) hour meter reading: _____
c) mileage: _____ d) where is equipment located: _____
e) how long has the equipment been there?: _____
Is the product under warranty? ☐ Yes ☐ No
Term: _____ Description: _____
Has the equipment been rebuilt/reconditioned? ☐ Yes ☐ No
By whom? _____ Location: _____ Date: _____
Does this equipment have an independent mechanical certification, evaluation, or assessment? ☐ Yes ☐ No

2. Export/Import History

Was the equipment previously exported? ☐ Yes ☐ No
Did Ex-Im Bank provide support? ☐ Yes ☐ No If yes, details: _____

Was the equipment imported to the U.S. ? ☐ Yes ☐ No

3. Prices and Costs

Contract price: $_____ Foreign content included in the contract price: $_____
U.S. supplier's purchase price: $_____ Purchase Date: _____
Cost of rebuilding/reconditioning: $_____ Cost of spare parts included: $_____
Description of rebuilding and/or spare parts: _____

4. Used Aircraft Only.

Have all airworthiness directives been completed? ☐ Yes ☐ No
If no, describe the regulation or directive permits required for continued operation of the aircraft: _____
_____
Number of cycle hours remaining on the airframe and engines: _____
Months remaining before next maintenance "C" and "D" checks: _____
Names of each previous owner and lessee with the corresponding acquisition dates: _____
Signature: _____ Date: _____
Name: _____ Title: _____

PRELIMINARY/FINAL COMMITMENT APPLICATION
ATTACHMENT F: Project and Structured Finance

QMB No. 3048-0013
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I. Project Finance.

The term "project finance" refers to the financing of projects that are dependent on the project cash flows for repayment as defined by the contractual relationships within each project. These projects do not rely on the typical export credit agency security package which has recourse to a foreign government, financial institution or established corporation to meet a reasonable assurance of repayment criterion. By their very nature, projects rely for successful completion on a large number of integrated contractual arrangements.

1. Ex-Im Bank Project Finance.

- **Maximum Support Possible.** Where appropriate, Ex-Im Bank will offer the maximum support allowed within the rules of the OECD Arrangement, to include:

a) *Financing of interest accrued during construction related to the Ex-Im Bank financing.*

b) *Allowance of up to 15% foreign content in the U.S. package.*

c) *Maximum repayment term allowed under the OECD guidelines.*

- **No Size Limitation.** There are no minimum or maximum size limitations.
- **Flexible Coverage.** Any combination of either direct loans or guarantees for commercial bank loans with political risk only or comprehensive coverage are available for a given project.
- **Flexible Equity Arrangements.** There are no predetermined equity requirements. Ex-Im Bank will review and determine the appropriate equity structure on a case-by-case basis. The equity sponsor's ownership position cannot be transferred without Ex-Im Bank's consent.
- **Ex-Im Bank Exposure Fee Commensurate with Risk.** Exposure fees will vary depending on the risk assessment of the project and the type of coverage requested during construction and post completion. The exposure fee can be paid up-front or with each disbursement and can be financed.
- **Environmental Considerations.** Ex-Im Bank's environmental procedures will apply.
- **Rapid Case Processing.** With the help of outside financial consultants, Ex-Im Bank will give a preliminary indication of support, called a Preliminary Project Letter (PPL), within 45 days from the date evaluation begins by the outside consultant. Should the project be sufficiently developed, the sponsor may proceed directly to a final commitment from the PPL, as determined by the Project and Structured Finance Division.
- **Financial Consultants.** Ex-Im Bank has advisers on specific project finance cases.

2. Application Process.

- **Submission.** The project finance application must include: 1) the standard *Ex-Im Bank Preliminary Commitment/Final Commitment Application*, and 2) the materials listed in this attachment. These materials should be marked "Project Finance Application" and submitted to Ex-Im Bank.
- **Preliminary Review.** Ex-Im Bank will review the submitted material within five to ten business days of the date that the application is received by the Division. This review will determine if the application includes the information required to proceed with an evaluation.
- **Incomplete Applications.** If the application presented is determined to be incomplete by the Project and Structured Finance Division, the applicant will be contacted with an explanation of the application's deficiencies. If the application is not determined to be suitable for limited recourse project financing but could still be considered for another form of Ex-Im Bank financing, it will be forwarded to the appropriate division and the applicant will be notified.
- **Choice of Financial Consultant.** A financial consultant will be selected by Ex-Im Bank to evaluate the application. Determination of the specific financial consultant will depend on several factors including geographic and sector expertise, and ability to meet project deadlines.
- **Evaluation Fee.** Before the financial consultant begins review, the applicant will be required to pay an evaluation fee.
- **Other Fees.** For most projects, Ex-Im Bank will require, either in conjunction with other lenders or for its own use, the advice of independent outside legal counsel, independent engineers, and insurance advisers. In addition, there may be other fees associated with conducting proper due diligence. Payment for these and any other fees will be the responsibility of the project sponsors or the applicant.
- **Preliminary Project Letter.** Assuming the evaluation process is satisfactory, the Project and Structured Finance Division will issue a PPL. The PPL indicates that Ex-Im Bank is prepared to move forward on a financing offer and the corresponding general terms and conditions. These terms and conditions will be based upon the information available at the time of application. The evaluation and issuance of the PPL will be completed within 45 days of commencement of the evaluation.
- **Evaluation Post-PPL.** After issuance of the PPL, Ex-Im Bank will work with the applicant to secure a final commitment. On a case-by-case basis, Ex-Im Bank may continue to utilize the financial consultant.

PRELIMINARY/FINAL COMMITMENT APPLICATION
ATTACHMENT F: Project and Structured Finance

QMB No. 3048-0013
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3. Project Criteria and Application Information Requirements.

a. General Project.(5 copies)

Definition

- Ideally the project should have long-term con-tracts from creditworthy entities for the purchase of the project's output and the purchase of the project's major inputs such as fuel, raw materials, and operations and maintenance. Such contracts should extend beyond the term of the requested Ex-Im Bank financing. Where such contracts do not exist, additional equity and/or other credit support is expected.
- The project should contain an appropriate allocation of risk to the parties best suited to manage those risks. Sensitivity analysis should result in a sufficient debt service coverage ratio to ensure uninterrupted debt servicing for the term of the debt.
- Total project cost should be comparable to projects of similar type and size for a particular market.
- Product unit pricing and costs should reflect market-based pricing.
- Devaluation risk needs to be substantially mitigated through revenues denominated in hard currencies, revenue adjustment formulas based on changing currency relationships, or other structural mechanisms.

Information required

1. Summary of all aspects of the project, as contained in an independently prepared feasibility study and/or a detailed information memorandum, prepared by a qualified party. The study or memorandum should include the project description, location, legal status, ownership, and the background and status of key elements of the project structure, such as agreements, licenses, local partner participation, and financing.
2. Draft agreements for key elements of the project, including supply and offtake agreements.
3. A breakdown of anticipated project costs through commissioning, including interest during construction and working capital requirements, by major cost category and country of origin.
4. A summary of the anticipated project financing plan and security package, including: the proposed source, amount, currency and terms of the debt and equity investments; the sources of finance in the event of project cost overruns; and a description of escrow accounts. Information on the terms, security requirements, and status of financing commitments of other lenders to the project, if applicable, should be provided.
5. Projected annual financial statements covering the period from project development through final maturity of the proposed Ex-Im Bank financing, to include balance sheet, profit and loss, source and application of funds statements, and debt service ratios. Projections should include a sensitivity analysis for not only the expected scenario but pessimistic and optimistic cases as well. The above information must be provided electronically in a user friendly financial model. Ex-Im Bank must be able to review and adjust the assumptions in the model.
6. Assumptions for the financial projections, including but not limited to the basis for sales volume and prices; operating and administrative costs; depreciation, amortization and tax rates; and local government policy on price regulation.
7. Market information to include: ten years of historical price and volume data; present and projected capacity of industry; product demand forecast with assumptions; description of competition and projected market share of the project as compared to the shares of the competition; identity and location of customers; and marketing and distribution strategy.
8. A description of the principal risks and benefits of the project to the sponsors, lenders, and host government.
9. A description of the types of insurance coverage to be purchased for both the pre- and post-completion phases of the project.

b. Participants. (5 Copies)

Definition

- Project sponsors, offtake purchasers, contractors, operators, and suppliers must be able to demonstrate the technical, managerial and financial capabilities to perform their respective obligations within the project.

Information Required

1. Sponsors must provide a brief history and description of their operations, a description of their relevant experience in similar projects, and three years of audited financial statements, in English.
2. If the sponsors are part of a joint venture or consortium, information on all participants should be provided. A shareholders' agreement should also be provided.
3. Offtake purchasers and suppliers should provide a history and description of operations, at least three years of audited financial statements, in English, and a description of how the project fits in to their long-term strategic plan.
4. Contractors and operators must provide resumes of experience with similar projects and recent historical financial information.

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PRELIMINARY/FINAL COMMITMENT APPLICATION
ATTACHMENT F: Project and Structured Finance

c. Technical. (3 Copies)

Definition

- Project technology must be proven and reliable, and licensing arrangements must be contractually secured for a period extending beyond the term of the Ex-Im Bank financing.
- A technical feasibility study or sufficiently detailed engineering information needs to be provided to demonstrate the technical feasibility of the project.

Information Required

1. Technical description and a process flow diagram for each project facility.
2. Detailed estimate of operating costs.
3. Arrangement for supply of raw materials and utilities.
4. Draft turnkey construction contract and description of sources of possible cost increases and delays during construction, including detailed description of liquidated damage provisions and performance bond requirements.
5. Project implementation schedule, showing target dates for achieving essential project milestones.
6. A site-specific environmental assessment, highlighting concerns, requirements and solutions. The information to be provided should demonstrate compliance with Ex-Im Bank's environmental guidelines.

d. Host Country Legal/Regulatory Framework and Government Role. (5 Copies)

Definition

- Host government commitment to proceeding with the project needs to be demonstrated.
- Legal and regulatory analysis needs to demonstrate that the country conditions and the project structure are sufficient to support long-term debt exposure for the project through enforceable contractual relationships.
- Ex-Im Bank's relationship with the host government will be addressed on a case-by-case basis. An Ex-Im Bank Project Incentive Agreement (PIA) with the host government may be required. The PIA addresses certain political risks and Ex-Im Bank's method of resolution of conflict with the host government pertaining to these issues. Only certain markets will require a PIA.

Information Required

1. A description of the host government's role in the project, and progress made toward obtaining essential government commitments, including authorizations from appropriate government entities to proceed with the project.
2. A definition of the control, if any, that the government will have in the management and operation of the project, and status of any assurances that the government will not interfere in the project's operation. If the government is also a project sponsor, these issues will be of particular importance.
3. Evidence of the government's current and historical commitment and policies for availability and convertibility of foreign currency.
4. Status and strategy for obtaining government undertakings to support any government parties involved in the project, to the extent that such undertakings are needed to provide adequate credit support for such entities.

II. Structured Finance.

"Structured" transactions will have an established corporation as a borrower but may rely upon sources of collateral or security in addition to the corporation's balance sheet. The information required for structured finance applications is the same as that requested in "Attachment G' plus any additional data describing the proposed structure and security package.

If you have questions about this attachment, please contact the Project and Structured Finance Division (Telephone: 202-565-3690 or Fax: 202-565-3695).

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LONG-TERM LOAN OR GUARANTEE APPLICATION

ATTACHMENT G: Credit Information

This attachment applies to all Long-Term Loan or Guarantee Applications, except for Large Aircraft and Project Finance Transactions. Provide the General Information and Supplemental Financial Information requested below (as applicable) on the borrower and, if any, guarantor. If any items are not available, provide an explanation. Following Ex-Im Bank's initial review of the application, an Ex-Im Bank Credit Officer may request additional credit information.

In the event that the borrower lacks sufficient credit strength in terms of asset size, operating history or cash flows to provide a reasonable assurance of repayment, an Ex-Im Bank Credit Officer will contact you to discuss whether "Structured Finance" credit enhancements are appropriate. Such enhancements may include one or more of the following:

- Special purpose accounts, including offshore payment accounts, escrow or reserve accounts, or other accounts that would be subject to Ex-Im Bank's control.
- Covenants and default provisions such as financial ratio or debt service coverage requirements that would, if violated, prevent payment of dividends to the company owners.
- Insurance requirements that might be more strict than those typically applicable under corporate insurance policies.
- Letters of credit or other sources of funds that would be pledged by the sponsor to Ex-Im Bank through a bank or other third party.

GENERAL INFORMATION

1. **Company description and ownership**. Provide a concise description of company origin, legal status, facilities, business activities (and any major changes during the last three years), and primary market(s). Describe the principal customer base (e.g., manufacturers, wholesalers) and provide the percentage of domestic versus export sales and the amount of sales to each major export market. Provide the name and address of each owner of at least 10% of company shares and his/her ownership percent.

2. **Related party information**. Provide the names and description of subsidiaries, affiliates and commonly owned companies. Indicate which, if any, of these related parties account for more than 25% of the borrower's sales or purchases during the last fiscal year.

3. **References**.

   a. Bank references. Provide a creditor bank reference prepared within six months of the application date. A bank reference is not required for sovereign or political risk transactions. Report should include bank name, address, length of relationship, amount, currency, terms of secured and unsecured credit and repayment experience.

   b. Credit Report: Provide a credit report (such as D and B) prepared within six months of the application date. Not required for sovereign or financial institution transactions.

4. **Financial Statements**. Provide independently audited balance sheets, income statements and cash flow statements, in English, for the last three fiscal years. Include the auditor's notes to the financial statements. If the most recent fiscal year ended more than nine months prior to the application date, provide interim statements. When interim statements are provided, also provide interim statements for the same period of the previous year (for comparative purposes). If there are substantial related party transactions as described in #2, the financial statements must adequately disclose the consolidated financial condition of the borrower/guarantor and the named related parties. Financial statements are not required for sovereign or political risk transactions.

5. **Financial projections**. Provide projected annual income statement, balance sheet and cash flow forecasts for the period of the Ex-Im Bank financing, accompanied by supporting assumptions. Projections are not required if the borrower or guarantor is a financial institution, or for sovereign or political risk transactions.

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LONG-TERM LOAN OR GUARANTEE APPLICATION

ATTACHMENT G: Credit Information

6. **Market indications.** Provide debt ratings assigned by Standard and Poor's, Moody's, Fitch-IBCA and Duff & Phelps, as well as other international and local rating agencies. Include the debt rating reports issued by the rating agency, and if applicable, the prospectus for debt or equity offered during the two years prior to the application date.

7. **Credit Agreement Information.** Provide a summary of the covenants, events of default, security interest and inter-creditor arrangements for existing creditors of the borrower or other entity considered to be the primary source of repayment.

SUPPLEMENTAL FINANCIAL INFORMATION

This information is required for comprehensive-cover transactions where the primary source of repayment is not a financial institution or a sovereign entity. Provide the information requested below on the borrower or guarantor that is designated as the primary source of repayment in accordance with the following guidance:

- if the requested information is provided in the notes to the financial statements, refer to the notes and indicate the note number.
- if the requested information is provided in a credit write-up that is enclosed, refer to the write-up and indicate the page number.
- unless otherwise indicated, provide information for each fiscal year for which financial statements are submitted.
- Items regarding changes in amounts or percentages refer to changes measured in U.S. dollars.
- a "change" means any change, either an increase or a decrease.

Operating Performance

1. Describe the expected operational and financial impact of the goods and/or services being purchased.
2. If any customer accounted for more than 25% of sales revenue in the last fiscal year, provide the customer's name, industry, percentage of revenue, length of relationship, sales terms, and whether or not the customer is a related or commonly owned entity.
3. If sales revenue changed by more than 15%, provide reasons.
4. Provide the level of production (in units) for principal product lines for each fiscal year and, if the production level changed by more than 15%, provide reasons.
5. For each component of cost of goods sold for the last fiscal year, provide the component type, amount, origin (domestic or foreign), and range of terms offered by suppliers.
6. If cost of goods sold as a percentage of sales revenue changed by more than 5%, provide reasons.
7. If any non-operating expense (other than interest or income taxes) represented more than 20% of operating profit, describe the expense.
8. If an operating loss or a net loss was incurred, provide reasons.

Balance Sheet

9 If total investments were more than 15% of total assets at the end of the last fiscal year, provide for each investment the type, amount, currency, security issuer, and/or company owned.

10. If there has been a change of more than 20% in receivables days-on-hand, provide the reasons and the range of terms granted for trade receivables.
11. If aggregate related company receivables, commonly owned company receivables, and non-trade related receivables exceeded 15% of total assets, provide the amount and purpose of each category of receivables.
12. If inventory was more than 20% of total assets at the end of the last fiscal year and/or inventory days-on-hand increased more than 20%, provide reasons.
13. If payables days-on-hand increased more than 20%, provide reasons and the terms granted by each supplier that represented more than 20% of payables.
14. If capital expenditures anticipated during the next 2 fiscal years exceed 15% of net fixed assets at the end of the last fiscal year, provide the amount, purpose, and financing plans for the capital expenditures.

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ATTACHMENT G: Credit Information

15. Provide the source, amount, currency, terms, and security/guarantees for credit lines available from financial institutions and credits owed to financial institutions.
16. Provide the aggregate amount of principal maturities due to all creditors in each of the next five fiscal years.
17. Provide the source, amount, and dates of equity cash infusions in each of the last three fiscal years and anticipated during the next fiscal year.
18. If any asset, liability, or equity account represented more than 15% of total assets and has not been previously described, provide the amount and a description of the account.

Off Balance Sheet Items

19. If the aggregate amount of contingent/off balance sheet items was more than 10% of total assets at the end of the last fiscal year, provide a description of the items.

Interim Statements

20. Explain any material changes in the interim financial statements relative to the statements for the last fiscal year.

Subsequent Events

21. Provide details of events subsequent to the end of the last fiscal year that could have a material effect on the creditworthiness of the company, and plans to deal with any material adverse changes.

OMB No. 3048-0013
Expires 11/30/2004

LONG TERM LOAN OR GUARANTEE APPLICATION

ATTACHMENT H: Co-Financing with Foreign Export Credit Agency

I. Parties:

Identify the name of the co-financing Foreign Export Credit Agency, and if known, the contact person(s), their phone and fax numbers, and e-mail addresses:

_____
_____
_____

Describe any relationships between any of the parties in the transaction except as described in Attachment G, Credit Information or 6.j) of EIB92-48:

_____
_____
_____

II. U.S. Supply Contract/Purchase Order Information in Dollars:

U.S. Content included in Supply Contract(s)	$_____
Eligible Foreign Content included in Supply Contract(s)	$_____
Local Costs (if any) included in Supply Contract(s)	$_____
Ancillary Services (if any)	$_____
Total Export-Import Bank Portion	**$**_____

III. Non-U.S. Exporter/Supplier Information:

Non-U.S. Exporter(s)/Supplier(s) With Address and Country of Origin	Description of their Goods and Services
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Non-U.S. Supply Contract(s)/Purchase Order(s) Information in Dollars

Foreign ECA Content included in Supply Contract(s)	$_____
Eligible Foreign Content included in Supply Contract(s)	$_____
Local Costs (if any) included in Supply Contract(s)	$_____
Other Services (if any) not included in Supply Contract(s)	$_____
Total Foreign ECA Portion	**$**_____

LONG TERM LOAN OR GUARANTEE APPLICATION

ATTACHMENT H: Co-Financing with Foreign Export Credit Agency

IV. Financed Amount Requested (excluding Exposure Fee):

This chart is to be completed with respect to those Goods and Services included in the Supply Contract(s) for which financing is requested from Ex-Im Bank. See Foreign Content Policy for Medium- and Long-Term Exports: http://www.exim.gov/pub/pdf/ebd-m-04a.pdf

	Ex-Im Bank	Foreign ECA	Total Financed/Insured
1. Content Sourced in the ECA Country	$	$	$
2. Eligible Foreign Content			
3. Ancillary/Other Services (if any)			
4. Less Cash Payment	( )	( )	( )
5. Local Costs (if any)			
Total Financed/Insured Amount Requested (excluding Exposure Fee/Insurance Premium)			

V. Other Information:

Describe any non-ECA financing for the Supply Contract(s):

_____

_____

Certification:

The applicant consents and certifies that it has obtained the consent of the other transaction participants to the disclosure by Ex-Im Bank of any information relating to this transaction to the co-financing Foreign Export Credit Agency, to the extent permitted by applicable law.

Signed _____ Dated _____

Print Name: _____

Title: _____

Firm Name: _____

[FR Doc. 04–26130 Filed 11–24–04; 8:45 am]

BILLING CODE 6690–01–C

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 9, 2004.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. John Wynn, BMTW LLC, SouthGate Leigh Wynne Trust, 1650 Partners, Catherine Wynne, and Hunter Leigh Wynne, as a group acting in concert to acquire voting shares of Community First Financial Corporation, Lynchburg, Virginia, and thereby indirectly acquire Community First Bank, Lynchburg, Virginia.

B. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Leamon Buchanan, Albertville, Alabama; to acquire additional voting shares of Peoples Independent Bancshares, Inc., Boaz, Alabama, and thereby indirectly acquire voting shares of Peoples Independent Bank, Boaz, Alabama, and First Bank, Wadley, Alabama.

Board of Governors of the Federal Reserve System, November 19, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–26127 Filed 11–24–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 20, 2004.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Maximum Holding International, Inc., Brooklyn Park, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of First Security Bank–Sanborn, Sanborn, Minnesota.

Board of Governors of the Federal Reserve System, November 19, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–26126 Filed 11–24–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Agency for Toxic Substances and Disease Registry

(Program Announcement 05002)

Public Health Conference Grant Program; Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year 2005 funds to award a Grant Agreement to Support Public Health Conference Support Grant Agreement published in the **Federal Register** on November 2, 2004, Volume 69, Number 211, pages 63541–63546.

The notice is amended as follows:

On page 63543, third column, 15th bullet, delete'' Main Conference topics (no more than 2) See attachment II'' and replace with ''Main Conference topics and topic number (no more than 2) See Attachment''. (Without these topics and topic numbers, the LOI and/or application will not be accepted.)

On page 63543, third column, below last bullet, delete paragraph that reads, ''This information must also be included in a summary page sent with the application''.

On page 63543, third column, in the last paragraph that begins with ''Application'', on the first line, add: ''The above information included in the LOI content must also be included on a cover page sent with the application.''

Dated: November 19, 2004.

Alan A. Kotch,

Acting Deputy Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–26183 Filed 11–24–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Request For Application 05029]

Dissemination Research on Fall Prevention: Development and Testing of an Exercise Program Package To Prevent Older Adult Falls; Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year 2005 funds to award a Cooperative Agreement to identify an effective exercise intervention to reduce older adult falls was published in the **Federal Register** on November 8, 2004,

Volume 69, Number 215, pages 64762–64769.

The notice is amended as follows: On page 64765, second column, Section IV.2, line 4, delete ''Maximum number of pages: 25 pages'' and replace with ''Maximum number of pages: 2 pages.''

Dated: November 19, 2004.

Alan A. Kotch,

Acting Deputy Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–26184 Filed 11–24–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–5011–WN]

Medicare and Medicaid Programs; Notice of Withdrawal of the Solicitation of Proposals for the Private, for-Profit Demonstration Project for the Program of All-Inclusive Care for the Elderly (PACE)

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Withdrawal notice.

SUMMARY: This document withdraws the ''Notice for the Solicitation of Proposals for the Private, For-Profit Demonstration Project for the Program of All-Inclusive Care for the Elderly (PACE)'' published in the **Federal Register** on August 10, 2001. That notice solicited proposals from private, for-profit organizations for a fully captitated joint Medicare and Medicaid demonstration. The goal of the solicitation notice was to determine whether the risk-based long-term care model employed by the nonprofit PACE could be replicated successfully by for-profit organization.

EFFECTIVE DATE: March 28, 2005.

FOR FURTHER INFORMATION CONTACT: Michael Henesch, (410) 786–6685.

SUPPLEMENTARY INFORMATION:

I. Background

Section 4804(a)(2) of the Balance Budget Act of 1997 (BBA) requires us to conduct a study to compare the costs, quality, and access to services provided by for-profit entities to those of nonprofit Program of All-Inclusive Care for the Elderly providers (PACE). Section 4801(h)(2)(A) of the BBA states that the terms and conditions for the for-profit PACE must be the same as those for PACE providers that are nonprofit, private organizations except that only 10 waivers may be granted.

On August 10, 2001, we published a notice in the **Federal Register** (66 FR 42229). The notice solicited proposals from for-profit entities to demonstrate that they could successfully provide comprehensive coordinated care for the frail elderly under a prepaid fully capitated payment system. The solicitation notice specified that we would consider proposals only from for-profit organizations and the demonstration would operate for 3 years.

II. Provisions of the Notice

This notice withdraws the solicitation notice that we published in the **Federal Register** on August 10, 2001. As specified in the solicitation notice, we would consider proposals only from for-profit organizations and the demonstration would operate for 3 years. Before submitting a proposal, all interested applicants were to submit letters of intent. We indicated that proposals would be accepted until 10 sites were awarded. Following the selection of 10 sites, organizations that had submitted letters of intent, but had not yet submitted proposals, would be notified that the limit of approved sites had been reached.

Since the publication of the solicitation notice, we received only ten letters of intent. Of these 10 letters of intent, 8 were received in 2001 and early 2002, 1 was received in February 2003, and 1 was received in August 2003. Although we have provided information to numerous organizations including having discussions with the organizations that have submitted letters of intent, we have not received any proposals. We have also contacted the two most recent organizations that have submitted letters of intent to offer technical assistance and have ascertained that only one organization has considered submitting a proposal. In addition, we have been informed by the National PACE Association, that it has consulted with organizations that have not submitted letters of interest.

Although the demonstration is mandated by the BBA, since CMS has not received any proposals that it could fund under the authority of the BBA, we are withdrawing our solicitation.

The need to keep abreast of regulatory provisions of the nonprofit PACE requires us to attend all PACE meetings, since the for-profit PACE demonstration would mirror nonprofit PACE policy. In the nearly 3 years since the implementation of the solicitation notice, the effort to maintain this level of activity has been extensive. With the enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173), we believe that our resources can better be utilized in addressing other workloads, including various studies, and other efforts related to the start-up of new programs and benefits. Furthermore, we believe it is unlikely that we will receive a proposal for a for-profit PACE demonstration. Therefore, we are withdrawing the August 10, 2001, solicitation notice.

This notice is intended to withdraw the solicitation by March 28, 2005. This withdrawal notice provides an opportunity for organizations that remain interested to submit proposals until that time.

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

Authority: Section 1894(h) and 1934(h) of the Social Security Act (42 U.S.C. 1395)

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 10, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 04–25980 Filed 11–24–04; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2202–FN]

Medicare and Medicaid Programs; Approval of Application for Deeming Authority for Ambulatory Surgical Centers by the American Association for Accreditation of Ambulatory Surgery Facilities, Inc.

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final notice.

SUMMARY: This final notice announces the approval of an application from the American Association for Accreditation of Ambulatory Surgery Facilities, Inc., (AAAASF) for continued recognition as a national accrediting organization for ambulatory surgical centers (ASCs) that request participation in the Medicare or

Medicaid programs. Following an evaluation of the organizational and programmatic capabilities of AAAASF, we determined that AAAASF's standards for ASCs meet or exceed the Medicare conditions for coverage. Therefore, ASCs accredited by AAAASF under the CMS-approved program will be deemed to have met the conditions for coverage under the Medicare program.

EFFECTIVE DATE: This final notice is effective November 26, 2004 through November 26, 2009.

FOR FURTHER INFORMATION CONTACT: Milonda Mitchell, (410) 786–3511.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Provisions and Regulations

Under the Medicare program, eligible beneficiaries may receive covered services in an ambulatory surgical center (ASC), provided that the ASC meets certain requirements. Section 1832(a)(2)(F)(i) of the Social Security Act (the Act) authorizes the Secretary to establish distinct criteria for a facility seeking designation as an ASC. Under this authority, the Secretary has set forth in regulations minimum requirements that an ASC must meet to participate in Medicare. The regulations at 42 CFR part 416 (Ambulatory Surgical Services) specify the conditions under which Medicare makes payments for covered services provided by an ASC. Applicable regulations concerning provider agreements are at part 489 (Provider Agreements and Supplier Approval) and those pertaining to facility survey and certification are at part 488 (Survey Certification and Enforcement Procedures), subparts A (General Provisions) and B (Special Requirements).

B. Verifying Medicare Conditions for Coverage (CfC)

For an ASC to enter into a provider agreement, a State survey agency must certify that the ASC is in compliance with the conditions or standards set forth in part 416 of our regulations. Then, the ASC is subject to ongoing review by a State survey agency to determine whether it continues to meet the Medicare requirements. However, there is an alternative to State compliance surveys. Accreditation by a CMS-approved accreditation program can substitute for ongoing State review.

Section 1865(b)(1) of the Act mandates that provider entities accredited by CMS-approved accrediting organizations including ASCs are deemed to be in compliance with Medicare conditions for coverage. Accreditation by an accreditation organization is voluntary and is not required of ASCs for participation in the Medicare program.

II. Deeming Application Approval Process

Section 1865(b)(3)(A) of the Act provides a statutory timetable to ensure that we conduct our review of deeming applications in a timely manner. The Act provides us with 210 calendar days after the date of receipt of a complete application to complete our survey activities and application review process. Within 60 days of receiving a completed application, we must publish a notice in the **Federal Register** that identifies the national accreditation body making the request, describes the nature of the request, and provides no less than a 30-day public comment period.

III. Provisions of the Proposed Notice

On July 23, 2004, we published a proposed notice (69 FR 44027) in the **Federal Register** that announced the American Association for Accreditation of Ambulatory Surgery Facilities, Inc.'s (AAAASF's) request for approval as a deeming organization for ASCs. In that notice, we detailed our evaluation criteria. Under section 1865(b)(2) of the Act and regulations at § 488.4, we conducted a review of AAAASF's application in accordance with the criteria specified by our regulations, which include, but are not limited to the following:

- An onsite administrative review of AAAASF's (1) corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its surveyors; (4) ability to investigate and respond appropriately to complaints against accredited facilities; and (5) survey review and decision-making process for accreditation.
- A comparison of AAAASF's ASC accreditation standards to our current Medicare conditions for coverage.
- A documentation review of AAAASF's survey processes to:

—Determine the composition of the survey team, surveyor qualifications, and the ability of AAAASF to provide continuing surveyor training.
—Compare AAAASF's processes to those of State survey agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.
—Evaluate AAAASF's procedures for monitoring providers or suppliers found to be out of compliance with AAAASF program requirements. The monitoring procedures are used only when the AAAASF identifies noncompliance. If noncompliance is identified through validation reviews, the survey agency monitors corrections as specified at § 488.7(d).
—Assess AAAASF's ability to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.
—Establish AAAASF's ability to provide us with electronic data in ASCII-comparable code and reports necessary for effective validation and assessment of AAAASF's survey process.
—Determine the adequacy of staff and other resources.
—Review AAAASF's ability to provide adequate funding for performing required surveys.
—Confirm AAAASF's policies with respect to whether surveys are announced or unannounced.
—Obtain AAAASF's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey that we may require, including corrective action plans.

In accordance with section 1865(b)(3)(A) of the Act, the proposed notice also solicited public comments regarding whether AAAASF's requirements met or exceeded the Medicare conditions for coverage for ASCs.

We did not receive public comments regarding AAAASF's renewal application as a national accrediting organization for ASCs.

IV. Provisions of the Final Notice

A. Differences Between AAAASF and Medicare's Conditions and Survey Requirements

On March 18, 2004, we sent a letter to AAAASF stating that ''AAAASF's new and revised standards meet or exceed the Medicare CfCs for ASCs and therefore has approved the revisions forwarded to CMS on March 3, 2004.'' We sent this letter in response to AAAASF's September 2003 submission of new and revised standards. Although, we approved the new and revised standards on March 18, 2004, AAAASF indicated in a letter dated June 10, 2004 that ''it will not implement its new standards until October 1, 2004 and that the approved Medicare standards will be printed prior to August 1, 2004 and will be sent to all new applicants after that date.'' Since AAAASF's implementation of its new and revised standards occurred during the review of its renewal application, we are including in this final notice AAAASF's

comments and responses to our review of its crosswalk ''Comparison of New AAAASF Standards and CMS Standards.'' The purpose of this review was to ensure that AAAASF's standards met or exceeded the Medicare CfCs for ASCs. The review yielded the following:

- In order to meet the requirements of § 416.41, AAAASF added to its standard that the governing body is legally responsible for the safe and effective operation of the ASCs.
- We requested AAAASF to clarify its standard *AAAASF number 4.020.11.0,* regarding its criteria for patient discharge. In addition, we recommended that AAAASF strike its reference to Post Anesthesia Care Unit (PACU) and insert ASC. AAAASF responded and revised its standards by requiring the physician to examine the patient immediately before discharge from the ASC. Lastly, AAAASF adopted our recommendation and removed PACU from its standards and inserted ASC.
- In order to meet the requirements of § 416.42(c), we recommended that AAAASF revise its standard, *AAAASF standard 8.001.08.0,* by requiring the ASCs to provide not only the patient's legally responsible representative with post-operative instructions before discharge, but also the actual patient himself or herself with post-operative instructions before discharge. AAAASF adopted our recommendation by revising its standard, which now requires adequate written post-operative instructions (including procedures in emergency situations) to be given to the patient and, if applicable, the adult responsible for the patient's care before discharge.
- AAAASF standard *10.002.01.0* indicated that the facility must display ''a professional look.'' We requested that AAAASF provide a definition/clarification of ''a professional look'' to ensure that its standard was in accordance with § 416.44. As referenced in Comparison of New AAAASF Standards and CMS Standards, AAAASF defines a professional look as ''the facility being properly constructed, equipped, and maintained to protect the health and safety of patients.''
- In order to meet the requirements of § 416.44(a)(2), we recommended that AAAASF revise its standard *3.032.02.0,* by requiring the ASC to have a separate recovery and waiting area. AAAASF revised its standard by requiring ASCs' recovery rooms in its Medicare ASCs to be distinctly separate and segregated from the waiting area.
- We asked AAAASF to revise its standard *9.002.00.1,* to comply with § 416.44(c)(1), by requiring its operating rooms (ORs) to have an emergency call system present in the OR. AAAASF revised its standards accordingly.
- To comply with § 416.44(c)(4), AAAASF revised its standard *9.002.00.4,* by requiring its facilities to use standard cardiac defibrillators versus an automated external defibrillators.
- We asked AAAASF to revise its standard *9.002.00.9,* which did not state that emergency medication must be readily available in the OR. The AAAASF standard failed to meet the requirements set forth in § 416.44(c)(9). AAAASF adopted our recommendation.
- AAAASF standard *7.004.09.0* failed to meet our standard § 416.44(d), by not specifying who was responsible for the use of cardiopulmonary resuscitation equipment in the ASC. AAAASF revised its standard by requiring a physician, Certified Registered Nurse Anesthetist (CRNA) or registered nurse (RN) with Advanced Cardiac Life Support certification or who is otherwise qualified in resuscitation to be immediately available in the facility until all patients have been discharged from the ASC.
- AAAASF standard *11.000.05.4* failed to reference granting privileges in accordance with recommendations from qualified medical personnel, as referenced at § 416.45(a). AAAASF revised its standard accordingly.
- We requested that AAAASF revise its standard *11.000.01.2,* which failed to state that medical staff would be accountable to the governing body. AAAASF revised it standard in accordance with our regulations at § 416.45.
- AAAASF standard *4.001.01* did not require medical records to be complete and comprehensive in accordance with § 416.47. AAAASF revised its standard by requiring medical records to be accurate, legible, documented, complete, comprehensive, and filed in a timely manner to ensure adequate patient care.
- In order to meet the requirements of § 416.47(b)(4), we recommended that AAAASF insert the phrase ''except those exempted by the governing body'', in its standard *4.020.05.0.* AAAASF adopted our recommendation. The standard now is identical to § 416.74(b)(4).
- In order to meet the requirements of § 416.47(b)(5), we recommended that AAAASF revise its standard *4.003.01.3,* by requiring the medical record to include documentation of patient drug reactions. AAAASF adopted our recommendation.
- In accordance with § 416.47(b)(8), AAAASF revised its standard *8.000.04.0,* to require the physician to include the discharge diagnosis in the patient's medical record.
- In accordance with § 416.48(a), AAAASF revised its standard *8.001.06.0,* to require a physician or RN to administer drugs to patients.

In addition to conducting a review of AAAASF's standards, we reviewed the materials contained in ''AAAASF Medicare Resource Guide,'' ''AAAASF's Policy and Procedures Manual,'' and AAAASF's ''Introductory Letter and Informational Packet.'' We compared this information with our State and Regional Operations Manual. This review yielded the following:

- We asked AAAASF to clarify the name of its Medicare Program for ASCs, as the organization used the title ''Medicare Accreditation and Medicare Certification'' interchangeably throughout its application materials. AAAASF advised us that the name of its program is ''AAAASF Medicare Accreditation.'' This program accredits Class B and Class C ASCs.
- We requested AAAASF to provide a definition or criteria for Class B and Class C facilities. According to AAAASF, a Class B facility performs surgical procedures in the facility under local or topical anesthesia and/or under intravenous or parenteral sedation, regional anesthesia, analgesia or dissociative drugs (excluding Propofol) without the use of endotracheal or laryngeal mask intubation, or inhalation general anesthesia (including nitrous oxide). In addition, the Class B facility must meet every standard under AAAASF's Class A facility requirements. AAAASF defines Class C facilities as facilities meeting the requirements under Class A and Class B. In addition, Class C facilities perform surgical procedures with intravenous Propofol, spinal or epidural anesthesia, endotracheal or laryngeal mask intubation or inhalation anesthesia (including nitrous oxide), spinal or epidural, which is administered by an anesthesiologist or a certified registered nurse anesthetist (CRNA).
- We requested AAAASF to clarify its accreditation decisions, as its policies and procedures indicate that, ''Offices can be approved or not approved for accreditation or they can be placed on provisional status.'' AAAASF responded that Class B and Class C facilities are either granted or denied Medicare Accreditation. These facilities are required to fully comply with AAAASF's Medicare standards and are prohibited from receiving provisional status.
- We requested AAAASF to provide clarification regarding its accreditation

cycle and its self-evaluation process. AAAASF responded that its Medicare accreditation is effective for 3 years (assuming that the facility remains in compliance with all AAAASF requirements for continued Medicare accreditation, which includes completion of a second and third year self-evaluation). The second and third year self-evaluation survey is conducted by the Facility Director and/or Registered Nurse (OR manager) annually to ensure continued compliance with all AAAASF requirements. AAAASF processes the evaluation and the facility is notified of any deficiencies. If the facility has any deficiencies, it is required to correct them within 30 days. AAAASF performs an onsite Medicare inspection at every consecutive 3-year cycle.

- We asked AAAASF to state who is responsible for performing the Life Safety Code (LSC) survey for its Medicare ASCs. It responded that it has contracted with *Fire and Life Safety Concepts, L.L.C.* to conduct its unannounced LSC surveys. In addition, AAAASF clarified that it is not requiring its Medicare ASCs to obtain their own LSC inspections from a state fire marshal or hired qualified inspector to qualify for Medicare accreditation.
- AAAASF submitted documentation stating that ''The Life Safety Code inspection is only performed during re-inspection if we require compliance with a new version of the NFPA Life Safety Code.'' We requested AAAASF to revise this statement, because a LSC survey is always required during re-accreditation by a deemed accreditation organization. In addition, we requested AAAASF to require its facilities to comply with the 2000 edition of the LSC. AAAASF responded that it will require its Medicare ASCs to obtain LSC surveys at the time of initial application, application renewal, or in instances which warrant a complaint survey involving physical environment. AAAASF provided us with copies of documentation that it sent to its Medicare ASCs, dated August 25, 2003, advising its facilities that effective September 11, 2003, all AAAASF Medicare approved ASCs are required to meet the NFPA 2000 LSC.
- We requested AAAASF to develop a comprehensive performance evaluation program for its Medicare inspectors. AAAASF responded by implementing a Medicare Inspector Examination Process. At the conclusion of each Medicare Inspector Training Workshop, an examination will be administered to assess the inspectors' knowledge and application of AAAASF's Medicare standards. In addition, we requested that the AAAASF inspectors accompany a field preceptor for an onsite Medicare facility inspection as part of the inspector training process. The field preceptor would complete a competency evaluation to assess the inspector's knowledge of AAAASF's survey process. Lastly, AAAASF now requires all of its Medicare ASCs to complete a facility evaluation form. It is a questionnaire completed by the surveyed facility and is designed to evaluate the inspector's skills and knowledge as it relates to the application of AAAASF standards, the inspection process, and Medicare requirements. AAAASF states that these tools will facilitate the proper evaluation of its Medicare inspectors' ability to apply AAAASF standards and survey processes, and will allow AAAASF to identify training needs for its inspectors.
- We asked AAAASF to develop policies and procedures for monitoring complaints in its Medicare ASCs. AAAASF has a toll-free hotline that patients, patient family members, or guardians may use to advise AAAASF of any complaints they may have regarding its Medicare ASCs. Each Medicare ASC is required to post AAAASF complaint certificate in its facility. This certificate provides the contact information individuals need to advise AAAASF of any comments or questions regarding services provided at the facility. The AAAASF Investigative Committee reviews all complaints. AAAASF's complaint categories are ''patient death,'' ''patient safety,'' and ''clinical practices.'' AAAASF's complaint surveys are always unannounced. The AAAASF Medicare survey team is responsible for conducting the complaint surveys in accordance with AAAASF's Medicare standards and with specific direction from the Investigative Committee chair. The survey team must investigate complaints involving patient death no later than 20 days after notifying the AAAASF office of the death. This allows the facility 10 days to respond to the request for information and allows AAAASF a maximum of 10 days to schedule the mandatory unannounced inspection. However, when investigating complaints involving patient safety or clinical practices, the survey team must complete its survey within 30 days after receipt of the initial complaint. This allows the facility 10 days to respond to the request for information and allows AAAASF a maximum of 20 days to schedule the mandatory unannounced inspection. The Investigative Committee Chair is responsible for advising the complainant of the result of AAAASF's investigation. The investigated facility will receive an outcome letter and a written investigation report. When applicable, the outcome letter will identify possible follow-up action (for instance, probation, suspension, or revocation of Medicare accreditation, follow-up visit, plan of correction, or no further action). Lastly, the outcome letter advises the facility of its rights to request a hearing in response to AAAASF's recommendations.
- We asked AAAASF to present documentation regarding its retention of facility files. AAAASF responded by submitting its policies and procedures for Record Retention and Maintenance. The policies and procedures state that facility records are maintained in both hard copy and database format. The hard copy file includes initial accreditation application records, surgeon credentials, Medicare accreditation onsite evaluations/outcomes and correspondence. AAAASF indicated that it purges its records periodically, however, and maintains the last 3 years' records for the facility including current credentials, correspondence, and evaluations.
- We asked AAAASF to clarify its procedures for scheduling Medicare accreditation surveys. AAAASF responded by submitting its policy, ''Procedure for Securing a Medicare Inspector.''

B. Term of Approval

Based on the review and observations described in section III of this final notice, we determined that AAAASF's requirements for ASCs meet or exceed our requirements. Therefore, we recognize AAAASF as a national accreditation organization for ASCs that request participation in the Medicare program, effective November 26, 2004 through November 26, 2009.

V. Regulatory Impact Statement

We have examined the impact of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential

economic, environmental, public health and safety effects; distributive impacts; and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This final notice recognizes AAAASF as a national accreditation organization for ASCs that request participation in the Medicare and Medicaid programs. There are neither significant costs nor savings for the program and administrative budgets of Medicare. Therefore, this notice is not a major rule as defined in Title 5, United States Code, section 804(2) and is not an economically significant rule under Executive Order 12866.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and Government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. Individuals and States are not included in the definition of a small entity. For purposes of the RFA, States and individuals are not considered small entities. We are not preparing an analysis for the RFA because we have determined that this notice will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

In an effort to better assure the health, safety, and services of beneficiaries in ASCs already certified as well as provide relief to State budgets in this time of tight fiscal restraints, we deem ASCs accredited by AAAASF as meeting its Medicare requirements. Thus, we continue our focus on assuring the health and safety of services by providers and suppliers already certified for participation in a cost-effective manner.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This notice will have no consequential effect on the governments mentioned or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. Since this notice does not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb)

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplemental Medical Insurance Program)

Dated: October 22, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 04–25830 Filed 11–19–04; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1374–GNC]

RIN: 0938–ZA50

Medicare Program; Criteria and Standards For Evaluating Intermediary, Carrier, and Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Regional Carrier Performance During Fiscal Year 2005

AGENCY: Centers for Medicare and Medicaid Services (CMS), Health and Human Services (HHS).

ACTION: General notice with comment period.

SUMMARY: This notice describes the criteria and standards to be used for evaluating the performance of fiscal intermediaries (FIs), carriers, and Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) regional carriers in the administration of the Medicare program beginning on the first day of the first month following publication of this notice in the **Federal Register**. The results of these evaluations are considered whenever we enter into, renew, or terminate an intermediary agreement, carrier contract, or DMEPOS regional carrier contract or take other contract actions, for example, assigning or reassigning providers or services to an intermediary or designating regional or national intermediaries. We are requesting public comment on these criteria and standards.

DATES: *Effective Date:* The criteria and standards are effective December 27, 2004.

Comment Date: Comments will be considered if we receive them at the appropriate address as provided below no later than 5 p.m. on December 27, 2004.

ADDRESSES: In commenting, please refer to file code CMS–1374–GNC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments to *http://www.cms.hhs.gov/regulations/ecomments* or to *http://www.regulations.gov* (attachments must be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word).

2. *By mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1374–GNC, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government

identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Sue Lathroum, (410) 786–7409.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this notice to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–1374–GNC and the specific ''issue identifier'' that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. After the close of the comment period, CMS posts all electronic comments received before the close of the comment period on its public Web site. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–7195.

I. Background

[If you choose to comment on issues in this section, please include the caption ''BACKGROUND'' at the beginning of your comments.]

A. Part A—Hospital Insurance

Under section 1816 of the Social Security Act (the Act), public or private organizations and agencies participate in the administration of Part A (Hospital Insurance) of the Medicare program under agreements with us. These agencies or organizations, known as FIs, determine whether medical services are covered under Medicare, determine correct payment amounts and then make payments to the health care providers (for example, hospitals, skilled nursing facilities (SNFs), and community mental health centers) on behalf of the beneficiaries. Section 1816(f) of the Act requires us to develop criteria, standards, and procedures to evaluate an intermediary's performance of its functions under its agreement.

Section 1816(e)(4) of the Act requires us to designate regional agencies or organizations, which are already Medicare intermediaries under section 1816 of the Act, to perform claim processing functions for freestanding Home Health Agency (HHA) claims. We refer to these organizations as Regional Home Health Intermediaries (RHHIs). *See* 42 CFR 421.117 and the final rule published on May 19, 1988 in the **Federal Register** (53 FR 17936) for more details about the RHHIs.

The evaluation of intermediary performance is part of our contract management process. These evaluations need not be limited to the current fiscal year (FY), other fixed term basis, or agreement term.

B. Part B—Supplementary Medical Insurance

Under section 1842 of the Act, we are authorized to enter into contracts with carriers to fulfill various functions in the administration of Part B, Supplementary Medical Insurance of the Medicare program. Beneficiaries, physicians, and suppliers of services submit claims to these carriers. The carriers determine whether the services are covered under Medicare and the amount payable for the services or supplies, and then make payment to the appropriate party.

Under section 1842(b)(2) of the Act, we are required to develop criteria, standards, and procedures to evaluate a carrier's performance of its functions under its contract. Evaluations of Medicare fee-for-service (FFS) contractor performance need not be limited to the current FY, other fixed term basis, or contract term. The evaluation of carrier performance is part of our contract management process.

C. Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Regional Carriers

In accordance with section 1834(a)(12) of the Act, we have entered into contracts with four DMEPOS regional carriers to perform all of the duties associated with the processing of claims for DMEPOS, under Part B of the Medicare program. These DMEPOS regional carriers process claims based on a Medicare beneficiary's principal residence by State. Section 1842(a) of the Act authorizes contracts with carriers for the payment of Part B claims for Medicare covered services and items. Section 1842(b)(2) of the Act requires us to publish in the **Federal Register** criteria and standards for the efficient and effective performance of carrier contract obligations. Evaluation of Medicare FFS contractor performance need not be limited to the current FY, other fixed term basis, or contract term. The evaluation of DMEPOS regional carrier performance is part of our contract management process.

D. Development and Publication of Criteria and Standards

In addition to the statutory requirements, 42 CFR 421.120, 421.122 and 421.201 provide for publication of a **Federal Register** notice to announce criteria and standards for intermediaries and carriers before the beginning of each evaluation period. The current criteria and standards for intermediaries, carriers, and DMEPOS regional carriers were published in the December 24, 2003 notice (68 FR 74613).

To the extent possible, we make every effort to publish the criteria and standards before the beginning of the Federal FY, which is October 1. If we do not publish a **Federal Register** notice before the new FY begins, readers may presume that until and unless notified otherwise, the criteria and standards that were in effect for the previous FY remain in effect.

In those instances in which we are unable to meet our goal of publishing the subject **Federal Register** notice before the beginning of the FY, we may publish the criteria and standards notice at any subsequent time during the year. If we publish a notice in this manner, the evaluation period for the criteria and standards that are the subject of the notice will be effective 30 days after the date of the publication. Any revised criteria and standards will measure performance prospectively; that is, any new criteria and standards in the notice will be applied only to performance after the effective date listed on the notice.

It is not our intention to revise the criteria and standards that will be used during the evaluation period once this information is published in a **Federal Register** notice. However, on occasion, either because of administrative action or statutory mandate, there may be a need for changes that have a direct impact on the criteria and standards previously published, or that require the addition of new criteria or standards, or that cause the deletion of previously published criteria and standards. If we must make these changes, we will

publish an amended **Federal Register** notice before implementation of the changes. In all instances, necessary manual issuances will be published to ensure that the criteria and standards are applied uniformly and accurately. Also, as in previous years, this **Federal Register** notice will be republished and the effective date revised if changes are warranted as a result of the public comments received on the criteria and standards.

On December 8, 2003, President Bush signed into law the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA). Section 911 of the MMA establishes the Medicare FFS Contracting Reform (MCR) initiative that will be implemented over the next several years. This provision requires that we use competitive procedures to replace our current FIs and carriers with Medicare Administrative Contractors (MACs). The MMA requires that we compete and transition all work to MACs by October 1, 2011.

FIs and or carriers will continue administering Medicare FFS work until the final competitively selected MAC is up and operating. We will continue to develop and publish standards and criteria for use in evaluating the performance of FIs, carriers, and DMERCs as long as these types of contractors exist.

II. Analysis of and Response to Public Comments Received on FY 2004 Criteria and Standards

We received no comments in response to the December 24, 2003 **Federal Register** general notice with comment.

III. Criteria and Standards—General

[If you choose to comment on issues in this section, please include the caption ''CRITERIA AND STANDARDS—GENERAL'' at the beginning of your comments.]

Basic principles of the Medicare program are to pay claims promptly and accurately and to foster good beneficiary and provider relations. Contractors must administer the Medicare program efficiently and economically. The goal of performance evaluation is to ensure that contractors meet their contractual obligations. We measure contractor performance to ensure that contractors do what is required of them by statute, regulation, contract, and our directives.

We have developed a contractor oversight program for FY 2004 that: outlines expectations of the contractor, measures the performance of the contractor; evaluates the performance against the expectations; and provides for appropriate contract action based upon the evaluation of the contractor's performance.

As a means to monitor the accuracy of Medicare FFS payments, we have established the Comprehensive Error Rate Testing (CERT) program that produces error rates for claims payment decisions made by carriers, DMERCs, and FIs. Beginning in November 2003, the CERT program produced claims payment error rates for each individual carrier and DMERC. FI-specific rates will be available in November 2004. These rates measure not only how well contractors are doing at implementing automated review edits and identifying which claims to subject to manual medical review but they also measure the impact of the contractor's provider outreach/education, as well as the effectiveness of the contractor's provider call center(s). We will use these contractor-specific error rates as a means to evaluate a contractor's performance.

Several times throughout this notice, we refer to the appropriate reading level of letters, decisions, or correspondence that are going to Medicare beneficiaries from intermediaries or carriers. In those instances, appropriate reading level is defined as whether the communication is below the 8th grade reading level unless it is obvious that an incoming request from the beneficiary contains language written at a higher level. In these cases, the appropriate reading level is tailored to the capacities and circumstances of the intended recipient.

In addition to evaluating performance based upon expectations for FY 2005, we may also conduct follow-up evaluations throughout FY 2005 of areas in which contractor performance was out of compliance with statute, regulations, and our performance expectations during prior review years where contractors were required to submit a Performance Improvement Plan (PIP).

We may also utilize Statement of Auditing Standards–70 (SAS–70) reviews as a means to evaluate contractors in some or all business functions.

In FY 2001, we established the Contractor Rebuttal Process as a commitment to continual improvement of contractor performance evaluation (CPE). We will continue the use of this process in FY 2005. The Contractor Rebuttal Process provides the contractors an opportunity to submit a written rebuttal of CPE findings of fact. Whenever we conduct an evaluation of contractor operations, contractors have 7 calendar days from the date of the CPE review exit conference to submit a written rebuttal. The CPE review team or, if appropriate, the individual reviewer will consider the contents of the rebuttal before the issuance of the final CPE report to the contractor.

The FY 2005 CPE for intermediaries and carriers is structured into five criteria designed to meet the stated objectives. The first criterion, claims processing, measures contractual performance against claims processing accuracy and timeliness requirements, as well as activities in handling appeals. Within the claims processing criterion, we have identified those performance standards that are mandated by legislation, regulation, or judicial decision. These standards include claims processing timeliness, the accuracy of Medicare Summary Notices (MSNs), the appropriateness of determinations reversed by an administrative law judge (ALJ), the timeliness of intermediary redeterminations, reconsiderations, reviews and hearings and the timeliness of carrier redeterminations, reviews and hearings, and the appropriateness of the reading level of carrier review determination letters. Further evaluation in the Claims Processing Criterion may include, but is not limited to, the accuracy of claims processing, the percent of claims paid with interest, and the accuracy of reconsiderations, reviews, and hearings.

The second criterion, customer service, assesses the adequacy of the service provided to customers by the contractor in its administration of the Medicare program. The mandated standard in the customer service criterion is the need to provide beneficiaries with written replies that are responsive, that is, they provide in detail the reasons for a determination when a beneficiary requests this information, they have a customer-friendly tone and clarity, and they are at the appropriate reading level. Further evaluation of services under this criterion may include, but will not be limited to, the following: timeliness and accuracy of all correspondence both to beneficiaries and providers; monitoring of the quality of replies provided by the contractor's telephone customer service representatives (quality call monitoring); beneficiary and provider education, training, and outreach activities; and service by the contractor's customer service representatives to beneficiaries and providers who come to the contractor's facility (walk-in inquiry service).

The third criterion, payment safeguards, evaluates whether the Medicare Trust Fund is safeguarded against inappropriate program expenditures. Intermediary and carrier

performance may be evaluated in the areas of Medical Review (MR), Medicare Secondary Payer (MSP), Overpayments (OP), and Provider Enrollment (PE). In addition, intermediary performance may be evaluated in the area of Audit and Reimbursement (A&R).

In FY 1996 the Congress enacted the Health Insurance Portability and Accountability Act (HIPAA), Medicare Integrity Program, giving us the authority to contract with entities other than, but not excluding, Medicare carriers and intermediaries to perform certain program safeguard functions. In situations where one or more program safeguard functions are contracted to another entity, we may evaluate the flow of communication and information between a Medicare FFS contractor and the payment safeguard contractor. All benefit integrity functions have been transitioned from intermediaries, carriers, and one DMERC to the program safeguard contractors. Because the other three DMERC contractors will continue to conduct benefit integrity activities in FY 2005, we may evaluate their performance of that function.

Mandated performance standards for intermediaries in the payment safeguards criterion include the accuracy of decisions on SNF demand bills and the timeliness of processing Tax Equity and Fiscal Responsibility Act (TEFRA) target rate adjustments, exceptions, and exemptions. There are no mandated performance standards for carriers in the payment safeguards criterion. Intermediaries and carriers may also be evaluated on any Medicare Integrity Program (MIP) activities if performed under their agreement or contract.

The fourth criterion, fiscal responsibility, evaluates the contractor's efforts to protect the Medicare program and the public interest. Contractors must effectively manage Federal funds for both the payment of benefits and the costs of administration under the Medicare program. Proper financial and budgetary controls, including internal controls, must be in place to ensure contractor compliance with its agreement with HHS and CMS.

Additional functions reviewed under this criterion may include, but are not limited to, adherence to approved budget, compliance with the Budget and Performance Requirements (BPRs), and compliance with financial reporting requirements.

The fifth and final criterion, administrative activities, measures a contractor's administrative management of the Medicare program. A contractor must efficiently and effectively manage its operations. Proper systems security (general and application controls), Automated Data Processing (ADP) maintenance, and disaster recovery plans must be in place. A contractor's evaluation under the administrative activities criterion may include, but is not limited to, establishment, application, documentation, and effectiveness of internal controls that are essential in all aspects of a contractor's operation, as well as the degree to which the contractor cooperates with us in complying with the Federal Managers' Financial Integrity Act of 1982 (FMFIA). Administrative activities evaluations may also include reviews related to contractor implementation of our general instructions and data and reporting requirements.

We have developed separate measures for RHHIs in order to evaluate the distinct RHHI functions. These functions include the processing of claims from freestanding HHAs, hospital-affiliated HHAs, and hospices. Through an evaluation using these criteria and standards, we may determine whether the RHHI is effectively and efficiently administering the program benefit or whether the functions should be moved from one intermediary to another in order to gain that assurance.

In section IV through VII of this notice, we list the criteria and standards to be used for evaluating the performance of intermediaries, RHHIs, carriers, and DMEPOS regional carriers.

IV. Criteria and Standards for Intermediaries

[If you choose to comment on issues in this section, please include the caption ''CRITERIA AND STANDARDS FOR INTERMEDIARIES'' at the beginning of your comments.]

A. Claims Processing Criterion

The claims processing criterion contains the following seven mandated standards:

Standard 1. Not less than 95.0 percent of clean electronically submitted non-Periodic Interim Payment claims are paid within statutorily specified time frames. Clean claims are defined as claims that do not require Medicare intermediaries to investigate or develop them outside of their Medicare operations on a prepayment basis. Specifically, the statute specifies that clean non-Periodic Interim Payment electronic claims be paid no earlier than the 14th day after the date of receipt, and that interest is payable for any clean claims if payment is not issued by the 31st day after the date of receipt. The HIPAA Administrative Simplification provisions and the implementing regulations established standards for electronic transmission of claims. CMS issued instructions that effective July 1, 2004, electronic claims that do not comply with the appropriate HIPAA claim standard will no longer qualify for payment as early as the 14th day after the date of receipt. These ''non-HIPAA'' claims will not be paid earlier than the 27th day after the date of receipt. These ''non-HIPAA'' claims will continue to have interest payable if payment is not issued by the 31st day after the date of receipt. Our expectation is that contractors will pay 95 percent of these clean claims by the 31st day (30 days after date of receipt) on a monthly basis.

Standard 2. Not less than 95.0 percent of clean paper non-Periodic Interim Payment claims are paid within specified time frames. Specifically, clean non-Periodic Interim Payment paper claims can be paid as early as the 27th day (26 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt). Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 3. The percentage of reconsideration determinations reversed by ALJs is acceptable. We have defined an acceptable reversal rate by ALJs as one that is at or below 5.0 percent.

Standard 4. 75.0 percent of reconsiderations are processed within 60 days, and 90.0 percent are processed within 90 days. Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 5. 95.0 percent of Part B review determinations are completed within 45 days. Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 6. 90.0 percent of Part B hearing decisions are completed within 120 days. Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 7. 100 percent of redeterminations must be concluded and mailed within 60 days of receipt of the request. We have determined that the 60-day timeframe will begin with redetermination requests received on or after October 1, 2004.

Because intermediaries process many claims for benefits under the Part B portion of the Medicare Program, we also may evaluate how well an intermediary follows the procedures for processing appeals of any claims for Part B benefits.

Additional functions that may be evaluated under this criterion include, but are not limited to, the following:

- Accuracy of claims processing.
- Remittance advice transactions.

• Establishment and maintenance of a relationship with Common Working File (CWF) Host.
• Accuracy of processing reconsideration cases.
• Accuracy of reviews and hearings, as well as the appropriateness of the reading level of any review determination letters.
• Accuracy and timeliness of processing appeals under section 521 of the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) and sections 933 and 940 of the MMA.

Note: Section 521 of BIPA and sections 933 and 940 of MMA amend section 1869 of the Act by requiring major revisions to the Medicare appeals process. ''Redeterminations'' replace the current ''reconsideration'' for Part A appeals and the current ''review'' for Part B appeals. Under section 940 of the MMA, amending section 1869 of the Act, intermediaries will be required to conclude all requests for redeterminations within 60 days of receipt of the request. We have determined that implementation of the new redetermination timeframes will begin with redetermination requests received on or after October 1, 2004. Consequently, there will be a period of time in which intermediaries will not only be concluding redeterminations, but will continue to process the reconsiderations, reviews, and hearing workloads with receipt dates prior to October 1, 2004. Because timeliness remains crucial to due process rights for cases with the receipt dates prior to October 1, 2004, we will continue to monitor and evaluate the contractor's ability to meet statutorily mandated timeframes for any reconsideration and review cases with receipt dates prior to October 1, 2004.

We may evaluate other provisions of section 521 of BIPA and sections 933 and 940 of MMA as they are implemented.

B. Customer Service Criterion

Functions that may be evaluated under this criterion include, but are not limited to, the following:

• Providing timely and accurate written replies to beneficiary or provider inquiries, responsiveness to the concerns raised, and writing the replies with an appropriate customer-friendly tone and clarity.
• Ensuring replies to beneficiary written inquiries are written at the appropriate reading levels.
• Maintaining a properly programmed interactive voice response system to assist callers.
• Performing quality call monitoring.
• Training of customer service representatives.
• Ensuring the validity of the call center performance data that are being reported in the customer service assessment and management system.
• Providing timely and accurate written replies to beneficiaries and providers that address the concerns raised and are written with an appropriate customer-friendly tone and clarity and that those written to beneficiaries are at the appropriate reading level.
• Maintaining walk-in inquiry service for beneficiaries and providers.
• Conducting beneficiary and provider education, training, and outreach activities.
• Effectively maintaining an Internet Web site dedicated to furnishing providers and physicians timely, accurate, and useful Medicare program information.

C. Payment Safeguards Criterion

The Payment Safeguard criterion contains the following two mandated standards:

Standard 1. Decisions on SNF demand bills are accurate.

Standard 2. TEFRA target rate adjustments, exceptions, and exemptions are processed within mandated time frames. Specifically, applications must be processed to completion within 75 days after receipt by the contractor or returned to the hospitals as incomplete within 60 days of receipt.

Intermediaries may also be evaluated on any MIP activities if performed under their Part A contractual agreement. These functions and activities include, but are not limited to, the following:

• Audit and Reimbursement
+ Performing the activities specified in our general instructions for conducting audit and settlement of Medicare cost reports.
+ Establishing accurate interim payments.
• Benefit Integrity
+ Referring allegations of potential fraud that are made by beneficiaries, providers, CMS, Office of Inspector General (OIG), and other sources to the Payment Safeguard Contractor.
+ Putting in place effective detection and deterrence programs for potential fraud.
• Medical Review
+ Increasing the effectiveness of medical review activities.
+ Exercising accurate and defensible decision making on medical reviews.
+ Effectively educating and communicating with the provider community.
+ Collaborating with other internal components and external entities to ensure the effectiveness of medical review activities.
• Medicare Secondary Payer
+ Accurately reporting MSP savings.
+ Accurately following MSP claim development and edit procedures.
+ Auditing hospital files and claims to determine that claims are being filed to Medicare appropriately.
+ Supporting the Coordination of Benefits Contractors' efforts to identify responsible payers primary to Medicare.
+ Identifying, recovering, and referring mistaken/conditional Medicare payments in accordance with appropriate Medicare Manual instructions and any other pertinent general instructions, in the specified order of priority.
• Overpayments
+ Collecting and referring Medicare debts timely.
+ Accurately reporting and collecting overpayments.
+ Adhering to our instructions for management of Medicare Trust Fund debts.
• Provider Enrollment
+ Complying with assignment of staff to the provider enrollment function and training the staff in procedures and verification techniques.
+ Complying with the operational standards relevant to the process for enrolling providers.

D. Fiscal Responsibility Criterion

We may review the intermediary's efforts to establish and maintain appropriate financial and budgetary internal controls over benefit payments and administrative costs. Proper internal controls must be in place to ensure that contractors comply with their agreements with us.

Additional functions that may be reviewed under the fiscal responsibility criterion include, but are not limited to, the following:

• Adherence to approved program management and MIP budgets.
• Compliance with the BPRs.
• Compliance with financial reporting requirements.
• Control of administrative cost and benefit payments.

E. Administrative Activities Criterion

We may measure an intermediary's administrative ability to manage the Medicare program. We may evaluate the efficiency and effectiveness of its operations, its system of internal controls, and its compliance with our directives and initiatives.

We may measure an intermediary's efficiency and effectiveness in managing its operations. Proper systems security (general and application controls), ADP maintenance, and disaster recovery plans must be in place. An intermediary must also test system changes to ensure

the accurate implementation of our instructions.

Our evaluation of an intermediary under the administrative activities criterion may include, but is not limited to, reviews of the following:

- Systems security.
- ADP maintenance (configuration management, testing, change management, and security).
- Implementation of the Electronic Data Interchange (EDI) standards adopted for use under HIPAA.
- Disaster recovery plan/systems contingency plan.
- Implementation of our general instructions.
- Data and reporting requirements implementation.
- Internal controls establishment and use, including the degree to which the contractor cooperates with the Secretary in complying with the FMFIA.

V. Criteria and Standards for Regional Home Health Intermediaries (RHHIs)

[If you choose to comment on issues in this section, please include the caption ''CRITERIA AND STANDARDS FOR RHHIs'' at the beginning of your comments.]

The following four standards are mandated for the RHHI criterion:

Standard 1. Not less than 95.0 percent of clean electronically submitted non-Periodic Interim Payment home health and hospice claims are paid within statutorily specified time frames. Clean claims are defined as claims that do not require Medicare intermediaries to investigate or develop them outside of their Medicare operations on a prepayment basis. Specifically, the statute specifies that clean non-Periodic Interim Payment electronic claims be paid no earlier than the 14th day after the date of receipt, and that interest is payable for any clean claims if payment is not issued by the 31st day after the date of receipt. The HIPAA Administrative Simplification provisions and the implementing regulations established standards for electronic transmission of claims. We issued instructions that are effective July 1, 2004, electronic claims that do not comply with the appropriate HIPAA claim standard will no longer qualify for payment as early as the 14th day after the date of receipt. These ''non-HIPAA'' claims will not be paid earlier than the 27th day after the date of receipt. These ''non-HIPAA'' claims will continue to have interest payable if payment is not issued by the 31st day after the date of receipt. Our expectation is that contractors will pay 95 percent of these clean claims by the 31st day (30 days after date of receipt) on a monthly basis.

Standard 2. Not less than 95.0 percent of clean paper non-periodic interim payment home health and hospice claims are paid within specified time frames. Specifically, clean, non-periodic interim payment paper claims can be paid as early as the 27th day (26 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt). Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 3. 75.0 percent of HHA and hospice reconsiderations are processed within 60 days and 90.0 percent are processed within 90 days. Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 4: 100 percent of redeterminations must be concluded and mailed within 60 days of receipt of the request. We have determined that the 60-day timeframe will begin with redetermination requests received on or after October 1, 2004.

We may use this criterion to review an RHHI's performance for handling the HHA and hospice workload. This includes processing HHA and hospice claims timely and accurately, properly paying and settling HHA cost reports, and timely and accurately processing reconsiderations and BIPA section 521 redeterminations from beneficiaries, HHAs, and hospices.

Note: Section 521 of BIPA and sections 933 and 940 of MMA amend section 1869 of the Act by requiring major revisions to the Medicare appeals process. ''Redeterminations'' replace the current ''reconsideration'' for Part A appeals and the current ''review'' for Part B appeals. Under section 940 of the MMA, RHHIs will be required to conclude all requests for redeterminations within 60 days of receipt of the request. We have determined that implementation of the new redetermination timeframes will begin with redetermination requests received on or after October 1, 2004. Consequently, there will be a period of time in which RHHIs will not only be concluding redeterminations, but will also continue to process the reconsideration, review, and hearing workloads receipt dates prior to October 1, 2004. Because timeliness remains crucial to due process rights for cases with receipt dates prior to October 1, 2004, we will continue to monitor and evaluate the contractor's ability to meet statutorily mandated timeframes for any reconsideration and review cases with receipt dates prior to October 1, 2004. We may evaluate compliance with our instructions concerning other provisions of section 521 of BIPA and sections 933 and 940 of MMA as they are implemented.

VI. Criteria and Standards for Carriers

[If you choose to comment on issues in this section, please include the caption ''CRITERIA AND STANDARDS FOR CARRIERS'' at the beginning of your comments.]

A. Claims Processing Criterion

The Claims Processing criterion contains the following seven mandated standards:

Standard 1. Not less than 95.0 percent of clean electronically submitted claims are processed within statutorily specified time frames. Clean claims are defined as claims that do not require Medicare carriers to investigate or develop them outside of their Medicare operations on a prepayment basis. Specifically, the statute specifies that clean non-Periodic Interim payment electronic claims be paid no earlier than the 14th day after the date of receipt, and that interest is payable for any clean claims if payment is not issued by the 31st day after the date of receipt. The HIPAA Administrative Simplification provisions and the implementing regulations established standards for electronic transmission of claims. CMS issued instructions that effective July 1, 2004, electronic claims that do not comply with the appropriate HIPAA claim standard will no longer qualify for payment as early as the 14th day after the date of receipt. These ''non-HIPAA'' claims will not be paid earlier than the 27th day after the date of receipt. These ''non-HIPAA'' claims will continue to have interest payable if payment is not issued by the 31st day after the date of receipt. Our expectation is that contractors will pay 95 percent of these clean claims by the 31st day (30 days after date of receipt) on a monthly basis.

Standard 2. Not less than 95.0 percent of clean paper claims are processed within specified time frames. Specifically, clean paper claims can be paid as early as the 27th day (26 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt). Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 3. 98.0 percent of MSNs are properly generated. Our expectation is that MSN messages are accurately reflecting the services provided.

Standard 4. 95.0 percent of review determinations are completed within 45 days. Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 5. 90.0 percent of carrier hearing decisions are completed within 120 days. Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 6. Review determination letters prepared in response to beneficiary initiated appeal requests are written at an appropriate reading level.

Standard 7. 100 percent of redeterminations must be concluded and mailed within 60 days of receipt of the request. We have determined that the 60-day timeframe will begin with redetermination requests received on or after October 1, 2004.

Additional functions that may be evaluated under this criterion include, but are not limited to, the following:

- Claims processing accuracy.
- Establishment and maintenance of relationship with the CWF Host.
- Accuracy of processing review determination cases.
- Accuracy of processing hearing cases with decision letters that are clear and have an appropriate customer-friendly tone.
- Accuracy and timeliness of processing appeals under BIPA and MMA.

Note: Section 521 of BIPA and sections 933 and 940 of MMA amend section 1869 of the Act by requiring major revisions to the Medicare appeals process. ''Redeterminations'' replace the current ''review'' for Part B appeals. Under section 940 of the MMA, amending section 1869 of the Act, carriers will be required to conclude all requests for redeterminations within 60 days of receipt of the request. We have determined that implementation of the new redetermination timeframes will begin with redetermination requests received on or after October 1, 2004. Consequently, there will be a period of time in which carriers will not only be concluding redeterminations, but will also be continuing to process the review and hearing workloads with receipt dates prior to October 1, 2004. Because timeliness remains crucial to due process rights for any cases receipt dates prior to October 1, 2004, we will continue to monitor and evaluate the contractor's ability to meet statutorily mandated timeframes for any review cases with receipt dates prior to October 1, 2004. We may evaluate other provisions of section 521 of BIPA and sections 933 and 940 of MMA as they are implemented.

B. Customer Service Criterion

The customer service criterion contains the following mandated standard: Replies to beneficiary written correspondence are responsive to the beneficiary's concerns, are written with an appropriate customer-friendly tone and clarity, and are written at the appropriate reading level.

Contractors must meet our performance expectations that beneficiaries and providers are served by prompt and accurate administration of the program in accordance with all applicable laws, regulations, and our general instructions.

Additional functions that may be evaluated under this criterion include, but are not limited to, the following:

- Providing timely and accurate written replies to beneficiary or provider inquiries.
- Ensuring replies to beneficiary written inquires are written at the appropriate reading levels.
- Maintaining a properly programmed interactive voice response system to assist callers.
- Performing call monitoring.
- Training of customer service representatives.
- Providing timely and accurate written replies to beneficiary and provider inquiries.
- Ensuring the validity of the call center performance data that are being reported in the customer service assessment and management system.
- Maintaining walk-in inquiry service for beneficiaries and providers.
- Conducting beneficiary and provider education, training, and outreach activities.
- Effectively maintaining an internet Web site dedicated to furnishing providers timely, accurate, and useful Medicare program information.

C. Payment Safeguards Criterion

Carriers may be evaluated on any MIP activities if performed under their contracts. In addition, other carrier functions and activities that may be reviewed under this criterion include, but are not limited to the following:

- Benefit Integrity

+ Referring allegations of potential fraud that are made by beneficiaries, providers, CMS, OIG, and other sources to the payment safeguard contractor.

+ Putting in place effective detection and deterrence programs for potential fraud.

- Medical Review

+ Increasing the effectiveness of medical review activities.

+ Exercising accurate and defensible decision making on medical reviews.

+ Effectively educating and communicating with the provider community.

+ Collaborating with other internal components and external entities to ensure the effectiveness of medical review activities.

- Medicare Secondary Payer

+ Accurately reporting MSP savings.

+ Accurately following MSP claim development/edit procedures.

+ Supporting the Coordination of Benefits Contractor's efforts to identify responsible payers primary to Medicare.

+ Identifying, recovering, and referring mistaken/conditional Medicare payments in accordance with the appropriate *Medicare Manual* instructions, and our other pertinent general instructions.

- Overpayments

+ Collecting and referring Medicare debts timely.

+ Accurately reporting and collecting overpayments.

+ Compliance with our instructions for management of Medicare Trust Fund debts.

- Provider Enrollment

+ Complying with assignment of staff to the provider enrollment function and training staff in procedures and verification techniques.

+ Complying with the operational standards relevant to the process for enrolling suppliers.

D. Fiscal Responsibility Criterion

We may review the carrier's efforts to establish and maintain appropriate financial and budgetary internal controls over benefit payments and administrative costs. Proper internal controls must be in place to ensure that contractors comply with their contracts.

Additional functions that may be reviewed under the Fiscal Responsibility criterion include, but are not limited to, the following:

- Adherence to approved program management and MIP budgets.
- Compliance with the BPRs.
- Compliance with financial reporting requirements.
- Control of administrative cost and benefit payments.

E. Administrative Activities Criterion

We may measure a carrier's administrative ability to manage the Medicare program. We may evaluate the efficiency and effectiveness of its operations, its system of internal controls, and its compliance with our directives and initiatives.

We may measure a carrier's efficiency and effectiveness in managing its operations. Proper systems security (general and application controls), ADP maintenance, and disaster recovery plans must be in place. Also, a carrier must test system changes to ensure accurate implementation of our instructions.

Our evaluation of a carrier under this criterion may include, but is not limited to, reviews of the following:

- Systems security.
- ADP maintenance (configuration management, testing, change management, and security).
- Disaster recovery plan/systems contingency plan.
- Implementation of our general instructions.
- Data and reporting requirements implementation.
- Internal controls establishment and use, including the degree to which the

contractor cooperates with the Secretary in complying with the FMFIA.

- Implementation of the Electronic Data Interchange (EDI) Standards adopted for use under the Health Insurance Portability and Accountability Act (HIPAA).

VII. Criteria and Standards for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Regional Carriers

[If you choose to comment on issues in this section, please include the caption ''CRITERIA AND STANDARDS FOR DMEPOS'' at the beginning of your comments.]

The five criteria for DMEPOS regional carriers contain a total of eight mandated standards against which all DMEPOS regional carriers must be evaluated.

There also are examples of other activities for which the DMEPOS regional carriers may be evaluated. The mandated standards are in the claims processing and customer service criteria. In addition to being described in these criteria, the mandated standards are also described in the DMEPOS regional carrier statement of work (SOW).

A. Claims Processing Criterion

The claims processing criterion contains the following seven mandated standards:

Standard 1. Not less than 95.0 percent of clean electronically submitted claims are processed within statutorily specified time frames. Clean claims are defined as claims that do not require Medicare DMEPOS regional carriers to investigate or develop them outside of their Medicare operations on a prepayment basis. Specifically, the statute specifies that clean non-Periodic Interim Payment electronic claims be paid no earlier than the 14th day after the date of receipt, and that interest is payable for any clean claims if payment is not issued by the 31st day after the date of receipt. The HIPAA Administrative Simplification provisions and the implementing regulations established standards for electronic transmission of claims. CMS issued instructions that effective July 1, 2004, electronic claims that do not comply with the appropriate HIPAA claim standard will no longer qualify for payment as early as the 14th day after the date of receipt. These ''non-HIPAA'' claims will not be paid earlier than the 27th day after the date of receipt. These ''non-HIPAA'' claims will continue to have interest payable if payment is not issued by the 31st day after the date of receipt. Our expectation is that contractors will pay 95 percent of these clean claims by the 31st day (30 days after date of receipt) on a monthly basis.

Standard 2. Not less than 95.0 percent of clean paper claims are processed within specified timeframes. Specifically, clean paper claims can be paid as early as day 27 (26 days after the date of receipt) and must be paid by day 31 (30 days after the date of receipt). Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 3. 98.0 percent of MSNs are properly generated. Our expectation is that MSN messages are accurately reflecting the services provided.

Standard 4. 95.0 percent of DMEPOS regional carrier review determinations are completed within 45 days. Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 5. 90.0 percent of DMEPOS regional carrier hearing decisions are completed within 120 days. Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 6. Review determination letters prepared in response to beneficiary initiated appeal requests are written at an appropriate reading level.

Standard 7. 100 percent of redeterminations must be concluded and mailed within 60 days of receipt of the request. We have determined that the 60-day timeframe will begin with redetermination requests received on or after October 1, 2004.

Additional functions that may be evaluated under this criterion include, but are not limited to, the following:

- Claims processing accuracy.
- Review determinations and hearing decisions are written accurately, clearly, and in a customer friendly tone.
- Telephone reviews are appropriately documented and adjudicated timely.
- Requests for ALJ hearings are forwarded timely.
- Accuracy and timeliness of processing appeals under BIPA and MMA.

Note: Section 521 of BIPA and sections 933 and 940 of MMA amend section 1869 of the Act by requiring major revisions to the Medicare appeals process. ''Redeterminations'' replace the current ''review'' for Part B appeals. Under section 940 of the MMA, amending section 1869 of the Act, DMEPOS regional carriers will be required to conclude all requests for redeterminations within 60 days of receipt of the request. We have determined that implementation of the new redetermination timeframes will begin with redetermination requests received on or after October 1, 2004. Consequently, there will be a period of time in which DMEPOS regional carriers will not only be concluding redeterminations, but will also be continuing to process the review and hearing workloads with receipt dates prior to October 1, 2004. Because timeliness remains crucial to due process rights for any cases with receipt dates prior to October 1, 2004, we will continue to monitor and evaluate the contractor's ability to meet statutorily mandated timeframes for any review cases with receipt dates prior to October 1, 2004. We may evaluate other provisions of section 521 of BIPA and sections 933 and 940 of MMA as they are implemented.

B. Customer Service Criterion

The customer service criterion contains the following mandated standard: Replies to beneficiary written correspondence address the beneficiary's concerns, are written with an appropriate customer-friendly tone and clarity, and are written at the appropriate reading level.

Contractors must meet our performance expectations that beneficiaries and suppliers are served by prompt and accurate administration of the program in accordance with all applicable laws, regulations, the DMEPOS regional carrier SOW, and our general instructions.

Additional functions that may be evaluated under this criterion include, but are not limited to, the following:

- Providing timely and accurate replies to beneficiary and supplier telephone inquiries.
- Maintaining a properly programmed interactive voice response system to assist callers.
- Monitoring calls for quality.
- Training of Customer Service Representatives.
- Ensuring the validity of the call center performance data that are being reported in the customer service assessment and management system.
- Providing timely and accurate replies to beneficiaries, providers, and suppliers.
- Maintaining walk-in inquiry service for beneficiaries and providers.
- Conducting beneficiary and supplier education, training, and outreach activities.
- Effectively maintaining an internet Web site dedicated to furnishing suppliers timely, accurate, and useful Medicare program information.
- Ensuring that communications are made to interested supplier organizations for the purpose of developing and maintaining collaborative supplier education and training activities and programs.

C. Payment Safeguards Criterion

DMEPOS regional carriers may be evaluated on any MIP activities if performed under their contracts. The DMEPOS regional carriers must

undertake actions to promote an effective program administration for DMEPOS regional carrier claims. These functions and activities include, but are not limited to the following:

• Benefit Integrity

+ Identifying potential fraud cases that exist within the DMEPOS regional carrier's service area and taking appropriate actions to resolve these cases.

+ Investigating allegations of potential fraud made by beneficiaries, suppliers, CMS, OIG, and other sources.

+ Putting in place effective detection and deterrence programs for potential fraud.

• Medical Review

+ Increasing the effectiveness of medical review activities.

+ Exercising accurate and defensible decision making on medical reviews.

+ Effectively educating and communicating with the supplier community.

+ Collaborating with other internal components and external entities to ensure the effectiveness of medical review activities.

• Medicare Secondary Payer

+ Accurately reporting MSP savings.

+ Accurately following MSP claim development/edit procedures.

+ Supporting the coordination of benefits contractors' efforts to identify responsible payers primary to Medicare.

+ Identifying, recovering, and referring mistaken/conditional Medicare payments in accordance with the appropriate program instructions in the specified order of priority.

• Overpayments

+ Collecting and referring Medicare debts timely.

+ Accurately reporting and collecting overpayments.

+ Compliance with our instructions for management of Medicare Trust Fund debts.

D. Fiscal Responsibility Criterion

We may review the DMEPOS regional carrier's efforts to establish and maintain appropriate financial and budgetary internal controls over benefit payments and administrative costs. Proper internal controls must be in place to ensure that contractors comply with their contracts. Additional matters that may be reviewed under this criterion include, but are not limited to, the following:

• Compliance with financial reporting requirements.

• Adherence to approved program management and MIP budgets.

• Control of administrative cost and benefit payments.

E. Administrative Activities

We may measure a DMEPOS regional carrier's administrative ability to manage the Medicare program. We may evaluate the efficiency and effectiveness of its operations, its system of internal controls, and its compliance with our directives and initiatives. Our evaluation of a DMEPOS regional carrier under this criterion may include, but is not limited to, review of the following:

• Systems security.

• Disaster recovery plan/systems contingency plan.

• Internal controls establishment and use, including the degree to which the contractor cooperates with the Secretary in complying with the FMFIA.

• Implementation of the EDI standards adopted for use under HIPAA.

VIII. Action Based on Performance Evaluations

[If you choose to comment on issues in this section, please include the caption ''ACTION BASED ON PERFORMANCE EVALUATIONS'' at the beginning of your comments.]

We evaluate a contractor's performance against applicable program requirements for each criterion. Each contractor must certify that all information submitted to us relating to the contract management process, including, without limitation, all files, records, documents and data, whether in written, electronic, or other form, is accurate and complete to the best of the contractor's knowledge and belief. A contractor is required to certify that its files, records, documents, and data have not been manipulated or falsified in an effort to receive a more favorable performance evaluation. A contractor must further certify that, to the best of its knowledge and belief, the contractor has submitted, without withholding any relevant information, all information required to be submitted for the contract management process under the authority of applicable law(s), regulation(s), contract(s), or our manual provision(s). Any contractor that makes a false, fictitious, or fraudulent certification may be subject to criminal or civil prosecution, as well as appropriate administrative action. This administrative action may include debarment or suspension of the contractor, as well as the termination or nonrenewal of a contract.

If a contractor meets the level of performance required by operational instructions, it meets the requirements of that criterion. When we determine a contractor is not meeting performance requirements, we will use the terms ''major nonconformance'' or ''minor nonconformance'' to classify our findings. A major nonconformance is a nonconformance that is likely to result in failure of the supplies or services, or to materially reduce the usability of the supplies or services for their intended purpose. A minor nonconformance is a nonconformance that is not likely to materially reduce the usability of the supplies or services for their intended purpose, or is a departure from established standards having little bearing on the effective use or operation of the supplies or services. The contractor will be required to develop and implement PIPs for findings determined to be either a major or minor nonconformance. The contractor will be monitored to ensure effective and efficient compliance with the PIP, and to ensure improved performance when requirements are not met.

The results of performance evaluations and assessments under all criteria applying to intermediaries, carriers, RHHIs, and DMEPOS regional carriers will be used for contract management activities and will be published in the contractor's annual Report of Contractor Performance (RCP). We may initiate administrative actions as a result of the evaluation of contractor performance based on these performance criteria. Under sections 1816 and 1842 of the Act, we consider the results of the evaluation in our determinations when—

• Entering into, renewing, or terminating agreements or contracts with contractors, and

• Deciding other contract actions for intermediaries and carriers (such as deletion of an automatic renewal clause). These decisions are made on a case-by-case basis and depend primarily on the nature and degree of performance. More specifically, these decisions depend on the following:

+ Relative overall performance compared to other contractors.

+ Number of criteria in which nonconformance occurs.

+ Extent of each nonconformance.

+ Relative significance of the requirement for which nonconformance occurs within the overall evaluation program.

+ Efforts to improve program quality, service, and efficiency.

+ Deciding the assignment or reassignment of providers and designation of regional or national intermediaries for classes of providers.

We make individual contract action decisions after considering these factors in terms of their relative significance and impact on the effective and efficient administration of the Medicare program.

In addition, if the cost incurred by the intermediary, RHHI, carrier, or DMEPOS regional carrier to meet its contractual requirements exceeds the amount that we find to be reasonable and adequate to meet the cost that must be incurred by an efficiently and economically operated intermediary or carrier, these high costs may also be grounds for adverse action.

IX. Collection of Information Requirements

This document does not impose information collection and record keeping requirements. Consequently the Office of Management and Budget need not review it under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

X. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are unable to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **Comment Period** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble of that document.

XI. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million in any one year). Since this notice only describes criteria and standards for evaluating FIs (including RHHIs), carriers, and DMEPOS regional carriers and has no significant economic impact on the program, its beneficiaries, providers or suppliers, this is not a major notice.

The RFA requires agencies to analyze options for regulatory relief of small businesses, but intermediaries, RHHIs, carriers and DMEPOS regional carriers are not small businesses.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This notice does not affect small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. In accordance with section 202, we have determined that the notice does not impose any unfunded mandates on States, local or tribal governments, or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a notice that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. We have determined that the notice does not significantly affect the rights, roles, and responsibilities of States.

We have not prepared a Regulatory Impact Analysis for this notice, in accordance with Executive Order 12866, because it will not have a significant economic impact, nor does it impose any unfunded mandates on State, local, or tribal governments or the private sector. Furthermore, we certify that the notice will not have a significant impact on a substantial number of small entities or small rural hospitals.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Authority: Sections 1816(f), 1834(a)(12), and 1842(b) of the Social Security Act (42 U.S.C. 1395h(f), 1395m(a)(12), and 1395u(b))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 27, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Editorial Note: This document was recieved at the Office of the Federal Register on November 23, 2004.

[FR Doc. 04–26278 Filed 11–24–04; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3149–N]

Medicare Program; Meeting of the Medicare Coverage Advisory Committee—January 25, 2005

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces a public meeting of the Medicare Coverage Advisory Committee (MCAC). The Committee provides advice and recommendations about whether scientific evidence is adequate to determine whether certain medical items and services are reasonable and necessary under the Medicare statute. This meeting concerns the data from and the quality of clinical evidence pertaining to the effects of lifestyle modification such as diet, exercise, stress reduction and group counseling as it relates to reversal or resolution of diseases such as coronary heart disease and diabetes. Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)).

DATES: The public meeting will be held on Tuesday, January 25, 2005, from 7:30 a.m. until 4:30 p.m. e.s.t.

Deadline for Presentations and Comments: Written comments and presentations must be received by December 27, 2005, 5 p.m., e.s.t.

ADDRESSES: The meeting will be held in the auditorium at the Centers for Medicare & Medicaid Services, 7500 Security Blvd, Baltimore, MD 21244.

Presentations and Comments: Interested persons may present data, information, or views orally or in writing on issues pending before the Committee. Please submit written comments to Michelle Atkinson, by e-mail at *Matkinson@cms.hhs.gov* or by mail to the Executive Secretary for MCAC, Coverage and Analysis Group, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail Stop C1–09–06, Baltimore, MD 21244.

Web site: You may access up-to-date information on this meeting at *http://www.cms.hhs.gov/mcac/default.asp#meetings.*

Hotline: You may access up-to-date information on this meeting on the CMS Advisory Committee Information Hotline, 1–877–449–5659 (toll free) or in the Baltimore area (410) 786–9379.

FOR FURTHER INFORMATION CONTACT: Michelle Atkinson, Executive Secretary, by telephone at 410–786–2881 or by e-mail at *Matkinson@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION: On December 14, 1998, we published a notice in the **Federal Register** (63 FR 68780) to describe the Medicare Coverage Advisory Committee (MCAC), which provides advice and recommendations to us about clinical issues. This notice announces a public meeting of the Committee.

Meeting Topic: The Committee will address the data from and the quality of clinical evidence pertaining to the effects of lifestyle modification such as diet, exercise, stress reduction and group counseling as it relates to reversal or resolution of diseases such as coronary heart disease and diabetes.

Background information about this topic, including panel materials, is available on the Internet at *http://www.cms.hhs.gov/coverage/*.

Procedure: This meeting is open to the public. The Committee will hear oral presentations from the public for approximately 45 minutes. The Committee may limit the number and duration of oral presentations to the time available. If you wish to make formal presentations, you must notify the Executive Secretary named in the **FOR FURTHER INFORMATION CONTACT** section and submit the following by the *Deadline for Presentations and Comments* date listed in the **DATES** section of this notice: a brief statement of the general nature of the evidence or arguments you wish to present, and the names and addresses of proposed participants. A written copy of your presentation must be provided to each Committee member before offering your public comments. Your presentation must address the questions asked by us to the Committee. The questions will be available on our Web site at *http://www.cms.hhs.gov/mcac/default.asp#meetings*. If the specific questions are not addressed, your presentation will not be accepted. We request that you declare at the meeting whether or not you have any financial involvement with manufacturers of any items or services being discussed (or with their competitors).

After the public and CMS presentations, the Committee will deliberate openly on the topic. Interested persons may observe the deliberations, but the Committee will not hear further comments during this time except at the request of the chairperson. The Committee will also allow a 15 minute unscheduled open public session for any attendee to address issues specific to the topic. At the conclusion of the day, the members will vote and the Committee will make its recommendation.

Registration Instructions

The Coverage and Analysis Group is coordinating meeting registration. While there is no registration fee, individuals must register to attend. You may register by contacting Maria Ellis at 410–786–0309, mailing address: Coverage and Analysis Group, OCSQ; Centers for Medicare & Medicaid Services; 7500 Security Blvd, Mailstop: C1–09–06; Baltimore, MD 21244, or by e-mail at *Mellis@cms.hhs.gov*. Please provide your name, address, organization, telephone and fax number, and e-mail address.

You will receive a registration confirmation with instructions for your arrival at the CMS complex. You will be notified if the seating capacity has been reached.

Because the meeting is located on Federal property, for security reasons, any persons wishing to attend this meeting must register by close of business on January 17, 2005. In order to gain access to the building and grounds, participants must show to the Federal Protective Service or guard service personnel, government-issued photo identification and a copy of their registration confirmation. Individuals who have not registered in advance will not be allowed to enter the building to attend the meeting.

Special Accommodations: Persons attending the meeting who are hearing or visually impaired, or have a condition that requires special assistance or accommodations, are asked to notify the Executive Secretary by January 3, 2005 (*see* **FOR FURTHER INFORMATION CONTACT**).

Authority: 5 U.S.C. App. 2, section 10(a).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 17, 2004.

Sean R. Tunis,

Director, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services.

[FR Doc. 04–26173 Filed 11–24–04; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Industry Exchange Workshop on Food and Drug Administration Clinical Trial Requirements; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) Pacific Region, in cooperation with the Society of Clinical Research Associates (SoCRA), is announcing a workshop on FDA Clinical trial statutory and regulatory requirements. Topics for discussion include: Pre-IND (investigational new drug application) meetings and FDA meeting process, medical device, drug and biological product aspects of clinical research, investigator initiated research, informed consent requirements, adverse event reporting, how FDA conducts bioresearch inspections, ethics in subject enrollment, FDA regulation of Institutional Review Boards, FDA and confidence in the conduct of clinical research, and what happens after the FDA inspection. This 2-day workshop for the clinical research community targets sponsors, monitors, clinical investigators, institutional review boards, and those who interact with them for the purpose of conducting FDA regulated clinical research. The workshop will include both industry and FDA perspectives on proper conduct of clinical trials regulated by FDA.

Date and Time: The public workshop is scheduled for Wednesday, January 12, 2005, from 8:15 a.m. to 4:15 p.m. and Thursday, January 13, 2005, from 8:15 a.m. to 4 p.m.

Location: The public workshop will be held at the Holiday Inn Fisherman's Wharf, 1300 Columbus Ave., San Francisco, CA 94133, 415–771–9000, FAX: 415–771–7006.

Contact: Marcia Madrigal, Small Business Representative, FDA, 1301 Clay St., suite 1180–N, Oakland, CA 94612–5217, FAX: 510–637–3977, e-mail: *marcia.madrigal@fda.gov*.

Registration: Send registration information (including name, title, firm name, address, telephone, and fax number) and the registration fee of $485 (member) or $560 (nonmember), $460 (government employee nonmember) (includes a 1 year membership). The registration fee for FDA employees is waived. Make the registration fee payable to SoCRA, P.O. Box 101,

Furlong, PA 18925. To register via the Internet go to *http://www.socra.org/FDA_Conference.htm*. (FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.)

The registrar will also accept payment by major credit cards. For more information on the meeting, or for questions on registration, contact 800–SoCRA92 (800–762–7292), or 215–345–7369 or via e-mail: *socramail@aol.com*. Attendees are responsible for their own accommodations. To make reservations at the Holiday Inn Fisherman's Wharf, at the reduced conference rate, contact the Holiday Inn (see *Location*) before December 21, 2004.

The registration fee will be used to offset the expenses of hosting the conference, including meals, refreshments, meeting rooms, and materials. Space is limited, therefore interested parties are encouraged to register early. Limited onsite registration may be available. Please arrive early to ensure prompt registration.

If you need special accommodations due to a disability, please contact Marcia Madrigal at least 7 days in advance of the workshop.

SUPPLEMENTARY INFORMATION: The ''FDA Clinical Trials Statutory and Regulatory Requirements'' workshop helps fulfill the Department of Health and Human Services' and FDA's important mission to protect the public health by educating researchers on proper conduct of clinical trials. FDA has made education of the research community a high priority to assure the quality of clinical data and protect research subjects.

The workshop helps to implement the objectives of section 406 of the FDA Modernization Act (21 U.S.C. 393) and the FDA Plan for Statutory Compliance, which includes working more closely with stakeholders and ensuring access to needed scientific and technical expertise. The workshop also furthers the goals of the Small Business Regulatory Enforcement Fairness Act (Public Law 104–121) by providing outreach activities by Government agencies directed to small businesses.

Dated: November 18, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–26092 Filed 11–24–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0509]

Draft Guidance and Protocol for Industry and Food and Drug Administration Staff: Certification of Fish and Fishery Products for Export to the European Union and the European Free Trade Association

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Guidance and Protocol for Industry and Food and Drug Administration Staff: Certification of Fish and Fishery Products for Export to the European Union and the European Free Trade Association.'' The draft guidance describes how health certificates required for shipments of fish and fishery products from the United States to the European Union (EU), EU Accession Partnership Countries, and members of the European Free Trade Association (EFTA) should be issued. This draft guidance is not final nor is it in effect at this time.

DATES: Submit written or electronic comments on this draft guidance by December 27, 2004. General comments on agency guidance documents are welcome at any time. Submit written or electronic comments on the collection of information provisions by January 25, 2005.

ADDRESSES: Submit written requests for single copies of the draft guidance to Bruce Wilson, Center for Food Safety and Applied Nutrition (HFS–417), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1425, e-mail: *bwilson1@cfsan.fda.gov*. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the guidance may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

Submit written comments concerning the draft guidance and the proposed information collection provisions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments on the draft guidance and the proposed information collection provisions to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Tim Hansen, Center for Food Safety and Applied Nutrition (HFS–415), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1405, e-mail: *thansen@cfsan.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Since 1993, the EU has required that an EU Export Certificate accompany all shipments of fish and fishery products that are shipped to the EU. For fish and fishery products generally, the certificates that FDA signs essentially attest that the products have been produced in accordance with a Hazard Analysis Critical Control Point (HACCP)-based safety system that is at least equivalent to the EU system of control. The FDA HACCP regulations have been deemed by the European Commission to be equivalent, in principle, to the EU system of control. In 1996, the EU also began requiring a different certificate specifically for shipments of live molluscan shellfish (e.g., oysters, clams, mussels). These certificates are based partly on equivalence to, and partly on consistency with, EU requirements.

In 1993, to ensure the smooth flow of trade in fish and fishery products to the EU, FDA began signing certificates for shipments of fish and fishery products to the EU. The FDA also signs certificates for shipments of fish and fishery products to EU Accession Partnership Countries and EFTA Members. A certificate is issued if it is determined that the establishment[1] is in regulatory good standing with FDA. The Seafood Inspection Program of the National Oceanic and Atmospheric Administration (NOAA SIP) of the U.S. Department of Commerce also signs EU Export Certificates as one service that it offers U.S. seafood processors and other entities in its voluntary, fee-for-service seafood inspection program.

II. Significance of Guidance

FDA is providing this draft guidance to clarify the internal processes that FDA uses to issue these EU Export Certificates, the procedures that industry seeking these certificates should follow, the criteria that FDA

[1] ''Establishment'' refers to any structure, or structures under one ownership at one general physical location, or, in the case of a mobile establishment, traveling to multiple locations, that manufactures/processes, packs, or holds food. Transport vehicles are not establishments if they hold food only in the usual course of business as carriers. An establishment may consist of one or more contiguous structures, and a single building may house more than one distinct establishment if the establishments are under separate ownership.

generally intends to consider in determining whether to issue an EU Export Certificate, and related matters. This guidance, when finalized, is intended to supersede all previous protocols that were written by the various districts offices that provide EU certification for seafood products.

III. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

FDA invites comments on the following topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Health Certificate for Fishery and Aquaculture Products Intended for Export to the European Community

Description: This draft guidance describes the procedures FDA staff should use to issue the EU certificates, as well as the procedures industry should use for requesting a certificate. As discussed in detail in the draft guidance, the EU requires that each shipment have a certificate issued by a ''competent authority'' in the exporting country. The respondent (shipper) is asked to fill out a certificate-form (as required by the EU) that provides the following information: (1) The identity of the fishery product in terms of its physical state, type of packaging, number of packages, net weight, temperature required during storage and transport; (2) origin of the product, to include the name and registration number of the establishment(s) that processed, stored or harvested the product and is registered with FDA for export to the EU; (3) destination of the product and place of dispatch from the United States, the means of transport, the name and address of the dispatcher, the name of the consignee, and address at destination; and (4) date of certificate. Certifying agencies will retain this information for a reasonable period of time in case it becomes necessary to respond to questions about the shipment by officials in the importing country.

The proposed collection of information will take place when an establishment fills out a certificate and submits it to FDA for signature. Certificates in different languages may be downloaded from the Internet at: *http://www.cfsan.fda.gov/~dms/eucert.html*.

Description of Respondents: The respondents to this collection of information are seafood industry firms that export seafood products to one or more of the countries within the EU. FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Item	No. of respondents	No. of responses per respondent	Total annual responses	Hours per response	Total hours
Health Certificate for Fishery and Aquaculture Products Intended for Export to the European Community	928	26	24,500	0.25	6,125

[1] There are no capital and/or operating and maintenance costs associated with this collection of information.

Estimates of the annual FDA reporting burden were made using the number of firms that are currently on the EU Shippers List (928 respondents after subtracting the number of firms contracting with NOAA SIP in 2003), and the approximate total number of EU Health Certificates issued in 2003 by FDA (approximately 24,500). The estimated annual total hour burden is likely to be more accurate than the estimated number of responses per respondent, because the latter figure is the average obtained by dividing the recent total annual certificates by the current number of potential respondents (928). In practice, the frequency of shipments to the EU may vary widely among approved firms; some firms may export weekly to the EU, others may export only a few times a year or not at all.

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

An electronic version of this guidance is available on the Internet at *http://www.cfsan.fda.gov/guidance.html*.

Dated: November 17, 2004.

Jeffrey Shuren,

Associate Commissioner for Policy.

[FR Doc. 04–26138 Filed 11–22–04; 1:33 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0510]

Proposed Referral Program from the Food and Drug Administration to the National Oceanic and Atmospheric Administration Seafood Inspection Program for the Certification of Live and Perishable Fish and Fishery Products for Export to the European Union and the European Free Trade Association

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or agency) is announcing the availability of the draft guidance entitled ''Proposed Referral Program from the Food and Drug Administration to the National Oceanic and Atmospheric Administration Seafood Inspection Program for the Certification of Live and Perishable Fish and Fishery Products for Export to the European Union and the European Free Trade Association.'' The draft guidance proposes a 24-month Referral Program in which European Union (EU) Export Certificates for all shipments of live and perishable fish and fishery products destined for the EU, EU Accession Partnership Countries, and members of the European Free Trade Association (EFTA) would be issued by the National Oceanic and Atmospheric Administration Seafood Inspection Program (NOAA SIP) under the Agricultural Marketing Act (AMA). This draft guidance is not final nor is it in effect at this time.

DATES: Submit written or electronic comments on this draft guidance by December 27, 2004. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of this draft guidance to Bruce Wilson, Center for Food Safety and Applied Nutrition (HFS–417), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1425, e-mail: *bwilson1@cfsan.fda.gov*. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the guidance may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

Submit written comments concerning the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments on the draft guidance to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Tim Hansen, Center for Food Safety and Applied Nutrition (HFS–415), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1405, e-mail: *thansen@cfsan.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Since 1993, the EU has required that an EU Export Certificate accompany all shipments of fish and fishery products that are shipped to the EU. For fish and fishery products generally, the certificates that FDA signs essentially attest that the products have been produced in accordance with a Hazard Analysis Critical Control Point (HACCP)-based safety system that is at least equivalent to the EU system of control. The FDA HACCP regulations have been deemed by the European Commission to be equivalent, in principle, to the EU system of control. In 1996, the EU also began requiring a different certificate specifically for shipments of live molluscan shellfish (e.g., oysters, clams, mussels). These certificates are based partly on equivalence to, and partly on consistency with, EU requirements.

In 1993, to ensure the smooth flow of trade in fish and fishery products to the EU, FDA began signing certificates for shipments of fish and fishery products to the EU. FDA also signs certificates for shipments of fish and fishery products to EU Accession Countries and EFTA Members. A certificate is issued if it is determined that the establishment[1] is in regulatory good standing with FDA. The NOAA SIP of the U.S. Department of Commerce also signs EU Export Certificates as one service that it offers U.S. seafood processors and other entities in its voluntary, fee-for-service seafood inspection program.

The demand for EU Export Certificates by industry has risen dramatically in recent years and has caused significant resource allocation problems for FDA. The diversion of resources to lower priority, discretionary activities diminishes the agency's ability to carry out public health activities and regulatory oversight that are intended to protect the U.S. consuming public.

[1] ''Establishment'' refers to any structure, or structures, under one ownership at one general physical location, or, in the case of a mobile establishment, traveling to multiple locations, that manufactures/processes, packs, or holds food. Transport vehicles are not establishments if they hold food only in the usual course of business as carriers. An establishment may consist of one or more contiguous structures, and a single building may house more than one distinct establishment if the establishments are under separate ownership.

II. Significance of Guidance

In order to expedite the exportation of live and perishable fish and fishery products, FDA is considering what parts of its current EU certification activities related to fish and fishery products could be conducted by NOAA SIP. FDA is, therefore, proposing to operate a Referral Program for a 24-month period to test the viability and effectiveness of such an arrangement. During this period, EU Export Certificates for all shipments of live and perishable fish and fishery products destined for the EU, EU Accession Partnership Countries, and EFTA Members would be issued by the NOAA SIP under the AMA. The basis for issuing EU Export Certificates under the Referral Program would be, as it is now, whether the establishment or establishments in question are in regulatory good standing with FDA. FDA intends to cease to issue EU Export Certificates for live and perishable fish and fishery products during this period. FDA seeks comment on this referral program, including whether it should be expanded beyond live and perishable to all shipments of fish and fishery products destined for the EU, EU Accession Partnership Countries, and other countries with certificate requirements. During this 24-month period, however, both agencies intend to continue to issue EU Export Certificates for shipments of canned, frozen, dried, vacuum packed, etc., products, as requested by appropriate parties.

III. Electronic Access

An electronic version of this guidance is available on the Internet at *http://www.cfsan.fda.gov/guidance.html.*

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 17, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–26139 Filed 11–22–04; 1:33 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for the opportunity for public comment on proposed data collection projects [Section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13], the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on (a) whether the agency needs to collect the proposed information to properly perform its functions and whether the information has any practical utility; (b) whether the agency's estimate of the burden of the proposed collection of information is accurate; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information for respondents (*e.g.*, by using automated collection techniques or other forms of information technology).

Proposed Project: Ryan White CARE Act Dental Reimbursement Program (OMB No. 0915–0151)—Revision

The Dental Reimbursement Program (DRP) under Part F of the Ryan White CARE Act offers grants to accredited dental schools and programs that provide non-reimbursed oral health care to patients with HIV disease. The Ryan White CARE Act Amendments of 2000 expanded eligibility of this program to accredited schools of dental hygiene, in addition to previously funded schools of dentistry and post-doctoral dental education programs.

HRSA requests clearance to revise the DRP Application as the Dental Services Report that schools and programs will use, either to apply for funding of non-reimbursed costs incurred in providing oral health care to patients with HIV, or to report annual program data. Awards are authorized under section 2692(b) of the Public Health Service Act (42 U.S.C. § 300ff–111(b). The Dental Services Report is intended to collect data in four different areas: program information, patient demographics and services, funding, and training. It also requests applicants to provide narrative descriptions of their services and facilities, as well as their links and collaboration with community-based providers of oral health services.

The primary purpose of collecting this information annually, as part of the Dental Services Report, is to verify eligibility and determine reimbursement amounts for DRP applicants as well as to document the program accomplishments of Community-Based Dental Partnership Program (CBDPP) grant recipients. This information also allows HRSA to learn about (1) the extent of the involvement of dental schools and programs in treating patients with HIV, (2) the number and characteristics of clients who receive CARE Act-supported oral health services, (3) the types and frequency of the provision of these services, (4) the non-reimbursed costs of oral health care provided to patients with HIV, and (5) the scope of grant recipients' community-based collaborations and training of providers. In addition to meeting the goal of accountability to Congress, clients, advocacy groups, and the general public, information collected in the Dental Services Report is critical for HRSA, State and local grantees, and individual providers, to help assess the status of existing HIV-related health service delivery systems.

The reporting burden for reviewing the Dental Services Report Instructions and completing the Report is estimated as:

Collection	Number of respondents	Hours per application	Total burden hours
Dental Services Report	125	20	2500

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: November 18, 2004.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 04–26142 Filed 11–24–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD 01–04–093]

Notice, Announcement of Public Meeting and Extension of Comment Period; Letter of Recommendation, LNG Facility Weaver's Cove, Fall River, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting; and extension of public comment period.

SUMMARY: In response to public comments on the proposed LNG facility at Weaver's Cove, Fall River, MA, the Coast Guard is sponsoring a public hearing. Additionally, the Coast Guard is reopening the public comment period an additional 60 days. These actions will afford the public and the owner or operator additional time and opportunity to provide the Coast Guard with information regarding the proposed Weaver's Cove LNG Facility.

DATES: Comments and related material must reach the Coast Guard on or before January 25, 2005.

ADDRESSES: The Commanding Officer, U.S. Coast Guard Marine Safety Office Providence maintains the public docket for this notice. Comments and documents will become part of this docket and will be available for inspection and copying at the same address between 8 a.m. and 3 p.m. Monday through Friday, except Federal holidays. You may submit comments and related material by:

(1) Mail or delivery to Commanding Officer, U.S. Coast Guard Marine Safety

Office, 20 Risho Avenue, East Providence, RI, 02914–1208.

(2) Fax to 401–435–2399

(3) Electronically via e-mail at *EleBlanc@msoprov.uscg.mil.*

The public hearing location is the Bristol Community College, Margaret Jackson Arts Center Theater, 777 Elsbree Street, Fall River, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Mr. Edward G. LeBlanc at Coast Guard Marine Safety Office Providence, RI, 401–435–2351.

SUPPLEMENTARY INFORMATION:

Request for Comments

In accordance with the requirements in 33 CFR 127.009, the U.S. Coast Guard Captain of the Port (COTP) Providence is preparing a Letter of Recommendation as to the suitability of the Narragansett Bay waterways for liquefied natural gas (LNG) marine traffic. The Letter of Recommendation will be issued in response to a Letter of Intent to operate a LNG facility at Weaver's Cove, Fall River, Massachusetts. On September 1, 2004, the COTP Providence published a **Federal Register** notice seeking comments on the suitability of Narragansett Bay and the Taunton River to accommodate LNG marine traffic. (*See* the **Federal Register**, Vol. 69, No. 169, Wednesday, September 1, 2004, pages 53455–53457.) A total of 43 public comments were received by the November 1, 2004, deadline, and nearly all of them requested that the Coast Guard hold a public meeting. Consequently, the Coast Guard will sponsor a public hearing at the time and place described in the *Public Meeting* paragraph below. Additionally, the Coast Guard is reopening the public comment period an additional 60 days.

We encourage you to submit comments and related material pertaining specifically to the maritime operation and waterways management aspects of the proposed LNG facility. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–04–093), and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the project officer at the addresses or phone numbers listed under **FOR FURTHER INFORMATION CONTACT**, but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached U.S. Coast Guard Marine Safety Office Providence, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. The recommendation made by this office may be affected by comments received. Comments received after the original closing date of November 1, 2004, but before the new comment period, will be considered timely.

Public Meeting

We intend to hold a public meeting to receive comments on navigation safety issues pertaining to the proposed LNG facility at Weaver's Cove. The times, dates, and locations for this meeting are:

(1) 7 p.m., Thursday, December 9, 2004, at the Bristol Community College, Margaret Jackson Arts Center Theater, 777 Elsbree Street, Fall River, Massachusetts.

Additional Information

Additional information about the Weaver's Cove LNG project is available from FERC's Office of External Affairs at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, then click on ''General Search'' and enter FERC's docket number excluding the last three digits in the Docket Number field (*i.e.*, CP04–36). For assistance, please contact FERC online support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY contact 1–202–502–8659.

Dated: November 15, 2004.

M.E. Landry,

Captain, U.S. Coast Guard, Captain of the Port, Providence.

[FR Doc. 04–26096 Filed 11–24–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker Permit

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker local permits are canceled without prejudice.

Name	Permit #	Issuing port
Evans, Wood and Mooring, Inc	373	Los Angeles.
MEC Transport Services Corp	13618–P	San Francisco.
Jose A. Mena	WTH	Miami.
South Florida Customs Brokers, Inc	GQ3	Miami.
Exel Global Logistics, Inc	20–02–233	New Orleans.
Exel Global Logistics, Inc	1101–02–4079	Philadelphia.
MEC Transport Services Corp	93031	Los Angeles.
Kathleen R. Carlton	52–02–AMC	Miami.
World Commerce Services Inc	39–754	Chicago.
Howard Fox	MM6	Chicago.
Janet Bernal dba. Happy Custom Brokers	52–03–AQB	Miami.
Valerie Knapp-Banker	WFG	Miami.
J.H. Bachmann, Inc	805	New York.
J.H. Bachmann, Inc	39–W82	Chicago.
J.H. Bachmann, Inc	01–17–008	Savannah.

Dated: November 15, 2004.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 04–26107 Filed 11–24–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker License

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker licenses are canceled without prejudice.

Name	License #	Issuing port
Evans, Wood and Mooring, Inc	11425	Los Angeles.
South Florida Customs Brokers, Inc	16898	Miami.
ADCO I.T.S., Inc	14361	Laredo.
MEC Transport Services Corp	13618	Los Angeles.
J.H. Bachmann, Inc	11765	New York.

Dated: November 15, 2004.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 04–26109 Filed 11–24–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker National Permit

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker national permits are canceled without prejudice.

Name	Permit #	Issuing port
J.H. Bachmann, Inc	04–00064	Headquarters.
MEC Transport Services Corp	99–00265	Headquarters.

Dated: November 15, 2004.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 04–26106 Filed 11–24–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Cancellation of Customs Broker License Due to Death of the License Holder

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: Notice is hereby given that, pursuant to Title 19 of the Code of Federal Regulations § 111.51(a), the following individual Customs broker licenses and any and all permits have been cancelled due to the death of the broker:

Name	License #	Port name
Frederic Alan Moede	10053	Los Angeles.
Irvin Henry Shannon	01252	Nogales.
Lawrence M. Lewis	03804	Norfolk.

Dated: November 15, 2004.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 04–26108 Filed 11–24–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of One Current Public Collection of Information; Flight Training for Aliens and Other Designated Individuals; Security Awareness Training for Flight School Employees

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: TSA invites public comment on an existing information collection requirement, abstracted below, that will be submitted to OMB for renewal in compliance with the Paperwork Reduction Act.

DATES: Send your comments by January 25, 2005.

ADDRESSES: Comments to be delivered to Lyn Rahilly, Deputy Privacy Officer, TSA Headquarters, East Tower, Floor 7, TSA–9, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–2624; facsimile (571) 227–2559.

FOR FURTHER INFORMATION CONTACT: Lyn Rahilly, Deputy Privacy Officer, (571) 227–2624.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number. Therefore, in preparation for submission of the specified information collection for renewal, TSA solicits comments in order to—

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

(2) Evaluate the accuracy of the agency's estimate of the burden;

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

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

1652–0021, Flight Training for Aliens and Other Designated Individuals; Security Awareness Training for Flight School Employees, 49 CFR part 1552. Pursuant to section 612 of the Vision 100—Century of Aviation Reauthorization Act, TSA is required to conduct background checks for all aliens and other designated individuals seeking flight instruction at Federal Aviation Administration (FAA)-endorsed schools to determine a candidate's flight training eligibility. By a rule published in the **Federal Register** on September 20, 2004 (69 FR 56324), TSA developed and implemented the requirements at 49 CFR part 1552, prescribing standards relating to the security threat assessment process that TSA will conduct to determine whether such individuals are a threat to aviation or national security, and thus prohibited from receiving flight training. The collection of information required under part 1552 permits TSA to gather candidates' biographic information and fingerprints, which are used to perform the background checks. Additionally, flight schools are required to conduct a security awareness program for their employees to increase awareness of suspicious circumstances and activities of individuals enrolling in or attending flight school. The flight school may use the initial security awareness training program offered by TSA or an alternative initial training program offered by a third party or designed by the flight school itself. Each flight school employee must receive recurrent security awareness training each year and flight schools must maintain records of the training throughout the course of the individual's employment and for one year after the individual is no longer a flight school employee.

TSA estimates a total of 38,000 respondents annually (35,000 pilot training candidates and 3,000 flight schools). Respondents will be required to provide the subject information every time an alien or other designated individual applies for pilot training as described in the regulation, which is estimated to be twice a year per applicant, for a total of 70,000 responses per year. It is estimated that it will take 45 minutes per application to provide TSA with all of the information required, for a total approximate application burden of 52,500 hours per year. Flight schools must keep records from the time they are created for five years, and it is estimated that each of the 3,000 flight schools will carry an annual record-keeping burden of 104 hours, for a total of 312,000 hours. Thus, TSA estimates the combined hour burden associated with this collection to be 364,500 hours annually.

The approval of this information collection expires on March 31, 2005.

Issued in Arlington, Virginia, on November 18, 2004.

Lisa S. Dean,

Privacy Officer.

[FR Doc. 04–26105 Filed 11–24–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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.

EFFECTIVE DATE: November 26, 2004.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY 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 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with December 12, 1988, court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's notice is for the purposes of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: November 18, 2004.

Mark R. Johnston,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 04–25985 Filed 11–24–04; 8:45 pm]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4931–N–01]

Notice of Funding Availability for the Section 202 Demonstration Planning Grant Program

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

ACTION: Notice of Funding Availability.

Overview Information

A. Federal Agency Name: Department of Housing and Urban Development, Office of Housing.

B. Funding Opportunity Title: Section 202 Demonstration Planning Grant Program.

C. Announcement Type: Initial announcement.

D. Funding Opportunity Number: The OMB approval number for this NOFA is 2502–0267. The **Federal Register** number is FR–4931–N–01.

E. Catalog of Federal Domestic Assistance (CFDA) Number(s): 14.157, Section 202 Demonstration Planning Grant Program

F. Dates: Application Deadline Date: January 10, 2005.

An original and 2 copies of a completed application package is due to the appropriate local HUD Office on or before January 10, 2005. See Appendix 1 for a complete listing of the Multifamily Hub Offices and Multifamily Program Centers.

G. Additional Overview Content Information: Private nonprofit organizations and nonprofit consumer cooperatives interested in applying for funding under this program should carefully review the General Section of FY 2004 SuperNOFA (69 FR–26942, May 14, 2004), the Section 202 Program NOFA (69 FR–22709, May 14, 2004), and the information detailed in this program NOFA. Also see the Correction document (69 FR–34878, June 22, 2004).

Full Text of Announcement

I. Funding Opportunity Description

A. Program Description

The purpose of this Demonstration Planning Grant Program is to assist Sponsors of projects that receive Fund Reservation Awards pursuant to the FY 2004 SuperNOFA for the Section 202 Supportive Housing for the Elderly Program by providing predevelopment grant funding for architectural and engineering work, site control, and other planning related expenses that are eligible for funding under the Section 202 Supportive Housing for the Elderly Program. Subsequent to providing predevelopment grant funding to the selected applicants, this Demonstration Planning Grant will assess the impact of the availability of such funding on the ability of project Sponsors to expedite the development processing of projects from Section 202 Fund Reservation to Initial Closing within 18 months.

The Department is aware of the complexities of developing Section 202 projects and understands that a lack of predevelopment funding may be a contributing factor in many instances where project Sponsors are not able to move their approved projects from Fund Reservation award to Initial Closing within the required 18-month time frame. Funding under this program is not intended to supplement Section 202 Capital Advance funding, but rather to provide a source of funding for predevelopment costs that would otherwise not be reimbursable until Initial Closing or would be payable from eligible funding resources secured outside of Section 202 Capital Advance funding.

B. Authority

The Section 202 Demonstration Planning Program is authorized by the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7, approved February 20, 2003), and the Consolidated Appropriations Resolution, 2004 (Pub. L. 108–199, approved January 23, 2004)

II. Award Information

A. Funding Available

This NOFA makes available approximately $44,719,500 for predevelopment grants to private nonprofit organizations and consumer cooperatives in connection with the development of housing under the Section 202 Supportive Housing for the Elderly Program. The total dollar amount that is available under this Demonstration Planning Grant Program includes approximately $24,837,500 that was provided in the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7; approved February 20, 2003), and approximately $19,882,000 million that was provided in the Consolidated Appropriations Resolution, 2004 (Pub. L. 108–199; approved January 23, 2004).

B. Funding Process

HUD will only make offers to fully fund as many applications as possible from the $44,719,500 allocated for Sponsors that receive Section 202 Fund Reservations pursuant to the FY 2004 SuperNOFA process. All applicants selected for funding under the FY 2004 Section 202 Supportive Housing for the Elderly NOFA are not guaranteed funding under this Demonstration Program.

C. Maximum Grant Award

The maximum grant amount per single application is $400,000 however, no more than $800,000 may be awarded to a single entity or its affiliated organizations. The amount of funding requested must be within the maximum grant award amounts.

D. Reduction of Requested Grant Amount

HUD may make an award in an amount less than requested, if:

1. HUD determines that any of the proposed predevelopment activities are ineligible for funding under the Section 202 Supportive Housing for the Elderly Program;

2. HUD determines that an eligible applicant has not been able to provide sufficient evidence to support the proposed cost of an eligible predevelopment item or activity; and/or

3. HUD determines that a reduced grant would prevent duplicative Federal funding.

4. HUD determines that proposed costs for predevelopment activities are not based on comparable costs for eligible items and activities in the applicant's community. HUD Field Office staff will review proposed costs in accordance with customary and reasonable costs for such items within the geographical jurisdiction of the respective Multifamily Hub and/or Multifamily Program Center Office. If requested by the Department, eligible applicants must provide supportable evidence of comparable costs for proposed activities.

E. Term of Funded Activities

The grant term is 2 years. Funds not expended by the end of the grant term are subject to recapture and/or repayment if expended on ineligible activities.

III. Eligibility Information

A. Eligible Applicants

All private nonprofit organizations and nonprofit consumer cooperatives that submitted an application for funding consideration under the FY 2004 SuperNOFA for the Section 202 Supportive Housing for the Elderly Program are eligible to apply for funding under this Demonstration Planning Grant Program. (Please refer to the Overview Information, Section G(4), of the Section 202 Program NOFA for a discussion on the eligibility criteria for the Section 202 program). However,

funding awards under this Section 202 Demonstration Planning Grant Program will be restricted to those applicants that are selected for Fund Reservation Awards under the FY 2004 SuperNOFA for the Section 202 Supportive Housing for the Elderly Program. Funding under this Program will not be fair shared to each HUD office.

1. Ineligible Applicants:

a. Applicants that failed to submit a request for Fund Reservation under FY2004 Section 202 Program NOFA.

b. Applications from eligible applicants that do not receive a Fund Reservation Award under the FY 2004 SuperNOFA for the Section 202 Program will not be considered for funding under this Demonstration Planning Program.

c. Applications from applicants that are ineligible under the Section 202 program including public bodies and instruments of public bodies.

d. Applicants submitting proposals involving mixed-financing for additional units are not eligible to be considered for predevelopment funding under this NOFA.

B. Cost Sharing or Matching

No match required.

C. Other

1. Requirement and Procedures. To receive and administer funding under this Demonstration Program, applicants must fully satisfy the eligibility requirements for participation in the Section 202 Supportive Housing for the Elderly Program as well as comply with the following requirements:

a. Statutory and Regulatory Requirements. You must comply with all statutory, regulatory, threshold, and public policy requirements listed in the Section III (C) of the General Section of FY 2004 SuperNOFA, published on May 14, 2004.

b. Allowable Use of Funds. Grant funds may be used to cover the costs of architectural and engineering work, and other eligible planning activities relating to the development of supportive housing for the elderly under the Section 202 program. Grantees may use the funding provided under this Demonstration Program to extend options to purchase or to lease sites, and enter into contracts with qualified third party individuals, companies, or firms to provide professional services for eligible predevelopment activities related to the development of an elderly housing project that was selected for funding under the FY 2004 Section 202 NOFA. Grantees may not use funds for land acquisition, leasing, new construction, or property rehabilitation, alteration, demolition, or disposition. HUD approval must be granted before a grantee can enter into a contract for professional services with any entity requiring HUD 2530 clearance. Such entities include, but are not limited to, housing consultants (including those instances where eligible Sponsors proposed to provide such services), general contractors, and management agents.

c. Organizational Costs. Eligible organizational expenses and/or costs are limited to those incurred in connection with the organization of an Owner entity pursuant to the requirements of the Section 202 Supportive Housing for the Elderly Program.

d. Site Control. Applicants are required to provide evidence of site control, consistent with the requirements of the Section 202 program, as a condition to being funded under the FY 2004 Section 202 NOFA. Applicants who receive funding awards under this NOFA may utilize this funding to extend site control in accordance with the site control requirements under the Section 202 Supportive Housing for the Elderly Program. See Section III(C)(2)(b)(3)(a) of the Section 202 Program NOFA.

e. Phase I and Phase II Environmental Site Assessments (ESA). The requirements for Phase I and II ESAs are the same as those that apply to the Section 202 Supportive Housing for the Elderly Program and are contained in Section III(C)(2)(b)(3)(c)(i) and (ii) of the Section 202 Program NOFA.

f. False Statements. See Section III(C)(2)(h) of the General Section of the FY 2004 SuperNOFA.

2. Program Related Threshold Requirements. In addition to the threshold requirements in Section III(C)(2) of the General Section, applicants must adhere to all program specific threshold requirements as detailed in this NOFA. HUD will consider an application non-responsive to this NOFA and will not accept it for processing if the applicant:

a. is determined to be ineligible. Please refer to Section III(A)(1) of this NOFA for a more detailed discussion on ineligible applicants;

b. requested more than the maximum grant amount;

c. failed to submit the threshold requirements as identified by the asterisk (*) in Section IV (B) of this program NOFA by the deadline date; or

d. did not submit a request for Fund Reservation under the Section 202 FY2004 NOFA.

IV. Application and Submission Information

A. Addresses To Request Application Package

All information needed for the preparation and submission of this application is included in this Program NOFA and the General Section of the FY 2004 SuperNOFA. An electronic copy of such information is also available on the Web at *http://www.grants.gov/Find*. Paper copies of all documents related to this NOFA can be obtained from the NOFA Information Center by calling 1–800–HUD–8929 or for the hearing impaired at 1–800–HUD–2209. See Section IV(A)(1) of the General Section of the FY 2004 SuperNOFA for additional information.

1. Guidebook and Further Information. Please refer to Section IV(A)(2) of the General Section of the FY 2004 SuperNOFA for information on the guidebook to HUD programs, titled ''Connecting with Communities: A User's Guide to HUD Programs and the 2004 NOFA Process''.

2. Technical Assistance. Before the application due date, HUD staff will be available to provide you with general guidance and technical assistance as it relates to this program. Please note that HUD staff is not permitted to assist you in preparing your application or to provide comments on your application.

B. Content and Form of Application Submission

Applicants may submit more than one application to a single Field Office. However, no more than one application may be submitted per project. All applicable documents must have an original signature. Each application must propose a separate project and the proposed development must be located within the jurisdiction of the appropriate Field Office. To be eligible for review, all applications must contain the required exhibits that include the pertinent forms and narrative discussions. Threshold items are identified by an asterisk (*). Failure to include threshold items in your initial application submission will render your application non-responsive and that application will not be considered for funding by HUD. Applications must contain the required exhibits as listed below:

1. Cover Letter.

2. * Narrative Demonstrating Need for Predevelopment Funding: A brief narrative describing the financial circumstances that resulted in your need to apply for funding assistance with predevelopment activities, how the lack of such assistance has impacted the

organization's previous or current development efforts, and how access to predevelopment funding will assist the applicant in moving its FY 2004 Section 202 elderly housing project to Initial Closing within 18 months of Fund Reservation approval.

3. * Proposed Predevelopment Activities and Budget: This exhibit requires applicants to submit Form HUD–424–CB, Grant Applications Detailed Budget. The form identifies the applicant's cost of the proposed program activities. To supplement this form, applicants should include a narrative detailing a budget listing of each eligible predevelopment planning activity being proposed by the applicant, the anticipated cost for each activity, the expected results for each activity, and the total amount of predevelopment funding assistance being requested in the application. No predevelopment grant funds may be expended with participants who do not have HUD 2530 clearance.

4. * Project Development Schedule: This Exhibit should include a detailed development schedule which identifies the predevelopment activities being proposed, their projected start and completion dates, the projected completion date for all predevelopment planning activities, and a brief narrative describing the applicant's plan for monitoring this schedule of activities and addressing delays should they occur. All projected development schedules must (1) demonstrate the applicant's ability to move its approved FY 2004 Section 202 elderly housing project from Fund Reservation to an Initial Closing within 18 months of grant approval and (2) provide a statement addressing how a predevelopment grant will insure that the schedule is met. The completion of the Logic Model (form HUD 96010), under the FY 2004 Section 202 NOFA will assist you in responding to this Exhibit.

5. Acknowledgment of Application Receipt (HUD–2993).

6. Client Comments and Suggestions (HUD–2994).

If changes have been made to any of the forms that were submitted under the FY 2004 Section 202 NOFA, the Department requires that the updated form(s) be resubmitted under this Demonstration Planning Grant NOFA.

C. Submission Dates and Times

An original and two (2) copies of your completed application are due to the appropriate HUD Field Office on or before January 10, 2005. See Appendix 1 of this program NOFA for a complete listing of the Multifamily Hub Offices and Multifamily Program Centers. For Mailing and Receipt Procedures, Proof of Timely Submission, and other specific procedures governing the submission of applications to HUD Field Offices, see Section IV E of this program NOFA and also Section IV of the General Section of the FY 2004 SuperNOFA.

D. Funding Restrictions

1. Eligible Activities. Section 202 Demonstration Planning Grant Program funds must be used exclusively to facilitate planning design and predevelopment activities for projects funded under the FY 2004 SuperNOFA for the Section 202 Supportive Housing for the Elderly Program. Such activities include architectural and engineering work, site control, and other planning activities related to the development of a multifamily housing project funded under the FY 2004 Section 202 Supportive Housing for the Elderly Program. Grantees may not use funds for land acquisition, leasing, new construction, or property rehabilitation, alteration, demolition, or disposition.

a. All expenses related to eligible activities must be limited to those actual costs that are incurred prior to initial closing and be otherwise eligible activities under the Section 202 Program. Activities that are eligible for funding include the following:

(1) Appraisals. The applicant's cost for obtaining an appraisal to establish the fair market value of the proposed site completed by a qualified and licensed appraiser.

(2) Architect Services. The design fees charged by licensed architectural/engineering firms for construction of the applicant's project.

(3) Engineering Services. Actual cost of boundary survey, topographic survey, soil borings and tests.

(4) Environmental Site Assessment. Actual cost incurred for the environmental site assessment, *i.e.*, Phase I and Phase II.

(5) Consultant Services. Up to 20 percent of the total amount of the contract between the applicant and their consultant for services related to the development and submission of an approvable Section 202 Fund Reservation Application.

(6) Cost Analysis. The cost of the contract between the applicant and a professional with experience in cost estimation, for an independent cost estimate needed to determine the viability of a proposed project as required for Firm commitment processing under the Section 202 program.

(7) Legal Fees. The cost for legal services and title binder fees.

(8) Site Control. The applicant's cost for extending the time for site control of the original site including option costs necessary to extend option agreement up to the 18-months closing target date. The proceeds of this grant may not be used for site acquisition.

(9) Market Studies. The applicant's cost for a study completed by a qualified, independent, third party, market research firm for purposes of examining the need for and verifying the marketability of the proposed project.

(10) Organizational Expenses. The actual cost related to the creation of an Owner entity for the proposed project pursuant to Section 202 Program regulations.

2. Ineligible Activities:

All proposed activities that are determined to be ineligible will not be funded from the Demonstration Planning Grant funds.

a. Section 202 Demonstration Planning Grant Program funds may not be used to acquire sites or other real property, to fund organizational overhead and/or operating expenses, staff salaries, or any planning activity that is otherwise ineligible for assistance under the Section 202 Supportive Housing for the Elderly Program.

b. Funding under this NOFA may not be used to meet Minimum Capital Investment (MCI) requirements for the Section 202 Program.

In the event that funding awarded under this Program is utilized for activities or purposes that have not been approved by HUD, the Department will seek repayment.

3. Applicants submitting proposals involving mixed-financing for additional units are not eligible to be considered for predevelopment funding under this NOFA.

E. Other Submission Requirements

1. *Delivery and Receipt Procedures.* The following procedures apply to the delivery and receipt of applications in HUD Headquarters and field offices. Please read the following instructions carefully and completely, as failure to comply with these procedures may disqualify your application. HUD's delivery and receipt policies are:

a. Hand deliveries will be permitted. Hand delivered packages to the HUD Field Offices must be received no later than 4 p.m. local time for the office receiving the application. However, if HUD staff is not available to accept your package or the courier service is not allowed to enter the building to deliver the package due to security or other

reasons, the package will be determined not delivered and not accepted by HUD. In such instances, HUD recommends that, you, the applicant, or your agent take your package to the nearest post office and follow the mailing instructions for postal service timely delivery.

b. HUD will not take responsibility for ensuring that staff is available to take your package and will not breach security measures in order to accept an undeliverable package.

c. HUD will not accept or consider any applications sent by facsimile.

d. Packages may be mailed using the United States Postal Service. Mailed applications will be accepted as being timely submitted if they are received at the designated HUD location (including the room number specified for receipt) not later than 15 days after the due date and time, and show a postmark of having been delivered to the postal facility for mailing by 12 midnight local time on the application due date. If the Postal Service does not normally postmark large packages, the proof of timely submission shall be receipt within 15 days at the designated HUD facility and, upon request by a HUD official, proof of mailing using USPS Form 3817 (Certificate of Mailing) or a receipt from the Postal Service which contains the post office name, location, and date and time of mailing. For submission through the United States Postal Service, no other proof of timely submission will be accepted.

e. Applications mailed to a location or office that is not designated for receipt of the application, which results in the designated office not receiving your application in accordance with the requirements for timely submission, will cause your application to be considered late and ineligible to receive funding consideration. HUD will not be responsible for directing packages to the appropriate office.

Applicants should pay close attention to these submission and timely receipt instructions as they can make a difference in whether HUD will accept your application for funding consideration. Please remember that mail sent to federal facilities is screened prior to delivery, so please allow sufficient time for your package to be delivered. If an application is received late because of the processing time required for the screening, it will not be considered for funding.

2. *Proof of Timely Submission.* Proof of timely submission of an application is specified below.

a. In the case of packages sent to HUD via a delivery service, other than the United States Postal Service, timely submission shall be evidenced via a delivery service receipt indicating that the application was delivered to a carrier service at least 24 hours prior to the application deadline, and, if applicable, that through no fault of the applicant, the delivery could not be made on or before the application due date. Couriers turned away from a HUD facility due to security issues will not be considered as meeting the requirement of ''no fault of the applicant,'' because applicants have been advised that delivery delays can arise when using courier services, resulting in a late application submission.

b. For packages submitted via the United States Postal Service, proof of timely submission shall be a postmark not later than the application due date and receipt not later than 15 days after the application due date at the designated HUD facility and, upon request by a HUD official, proof of mailing using USPS Form 3817 (Certificate of Mailing) or a receipt from the Post Office which contains the post office name, location, and date and time of mailing. For submission through the United States Postal Service, no other proof of timely submission will be accepted. Applications not meeting the timely submission requirements will not be considered for funding.

3. *Address for Submitting Applications.* You should not submit any copies of your application to HUD Headquarters. All applications must be sent to the appropriate local HUD Office. It is strongly recommended that you submit your application by mail via United States Postal Service. Please refer to the Section IV(F)(1) of the General Section of the FY 2004 SuperNOFA as well as Section IV(E) of this program NOFA for detailed instructions regarding delivery and receipt procedures. Applications for this program cannot be made electronically and can only be made through the local HUD office. You must submit an original and two (2) copies of your completed application to the Director of the appropriate Multifamily Hub Office or Multifamily Program Center, as listed in Appendix 1 of this program NOFA, with the following exceptions:

a. Applications for projects proposed to be located within the jurisdiction of the Sacramento, California Office must be submitted to the San Francisco, California Office.

b. Applications for projects proposed to be located within the jurisdiction of the Cincinnati, Ohio Office must be submitted to the Columbus, Ohio Office.

c. Applications for projects proposed to be located within the jurisdiction of the Washington, DC Office must be submitted to the Baltimore, Maryland Office.

d. Applications for projects proposed to be located within the jurisdiction of the Grand Rapids, Michigan Office must be submitted to the Detroit, Michigan Office. Appendix 1 also includes the telephone numbers and TTY (text telephone) numbers for the Multifamily Hubs and Program Centers. This information is also available from HUD's NOFA Information Center at 1–800–HUD–8929 and from the Internet through the HUD web site at *http://www.hud.gov/grants.* Persons with hearing or speech impairments may call the Center's TTY number at 1–800–HUD–2209.

V. Application Review Information

A. Criteria

HUD Headquarters will select applications for Demonstration Planning Grant funding through a rating process. HUD will award funding under this process until all available funding has been exhausted.

B. Review and Selection Process

1. HUD's application review process will include, but is not limited to, an eligibility review of each predevelopment planning activity being proposed by the applicant, the reasonableness of the proposed cost for each activity, the reasonableness of the applicant's proposed budget, and the ability of project Sponsors to expedite the development processing of projects from Section 202 Fund Reservation to Initial Closing within the 18-month timeframe. All activities must be related to the development of the Section 202 housing project selected under the FY 2004 Section 202 Supportive Housing for the Elderly Program and be otherwise eligible activities under the Section 202 Program.

2. Review for Curable Deficiencies. You should ensure that your application is complete and that you have an original and two (2) copies before submitting it to the appropriate HUD Office. HUD will screen all applications received by the application submission deadline for threshold items and curable deficiencies. A curable deficiency is a missing Exhibit or portion of an Exhibit that will not affect the eligibility of the applicant. The HUD Office will notify you in writing if your application is missing any of the exhibits or portions of exhibits, as listed in Section IV(B) of this NOFA and you will be given fourteen (14) calendar days from the date of the HUD written notification to submit the information required to cure the noted deficiencies. In addition to the

threshold requirements in Section III(C)(2) of the General Section of the FY 2004 SuperNOFA, the items identified by an asterisk (*), as listed in Section IV(B) and in Section III(C)(2) of this NOFA, are also threshold requirements and must be dated on or before the application deadline date. Failure to satisfy all threshold requirements, at the time of submission, will render the application in question as being non-responsive to this NOFA and subject to no further review.

HUD will not reject your application based on technical review without notifying you of that rejection, the reason(s) for the rejection, and providing you an opportunity to appeal. You will have fourteen (14) calendar days, from the date of HUD's written notice, to appeal a technical rejection to the HUD Office. The HUD Office will make a determination on an appeal before making its selection of projects to be forwarded to HUD HQ as outlined in the section below. See Section (B)(4) of the General Section for additional procedures for corrections to deficient applications.

3. Eligibility Review. Threshold items are identified in Section III(C)(2) of the General Section of the FY 2004 SuperNOFA and in Section IV(B) and Section III(C)(2) of this program NOFA. Failure to meet any threshold item will render an application ineligible for funding consideration. HUD Multifamily Field Office staff will review applications for completeness and compliance with the eligibility criteria set forth in this NOFA. Field Office staff will forward to Headquarters a listing of eligible applications that were received by the deadline date, meet all eligibility criteria, propose reasonable costs for eligible activities, and include all technical corrections by the designated deadline date. From that listing, only those applications for projects that received a FY 2004 Section 202 Fund Reservation award will be considered for funding under this Demonstration Planning Grant NOFA.

4. HUD Headquarters will select Section 202 Demonstration Planning Grant applications based on HUD Multifamily Program Centers' rating of the respective FY 2004 Section 202 application, beginning with the highest rated application nationwide. After this selection, HUD Headquarters will select the next highest rated application in another Program Center. Only one application will be selected per Multifamily Program Center. However, if there are no approvable applications in other Multifamily Program Centers, the process will begin again with the selection of the next highest rated application nationwide. More than one application may be selected per HUD Multifamily Program Centers if there are no other approvable applications.

This process will continue until all approvable applications are selected using the available remaining funds. HUD Headquarters will fully fund as many applications as allocated funds will allow. HUD Headquarters will review its selection results to ensure that no single entity (including affiliated entities) receives grant funding in excess of $800,000. Once an organization receives its maximum amount of grant funding, no other projects from that organization will be eligible for selection from the succeeding drawings. If there is a tie score between two or more applications, HUD will select the applicant with the highest score in Rating Factor 1 of the FY 2004 Section 202 application. If Rating Factor 1 is scored identically, the score in Rating Factor 2, 3, and 4, of the FY 2004 Section 202 application, will be compared in that order, until one of the applications received a higher score. If both applications still score the same, then the application which request the least funding will be selected.

5. Adjustments to Funding.

a. Reduction of Requested Grant Amount. See Section II (D) of this program NOFA.

VI. Award Administration Information

A. Award Notices

Following the Congressional Notification process, HUD will issue a press release announcing the selection of awards. Once such an announcement has been made, successful applicants will receive their selection letters and grant agreement via postal or overnight mail. The grant agreement is the legally binding document that establishes a relationship between HUD and the award recipient organization. Once properly executed, it authorizes the obligation and disbursement of funds.

1. As a condition of receiving a grant under this Demonstration Planning Program, Grantees must open a separate, non-interest bearing account, for the receipt and handling of these funds.

2. All applicants that were not selected for funding will receive a non-selection letter.

3. You may request a debriefing on your application in accordance with the General Section of the FY 2004 SuperNOFA, with the exception that the request must be made to the Director of Multifamily Housing in the HUD Field Office to which you sent your application.

B. Administrative and National Policy Requirements

Expiration of Section 202 Funds. The FY 2003 and FY 2004 Consolidated Appropriations require HUD to obligate all Section 202 Demonstration Planning Grant funding appropriated for the respective fiscal years by September 30, 2006. Under 31 U.S.C. Section 1551, no funds can be disbursed from the account after September 30, 2011. Under this Demonstration Program, obligation of funds occurs upon execution of the Grant Agreement.

C. Reporting

Grantees must submit quarterly program performance and financial status reports to their respective Multifamily Hub or Program Center Office. Such reports include a narrative on the progress of each eligible activity undertaken, a narrative on problems encountered to date and how such problems may impact the grantee's proposed predevelopment or development timeframe, a narrative on the grantee's plan of corrective action to ensure that its project will be under construction within 24 months of grant approval or less, a listing of the professional firms contracted with, dollar amounts contracted for and services provided to date, a budget summary identifying funding expended to date for eligible activities versus the total grant awarded, and a certification on whether or not the proposed project continues to be viable as of the date of the report.

The project owner is still required to report on their performance based on the Logic Model (form HUD 96010), submitted under the FY04 Section 202 NOFA.

D. Environmental Requirements. The provision of assistance under this NOFA is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and not subject to compliance action for related environmental authorities under 24 CFR 50.19(b)(1), (3), (8) and (16).

E. This NOFA does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this NOFA is categorically excluded from environmental review under the

National Environmental Policy Act of 1969 (42 U.S.C. 4321).

VII. Agency Contacts

A. For further Information and Technical Assistance you may contact the appropriate Multifamily Hub Office or Multifamily Program Center, or Alicia Anderson at HUD Headquarters at (202) 708–3000, or access the Internet at *http://www.hud.gov/grants*. Persons with hearing and speech impairments may access the above number via TTY by calling the toll-free Federal Relay Service at 1–800–877–8339.

B. Satellite Broadcast

HUD will hold an information broadcast via satellite for potential applicants to learn more about the program and preparation of the application. The broadcast will be viewable at your local HUD Office. HUD strongly encourages minority organizations and grassroots faith-based and other community-based organizations especially those who may be applying for Section 202 funding to tune into this broadcast, if at all possible. Copies of the broadcast tapes will also be available from the NOFA Information Center. For more information about the date and time of the broadcast, you should consult the HUD Web site at *http://www.hud.gov/grants*.

VIII. Other Information

A. Section 102 of the HUD Reform Act, Documentation and Public Access Requirements

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (HUD Reform Act) and the regulations codified at 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published a notice that also provides information on the implementation of Section 102 (57 FR 1942). The documentation, public access, and disclosure requirements of Section 102 apply to assistance awarded under this NOFA as follows:

1. *Documentation.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations (24 CFR part 15).

2. *Debriefing.* For a period of at least 120 days, beginning 30 days after the awards for assistance are publicly announced, HUD will provide a debriefing to a requesting applicant a debriefing related to its application. All debriefing requests must be made in writing or by email by the authorized official whose signature appears on the SF–424 or his or her successor in office, and submitted to the person or organization identified as the Contact under the section entitled ''Agency Contact.'' Information provided during a debriefing will include, at a minimum, the final score the applicant received for each rating factor, final evaluator comments for each rating factor, and the final assessment indicating the basis upon which assistance was provided or denied.

3. *Disclosures.* HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also reported on HUD Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than three years. All reports, both applicant disclosures and updates, will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations (24 CFR part 15).

4. *Publication of Recipients of HUD Funding.* HUD will publish a notice in the **Federal Register** to notify the public of all decisions made by the Department to provide:

a. Assistance subject to Section 102(a) of the HUD Reform Act; and

b. Assistance provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

B. Section 103 of the HUD Reform Act

HUD's regulations implementing Section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified at 24 CFR part 4, subpart B, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by the regulations in providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics-related questions should contact the HUD Ethics Law Division at (202) 708–3815. (This is not a toll-free number.) HUD employees who have specific program questions should contact the appropriate field office counsel or Headquarters counsel for the program to which the question pertains.

C. Paperwork Reduction Act Statement

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number *2502–0267*. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number. Public reporting burden for the collection of information is estimated to average 4 hours per annum per respondent for the application and grant administration. This includes the time for collecting, reviewing, and reporting the data for the application, semi-annual reports and final report. The information will be used for grantee selection and monitoring the administration of funds. Response to this request for information is required in order to receive the benefits to be derived.

Dated: November 19, 2004.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

HUD Field Office Addresses for Submitting Applications

A. Your application must be sent to the appropriate local HUD Office having jurisdiction over the locality in which your project will be located. If you send your application to the wrong local HUD Office, it will be rejected. Therefore, if you are uncertain as to which local HUD Office to submit your application, you are encouraged to contact the local HUD Office below that is closest to your proposed project location(s) to ascertain the Office's jurisdiction and ensure that you submit your application to the correct local HUD Office.

1. Applications for projects proposed to be located within the jurisdiction of the Sacramento, California Office must be submitted to the San Francisco, California Office.

2. Applications for projects proposed to be located within the jurisdiction of the Cincinnati, Ohio Office must be submitted to the Columbus, Ohio Office.

3. Applications for projects proposed to be located within the jurisdiction of the Washington, DC Office must be submitted to the Baltimore, Maryland Office.

4. Applications for projects proposed to be located within the jurisdiction of the Grand Rapids, Michigan Office must be submitted to the Detroit, Michigan Office.

HUD—Boston Hub

Hartford Office

One Corporate Center, 19th Floor, Hartford, CT 06103–3220, (860) 240–4800, TTY Number: (860) 240–4665

Boston Office

Room 301, Thomas P. O'Neill, Jr., Federal Building, 10 Causeway Street, Boston, MA 02222–1092, (617) 994–8500, TTY Number: (617) 565–5453

Manchester Office

1000 Elm Street, 8th Floor, Manchester, NH 03101–1730, (603) 666–7510, TTY Number: (603) 666–7518

Providence Office

Sixth Floor, 10 Weybosset Street, Providence, RI 02903–2808, (401) 528–5230, TTY Number: (401) 528–5403

HUD—New York Hub

New York Office

26 Federal Plaza, Room 3200, New York, NY 10278–0068, (212) 264–8000, TTY Number: (212) 264–0927

HUD—Buffalo Hub

Buffalo Office

Lafayette Court Building, 465 Main Street, 2nd Floor, Buffalo, NY 14203–1780, (716) 551–5755, ext. 5000, TTY Number: (716) 551–5787

HUD—Philadelphia Hub

Philadelphia Office

The Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3380, (215) 656–0609, TTY Number: (215) 656–3452

Charleston Office

Suite 708, 405 Capitol Street, Charleston, WV 25301–1795, (304) 347–7000, TTY Number: (304) 347–5332

Newark Office

Thirteenth Floor, One Newark Center, 1085 Raymond Boulevard, Newark, NJ 07102–5260, (973) 622–7900, TTY Number: (973) 645–3298

Pittsburgh Office

339 Sixth Avenue, Sixth Floor, Pittsburgh, PA 15222–2507, (412) 644–6428, TTY Number: (412) 644–5747

HUD—Baltimore Hub

Baltimore Office

Fifth Floor, City Crescent Building, 10 South Howard Street, Baltimore, MD 21201–2505, (410) 962–2520, TTY Number: (410) 962–0106

Richmond Office

600 East Broad Street, 3rd Floor, Richmond, VA 23219, (804) 771–2100, TTY Number: (804) 771–2038

HUD—Greensboro Hub

Greensboro Office

Asheville Building, 1500 Pinecroft Road, Suite 401, Greensboro, NC 27407–3838, (336) 547–4000, TTY Number: (336) 547–4054

Columbia Office

Strom Thurmond Federal Building, 13th Floor, 1835–45 Assembly Street, Columbia, SC 29201–2480, (803) 765–5592

HUD—Atlanta Hub

Atlanta Office

ATTN: Multifamily Housing, 12th Floor, 40 Marietta Street—Five Points Plaza, Atlanta, GA 30303–2806, (404) 331–5136, TTY Number: (404) 730–2654

San Juan Office

Edificio Administracion de Terrenos, 171 Carlos Chardon Avenue, Suite 301, San Juan, PR 00918–0903, (787) 766–5400, TTY Number: (787) 766–5909

Louisville Office

601 West Broadway, Room 110, Louisville, KY 40202, (502) 582–5251, TTY Number: (800) 648–6056

Knoxville Office

John J. Duncan Federal Building, 710 Locust Street, Third Floor, Knoxville, TN 37902–2526, (865) 545–4384, TTY Number: (865) 545–4559

Nashville Office

Suite 200, 235 Cumberland Bend, Nashville, TN 37228–1803, (615) 736–5600, TTY Number: (866) 503–0264

HUD—Jacksonville Hub

Jacksonville Office

Southern Bell Towers, 301 West Bay Street, Suite 2211, Jacksonville, FL 32202–5121, (904) 232–2627, TTY Number: (904) 232–3759

Birmingham Office

Medical Forum Building, 950 22nd St., North, Suite 900, Birmingham, AL 35203–5301, (205) 731–2617, TTY Number: (800) 548–2546

Jackson Office

Suite 910, Doctor A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, MS 39269–1096, (601) 965–4757, TTY Number: (601) 965–4171

HUD—Chicago Hub

Chicago Office

Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604–3507, (312) 353–5680, TTY Number: (312) 353–7143

Indianapolis Office

151 North Delaware Street, Suite 1200, Indianapolis, IN 46204–2526, (317) 226–6303, TTY Number: (800) 743–3333

HUD—Detroit Hub

Detroit Office

Patrick V. McNamara Federal Building, 477 Michigan Avenue, Suite 1700, Detroit, MI 48226–2592, (313) 226–7900, TTY Number: (313) 226–6899

HUD—Columbus Hub

Columbus Office

200 North High Street, 7th Floor, Columbus, OH 43215–2499, (614) 469–5737, TTY Number: (614) 469–6694

Cleveland Office

US Bank Centre, 1350 Euclid Avenue, Suite 500, Cleveland, OH 44115–1815, (216) 522–4058, TTY Number: (216) 522–2261

HUD—Minneapolis Hub

Minneapolis Office

920 Second Avenue South, Suite 1300, Minneapolis, MN 55402–4012, (612) 370–3000, TTY Number: (612) 370–3186

Milwaukee Office

Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Suite 1380, Milwaukee, WI 53203–2289, (414) 297–3214, TTY Number: (414) 297–1423

HUD—Ft. Worth Hub

Little Rock Office

Suite 900, Metropolitan Bank Building, 425 West Capitol Avenue, Little Rock, AR 72201–3488, (501) 324–5931, TTY Number: (501) 324–5931

New Orleans Office

Hale Boggs Federal Building, 500 Poydras Street, 9th Floor, New Orleans, LA 70130–3099, (504) 589–7201, TTY Number: (504) 589–7277

Ft. Worth Office

801 Cherry Street, P.O. Box 2905, Fort Worth, TX 76113–2905, (817) 978–5965, TTY Number: (817) 978–5595

Houston Office

1301 Fannin, Suite 2200, Houston, TX 77002, (713) 718–3199, TTY Number: (713) 718–3289

San Antonio Office

106 South St. Mary's Street, Suite 405, San Antonio, TX 78205, (210) 475–6806, TTY Number: (210) 475–6885

HUD—Great Plains

Des Moines Office

Room 239, Federal Building, 210 Walnut Street, Des Moines, IA 50309–2155, (515) 284–4512, TTY Number: (515) 284–4728

Kansas City Office

Room 200, Gateway Tower II, 400 State Avenue, 5th Floor, Kansas City, KS 66101–2406, (913) 551–5644, TTY Number: (913) 551–5416

Omaha Office

Executive Tower Centre, 10909 Mill Valley Road, Suite 100, Omaha, NE 68154–3955, (402) 492–3100, TTY Number: (402) 492–3183

St. Louis Office

Third Floor, Robert A. Young Federal Building, 1222 Spruce Street, Room 3.207, St. Louis, MO 63103–2836, (314) 539–6583, TTY Number: (314) 539–6331

Oklahoma City Office

301 NW. 6th Street, Suite 200, Oklahoma City, OK 73102, (405) 609–8509, TTY Number: 405–609–8480

HUD—Denver Hub

Denver Office

23rd Floor, 1670 Broadway, Denver, CO 80202, (303) 672–5440, TTY Number: (303) 672–5022

HUD—San Francisco Hub

Phoenix Office

One North Central, Suite 600, Phoenix, AZ 85004, (602) 379–7100, TTY Number: (602) 379–7181

San Francisco Office

600 Harrison Street, San Francisco, CA 94107, (415) 489–6400, TTY Number: (415) 436–6594

Honolulu Office

500 Ala Moana Boulevard, Suite 3A, Honolulu, HI 96813, (808) 522–8175, TTY Number: (808) 522–8193

HUD—Los Angeles Hub

Los Angeles Office

611 West 6th Street, Suite 800, Los Angeles, CA 90017–3106, (213) 894–8000, TTY Number: (213) 894–8133

HUD—Seattle Hub

Portland Office

400 Southwest Sixth Avenue, Suite 700, Portland, OR 97204–1632, (503) 326–2561, TTY Number: (503) 326–3656

Anchorage Office

3000 C Street, Suite 401, Anchorage, AK 99503, (907) 677–9880, TTY Number: (907) 677–9825

Seattle Office

909 First Avenue, Suite 200, Seattle, WA 98104–5254, (206) 220–5101, TTY Number: (206) 220–5254

BILLING CODE 4210–27–P

Grant Applications
Detailed Budget

U.S. Department of Housing and Urban Development

OMB Approvoal No. 2501-0017
(expires 03/31/2005)

Name of Project/Activity:	Functional Categories [Year 1:__] [Year 2:__] [Year 3:__] [All Years:__]								
	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9
	HUD Share	Applicant Match	Other HUD Funds	Other Fed Share	State Share	Local/Tribal Share	Other	Program Income	Total
a. Personnel (Direct Labor)	$	$	$	$	$	$	$	$	$ 0.00
b. Fringe Benefits									0.00
c. Travel									0.00
d. Equipment (only items > $5,000 depreciated value)									0.00
e. Supplies (only items < $5,000 depreciated Value)									0.00
f. Contractual									0.00
g. Construction									0.00
1. Administration and legal expenses									0.00
2. Land, structures, rights-of way, appraisals, etc.									0.00
3. Relocation expenses and payments									0.00
4. Architectural and engineering fees									0.00
5. Other architectural and engineering fees									0.00
6. Project inspection fees									0.00
7. Site work									0.00
8. Demolition and removal									0.00
9. Construction									0.00
10. Equipment									0.00
11. Contingencies									0.00
12. Miscellaneous									0.00
h. Other (Direct Costs)									0.00
i. Subtotal of Direct Costs									0.00
j. Indirect Costs (% Approved Indirect Cost Rate:___%)									
Grand Total (Year:___):									0.00
Grand Total (All Years):									

form **HUD-424-CB** (1/2004)

Instructions for the HUD Grant Application Detailed Budget Form

U.S. Department of Housing and Urban Development

OMB Approval No. 2577-0208 (expires 03/31/2005)

Public reporting Burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB Control Number.

General Instructions

This form is designed so that an application can be made for any of HUD's grant programs. Separate sheets must be used for each proposed program year and for a summary of all years.

Check applicable program year or all years box at top of page to indicate which applies.

On the final sheet enter the Grand Total for all years in the applicable box at the bottom of the page. In preparing the budget, adhere to any existing HUD requirements which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, HUD may require budgets to be shown separately by function or activity. Your budget information should show the entire cost of your proposed program of activities per year. If you are not using funds in any of the line item categories, you should leave the item blank. Pages may be duplicated to show budget data for individual programs, projects or activities.

NOTE: Not all budget categories on this form are eligible for funding under all programs. Please see eligible activities under the specific program for which you are seeking funding.

Budget Categories

The budget categories identifies how your program funds will be allocated by type of use, e.g., funds going for salaries, travel, contracts, etc. Each of these line items should be broken out under each applicable column.

Lines a-f--Show the totals of Lines a to f in each column.

Lines g. Show construction related expenses in the appropriate categories below.

Line g.1.--Enter estimated amounts needed to cover administrative expenses. Do not include costs which are related to the normal functions of government.

Line g.2.--Enter estimated site and right(s)-of-way acquisition costs (this includes purchase, lease, and/or easements).

Line g.3.--Enter estimated costs related to relocation advisory assistance, replacement housing, relocation payments to displaced persons and businesses, etc.

Line g.4.--Enter estimated basic engineering fees related to construction (this includes start-up services and preparation of project performance work plan).

Line g.5.--Enter estimated engineering costs, such as surveys, tests, soil borings, etc.

Line g.6.--Enter estimated engineering inspection costs.

Line g.7.--Enter the estimated site preparation and restoration which are not included in the basic construction contract.

Line g.8.--Enter the estimated costs related to demolition activities.

Line g.9.--Enter estimated costs of the construction contract.

Line g.10.--Enter estimated cost of office, shop, laboratory, safety equipment, etc. to be used at the facility, if such costs are not included in the construction contract.

Line g.11.--Enter any estimated contingency costs.

Line g.12.--Enter estimated miscellaneous costs.

Line h.--Enter any other direct costs not already addressed above.

Line i.--Calculate the totals of all applicable columns to determine the Subtotal of Direct Costs.

Line j.--Indicate the approved Indirect Cost Rate (if any) and calculate the indirect cost in accordance with the terms of your approved indirect cost rate and enter the resulting amount.

Grand Total (Year:__)--Enter the sum of lines i. and j. under column 9 for each year, and enter the applicable year, in the blank, for each sheet completed.

Grand Total (All Years)--Enter the sum of all the, "Grand Total (Year:__)" amounts from each sheet completed, under column 9, for all proposed years.

For each budget category (personnel, fringe benefits, travel, etc) you should identify the amount of funding you plan on using in your grant program. You should complete each column as follows:

Column 1 - Identify the amount of funds that you will need from the HUD grant program for which you are seeking funding.

Column 2 - Identify any matching funds that you are required to include in your proposed program in order to be eligible for assistance.

Column 3 - Identify any other HUD funds that you will be adding to this program either through your formula or competitive grant programs.

Column 4 - Identify any other Federal funds that you will be adding to this program either through your formula or competitive grant programs.

Column 5 - Identify any State funds that you will be adding to this program.

Column 6 - Identify any Local or Tribal Government funds that you will be adding to this program.

Column 7 - Identify any additional funds not previously identified in Columns 1 - 6, that you intend to use for your proposed program.

Column 8 - Identify any program income that you expect to generate under this program.

Column 9 - Add columns 1 - 8 across and place the total in Column 9.

Acknowledgment of Application Receipt

U.S. Department of Housing and Urban Development

Type or clearly print the Applicant's name and full address in the space below.

(fold line)

Type or clearly print the following information:

Name of the Federal Program to which the applicant is applying: _____

To Be Completed by HUD

☐ HUD received your application by the deadline and will consider it for funding. In accordance with Section 103 of the Department of Housing and Urban Development Reform Act of 1989, no information will be released by HUD regarding the relative standing of any applicant until funding announcements are made. However, you may be contacted by HUD after initial screening to permit you to correct certain application deficiencies.

☐ HUD did not receive your application by the deadline; therefore, your application will not receive further consideration. Your application is:

- ☐ Enclosed
- ☐ Being sent under separate cover

Processor's Name _____

Date of Receipt _____

form **HUD-2993** (2/99)

Client Comments and Suggestions

U.S. Department of Housing and Urban Development

You are our Client! Your comments and suggestions, please!

The Department of Housing and Urban Development in preparing this Notice of Funding Availability and application forms, has tried to produce a more user friendly, customer driven funding process. Please let us have your comments and recommendations for improvements to this document. You may leave this form attached to your application, or feel free to detach the form and return it to:

The Department of Housing and Urban Development
Office of Departmental Grants Management and Oversight
Room 3156
451 7th Street, SW
Washington, DC 20410

Please Provide Comments on HUD's Efforts:

The NOFA (insert title) _____

is: (please check one)

(a) ☐ is clear and easily understandable

(b) ☐ better than before, but still needs improvement (please specify)

(c) other (please specify)

The application form (insert title) _____

is: (please check one)

(a) ☐ is acceptable given the volume of information required by statute and the volume of information required for accountability in selecting and funding projects.

(b) ☐ is simpler and more user-friendly than before, but still needs work (please specify).

(c) other comments (please specify)

Name & Organization (Optional):

Are additional pages attached? ☐ Yes ☐ No

Previous versions obsolete

form **HUD-2994** (03/2003)

[FR Doc. 04–26115 Filed 11–24–04; 8:45 am]
BILLING CODE 4210–27–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Renewal Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; OMB Control Number 1018–0112; U.S. Fish and Wildlife Service Employee Exit Follow-Up, Authorized by the Merit System Principles (5 U.S.C. 2301)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Fish and Wildlife Service (We/Service) is requesting that OMB extend an existing approval to collect information from former employees. We will use the information that we collect to assist us in developing strategies to improve employee retention.

DATES: You must submit comments on or before December 27, 2004.

ADDRESSES: Send your comments on this information collection renewal to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–6566 (fax) or at *OIRA_DOCKET@OMB.eop.gov* (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 N. Fairfax Drive, Arlington, VA 22203 (mail); (703) 358–2269 (fax); or at *hope_grey@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requirements, the related form, or explanatory information, contact Hope Grey at the address or fax number listed above or by telephone at (703) 358–2482.

SUPPLEMENTATARY INFORMATION: We have sent a request to OMB to renew approval of the information collection clearance requirements for an Employee Exit Follow-up Survey. Currently, we have approval from OMB to collect information under OMB control number 1018–0112. This approval expires on November 30, 2004. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless we display a currently valid OMB control number. OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). OMB has up to 60 days to approve or disapprove our information collection request, but their response may be given as early as 30 days after our submittal. Therefore, to ensure consideration, send your comments to OMB by the date listed in the DATES section near the beginning of this notice.

On August 6, 2004, we published in the **Federal Register** (69 FR 47948) a 60-day notice of our intent to request renewal of this information collection authority from OMB. In that notice, we solicited public comments for 60 days ending on October 5, 2004. We received one comment regarding this notice. The commenter expressed general opposition to the use of the survey and encouraged the Service to protect wildlife. The commenter did not provide specific reasons for objecting to the survey or address the information collected. Service management has made it a high priority to ensure that we retain the highest caliber employees possible. We can do this only if we examine and analyze the reasons for employee separation from the Service. Therefore, we have not made any changes to the survey based on this comment.

The Fish and Wildlife Service is the principal Federal agency responsible for conserving, protecting, and enhancing fish, wildlife, and plants and their habitats for the continuing benefit of the American people. We manage the 95-million-acre National Wildlife Refuge System, which encompasses 545 national wildlife refuges, thousands of small wetlands, and other special management areas. We also operate 69 national fish hatcheries, 64 fishery resource offices, and 81 ecological services field stations. We enforce Federal wildlife laws, administer the Endangered Species Act, manage migratory bird populations, restore nationally significant fisheries, conserve and restore wildlife habitat such as wetlands, and help foreign governments with their conservation efforts. We also oversee the Federal Assistance program that distributes hundreds of millions of dollars of excise taxes on fishing and hunting equipment to State fish and wildlife agencies. We have made it a high priority to recruit and retain valued employees to accomplish these responsibilities. As part of an active career development program, we have instituted an Employee Exit Follow-up Survey to collect feedback from former Service employees so that we may discover relevant issues that impact employee retention. If this survey were not used, there would be no way we could analyze the reasons for employee separation.

We estimate that the total annual burden associated with the request will be 100 hours. This represents an average of 400 respondents with each taking an estimated 15 minutes to complete the survey.

Title: U.S. Fish and Wildlife Service Employee Exit Follow-up, authorized by the Merit System Principles (5 U.S.C. 2301).

OMB Control Number: 1018–0112.

Form Number: FWS Form 3–2186.

Frequency of Collection: Occasionally.

Description of Respondents: Former Fish and Wildlife Service employees.

Total Annual Responses: 400.

Total Annual Burden Hours: 100 hours.

We again invite comments on this information collection renewal on: (1) Whether or not this collection of information is necessary for us to properly perform our functions, including whether or not this information will have practical utility; (2) the accuracy of our estimate of burden, including the validity of the methodology and assumptions we use; (3) ways to enhance the quality, utility, and clarity of the information we are proposing to collect; and (4) ways for us to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law. If you wish to withhold your name and/or address, you must state this clearly at the beginning of your comment. We will not consider anonymous comments. We generally make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: November 5, 2004.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. 04–26150 Filed 11–24–04; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; National Survey of Fishing, Hunting, and Wildlife-Associated Recreation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The Fish and Wildlife Service (we) plans to submit the collection of information described below to OMB for approval under the provisions of the Paperwork Reduction Act of 1995. The information collected for the National Survey of Fishing, Hunting, and Wildlife-Associated Recreation (FHWAR Survey) is needed to assist Federal and State agencies in administering the Sport Fish and Wildlife Restoration grant programs. The 2006 FHWAR Survey will provide up-to-date information on the uses and demands for wildlife-related recreation resources, trends in uses of those resources, and a basis for developing and evaluating programs and projects to meet existing and future needs. We have conducted this survey every 5 years since 1955.

DATES: You must submit comments on or before January 25, 2005.

ADDRESSES: Send your comments on this information collection to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203; *hope_grey@fws.gov* (e-mail); or (703) 358–2269 (fax).

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requirements, explanatory information, or related materials, contact Hope Grey at (703) 358–2482 or e-mail *hope_grey@fws.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)).

We plan to send a request to OMB for approval of the information collection requirements for the 2006 FHWAR Survey. We are requesting a 3-year term of approval for this information collection activity. Federal agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The OMB control number for previous collections of this information was 1018–0088. We collect the information in conjunction with carrying out our responsibilities under the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–777M) commonly referred to as the Dingell-Johnson Act, and the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669–669i) commonly referred to as the Pitman-Robertson Act. Under these acts, as amended, we provide approximately $500 million in grants annually to States for projects to support sport fish and wildlife management and restoration, including the improvement of fish and wildlife habitats, fishing and boating access, fish stocking, and hunting and fishing opportunities. We also provide grants for aquatic education and hunter education, maintenance of completed projects, and research into the problems affecting fish and wildlife resources. These projects help to ensure that the American people have adequate opportunities for fish and wildlife recreation.

The 2006 FHWAR Survey will be the 11th conducted since 1955. We sponsor the survey requested by the States through the International Association of Fish and Wildlife Agencies. The Bureau of the Census collects the information using computer-assisted telephone or in-person interviews. A sample of sportsmen and wildlife watchers will be selected from a household screen. Sample persons will be asked about their participation and expenditures. Three detailed interviews will be conducted during the survey year. The 2006 FHWAR Survey will be similar in scope to past surveys. It will generate information identified as priority data needed by the Federal and State agencies responsible for administering the Sport Fish and Wildlife Restoration grant programs. Accordingly, the 2006 FHWAR Survey will produce a comprehensive database of fish and wildlife related recreation activities and expenditures. It will include the number of persons participating in different types of activities such as freshwater, saltwater, and Great Lakes fishing, and big game, small game, migratory bird, and other animal hunting. Wildlife-watching activities include wildlife observation, feeding, and photographing around the home and on trips away from home. Information is collected on days of participation, species of animals sought, and how much money was spent on trips and for equipment. Information on the characteristics of participants include age, income, sex, education, race, and residency. The survey data has State level reliability. Federal and State agencies use information from the survey to formulate management and policy decisions related to fish and wildlife restoration and management. Participation patterns and trend information assist in identifying present and future needs and demands. The information is used for planning the acquisition, development, and enhancement of resources for the benefit of wildlife-related recreation. Land managing agencies use the data on expenditures, economic evaluation, and participation to assess the value of wildlife-related recreational uses of natural resources. States use expenditure information to estimate the economic impact of wildlife-related recreation expenditures on their economies and to support the dedication of tax revenues for fish and wildlife restoration programs. The information collected on resident saltwater fishing assists coastal States in determining the proper ratio for allocating funds between freshwater and saltwater projects as required by the Federal Aid in Sport Fish Restoration Act, as amended. The information is not readily available elsewhere because few States have saltwater licenses or conduct their own surveys. If the 2006 FHWAR Survey data were not available, it would impair the ability of those States to meet their obligations under the Act.

Title: National Survey of Fishing, Hunting, and Wildlife-Associated Recreation.

OMB Control Number: 1018–0088.

Form Number: None.

Frequency: Household screen interviews and the first detailed sportsmen and wildlife-watchers interviews will be conducted April–June 2006. The second detailed interviews will be conducted September–October 2006. The third and last detailed interviews will be conducted January–March 2007.

Description of Respondents: Individuals.

Total Annual Burden Hours: 32,254 hours.

Total Annual Responses: 95,000 respondents.

	Estimated number of household responses	Average time per household (minutes)	Estimated number of participant responses	Average respondent time (minutes)	Total burden (hours)
Screen	*76,000	7			8,867
Screen Reinterview**	3,800	5			317
Hunting & Fishing:					
1st interview			12,000	15	3,000
2nd interview			24,000	10	4,000
3rd interview			36,000	15	9,000
Reinterview			2,000	5	167
Wildlife Watching:					
1st interview			7,200	11	1,320
2nd interview			12,000	11	2,200
3rd interview			18,000	11	3,300
Reinterview			1000	5	83
Total	79,800	6.9	112,200	12.3	32,254

*The estimated number of respondents reached from a sample of households will be 76,000. About 50 percent, or 38,000, of those respondents will sample in and receive a detailed interview. An additional 50 percent of those households where one person is sampled (19,000) will have a second person screened in for interviews. We estimate the total number of respondents to be 95,000 (76,000 + 19,000).

**Of the survey respondents, 5 percent from the screener workload and 6 percent from the third interview sportsmen and wildlife-watching user workloads are reinterviewed by another Census interviewer using a subset of the regular questionnaire. These reinterview responses are compared to the responses of the full interview as a quality control measure.

The total number of respondents can be calculated by adding up the household and participant responses and subtracting the reinterviews and the third interviews. There is some wave 1 and wave 2 overlap.

We expect the burden to be about 15 minutes for the sportsmen and 11 minutes for the wildlife-watching participants. We base the estimate for interview length on the 2001 survey and experience with similar surveys conducted within the past year. The combined total estimated hours of respondent burden is 32,254.

We invite your comments on: (1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency including whether or not the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection information; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents.

Dated: November 8, 2004.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. 04–26178 Filed 11–24–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species and/or marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*), and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361, *et seq.*), the Fish and Wildlife Service issued the requested permit(s) subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

Endangered Species

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
063771	Feld Entertainment	69 FR 54150, September 7, 2004	10/25/2004
088351	Feld Entertainment	69 FR 54150, September 7, 2004	10/25/2004
090113	Lincoln Park Zoological	69 FR 55446, September 14, 2004	10/22/2004
090216	Univ. of Tennessee	69 FR 55446, September 14, 2004	10/27/2004

Endangered Marine Mammals and Marine Mammals

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
091775	Joseph A. Tice	69 FR 54149; September 7, 2004	11/01/2004

Dated: November 12, 2004.

Michael L. Carpenter,

Senior Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–26128 Filed 11–24–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by December 27, 2004.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: California Science Center, Los Angeles, CA, PRT–091186.

The applicant requests a permit to import one plastinated captive-born male western lowland gorilla (*Gorilla gorilla gorilla*) from the Institut fur Plastination, Heidelberg, Germany for the purpose of education and enhancement of the survival of the species.

Applicant: James A. Toth, Burton, MI, PRT–095425.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Edward W. Johnson, Houston, TX, PRT–095573.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Hugh Cropper, III, Ocean City, MD, PRT–096039.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Jonathan W. Davis, Richland, MO, PRT–094982.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd in the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Feld Entertainment/ Ringling Brothers, Vienna, Virginia, PRT–063771, 088351.

This corrects the language in 69 FR 54150, September 7, 2004, from ''Grayslake, IL'' to ''Vienna, Virginia'' and from ''export'' to ''export and re-import.'' The applicant requests permits to export and re-import two live captive-born Asian elephants (*Elephas maximus*) to world wide locations for the purpose of enhancement of the species through conservation education. The permit numbers and animals are: ''Doc'' or ''Fish,'' 063771; and ''Gunther'' 088351. This notification covers activities to be conducted by the applicant over a three-year period.

Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The applications were submitted to satisfy requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*) and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361, *et seq.*), and the regulations governing endangered species (50 CFR part 17) and/or marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: California Department of Fish and Game, Marine Wildlife Veterinary Care and Research Center, Santa Cruz, California, PRT–095276.

The applicant requests a permit to take up to 6 captive-held Southern sea otters (*Enhydra lutris nereis*), for the purpose of scientific research on the thermoregulatory effects of washing them, for the purpose of improving oil spill response capabilities and outcomes. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: The Sirenia Project, U.S. Geological Survey, Biological Resources Division, Gainesville, Florida, PRT–791721.

The applicant requests a renewal of their permit to take manatees (*Trichechus manatus*), up to 200 per year from the wild, for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Applicant: Edward A. Bell, West Columbia, WV, PRT–095238.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

Applicant: Sidney R. Wilhite, West Monroe, LA, PRT–095768.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

Dated: November 12, 2004.

Michael L. Carpenter,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–26129 Filed 11–24–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

SUMMARY: The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

DATES: Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received on or before December 27, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Fasbender, (612) 713–5343.

SUPPLEMENTARY INFORMATION:

Permit Number: TE096410.

Applicant: Thomas E. Tomasi, Southwest Missouri State University, Springfield, Missouri.

The applicant requests a permit to take the Indiana bat (*Myotis sodalis*) throughout Missouri. The scientific research is aimed at enhancement of survival of the species in the wild.

Dated: November 12, 2004

T.J. Miller,

Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 04–26185 Filed 11–24–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Meetings of the Klamath Fishery Management Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces three meetings of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). All meetings are open to the public. The Klamath Fishery Management Council makes recommendations to agencies that regulate harvest of anadromous fish in the Klamath River Basin. The objectives of these meetings are to hear technical reports, to discuss and develop Klamath fall Chinook salmon harvest management options for the 2005 season, and to make recommendations to the Pacific Fishery Management Council and other Fishery Management agencies.

DATES: The first meeting will be from 8:30 a.m. to 5 p.m. on February 23, 2005 and 8 a.m. to 5 p.m. on February 24, 2005. The second meeting will be from 3 p.m. to 7 p.m. on Sunday, March 6, 2005. At the March 6, 2005, meeting the Klamath Fishery Management Council may schedule short follow-up meetings to be held between March 7–11, 2005 at the same location. The third meeting will be from 3 p.m. to 7 p.m. on Sunday, April 3, 2005. At the April 3, 2005, meeting the Klamath Fishery Management Council may schedule short follow-up meetings to be held between April 4–8, 2005.

ADDRESSES: The February 23–24, 2005, meeting will be held at the Red Lion Hotel, 1929 Fourth Street, Eureka, California. The March 6–11, 2005, meeting will be held at the Doubletree Hotel Sacramento, 2001 Point West Way, Sacramento, California. The April 3–8, 2005 meeting will be held at the Sheraton Tacoma Hotel, 1320 Broadway Plaza, Tacoma, Washington. The March, 2005, meeting in Sacramento, California and the April, 2005, meeting in Tacoma, Washington are held concurrent with the meetings of the Pacific Fishery Management Council.

FOR FURTHER INFORMATION CONTACT: Phil Detrich, Field Supervisor, U.S. Fish and Wildlife Service, 1829 South Oregon Street, Yreka, California 96097, telephone (530) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Klamath Fishery Management Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Dated: November 10, 2004.

Michael M. Long,

Manager, California/Nevada Operations Office, Sacramento, CA.

[FR Doc. 04–26186 Filed 11–24–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

North American Wetlands Conservation Council Meeting Announcement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The North American Wetlands Conservation Council (Council) will meet to select North American Wetlands Conservation Act (NAWCA) grant proposals for recommendation to the Migratory Bird Conservation Commission (Commission). The meeting is open to the public.

DATES: December 7, 2004, 1–4 p.m.

ADDRESSES: The meeting will be held at the Hotel Playa Mazatlan, Mazatlan, Mexico. The Council Coordinator is located at the U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Mail Stop: MBSP 4501–4075, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: David A. Smith, Council Coordinator, (703) 358–1784 or *dbhc@fws.gov*.

SUPPLEMENTARY INFORMATION: In accordance with NAWCA (Pub. L. 101–233, 103 Stat. 1968, December 13, 1989, as amended), the State-private-Federal Council meets to consider wetland acquisition, restoration, enhancement, and management projects for recommendation to, and final funding approval by, the Commission. Proposal due dates, application instructions, and eligibility requirements are available through the NAWCA Web site at *http://birdhabitat.fws.gov*. Proposals require a minimum of 50 percent non-Federal matching funds. Mexican and U.S. Standard grant proposals will be considered at the Council meeting. The tentative date for the Commission meeting is March 2, 2005.

Dated: November 15, 2004.

Paul Schmidt,

Assistant Director—Migratory Birds and State Programs.

[FR Doc. 04–26179 Filed 11–24–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the Lower Lake Rancheria Casino-Hotel Project, Oakland, CA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency, with the Lower Lake Rancheria Koi Nation as a cooperating agency, intends to gather information necessary for preparing an Environmental Impact Statement (EIS) for a proposed casino and hotel project to be located in Oakland, California. The purpose of the proposed action is to help provide a land base for, and address the socio-economic needs of the Lower Lake Rancheria Koi Nation. This notice also announces a public scoping meeting to identify potential issues, concerns and alternatives to be considered in the EIS.

DATES: Written comments on the scope and implementation of this proposal must arrive by December 29, 2004. The public scoping meeting, to be co-hosted by the BIA and the Lower Lake Rancheria Koi Nation, will be held Wednesday, December 15, 2004, from 6 p.m. to 9 p.m., or until the last public comment is received.

ADDRESSES: You may mail or hand carry written comments to Clay Gregory, Regional Director, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825. The public scoping meeting will be at the East Oakland Senior Center, 9255 Edes Avenue, Oakland, CA 94603.

FOR FURTHER INFORMATION CONTACT: John Rydzik, (916) 978–6042.

SUPPLEMENTARY INFORMATION: The Lower Lake Rancheria Koi Nation is presently a landless federally-recognized tribe, governed by a tribal council elected pursuant to its constitution. The Lower Lake Rancheria Koi Nation is eligible to acquire land to be placed in trust.

The land proposed to be placed in trust, a 35.45-acre paved land parcel, is located within the incorporated City of Oakland in Alameda County, California. The project parcel is located southeast of San Leandro Bay, across the ''Airport Channel'' from Oakland International Airport, at the corner of Swan Way and Pardee Drive.

The tribe and developers are currently conducting a marketing study to assist in determining the overall size of the proposed facility. At this time, the casino can be expected to be approximately 200,000 square feet in size, which would be constructed during Phase I. Phase II would include the construction and operation of a 300 room hotel on the project site. The casino footprint would consist of a combination of uses, including the main gaming hall, food and beverage facilities, banking and administration facilities, and possibly an event center. The conceptual design of the facility is expected to be completed prior to the public scoping meeting announced in this notice.

Areas of environmental concern to be addressed in the EIS include land use, geology and soils, water resources, agricultural resources, biological resources, cultural resources, mineral resources, paleontological resources, traffic and transportation, noise, air quality, public health/environmental hazards, public services and utilities, hazardous waste and materials, socio-economics, environmental justice, and visual resources/aesthetics. In addition to the proposed action, a reasonable range of alternatives, including a no-action alternative, will be analyzed in the EIS. The range of issues and alternatives may be expanded based on comments received during the scoping process.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section, during business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by the law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with section 1503.1 of the Council of Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et seq.*), Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Principal Deputy Assistant Secretary—Indian Affairs by 209 DM 8.l.

Dated: November 16, 2004.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 04–26193 Filed 11–24–04; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–140–1610–DS–009C]

Notice of Availability of the Draft Resource Management Plan (RMP) Amendment and Draft Environmental Impact Statement (EIS) for the Roan Plateau Planning Area, Including the Former Naval Oil Shale Reserves (NOSR) 1 & 3; Glenwood Springs and White River Field Offices in Garfield and Rio Blanco Counties, CO

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability.

SUMMARY: The Draft RMP Amendment/Draft EIS for the Roan Plateau planning area, which includes the former Naval Oil Shale Reserves 1 and 3, is available for 90 days for public review and comment. BLM has prepared the document, and is announcing this comment period, in accordance with the National Environmental Policy Act (NEPA) of 1969, the Federal Land Policy and Management Act of 1976 (FLPMA), and regulatory requirements

DATES: The BLM will accept written comments on the Draft RMP Amendment/Draft EIS for 90 days following the publication of its availability by the Environmental Protection Agency (EPA) in the **Federal Register**. BLM will announce future public meetings and any other public involvement activities at least 15 days in advance through public notices in local newspapers (Glenwood Springs and Rifle, Colorado), through local media news releases, on the project Web site at *http://www.roanplateau.ene.com*, and/or through mailings.

ADDRESSES: Copies of the Roan Plateau Draft RMP Amendment/Draft EIS and additional information can be obtained, and/or downloaded, by the public via the Internet at: *http://www.roanplateau.ene.com*. The public can also obtain a copy of the Draft by writing to: Roan RMPA Request, Bureau of Land Management, Glenwood Springs Field Office, P.O. Box 1009, Glenwood Springs, Colorado 81602.

Submit written comments to: Roan Plateau Comments—Attention Greg Goodenow, at the address shown above. Comments also may be submitted electronically at *http://www.roanplateau.ene.com;* click on the comment tab and follow the directions. Comments from organizations or businesses will be made available to the public in their entirety. Individuals, by contrast, may request confidentiality with respect to their name, address, and phone number. If individuals wish to have their name or street address withheld from public review, or from disclosure under the Freedom of Information Act, the first line of their comment must start with the words ''CONFIDENTIALITY REQUESTED'' in uppercase letters in order for BLM to comply with your request. Such requests will be honored to the extent allowed by law. Comment contents will not be kept confidential. Comments (including names and addresses of respondents except as previously noted) will be available for public review at the BLM Glenwood Springs Field Office, 50629 Highways 6 & 24, Glenwood Springs, Colorado, during normal working hours (7:45 a.m. to 4:30 p.m., except weekends and holidays).

The public may view the Draft RMP Amendment/Draft EIS and associated documents such as maps, planning criteria, and supporting background information at several locations:

- The project Web site at *http://www.roanplateau.ene.com*. Documents may be downloaded in PDF format from this site. The public can also request a copy of the document by visiting this Web site (the BLM can mail an individual or group a CD, for example).
- The BLM Glenwood Springs Field Office (50629 Highways 6 & 24, Glenwood Springs, Colorado) or the White River Field Office (73544 Highway 64, Meeker, Colorado, 81641) during normal working hours (7:45 a.m. to 4:30 p.m., except weekends and holidays).
- The Garfield County (Colorado) Public Libraries. Locations are provided on the project Web site.

FOR FURTHER INFORMATION CONTACT: For further information, to comment, and/or to have your name added to the mailing list, visit the Web site shown above. For other questions, you may also contact: Greg Goodenow—Planning and Environmental Coordinator, Steve Bennett—Associate Field Manager, or Jamie Connell—Field Manager at the Glenwood Springs Field Office, Bureau of Land Management, P.O. Box 1009 Glenwood Springs, Colorado 81602. The Glenwood Springs Field Office telephone number is (970) 947–2800. All three can be reached via e-mail at *colorado_roanplateau@co.blm.gov*.

SUPPLEMENTARY INFORMATION: The Roan Plateau planning area analyzed in the Draft RMP Amendment/Draft EIS contains about 73,602 acres of Federal land managed by the BLM (both surface and subsurface estate). The planning area totals about 127,000 acres. Although the planning area boundary includes private lands, the BLM's decisions will only apply to the approximately 73,602 acres of land (surface and subsurface estate) that BLM manages.

Most of the planning area is in western Garfield County, Colorado; a small portion is in southern Rio Blanco County, Colorado. The planning area lies north of Interstate 70 between the towns of Rifle and Parachute and consists of three visually, geologically, and ecologically distinct areas: (1) Xeric (dry) semi-desert habitats at lower elevations, (2) relatively mesic (moist) montane and subalpine habitats at higher elevations, and (3) a band of high and most unbroken cliffs separating these areas. Lands within the planning area drain westward to Parachute Creek, eastward to Government Creek, or southward to the Colorado River. Parachute Creek and Government Creek are also tributaries of the Colorado River.

The Roan Plateau RMP Amendment will amend two existing Resource Management Plans:

- The Glenwood Springs Resource Management Plan approved January 1984; revised 1988; amended November 1991, November 1996, August 1997, March 1999, November 1999, and September 2002.
- The White River Resource Area RMP, approved July 1997.

Once approved, the Record of Decision (ROD) for the Roan Plateau RMP Amendment will replace all existing management plans for the BLM lands within the planning area.

The Federal Land Management and Policy Act of 1976 (FLPMA) is the principal law that guides planning and management for BLM-administered lands. Public Law 105–85, the National Defense Authorization Act for Fiscal Year 1998, Section 3404 (the transfer act), dated, November 18, 1997, transferred the administrative and management responsibility for about 56,000 acres of land from Department of Energy to BLM. These lands were referred to as Naval Oil Shale Reserves 1 and 3. Public Law 105–85 directed BLM to enter into leases with one or more private entities for the purpose of exploration, development and production of petroleum. In addition, the act stipulates that the transferred lands be managed in accordance with the Federal Land Policy and Management Act (FLPMA) and other laws applicable to public lands.

The alternatives present differing management approaches for the various natural, biological, and cultural resources within the planning area. As required by the BLM's planning regulations (43 CFR 1610.4–7), the BLM has selected a ''preferred alternative'', alternative 3, in the Draft RMP Amendment. Commenters should note that the preferred alternative and/or the components of the preferred alternative may be changed between the Draft RMP Amendment/Draft EIS and Proposed RMP Amendment/Final EIS to respond to public and cooperating agency comments, and any other pertinent information provided to BLM.

The alternative ultimately adopted by BLM may be comprised from components contained in any of the alternatives presented in the Draft RMP Amendment/Draft EIS, and/or components within the range of actions analyzed. Commenters are therefore encouraged to comment on components of any or all of the alternatives, rather than on any one alternative as a whole (*e.g.*, the preferred alternative). Comments should focus on specific management actions being considered and the adequacy of analysis. The BLM will publish responses to the comments as part of the Proposed RMP Amendment/Final EIS.

The Draft RMP Amendment/Draft EIS evaluates the Continuation of Current Management (No Action) in Alternative I, and four other alternative management approaches in Alternatives II through V. Specific issues include management of: oil and gas resources, fish and wildlife habitat, rare plant habitat, ecological richness, visual resources, travel and transportation, livestock grazing, wilderness characteristics, forest resources, recreation, use authorizations such as rights-of-way, other land uses, and the economic effects of management of the various resources.

Three areas (totaling 21,382 acres) found to contain wilderness character by BLM, are being considered for management to maintain their wilderness characteristics within the range of alternatives. The Draft RMP/Draft EIS will include an analysis of alternative management prescriptions for these three areas. On April 11, 2003, a settlement agreement was reached between the Department of the Interior and the State of Utah, Utah School and Institutional Trust Lands Administration, and Utah Association of Counties. Consistent with that settlement and subsequent policies issued by BLM, the Draft RMP Amendment/Draft EIS will not consider the designation of new Wilderness Study Areas (WSAs), or the classification or management of BLM lands as if they are or may become WSAs. However, alternatives for the protection and management of wilderness characteristics will be considered.

The BLM is considering three types of administrative designations for federal lands in the planning area:

- One Special Recreation Management Area (SRMA).
- Various configurations of four areas as Areas of Critical Environmental Concern (ACECs) to protect important ecological or other values.
- Two configurations of a watershed management area.

Several stream segments have been found to be eligible for further study to determine their suitability for designation as Wild and Scenic Rivers. Under all alternatives these stream segments would be managed to protect pertinent values until such time as a suitability study and further planning is completed.

Oil and gas leasing is being considered throughout the approximately 73,600 acres of public lands within the planning area, along with potential lease terms and conditions.

Jamie E. Connell,

Manager, Glenwood Springs Field Office.

[FR Doc. 04–26316 Filed 11–24–04; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT 020–1430–ES]

Notice of Intent To Amend the Randolph Management Framework Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: This notice is to advise the public that the Bureau of Land Management (BLM) is proposing to amend the Randolph Management Framework Plan (MFP) affecting public lands located in the Rich County, Utah. This proposed amendment is being conducted in conjunction with a Coordinated Resource Management Plan effort with the county and will address a variety of issues related to rangeland health, wildlife, and livestock management. The amendment will also evaluate the potential for wind energy development in the county. Several preliminary issues have been identified including, but not limited to, rangeland health and riparian management, wildlife habitat for sagebrush obligate species and fisheries, and visual resource management.

DATES: The comment period for the proposed plan amendment will commence with publication of this notice. Comments must be submitted on or before January 25, 2005. Notice of Public Meetings will be published in local newspapers.

ADDRESSES: If you wish to participate in this planning effort, identify issues of concern, or provide ideas that could assist the BLM and its partners with alternative management strategies for analysis purposes, or request additional information, you may do so by any of several methods. You may mail, hand deliver, or fax your written comments to: Curtis Warrick, Bureau of Land Management, Renewable Resources Advisor, Salt Lake Field Office, 2370 South 2300 West, Salt Lake City, UT 84119, Fax: 801–977–4397. Upon request, comments, including names and street addresses of respondents, will be available for public review at the Salt Lake Field Office during regular business hours 8 a.m. to 4 p.m., Monday through Friday, except holidays.

Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety. The current MFP as well as all other documents relevant to this planning process are available for public review at the Salt Lake Field Office, 2370 South 2300 West, Salt Lake City, UT 84119 Monday through Friday (excluding legal holidays), from 8 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Curtis Warrick, Salt Lake Field Office, 2370 South 2300 West, Salt Lake City, UT 84119. Existing planning documents and information are available at the above address or telephone (801) 977–4332.

SUPPLEMENTARY INFORMATION: The proposed amendment to the MFP and associated environmental assessment (EA) would update the Randolph MFP which was completed in 1980. It is anticipated that this process will include both resource management planning and implementation level decisions. This MFP amendment would address the following planning level decisions: Identification of goals, objectives, and or desired future conditions for sagebrush steppe ecosystems and riparian resources, potential vegetation enhancement strategies, and address the potential/criteria for potential wind energy development in Rich County. The EA would also address the following implementation level decisions: Development of pro-active grazing strategies to fulfill permitting requirements on 18 grazing allotments and a wildlife/livestock cooperative management area in order to enhance riparian and sagebrush steppe ecosystems. This MFP amendment is being conducted concurrently with the Rich County Coordinated Resource Management Plan (CRMP); an addendum to the Rich County Comprehensive Plan. Throughout this process, BLM will work collaboratively with Rich County and a broad base of CRMP partners including but not limited to: the Wasatch-Cache National Forest, Utah Wild Project, Audubon Society, Utah State University, Cooperative Extension Service, Trout Unlimited, ranching community members, and Utah State Department of Wildlife Resources.

Dated: October 27, 2004.

Sally Wisely,

State Director.

[FR Doc. 04–26152 Filed 11–24–04; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–910–05–1040–PH–24–1A]

Notice of Resource Advisory Council Call for Nominations; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Utah Resource Advisory Council (RAC) Call for Nominations.

SUMMARY: The Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1730) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by the Bureau of Land Management (BLM). Section 309 of FLPMA directs the Secretary to select 10 to 15 member citizen-based advisory councils, which are consistent with the requirements of the Federal Advisory Committee Act (FACA). As required by FACA, Resource Advisory Council (RAC) membership must be balanced and representative of the various interests concerned with the management of the public lands. The BLM regulations governing RACs are found at 43 CFR part 1784.

The BLM Utah State Director is issuing a call for nominations for a position on the advisory council. There is a vacant seat in Category Three (representing Holders of State, county, or local elected office; employees of a State agency responsible for management of natural resources; members of an Indian Tribe; academicians involved in natural sciences; and the public-at-large). Upon appointment, the individual selected to this position will fill the seat until September 19, 2007, the remainder of this position's term.

DATES: BLM will accept public nominations until December 27, 2004. Applicants are requested to submit a completed nomination form and nomination letters to the address listed below no later than December 27, 2004.

FOR FURTHER INFORMATION CONTACT: Sherry Foot, Special Programs Coordinator, Utah State Office, Bureau of Land Management, 324 South State Street, Salt Lake City, Utah 84111; phone (801) 539–4195.

SUPPLEMENTARY INFORMATION: Individuals may nominate themselves or others. Nominees must be residents of Utah. BLM will evaluate nominees based on their education, training, experience, and their knowledge of the geographical area of the RAC. Nominees should demonstrate a commitment to collaborative resource decision making.

The following must accompany nominations:

- Letters of reference from represented interest or organizations,
- A completed background information nomination form (contact Sherry Foot at (801) 539–4195 to obtain a nomination form); and
- Any other information that highlights the nominee's qualifications.

The BLM Utah State Office will issue a press release, providing additional information, on November 26, 2004.

Dated: October 14, 2004.

Sally Wisely,

State Director.

[FR Doc. 04–26151 Filed 11–24–04; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–040–05–1020PH]

Notice of Public Meetings: Mojave-Southern Great Basin Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of 2005 Meetings, Locations, and Times for the Mojave-Southern Great Basin Resource Advisory Council (Nevada).

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), the Department of the Interior, Bureau of Land Management (BLM) Mojave-Southern Great Basin Resource Advisory Council meetings will be held as indicated below. Topics for discussion at each meeting will include, but are not limited to: January 20–21, 2005 (Las Vegas, Nevada)—Ely Resource Management Plan and Environmental Impact Statement, Las Vegas Valley Disposal Boundary Environmental Impact Statement, and Southern Nevada Public Land Management Act; April 14–15, 2005 (Caliente, Nevada)—Elk Management, Renewable Energy Sources, and Ely Resource Management Plan and Environmental Impact Statement; June 16, 2005 (Ely, Nevada)—Sagebrush Ecosystem Management; and August 11–12, 2005 (Tonopah, Nevada)—Fire Plan update, and Wildland/Urban Interface Fire Projects. Manager's reports of field office activities will be given at each meeting. The council may raise other topics at any of the four planned meetings.

Dates & Times: The Mojave-Southern Great Basin Resource Council will meet four times in 2005: on January 20–21 (Thursday & Friday), at the Red Rock Canyon National Conservation Area visitor's center, 1000 Scenic Drive, Las Vegas, Nevada; on April 14–15 (Thursday & Friday), at the BLM-Caliente Field Station conference room, 1400 South Front Street, Building Number One, Caliente, Nevada; on June 16 (Thursday), at the BLM-Ely Field Office conference room, 702 North Industrial Way, Ely, Nevada; and August 11–12 (Thursday & Friday), at the BLM-Tonopah Field Station conference room,1553 South Main Street, Tonopah, Nevada. All meetings and field trips are open to the public. Each meeting will last from 8 a.m. to 4 p.m., plus, a general public comment period, where the public may submit oral or written comments to the RAC, will be at 11 a.m. on the second day of each meeting, unless otherwise listed in each specific, final meeting agenda.

Final detailed agendas, with any additions/corrections to agenda topics, locations, field trips and meeting times, will be available on the internet at least 10 working days before each meeting, at *http://www.nv.blm.gov/rac;* hard copies can also be mailed or sent via fax. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish a hard copy of each agenda, should contact Chris Hanefeld, BLM Ely Field Office, HC33 Box 33500 (702 N. Industrial Way), Ely, NV 89301, telephone (775) 289–1842 no later than 10 days prior to each meeting.

FOR FURTHER INFORMATION CONTACT: Chris Hanefeld, Public Affairs Specialist, BLM Ely Field Office, HC33 Box 33500 (702 N. Industrial Way), Ely, NV 89301. Telephone: (775) 289–1842. E-mail: *chanefel@nv.blm.gov.*

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management (BLM), on a variety of planning and management issues associated with public land management in Nevada. All meetings are open to the public. The public may present written comments to the Mojave-Southern Great Basin Resource Advisory Council.

Dated: November 18, 2004.

Gene A. Kolkman,

BLM Ely Field Manager.

[FR Doc. 04–26187 Filed 11–24–04; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–120–04–1630–PD]

Proposed Supplementary Rule for the Public Lands Administered by the Bureau of Land Management, Arizona State Office, Relating to Possession of Open Container of Alcohol While Operating or Riding on/in Motor Vehicles

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed Supplementary Rule.

SUMMARY: The Bureau of Land Management (BLM) is proposing a supplementary rule to apply to the public lands administered by the Arizona State Office. The rule addresses the illegal use of alcohol on public lands. The BLM needs this supplementary rule to protect natural resources and the health and safety of public land users. This supplementary rule will allow BLM Law Enforcement Officers to enforce a regulation prohibiting the possession of open containers of alcohol while operating or riding on/in motor vehicles on public lands in a manner consistent with current Arizona State law and BLM California supplementary rule.

DATES: Send your comments by January 25, 2005. In developing final rules, the BLM may not consider comments postmarked or received in person or by electronic mail after this date.

ADDRESSES: Send comments to John McLaughlin, State Staff Ranger, Bureau of Land Management, Arizona State Office, 222 N. Central Avenue, Phoenix, AZ 85004, (602) 417–9339.

FOR FURTHER INFORMATION CONTACT: Lyle Shaver, Special Agent-in-Charge, BLM Arizona State Office, 222 N. Central Avenue, Phoenix, AZ 85004, (602) 417–9317.

I. Discussion of the Supplementary Rules

This proposed supplementary rule would apply to all public lands administered by BLM's Arizona State Office, *i.e.*, all public lands in Arizona. In keeping with the BLM's performance goal to reduce threats to public health and safety and property, this proposed supplementary rule is necessary to protect the natural resources and to provide for safe public recreation and public health. Alcohol related offenses are a growing problem on the public lands. Hundreds of people are injured each year while operating or riding on/in motor vehicles on public lands. A large percentage of these injury accidents are alcohol related. This rule will provide BLM with a tool to increase law enforcement efforts related to driving under the influence and ultimately reduce the number of alcohol related incidents and deaths.

II. Procedural Information

Executive Order 12866, Regulatory Planning and Review

This supplementary rule is not a significant regulatory action and is not subject to review by the Office of Management and Budget under Executive Order 12866. This supplementary rule will not have an annual effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. It is directed at preventing unlawful personal behavior on public lands for purposes of protecting public health or safety.

This proposed supplementary rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The supplementary rule would not materially alter the budgetary effects of entitlements, grants, user fees or loan programs or the rights or obligations of their recipients, and would not raise novel legal or policy issues. The supplementary rule would merely enable BLM law enforcement personnel to enforce a regulation pertaining to unlawful possession of an open container of alcohol on public lands in a manner that mirrors current State of Arizona law and BLM California supplementary rule.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, (RFA) to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial on a substantial number of small entities. The supplementary rule proposed here would protect the health and safety of individuals, property, and resources on the public lands. Therefore, BLM has determined under the RFA that these rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This proposed supplementary rule would not constitute a ''major rule'' as defined at 5 U.S.C. 804(2). Again, the proposed supplementary rule only pertains to individuals who may be unlawfully using alcohol on the public lands. The proposed rule will assist in the protection of the public lands and those who use them, including small business concessionaires and outfitters. The proposed supplementary rule would have no effect on costs, prices, competition, or commercial use of the public lands.

Unfunded Mandates Reform Act

This proposed supplementary rule would not impose an unfunded mandate on State, local, or tribal governments, in the aggregate, or the private sector of more than $100 million per year; nor would this proposed supplementary rule have significant or unique effect on small governments. The supplementary rule would be patterned on Arizona State law and the BLM California supplementary rule. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandate Reform Act (2 U.S.C. 1531 *et seq.*)

Executive Order 12630, Governmental Action and Interference With Constitutionally Protected Property Rights (Takings)

The proposed supplementary rule does not have significant takings implications, and does not cause the impairment of any property rights. The rule would not provide for the surrender or confiscation of any legal personal or real property. Therefore, the Department of the Interior has determined that the supplementary rule would not require preparation of a takings assessment under this Executive Order.

Executive Order 13132, Federalism

The proposed supplementary rule would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and the responsibilities among the various levels of government. The supplementary rule applies only to public lands administered by the Arizona State Office and does not address jurisdictional issues involving the Arizona State government. Therefore, in accordance with Executive Order 13132, BLM has determined that the proposed supplementary rule does not have sufficient federalism

implications to warrant preparation of a federalism assessment.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with E.O. 13175, we have found that this proposed supplementary rule would not include policies that have tribal implications. Since the rule does not change BLM policy and does not involve Indian reservation lands or resources, we have determined that the government-to-government relationships should remain unaffected. The proposed supplementary rule only prohibits the unlawful possession of alcoholic beverages on public lands.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this proposed supplementary rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This proposed supplementary rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

BLM has determined the supplementary rule is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM) Chapter 2, Appendix 1. In addition, the supplemental rule does not meet any of the ten criteria for exceptions to categorical exclusions listed in 516 DM, Chapter 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term ''categorical exclusion'' means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal Agency, and for which neither an environmental assessment nor environmental impact statement is required.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This proposed supplementary rule is not a significant energy action. The rule would not have an adverse effect on energy supplies, production or consumption. It only addresses the possession of alcoholic beverages on public lands, and has no conceivable connection with energy policy.

Author

The principal author of this supplementary rule is State Staff Ranger John McLaughlin of the Arizona State Office, Bureau of Land Management, Department of the Interior.

Under the authority of 43 CFR 8365.1–6 and 43 U.S.C. 1733(a), the Arizona State Director, Bureau of Land Management, issues supplementary rules for public lands administered by the Arizona State Office.

Supplementary Rule on Possession of Open Containers of Alcoholic Beverages on Public Lands

The Arizona State Office issues this supplementary rule under the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1733(a), 1740, and 43 CFR 8365.1–6.

No person shall have in their possession, or on their person, an open container that contains an alcoholic beverage while operating or riding on/in a motor vehicle or off-road vehicle on public lands administered by the BLM, Arizona State Office.

1. Definitions

The following definitions will apply to the proposed supplementary rule, unless modified within a specific part or regulation:

a. A motor vehicle is defined as any self-propelled device in, upon, or by which a person is or may be transported, including a vehicle that is propelled by electric power. Exempt from this definition are motorized wheelchairs. ''Off-road vehicle'' is defined in 43 CFR 8340.0–5(a).

b. Operator means any person who operates, drives, controls, or otherwise has charge of a mechanical mode of transportation or any other mechanical equipment.

c. Public lands means any lands and interests in lands owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management without regard to how the United States acquired ownership. This includes, but is not limited to, a paved or unpaved parking lot or other paved or unpaved area where vehicles are parked or areas where the public may drive a motorized vehicle, paved or unpaved roads, roads, routes or trails.

Open container means any bottle, can, jar or other receptacle that contains alcohol and that has been opened, has had its seal broken or the contents of which have been partially removed.

2. Limitations

a. This section does not apply to:

i. An open container stored in the trunk of a motor vehicle or, if a motor vehicle is not equipped with a trunk, an open container stored in some other portion of the motor vehicle designed for the storage of luggage and not normally occupied by or readily accessible to the operator or passengers; or

ii. An open container stored in the living quarters of a motor home or camper; or

iii. Unless otherwise prohibited, an open container carried or stored in a motor vehicle that is parked and the vehicle's occupant(s) are camping.

iv. For the purpose of paragraph (a)(i) of this section, a utility compartment or glove compartment is deemed to be readily accessible to the operator and passengers of a motor vehicle.

Penalties

Under the Federal Land Policy and Management Act of 1976 43 U.S.C. 1733(a), and the Sentencing Reform Act of 1984, as amended, 18 U.S.C. 3551, 3571, persons who violate this restriction are subject to arrest and, upon conviction, may be fined up to $100,000 and/or imprisoned for not more than 12 months.

Elaine Y. Zielinski,

State Director, Arizona.

[FR Doc. 04–26089 Filed 11–24–04; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–150–1220–PA]

Notice of Proposed Supplementary Rules for Public Lands in Colorado: Escalante Canyon Area of Critical Environmental Concern (ACEC), Escalante Potholes Recreation Area, and Escalante Bridge Boat Launch Site

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed supplementary rules.

SUMMARY: The Bureau of Land Management's (BLM) Uncompahgre

Field Office is proposing supplementary rules to regulate conduct on specific public lands within Escalante Canyon in Montrose and Delta Counties. The rules apply to the following Escalante Canyon recreation sites: Escalante Bridge boat launch site, Escalante Canyon Area of Critical Environmental Concern (ACEC), and the Potholes Recreation Area. BLM has determined these rules necessary to protect the area's natural resources, provide for public health and safe public recreation and reduce the potential for damage to sensitive resources including unique riparian areas and threatened and rare plant species and habitat.

DATES: Please mail comments to the following address by December 27, 2004.

ADDRESSES: Please mail comments to Barbara Sharrow, 2505 South Townsend Avenue, Montrose, Colorado 81401.

FOR FURTHER INFORMATION CONTACT: Barbara Sharrow, Uncompahgre Field Office Manager, 2505 S. Townsend Avenue, Montrose, CO 81401, (970) 240–5315, or by e-mail: *Barbara_sharrow@co.blm.gov*.

SUPPLEMENTARY INFORMATION: The identified public lands are in Montrose and Delta Counties, Colorado, under the management jurisdiction of the Bureau of Land Management. The Escalante Bridge boat launch site is located within sec. B, T. 15 S., R. 97 W., 6th Principal Meridian. The Escalante Canyon ACEC is located within secs. 20–22 and 28–30, T. 51 N., R. 13 W., and secs. 25 and 36, T. 51, R. 14 W., New Mexico Principal Meridian. The Potholes Recreation Area is located within the ACEC at NE¼ SW¼ Sec. 21, T. 51 N., R. 13 W.

The 1,895 acre Escalante ACEC was designated in the 1989 Uncompahgre Basin Resource Management Plan (RMP) to provide protection from surface disturbing activities for several listed plant species including the Unita hookless cactus (threatened) Grand Junction milkvetch (candidate), Delta lomatium (sensitive), and three unique plant associations. The State of Colorado, Natural Areas Program, also designated the area as a Colorado State Natural Area in 1992 based on threatened and rare plants, unique plant communities and significant geologic interest. The Escalante Bridge boat ramp site is extremely limited in size due to natural topography, private land, and a railroad crossing and right-of-way. Overnight camping by boating groups at the small site is a safety hazard and inconvenience for other users trying to launch boats at the site. The Escalante Potholes Recreation site receives significant recreational use due to its scenic qualities and the presence of eroded potholes in Escalante Creek which are used for swimming. The practice of visitors diving and jumping from heights of 30–100 feet off surrounding cliffs into the holes has resulted in numerous accidents and at least 5 deaths over the last 12 years. In addition to jumping, visitors also cause significant resource damage to the area by cutting trees for bonfires; shooting or throwing glass bottles around the swimming and camping areas; leaving trash; and improperly disposing of human waste. Underage drinking and drug-related activity, particularly associated with overnight camping and bonfire parties, is increasing and adding to visitor safety concerns and BLM compliance problems. Complaints regarding the amount of public nudity at the site are increasing as are conflicts between various user groups. The BLM is currently installing recreation facilities at the Potholes to address sanitation problems, resource impacts, and restrict visitor use and parking to certain areas to increase safety and protect sensitive sites. Additional visitor use restrictions are needed to address the problems associated with unsafe jumping and diving, target shooting, broken glass safety concerns, damage to trees and sensitive plant communities from fire wood collecting, improper off-highway vehicle use, and unrestricted overnight camping.

I. Discussion of the Proposed Supplementary Rule

These supplementary rules are needed to address significant public safety concerns and resource protection issues resulting from increased public use and unsafe user conduct at popular recreation sites within Escalante Canyon and the Escalante Canyon ACEC. The rules would apply to the public lands located at the Escalante boat launch site. Escalante Canyon ACEC, and the Potholes Recreation Area at the legal descriptions provided above.

II. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These supplementary rules are not significant regulatory actions and not subject to review by the Office of Management and Budget under Executive Order 12866. These supplementary rules will not have an annual effect of $100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The supplementary rules do not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; nor does it raise novel legal or policy issues. These supplementary rules would establish rules of conduct for public use of a limited area of public lands.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make this supplementary rule easier to understand, including answers to questions such as the following:

1. Are the requirements in the supplementary rule clearly stated?
2. Does the supplementary rule contain technical language or jargon that interferes with their clarity?
3. Does the format of the supplementary rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce clarity?
4. Is the description of the supplementary rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the supplementary rule? How could this description be more helpful in making the supplementary rule easier to understand?

Please send any comments you have on the clarity of the rule to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

These supplementary rules do not constitute a major Federal action significantly affecting the quality of the human environment. The rules would merely establish rules of conduct for public use of a limited area of public lands to protect public health and safety and improve the protection of the resources. Although some uses, such as target shooting, will be prohibited at all sites, all of the areas would still be open to other recreation uses. A detailed statement under the National Environmental Policy Act of 1969 is not required.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule

would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These supplementary rules would merely establish rules of conduct for public use of a limited area of public lands. Therefore, BLM has determined under the RFA that this supplementary rule would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These supplementary rules are not ''major'' as defined under 5 U.S.C. 804(2). The supplementary rules would merely establish rules of conduct for public use of a limited area of public lands and do not affect commercial or business activities of any kind.

Unfunded Mandates Reform Act

These supplementary rules do not impose an unfunded mandate on State, local, or tribal governments in the aggregate, or the private sector of more than $100 million per year; nor does it have a significant or unique effect on small governments. The rules have no effect on governmental or tribal entities and would impose no requirements on any of these entities. The supplementary rules would merely establish rules of conduct for public use of a limited selection of public lands and do not affect tribal, commercial, or business activities of any kind. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

These supplementary rules do not have significant takings implications, nor are they capable of interfering with Constitutionally-protected property rights. The supplementary rules would merely establish rules of conduct for public use of a limited area of public lands and do not affect anyone's property rights. Therefore, the Department of the Interior has determined that these rules will not cause a taking of private property or require preparation of a takings assessment under this Executive Order.

Executive Order 13132, Federalism.

These supplementary rules will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. These supplementary rules do not come into conflict with any state law or regulation. Therefore, in accordance with Executive Order 13132, BLM has determined that these supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform.

Under Executive Order 12988, the Office of the Solicitor has determined that these rules will not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have found that these supplementary rules do not include policies that have tribal implications. None of the lands included in these rules are Indian lands or affect Indian rights.

Paperwork Reduction Act

These supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* Any information collection requirements contained in these rules are exempt from the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3518(c)(1). Federal criminal investigations or prosecutions may result from these rules, and the collection of information for these purposes is exempt from the Paperwork Reduction Act.

Authors

The principal author of these supplementary rules is Gunnison Gorge NCA Manager Karen Tucker.

Supplementary Rules

Under 43 CFR 8365.1–6, the Bureau of Land Management will enforce the following supplementary rules on public lands in the areas specified below.

Escalante Canyon ACEC:

(a) No camping outside designated and signed campsites.

(b) No target shooting or shooting of paintball weapons.

(c) No cutting of live or dead trees.

(d) No person shall use (or possess to use) as firewood any materials containing nails, screws or other metal hardware to include, but not limited to, wood pallets and/or construction debris.

(e) All campers, picnickers, and all other persons using public lands shall keep their sites free of trash, litter, and debris during the period of occupancy and shall remove all personal equipment and clean their sites upon departure.

Escalante Potholes: The Escalante Potholes Recreation Site is designated as a day use only area with the following supplemental rules that all visitors must follow:

(a) No diving and/or jumping from rocks, shore, or any other means into the water.

(b) No discharge of firearms of any kind, including those used for target shooting or paintball weapons.

(c) No glass containers for beverages, food, or other items.

(d) No public nudity.

(e) No overnight camping.

(f) No cutting of live or dead trees.

(g) No wood collecting.

(h) No wood fires or bonfires.

(i) No person shall use (or possess to use) as firewood any materials containing nails, screws or other metal hardware to include, but not limited to, wood pallets and/or construction debris.

(j) All picnickers, and all other persons using public lands shall keep their sites free of trash, litter, and debris during the period of occupancy and shall remove all personal equipment and clean their sites upon departure.

Escalante Bridge Boat Launch Site: The Escalante Bridge Boat Launch Site is designated as a day use only area with the following supplemental rules that all visitors must follow:

(a) No overnight camping.

(b) No cutting of live or dead trees.

(c) No wood collecting.

(d) No wood fires or bonfires.

(e) No discharge of firearms of any kind, including those used for target shooting or paintball weapons.

(f) No person shall use (or possess to use) as firewood any materials containing nails, screws or other metal hardware to include, but not limited to, wood pallets and/or construction debris.

(g) All campers, picnickers, and all other persons using public lands shall keep their sites free of trash, litter, and debris during the period of occupancy and shall remove all personal equipment and clean their sites upon departure.

Penalties

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and the Sentencing Reform Act of 1984, as amended, 18 U.S.C. 3551, or 3571, if you violate these supplementary rules on public lands within the boundaries

established in the rule, you may be tried before a United States Magistrate and fined up to $100,000 or imprisoned for no more than 12 months, or both.

Dated: August 4, 2004.

Anna Marie Felder,

Acting Colorado State Director.

[FR Doc. 04–26090 Filed 11–24–04; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[100% to CO–956–1420–BJ–0000–241A]

Colorado: Filing of Plats of Survey

November 17, 2004.

SUMMARY: The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., November 17, 2004. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

The plat, of the entire record, representing the metes-and-bounds survey in section 24, Township 41 North, Range 2 East, New Mexico Principal Meridian, Group 1367, Colorado, was accepted November 10, 2004.

This survey and plat was requested by the U.S. Forest Service, Rio Grande National Forest, to facilitate a land exchange, and for administrative and management purposes.

Randall M. Zanon,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 04–26143 Filed 11–24–04; 8:45 am]

BILLING CODE 4310–JB–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1056 (Final)]

Certain Aluminum Plate From South Africa

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from South Africa of certain aluminum plate, provided for in subheading 7606.12.30 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective October 16, 2003, following receipt of a petition filed with the Commission and Commerce by Alcoa, Inc., Pittsburgh, PA. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of certain aluminum plate from South Africa were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 15, 2004 (69 FR 33401). The hearing was held in Washington, DC, on October 5, 2004, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on November 18, 2004. The views of the Commission are contained in USITC Publication 3734, November 2004, entitled Certain Aluminum Plate from South Africa (Investigation No. 731–TA–1056 (Final)).

By order of the Commission.

Issued: November 19, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–26134 Filed 11–24–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on October 28, 2004, a proposed Consent Decree in *United States of America and State of Louisiana* v. *CanadianOxy Offshore Production Co.*, Civil Action No. CV04–2220–S was lodged with the United States District Court for the Western District of Louisiana.

In this action the United States sought to recover from CanadianOxy Offshore Production Co. (''COPCo'') response costs incurred in response to releases and threatened releases of hazardous substances from the facility known as the Highway 71/72 Refinery Site (the ''Site'') located in Bossier City, Bossier Parish, Louisiana. The United States also sought a declaratory judgment that COPCo was liable for any future response costs incurred by the United States at the Site. The Consent Decree provides that COPCO shall (1) perform all the work required by EPA's September 2000 Record of Decision; (2) pay $5,689,192.06 towards the response costs incurred by EPA in connection with the Site on or before September 30, 2003, plus interest from September 30, 2003, to the date the Consent Decree is entered; and (3) pay all response costs incurred by EPA in connection with the Site after September 30, 2003. The Consent Decree also settles the Louisiana Department of Environmental Quality's (LDEQ's) claims regarding the Site and establishes a $25,000 special account for the LDEQ to draw upon for its work at the Site. COPCo is required to replenish the LDEQ special account annually.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Degree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America and State of Louisiana* v. *CanadianOxy Offshore Production Co.*, D.J. Ref. 90–11–2–1102.

The Consent Decree may be examined at the Office of the United States Attorney, Western District of Louisiana, 300 Fannin Street, Suite 3201, Shreveport, Louisiana 71101–3068, and at the offices of the U.S. Environmental Protection Agency, Region 6, 1445 Ross Ave., Dallas, TX 75202–2733. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*),

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Stephen Koplan and Commissioner Charlotte R. Lane dissenting.

fax No. (202) 514–0097, phone confirmation No. (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $48.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Thomas A. Mariani, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–26118 Filed 11–24–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Brian Chuchua*, et al., (S.D. Cal.), 3:01CV1479 DMS (AJB), was lodged with the United States District Court for the Southern District of California on November 8, 2004.

This proposed Consent Decree concerns a complaint filed by the United States against Brian Chuchua pursuant to section 309(b) and (d) of the Clean Water Act, 33 U.S.C. 1319(b) and (d), to obtain injunctive relief from and impose civil penalties against the Defendant for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring Defendant Brian Chuchua to mitigate the environmental impacts by purchasing mitigation credits at the Pilgrim Creek Mitigation Bank and to pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Pamela S. Tonglao, Trial Attorney, United States Department of Justice, Environment and Natural Resources Division, P.O. Box 23986, Washington, DC 20026–3986 and refer to *United States* v. *Brian Chuchua* et al., (S.D. Cal.) 3:01CV1479 DMS (AJB), DJ #90–5–1–1–1611.

The proposed Consent Decree may be viewed at *http://www.usdoj.gov/enrd/open.html.*

Stephen Samuels,

Assistant Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. 04–26117 Filed 11–24–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act

Under 28 CFR 50.7, notice is hereby given that on November 12, 2004, a proposed Settlement Agreement in *In re: Met-Coil Systems, LLC (f/k/a Met-Coil Systems Corporation),* Case No. 03–12676 was lodged with the United States Bankruptcy Court for the District of Delaware.

In this action the United States sought reimbursement from Met-Coil Systems Corp. of response costs incurred for response actions taken at or in connection with the release of hazardous substances at the Lockformer Site located in Lisle, Illinois. The Settlement Agreement provides that Met-Coil Systems LLC shall continue its cleanup of the Lockformer Site under the existing Unilateral Administrative Order, the United States shall be allowed a general unsecured claim in the amount of $415,000, with a cash value of $290,500 (under the Plan of Reorganization approved by the Bankruptcy Court, creditors shall receive $0.70 for each dollar of an allowed general unsecured claim), and the United States shall be allowed an administrative expense claim in the amount of $120,000 to be paid in full, for a total payment of $410,500 as partial reimbursement for response costs incurred by the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In re: Met-Coil Systems, LLC (f/k/a Met-Coil Systems Corporation),* D.J. Ref. No. 90–11–3–08219.

The Settlement Agreement may be examined at the Office of the United States Attorney, 1201 Market Street, Wilmington, Delaware, and at U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, Illinois. During the public comment period, the Settlement Agreement, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Settlement Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–26119 Filed 11–24–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on November 15, 2004, a proposed Consent Decree in *United States* v. *Orange County Sanitation District,* Civil Action No. SACV04–1317 AHS (MLGx), was lodged with the United States District Court for the Central District of California. The United States and the People of the State of California *ex rel.* California Regional Water Quality Control Board (''Regional Board'') are signatories to the Consent Decree.

The United States and the Regional Board have filed a complaint against the Orange County Sanitation District (''OCSD'') requesting injunctive relief and penalties for violations of the secondary treatment standards of the Clean Water Act (''Act''), 33 U.S.C. 1311, and requirements of OCSD's National Pollutant Discharge Elimination System (''NPDES'') permit.

The Consent Decree requires OCSD to construct secondary treatment facilities to allow OCSD to achieve compliance with the terms and conditions of its NPDES permit and the Act. OCSD must also comply with interim effluent limitations while undergoing secondary treatment upgrades, report its progress to EPA and the Regional Board and be subject to stipulated penalties for non-compliance with the Consent Decree.

Pursuant to 28 CFR 50.7, the United States Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, Ben Franklin Station, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Orange County Sanitation District,* D.J. Ref. No. 90–5–1–1–07914.

The Consent Decree may be examined during the public comment period on

the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Settlement Agreement Library, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Settlement Agreement Library, please enclose a check in the amount of $8.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–26116 Filed 11–24–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

November 18, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment Standards Administration.

Type of Review: Extension of currently approved collection.

Title: Report of Construction Contractor's Wage Rates.

OMB Number: 1215–0046.

Form Number: WD–10.

Frequency: On occasion.

Type of Response: Reporting.

Affected Public: Business or other for-profit.

Number of Respondents: 37,500.

Number of Annual Responses: 75,000.

Estimated Time Per Response: 20 minutes.

Total Burden Hours: 25,000.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Davis-Bacon Act (40 U.S.C. 3141, *et seq.*) provides that every contract in excess of $2,000 to which the United States or the District of Columbia is a party for construction, alteration, and/or repair which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village or other civil subdivision of the State in which the work is to be performed. Further, Section 1.3 of Regulations 29 CFR part 1 provides that the Administrator of the Wage and Hour Division, through a delegation of authority, is responsible for making these wage determinations. Accordingly, Form WD–10 is used by the U.S. Department of Labor to elicit construction project data from contractor associations, contractors and unions. The wage data is used to determine locally prevailing wages under the Davis-Bacon and Related Acts.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–26146 Filed 11–24–04; 8:45 am]

BILLING CODE 4510–27–P

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 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related 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.

Modification to General Wage Determination Decisions

The number of the decisions listed to 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

None

Volume II

West Virginia
WV030001 (Jun. 13, 2003)
WV030002 (Jun. 13, 2003)
WV030003 (Jun. 13, 2003)
WV030009 (Jun. 13, 2003)
WV030010 (Jun. 13, 2003)
WV030011 (Jun. 13, 2003)

Volume III

None

Volume IV

Wisconsin
WI030001 (Jun. 13, 2003)
WI030002 (Jun. 13, 2003)
WI030002 (Jun. 13, 2003)
WI030004 (Jun. 13, 2003)
WI030005 (Jun. 13, 2003)
WI030006 (Jun. 13, 2003)
WI030007 (Jun. 13, 2003)
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WI030013 (Jun. 13, 2003)
WI030016 (Jun. 13, 2003)
WI030017 (Jun. 13, 2003)
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WI030021 (Jun. 13, 2003)
WI030022 (Jun. 13, 2003)
WI030029 (Jun. 13, 2003)
WI030030 (Jun. 13, 2003)
WI030032 (Jun. 13, 2003)
WI030033 (Jun. 13, 2003)
WI030039 (Jun. 13, 2003)
WI030040 (Jun. 13, 2003)
WI030046 (Jun. 13, 2003)
WI030047 (Jun. 13, 2003)
WI030048 (Jun. 13, 2003)

Volume VI

Montana
MT030003 (Jun. 13, 2003)
MT030005 (Jun. 13, 2003)
MT030006 (Jun. 13, 2003)
MT030007 (Jun. 13, 2003)
MT030034 (Jun. 13, 2003)

Volume VII

Nevada
NV030001 (Jun. 13, 2003)
NV030002 (Jun. 13, 2003)
NV030003 (Jun. 13, 2003)
NV030004 (Jun. 13, 2003)
NV030005 (Jun. 13, 2003)
NV030007 (Jun. 13, 2003)
NV030008 (Jun. 13, 2003)
NV030009 (Jun. 13, 2003)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and Related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and Related Acts are available electronically at no cost on the Govenrment Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the users desktop, the ability to access prior wage decisions issued during the year, extensive Help Desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations of the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed in Washington, DC, this 18th day of November, 2004.

John Frank,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 04–25984 Filed 11–24–04; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–17422]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for West Virginia School of Osteopathic Medicine's Facility in Lewisburg, WV

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Orysia Masnyk Bailey, Materials Security & Industrial Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, telephone (404) 562–4739, fax (404) 562–4955; or by e-mail: *omm@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is terminating Materials License No. 47–19315–01 issued to the West Virginia School of Osteopathic Medicine and authorizing release of its facility in Lewisburg, West Virginia for unrestricted use. NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has

concluded that a Finding of No Significant Impact (FONSI) is appropriate. The license will be terminated following the publication of this Notice.

II. EA Summary

The purpose of the action is to terminate the license and authorize the release of the licensee's Lewisburg, West Virginia facility for unrestricted use. The West Virginia School of Osteopathic Medicine was authorized by the NRC from June 6, 1980 to use radioactive materials for research and development purposes. On June 6, 2003, the West Virginia School of Osteopathic Medicine requested that the NRC release the facility for unrestricted use. Belair Quartz has conducted surveys of the facility and provided information to the NRC to demonstrate that the site meets the license termination criteria in Subpart E of 10 CFR Part 20 for unrestricted release.

The NRC staff has prepared an EA in support of the license termination. The facility was remediated and surveyed prior to the licensee requesting the license amendment. The NRC staff has reviewed the information and final status survey submitted by the West Virginia School of Osteopathic Medicine. Based on its reviews, the staff has determined that there are no additional remediation activities necessary to complete the proposed action. Therefore, the staff considered the impact of the residual radioactivity at the facility and concluded that since the residual radioactivity meets the requirements in Subpart E of 10 CFR Part 20, a Finding of No Significant Impact is appropriate.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of the termination of the license and release the facility for unrestricted use. The NRC staff has evaluated the West Virginia School of Osteopathic Medicine's request and the results of the survey and has concluded that the completed action complies with the criteria in Subpart E of 10 CFR Part 20. The staff has found that the environmental impacts from the action are bounded by the impacts evaluated by NUREG–1496, Volumes 1–3, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities'' (ML042310492, ML042320379, and ML042330385). On the basis of the EA, the NRC has concluded that the environmental impacts from the action are expected to be insignificant and has determined not to prepare an environmental impact statement for the action.

IV. Further Information

Documents related to this action, including the application for the license termination and supporting documentation, are available electronically at the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this Notice are: The Environmental Assessment (ML042720038), and Letter dated June 6, 2003 transmitting Final Status Survey Report (ML031611054). On October 25, 2004, the NRC terminated public access to ADAMS and initiated an additional security review of publicly available documents to ensure that potentially sensitive information is removed from the ADAMS database accessible through the NRC's web site. Interested members of the public may obtain copies of the referenced documents for review and/or copying by contacting the Public Document Room pending resumption of public access to ADAMS. The NRC Public Documents Room is located at NRC Headquarters in Rockville, MD, and can be contacted at (800) 397–4209, (301) 415–4737 or by e-mail to: *pdr@nrc.gov*.

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at King of Prussia, Pennsylvania this 18th day of November, 2004.

For the Nuclear Regulatory Commission.

John D. Kinneman,

Chief, Materials Security & Industrial Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. 04–26135 Filed 11–24–04; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection: Comment Request for Review of Expiring Information Collection: Claim for Unpaid Compensation of Deceased Civilian Employee; SF 1153

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the U.S. Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of an expiring information collection. Standard Form (SF) 1153, Claim for Unpaid Compensation of Deceased Civilian Employee, is used to collect information from individuals who have been designated as beneficiaries of the unpaid compensation of a deceased Federal employee or who believe that their relationship to the deceased entitles them to receive the unpaid compensation of the deceased Federal employee. OPM needs this information in order to adjudicate the claim and properly assign a deceased Federal employee's unpaid compensation to the appropriate individual(s).

Approximately 3,000 SF 1153 forms are submitted annually. It takes approximately 15 minutes to complete the form. The annual estimated burden is 750 hours.

Comments are particularly invited on:

—Whether this collection of information is necessary for the proper performance of functions of OPM, and whether it will have practical utility;

—Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology;

—Ways we can enhance the quality, utility and clarity of the information collected; and

—Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, Fax (202) 418–3251, or e-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Robert D. Hendler, Acting Program Manager, Center for Merit System Compliance, Division for Human Capital Leadership and Merit System Accountability, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6484, Washington, DC 20415.

Kay Coles James,

Director, U.S. Office of Personnel Management.

[FR Doc. 04–26148 Filed 11–24–04; 8:45 am]

BILLING CODE 6325–43–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for the Review of a Revised Information Collection: RI 38–31

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 38–31, We Need More Information About Your Missing Payment, is sent in response to a notification by an individual of the loss or non-receipt of a payment from the Civil Service Retirement and Disability Fund. The form requests the information needed to enable OPM to trace and/or reissue payment. Missing payments may also be reported to OPM by a telephone call.

Approximately 8,000 reports of missing payments are processed each year. Of these, we estimate that 7,800 are reports of missing checks. Approximately 200 reports of missing checks are reported using RI 38–31 and 7,600 are reported by telephone. A response time of ten minutes per form reporting a missing check is estimated; the same amount of time is needed to report the missing checks or electronic funds transfer (EFT) payments using the telephone. The annual burden for reporting missing checks is 1,300 hours. The remaining 200 reports relate to EFT payments. No missing EFT payments are reported using RI 38–31.The annual burden for reporting missing EFT payments is 33 hours. The total burden is 1,333 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via E-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3540; and Joseph F. Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

For Information Regarding Administrative Coordination—Contact: Cyrus S. Benson, Team Leader, Publications Team, Administrative Services Branch, (202) 606–0623.

Kay Coles James,

Director, U.S. Office of Personnel Management.

[FR Doc. 04–26149 Filed 11–24–04; 8:45 am]

BILLING CODE 6325–38–P

POSTAL SERVICE

United States Postal Service Board of Governors; Sunshine Act Meeting

DATES AND TIMES: Tuesday, December 7, 2004; 10 a.m. and 3 p.m.

PLACE: Washington, DC., at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

STATUS: December 7—10 a.m. (Closed); 3 p.m. (Open).

MATTERS TO BE CONSIDERED:

Tuesday, December 7—10 a.m. (Closed)

1. Biohazard Detection Systems.
2. Audit and Finance Committee Report and Review of Year-End Financial Statements.
3. Financial Update.
4. Rate Case Planning.
5. Strategic Planning.
6. Personnel Matters and Compensation Issues.

Tuesday, December 7—3 p.m. (Open)

1. Minutes of the Previous Meeting, November 4, 2004.
2. Remarks of the Postmaster General and CEO.
3. Committee Reports.
4. Fiscal Year 2004 Audited Financial Statements.
5. Postal Service Fiscal Year 2004 Annual Report.
6. Final Fiscal Year 2006 Appropriation Request.
7. Capital Investments.

a. Bethpage, New York, Logistics & Distribution Center.

b. Kearny, New Jersey, Logistics & Distribution Center.

8. Tentative Agenda for the January 11, 2005, meeting in Washington, DC

FOR FURTHER INFORMATION CONTACT: William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

William T. Johnstone,

Secretary.

Neva R. Watson,

Alternate Certifying Officer.

[FR Doc. 04–26237 Filed 11–22–04; 4:12 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–26659; File No. 812–13131]

Allstate Life Insurance Company, et al.; Notice of Application

November 19, 2004.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of an application for an order of exemption pursuant to Section 17(b) of the Investment Company Act of 1940 (the ''Act'') from Section 17(a) of the Act.

APPLICANTS: Allstate Life Insurance Company (''Allstate''), Allstate Financial Advisors Separate Account I (''Allstate Separate Account I''), Allstate Life Variable Life Separate Account A (''Allstate VL Account''), Glenbrook Life and Annuity Company (''Glenbrook''), Glenbrook Life Multi-Manager Variable Account (''Glenbrook Multi-Manager''), Glenbrook Life and Annuity Company Separate Account A (''Glenbrook Separate Account A''), and Glenbrook Life Variable Life Separate Account A (''Glenbrook VL'').

SUMMARY OF APPLICATION: Applicants seek an order of exemption to the extent necessary to permit a transfer of assets and assumption of liabilities of (1) Glenbrook Multi-Manager and Glenbrook Separate Account A by Allstate Separate Account I; and (2) Glenbrook VL Account by Allstate VL Account.

FILING DATE: The application was filed on October 14, 2004 and amended and restated on November 15, 2004.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 14, 2004, and must be accompanied by proof of service, on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature

of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicants, Charles Smith, Esq., Assistant Counsel, Allstate Life Insurance Company, 3100 Sanders Road, Northbrook, Illinois 60062.

FOR FURTHER INFORMATION CONTACT: Alison White, Senior Counsel, or Lorna MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. Allstate is a stock life insurance company organized under the laws of the State of Illinois in 1957. Allstate's home office is located at 3100 Sanders Road, Northbrook, Illinois, 60062. Allstate is licensed to operate in the District of Columbia, Puerto Rico, and all states except New York. Allstate is a wholly owned subsidiary of Allstate Insurance Company, a stock property-liability insurance company incorporated under the laws of Illinois. All of the outstanding capital stock of Allstate Insurance Company is owned by The Allstate Corporation.

2. Allstate established Allstate Separate Account I and Allstate VL Account (''Allstate Separate Accounts'') as separate accounts pursuant to Illinois law. Each is a ''separate account,'' as defined by Section 2(a)(37) of the Act, and is registered with the Commission pursuant to the Act as a unit investment trust.

3. Certain variable annuity and variable life insurance contracts sponsored by Allstate and issued through Allstate Separate Accounts (''Allstate contracts'') are registered with the Commission pursuant to the Securities Act of 1933 (the ''Securities Act'').

4. Allstate Separate Account I is divided into 146 sub-accounts, each of which invests exclusively in shares of a corresponding portfolio of an open-end, diversified management investment company registered under the Act (the ''Funds''). Allstate VL is divided into 19 sub-accounts, each of which invests exclusively in shares of a corresponding portfolio of the Funds.

5. Glenbrook is a stock life insurance company organized under the laws of the State of Arizona in 1998. Previously, Glenbrook Life was organized under the laws of the State of Illinois in 1992. Glenbrook Life was originally organized under the laws of the State of Indiana in 1965. From 1965 to 1983 Glenbrook Life was known as ''United Standard Life Assurance Company'' and from 1983 to 1992 as ''William Penn Life Assurance Company of America.'' Glenbrook's home office is located at 3100 Sanders Road, Northbrook, Illinois, 60062. Glenbrook is currently licensed to operate in the District of Columbia, Puerto Rico, and all states except New York. Glenbrook is a direct, wholly owned subsidiary of Allstate Life Insurance Company.

6. Glenbrook established Glenbrook Multi-Manager, Glenbrook Separate Account A, and Glenbrook VL Account (collectively, the ''Glenbrook Separate Accounts'') as separate accounts pursuant to Illinois law, and the Separate Accounts are currently subject to Arizona law following Glenbrook's redomestication to Arizona in 1998. Each is a ''separate account,'' as defined by Section 2(a)(37) of the Act, and each is registered with the Commission pursuant to the Act as a unit investment trust.

7. Certain variable annuity and variable life insurance contracts sponsored by Glenbrook and issued through the Glenbrook Separate Accounts are registered with the Commission pursuant to the Securities Act.

8. Glenbrook Multi-Manager is divided into 97 sub-accounts, each of which invests exclusively in shares of a corresponding portfolio the Funds. Glenbrook Separate Account A is divided into 36 sub-accounts, each of which invests exclusively in shares of a corresponding portfolio of the Funds. Glenbrook VL Account is divided into 63 sub-accounts, each of which invests exclusively in shares of a corresponding portfolio of the Funds.

9. Allstate and Glenbrook have determined to engage in transactions whereby Glenbrook will be reorganized with and merged into Allstate, with Allstate as the surviving corporation (such transactions, collectively, the ''Merger''). By resolutions dated August 3, 2004 and August 4, 2004, a Merger Agreement and Articles of Merger (collectively ''Agreement'') were approved and adopted by the respective boards of directors of Allstate and Glenbrook. Prior approval of the Merger and the Agreement also will be obtained from the insurance departments of Illinois and Arizona, the states of domicile for Allstate and Glenbrook, respectively.

10. On the effective date of the Merger: (a) Allstate will assume ownership of all the assets of Glenbrook, including all the assets held in the Glenbrook Separate Accounts; (b) Allstate will conduct the business presently conducted by Glenbrook, and will be responsible for satisfaction of all of the liabilities and obligations of Glenbrook; and (c) Glenbrook will cease to exist as a separate corporate entity. Allstate will then control the merged separate accounts supporting the Contracts.

11. After considering the nature and purpose of each separate account, the Boards of Directors of Allstate and Glenbrook have determined that the efficiency of the operations of the separate accounts could be improved, and the overall administration enhanced, by merging: (a) Glenbrook Multi-Manager and Glenbrook Separate Account A into Allstate Separate Account I; and (b) Glenbrook VL Account into Allstate VL Account. The Merger will be structured so there will be no change in the rights and benefits of persons having an interest in any of the Contracts issued by those Separate Accounts. Moreover, the Merger will not dilute or otherwise adversely affect the economic interests of the owners of the Contracts, nor will the Merger affect the values determined under the Contracts. Allstate will be responsible for the expenses incurred in connection with the Merger.

12. The consolidation of any overlapping sub-accounts will take place at their respective net asset values and each Glenbrook Contract owner holding units of interest in one of the merging sub-accounts will have those units exchanged for units of equal value in the corresponding surviving sub-account. The values of the exchanged interests under the Contracts will thus be equivalent. The accumulation unit values for these sub-accounts will not change, and the Contract value of any affected Contract owner immediately after the sub-account consolidation will be the same as the value immediately before the sub-account consolidation.

13. The Merger provides for the transfer of Glenbrook Multi-Manager and Glenbrook Separate Account A assets to Allstate Separate Account I and the assumption of the liabilities and contractual obligations of each of Glenbrook Multi-Manager and Glenbrook Separate Account A by Allstate Separate Account I in return for the crediting of accumulation units of Allstate Separate Account I to Glenbrook Multi-Manager and

Glenbrook Separate Account A contract owners. Once this process has been completed, the units of Glenbrook Multi-Manager and Glenbrook Separate Account A would be cancelled, Glenbrook Multi-Manager and Glenbrook Separate Account A would each submit an application to the Commission pursuant to Section 8(f) of the Act to effect its deregistration as an investment company and would cease to exist, and Allstate Separate Account I would continue to exist.

14. Immediately following the Merger, each Glenbrook Multi-Manager and Glenbrook Separate Account A contract owner will possess a number of Allstate Separate Account I units (both full and fractional) that, when multiplied by the unit value of Allstate Separate Account I units, would result in an aggregate unit value equal to the aggregate unit value of the units the contract owner had in the respective Separate Account immediately before the consummation of the Merger.

15. The Merger also provides for the transfer of Glenbrook VL Account assets to Allstate VL Account and the assumption of the liabilities and contractual obligations of Glenbrook VL Account by Allstate VL Account in return for the crediting of accumulation units of Allstate VL Account to Glenbrook VL Account contract owners. Once this process has been completed, the units of Glenbrook VL Account would be cancelled, Glenbrook VL Account would submit an application to the Commission pursuant to Section 8(f) of the Act to effect its deregistration as an investment company and would cease to exist, and Allstate VL Account would continue to exist.

16. Immediately following the Merger, each Glenbrook VL Account contract owner will possess a number of Allstate VL Account units (both full and fractional) that, when multiplied by the unit value of Allstate VL Account units, would result in an aggregate unit value equal to the aggregate unit value of the units the contract owner had in the respective Separate Account immediately before the consummation of the Merger.

17. Upon the effective date of the Merger, Allstate will succeed to all of the business and operations of Glenbrook, including the obligations pursuant to the Glenbrook contracts. Allstate will distribute to each existing Glenbrook contract owner: (a) A contract rider indicating that such contracts are thereafter funded by the surviving separate account; (b) a letter informing such contract owners of the Merger; and (c) prospectus disclosure that reflects Allstate's sponsorship of the surviving separate account as a result of the merger.

18. Allstate and Glenbrook assert that the Merger will have no tax consequences for Glenbrook contract owners. In addition, no payments will be required or charges imposed under the Glenbrook contracts in connection with, or by virtue of, the Merger that would not otherwise be required or imposed.

Applicants' Legal Analysis

1. Section 17(a) of the Act provides generally that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal to knowingly purchase or to sell any security or other property from or to such registered company.

2. Section 17(b) of the Act provides generally that the Commission may grant an order exempting a transaction otherwise prohibited by Section 17(a) of the Act if evidence establishes that: (a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. The Merger may be subject to the provisions of Section 17(a) of the Act because it could be viewed as involving an investment company (Glenbrook Multi-Manager, Glenbrook Separate Account A, Glenbrook VL Account) selling its assets to another investment company (Allstate Separate Account I, Allstate VL Account) that is affiliated by reason of having sponsoring insurance companies that are under common control, or by reason of having common directors.

4. Applicants request an order of the Commission pursuant to Section 17(b) of the Act to the extent necessary to exempt the Merger from the provisions of Section 17(a) of the Act.

5. Applicants assert that the terms of the Merger are fair and reasonable. The transfer of assets held by Glenbrook Multi-Manager, Glenbrook Separate Account A and Glenbrook VL Account respectively, will be made at the relative net asset values of the sub-accounts. Consequently, the interests of Allstate Separate Account I and Allstate VL Account owners will not be diluted by the Merger. Each Glenbrook Multi-Manager and Glenbrook Separate Account A contract will be credited, immediately after the Merger, with units of Allstate Separate Account I having the same aggregate value as the aggregate value of the units of Glenbrook Multi-Manager and Glenbrook Separate Account A credited to such contract immediately prior to the Merger. Likewise, each Glenbrook VL Account contract will be credited, immediately after the Merger, with units of the Allstate VL Account having the same aggregate value as the aggregate value of the units of Glenbrook VL Account credited to such contract immediately prior to the Merger. The Merger will not result in any change in charges, costs, fees or expenses borne by any Contract owner. No direct or indirect costs will be incurred by any Separate Account concerned as a result of the Merger. Therefore, the proposed transactions will not result in dilution of the economic interests of any Contract owners. In addition, the Merger will result in no change in the investment options available to Glenbrook contract owners. Each sub-account of the Separate Accounts will continue to invest in the same Fund as that sub-account invested in prior to the Merger.

6. The consolidation of any overlapping sub-accounts will take place at their respective net asset values and each Glenbrook Contract owner holding units of interest in one of the merging sub-accounts will have those units exchanged for units of equal value in the corresponding surviving sub-account. The values of the exchanged interests under the Contracts will thus be equivalent. The accumulation unit values for these sub-accounts will not change, and the Contract value of any affected Contract owner immediately after the sub-account consolidation will be the same as the value immediately before the sub-account consolidation.

7. Applicants assert that the Merger does not involve overreaching on the part of any party involved and is consistent with the general purposes of the Act. The purposes of the Merger are to consolidate three variable annuity separate accounts, each of which issue variable annuity contracts, into a single separate account and to consolidate two variable life separate accounts, each of which issue variable life contracts, into a single separate account. The Merger will allow for administrative efficiencies and cost savings by Glenbrook because it can consolidate its separate account operations. The Merger will not dilute or otherwise adversely affect the economic interests of the owners of the Glenbrook contracts, nor will the Merger affect the values determined under the Glenbrook contracts. Allstate will pay all expenses incurred in connection with the merger.

8. Applicants represent that the Merger is consistent with the policy of each Separate Account as set forth in its registration statement. The policy of each Separate Account is to invest in the Funds. As noted above, the Merger will result in no change to any Fund underlying the Glenbrook Separate Accounts. Each sub-account of the Separate Accounts will continue to invest in the same Fund as that sub-account invested in prior to the Merger. Accordingly, the assets underlying the Contracts will continue to be invested in accordance with the policies recited in the Separate Accounts' respective registration statements.

Conclusion

For the reasons summarized above, Applicants assert that the terms of the Merger, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, are consistent with the policies of the Glenbrook Separate Accounts as recited in their registration statements, are consistent with the general purposes of the Act, and therefore meet the conditions for exemptive relief established by Section 17(b).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3334 Filed 11–24–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27912]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

November 19, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 13, 2004, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 13, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Dominion Resources, Inc., et al. (70–10246)

Dominion Resources, Inc. (''DRI''), a registered holding company; Consolidated Natural Gas Company (''CNG''), a direct subsidiary of DRI and also a registered holding company, both of 120 Tredegar Street, Richmond, VA 23219; their public utility subsidiaries: Virginia Electric and Power Company (''Virginia Power''), P.O. Box 26666, 17th Floor, Richmond, VA, The Peoples Natural Gas Company (''Peoples''), 625 Liberty Avenue, Pittsburgh, PA 15222, The East Ohio Gas Company (''East Ohio''), 1201 E. 55th Street, Cleveland, OH 44103, and Hope Gas, Inc. (''Hope''), 445 West Main Street, Clarksburg, WV 26301; and the nonutility subsidiaries (as defined below) (collectively, the ''Applicants'') [1] have filed an application-declaration (''Application'') under sections 6(a), 7, 9(a), 10, 12(b), 12(c), 12(f), 32, 33 and 34 of the Act and rules 43, 45, 46, 53 and 54 under the Act.

DRI's utility subsidiaries are: (1) Virginia Power, a regulated public utility engaged in the generation, transmission and distribution of electric energy in Virginia and northeastern North Carolina; (2) Peoples, a regulated public utility engaged in the distribution of natural gas in Pennsylvania; (3) East Ohio, a regulated public utility engaged in the distribution of natural gas in Ohio; and (4) Hope, a regulated public utility engaged in the distribution of natural gas in West Virginia (collectively, the ''Utility Subsidiaries''). Virginia Power is a direct subsidiary of DRI. Peoples, East Ohio and Hope are each direct subsidiaries of CNG.

DRI's nonutility activities are conducted through its nonutility subsidiaries (the ''Nonutility Subsidiaries''): (1) Dominion Energy, Inc. (''DEI'') which, through its direct and indirect subsidiaries (together with DEI, the ''DEI Companies''), is active in the competitive electric power generation business and in the development, exploration and operation of natural gas and oil reserve; [2] (2) direct and indirect subsidiaries of Virginia Power, which are engaged in fuel procurement for Virginia Power and other DEI subsidiaries, energy marketing and nuclear consulting services; and (3) direct and indirect subsidiaries of CNG which are engaged in all phases of the natural gas business other than retail distribution including transmission, storage and exploration and production. DRI and all of its subsidiaries are referred to as the ''DRI System.'' [3]

Requested Authorization

A. Summary of Transactions

By prior orders, the Applicants have been authorized to engage in various financing transactions, a money pool and a tax allocation agreement.[4] Applicants request authority to engage in the transactions set forth below during the period from the effective date of the order issued in this filing through the period ending December 31, 2007 (''Authorization Period''). This authority would replace and supersede all of the Applicants' current authorization under the prior orders. In particular, Applicants request:

(1) For DRI to increase its capitalization in the aggregate amount of $8.0 billion over and above its capitalization as of June 30, 2004, other than for refunding or replacing securities where capitalization either is not increased (or is increased solely by operation of call premiums, make whole premiums, or other offering expenses, collectively, ''Offering Expenses''), through the issuance and/or sale by DRI of common stock (including forward

[1] The addresses for these companies are shown on Exhibit J–1 of the Application.

[2] DEI also owns Dominion Wholesale, Inc., which provides inventory services to the DEI Companies and other subsidiaries of DRI. *See* HCAR No. 27772 (December 12, 2003).

[3] DRI has another nonutility subsidiary, Dominion Capital, Inc. (''DCI'' and, together with its subsidiaries, the ''DCI Companies''), which in the past, operated as a diversified financial services company with several operating subsidiaries in the commercial lending, merchant banking and residential lending businesses. Pursuant to an order dated January 28, 2003, HCAR No. 27644, DRI is obligated to dispose of its interest in the DCI Companies (other than certain interests in specified independent power projects) by December 31, 2006

[4] *See* HCAR No. 27112, December 15, 1999 (the ''Initial Financing Order''), HCAR No. 27406, May 24, 2001 (the ''Second Financing Order''), HCAR No. 27814, March 15, 2004 (the ''Third Financing Order''), HCAR No. 27634, January 3, 2003 (the ''Money Pool Order'') and HCAR No. 27845, May 13, 2004 (the ''Tax Allocation Order'').

sales), preferred securities, equity-linked securities, and long-term debt, whether directly or through one or more financing conduits;

(2) For DRI to issue short term debt, including, but not limited to the issuance of commercial paper or letters of credit in an aggregate amount up to $12.5 billion principal amount outstanding at any one time, provided, however, the authority in this subparagraph (2) will be reduced by the amount of securities issued and outstanding pursuant to the authority requested in subparagraph (1) above. This short-term debt authorization would enable DRI to support the DRI Money Pool and other short-term financing needs, which vary significantly during a calendar period and are not permanent capital increases;

(3) For DRI to provide guarantees, intra-system advances and other credit support for all of its subsidiaries, as described below, in an aggregate amount not to exceed $10 billion at any time outstanding; [5]

(4) For DRI to issue up to 50 million shares of stock for its direct stock purchase and dividend reinvestment plan, incentive compensation plans and other employee benefit plans as described below (these issuances to be excluded from the increase to DRI's capitalization described in subparagraph 1 above);

(5) For DRI to continue to operate the DRI Money Pool as described below;

(6) For CNG to increase its capitalization in the aggregate amount of $6.0 billion over and above its capitalization as of June 30, 2004, other than through refunding or replacing securities where capitalization is either not increased (or is increased solely by Offering Expenses) through the issuance and/or sale of common stock (including forward sales), preferred securities, equity-linked securities, and long-term debt, whether directly or through one or more financing conduits;

(7) For CNG to issue short-term debt, including, but not limited to, the issuance of commercial paper or letters of credit, in an aggregate amount of up to $9.25 billion principal amount outstanding at any one time, provided, however, the authority in this subparagraph (7) will be reduced by the amount of the securities issued and outstanding pursuant to the authority requested in subparagraph (6) above. This short-term debt authorization would enable CNG to support its short-term financing needs which vary significantly during a calendar year and are not permanent capital increases;

(8) For CNG to provide guarantees, intra-system advances and other credit support for all of its subsidiaries in an aggregate amount not to exceed $5.0 billion at any time outstanding;

(9) For DRI and CNG to use financing conduits or subsidiaries to issue or sell debt or equity securities on DRI's or CNG's behalf either by DRI or CNG owning these conduits or subsidiaries or guaranteeing the obligations of these conduits or subsidiaries as described below;

(10) For DRI and CNG to enter into transactions to manage interest rate credit and equity price risk with regard to the issuance of securities as described below;

(11) For DRI and CNG to use up to $300 million of the financing for development costs related to investments in Exempt Subsidiaries and Non-Exempt Subsidiaries as defined below;

(12) For the Utility Subsidiaries to issue short-term debt securities (including commercial paper) not to exceed the following amounts outstanding at any one time:

Utility subsidiary	Short-term debt amount
Virginia Power	$2.25 billion.
Peoples	$100 million.
East Ohio	$100 million.
Hope	$100 million.

(13) For the Utility Subsidiaries to enter into transactions to manage interest rate, credit and equity price risk with regard to the issuance of securities as described below;

(14) For the Nonutility Subsidiaries to pay dividends out of capital or unearned surplus;

(15) For DRI and CNG to change the capital stock of subsidiaries;

(16) For DRI and CNG to refund or replace existing securities where capitalization is not increased (or is increased solely by Offering Expenses) from that in place at June 30, 2004, all subject to the financing parameters set forth below;

(17) For DRI to manage and develop DRI system nonutility real estate as described below;

(18) For DRI and its subsidiaries to continue to operate under the terms of the Tax Allocation Agreement;

(19) For DRI to make investments in Exempt Wholesale Generators (''EWG'') and Foreign Utility Companies (''FUCO'') up to an aggregate investment of 100% of consolidated retained earning plus $8 billion; and

(20) For the issuance of intra-system advances and guarantees by DRI and/or CNG to or on behalf of its subsidiaries, by the Nonutility Subsidiaries to or on behalf of other Nonutility Subsidiaries and by the Utility Subsidiaries to or on behalf of the Utility Subsidiary's direct or indirect subsidiaries and others.

B. Parameters for Financing Authorization

The following general terms would be applicable as appropriate to the financing transactions requested to be authorized in the Application:

(1) *Common Equity Ratio.* DRI and CNG state that at all times during the Authorization Period, DRI, CNG and each of the Utility Subsidiaries would maintain common equity (as reflected in the most recent Form 10–K and Form 10–Q filed with the Commission) of at least 30% of its consolidated capitalization (common equity, preferred stock and long-term and short-term debt); provided that DRI and CNG would in any event be authorized to issue common stock to the extent otherwise authorized in this Application.

(2) *Investment Grade Ratings.* DRI, CNG and the Utility Subsidiaries would not issue any guarantees or other securities, other than common stock, member interests or securities issued for the purpose of funding money pool operations, unless: (i) The securities, if rated, are rated at least investment grade, (ii) all outstanding securities of the issuer that are rated, are rated investment grade, and (iii) all securities of DRI and CNG that are rated, are rated investment grade. For purposes of this provision, a security would be deemed to be rated investment grade if it is rated investment grade by at least one nationally recognized statistical rating organization, as defined in rule 15c3–1(c)(2)(vi)(F) under the Securities Exchange Act of 1934, as amended (''Securities Exchange Act''). Applicants further request that the Commission reserve jurisdiction over the issuance of any of these securities at any time that the conditions set forth above are not satisfied.

(3) *Effective Cost of Money on Financings.* The effective cost of capital for long-term debt, short-term debt, preferred securities and equity linked securities would not exceed competitive market rates available at the time of issuance for securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality; provided that in no event would the

[5] Pursuant to the prior orders, DRI continues to maintain guarantee and credit support arrangements for the DCI Companies. However, DRI is disposing of its interest in the DCI Companies and these arrangements will diminish and terminate when the disposition process is completed.

effective cost of capital on (i) any long-term debt securities exceed 500 basis points over comparable term U.S. Treasury securities (''Treasury Security''); or (ii) any short-term debt securities exceed 500 basis points over the comparable term London Interbank Offered Rate (''LIBOR''). The dividend and distribution rate on any series of preferred securities or equity linked securities will not exceed at the time of issuance 700 basis points over a Treasury Security.

(4) *Maturity.* The final maturity of any long-term debt securities would not exceed 50 years. Preferred securities and equity linked securities would be redeemed no later than 50 years after issuance, except for preferred securities or equity-linked securities that are perpetual in duration.

(5) *Issuance Expenses.* The underwriting fees and commissions paid in connection with the issue, sale or distribution of securities pursuant to this Application would not exceed 7% of the principal or face amount of the securities being issued or gross proceeds of the financing.

(6) *Use of Proceeds.* The proceeds from the sale of securities issued by Applicants pursuant to this Application would be used for any lawful purposes, including: (i) The financing of the capital expenditures of the DRI System; (ii) the financing of working capital requirements of the DRI System; (iii) direct or indirect investment in companies or assets the acquisition of which are either exempt under the Act or by Commission Rule or have been authorized by the Commission; and (iv) general corporate purposes.

C. Description of Specific Types of Financing

(1) Equity Securities

(a) *Common Stock (including Equity-Linked Securities).* From time to time during the Authorization Period, subject to the limits and conditions specified in this Application, DRI seeks authority to issue and sell up to $8 billion additional shares of its common stock (i) through solicitations of proposals from underwriters or dealers, (ii) through negotiated transactions with underwriters or dealers, (iii) directly to a limited number of purchasers or to a single purchaser, and/or (iv) through agents. The price applicable to additional shares sold in any transaction would be based on several factors, including the current market price of the common stock and prevailing capital market conditions. Additionally, DRI may seek to enter into derivative transactions (including the writing of options) to sell securities to third parties. These transactions could occur in connection with forward sales of DRI's common stock.

DRI also seeks authority to issue and sell from time to time equity linked securities, including but not limited to contracts obligating holders to purchase from DRI and/or DRI to sell to the holders, a number of shares specified directly or by formula at an aggregate offering price either fixed at the time the Stock Purchase Contracts (''Stock Purchase Contracts'') are issued or determined by reference to a specific formula set forth in the Stock Purchase Contracts. The Stock Purchase Contracts may be issued separately or as part of units (''Stock Purchase Units'') consisting of a stock purchase contract and debt and/or preferred securities of DRI and/or debt obligations of non-affiliates, including U.S. Treasury securities, securing holders' obligations to purchase the common stock of DRI under the Stock Purchase Contracts. The Stock Purchase Contracts may require holders to secure their obligations in a specified manner.

DRI may also issue common stock as consideration, in whole or in part, for acquisitions of securities of businesses or the assets of these businesses, the acquisition of which (a) is exempt under the Act or by Commission rule or (b) has been authorized by prior Commission order issued to DRI, subject in either case to applicable limitations on total investments in any of these businesses. All common stock sales would be with terms and conditions, at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets.

From time to time during the Authorization Period, subject to the limits and conditions specified in this Application, CNG seeks authority to issue up to $6 billion additional shares of its common stock to DRI. The consideration for the stock would be based on the book value of the stock determined as of the quarter end immediately preceding the issuance.

(b) *Preferred Securities.* Subject to the limits and conditions specified in this Application, each of DRI and CNG also seeks authority to issue and sell preferred securities in one or more series. Preferred securities of any series (a) would have a specified par or stated value or liquidation value per security, (b) would carry a right to periodic cash dividends and/or other distributions, subject among other things, to funds being legally available, (c) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the par or stated liquidation value, (d) may be convertible or exchangeable into common stock of DRI, (e) and may bear other further rights, including voting, preemptive or other rights, and other terms and conditions, as set forth in the applicable certificate of designation, purchase agreement and/or similar instruments governing the issuance and sale of the series of preferred securities.

Preferred securities may be issued in private or public transactions. With respect to private transactions, preferred securities of any series may be issued and sold directly to one or more purchasers in privately negotiated transactions or to one or more investment banking or underwriting firms or other entities who would resell the preferred securities without registration under the Securities Act of 1933, as amended (the ''Securities Act'') in reliance upon one or more applicable exemptions from registration. From time to time each of DRI and CNG may also issue and sell preferred securities of one or more series to the public either (i) through underwriters selected by negotiation or competitive bidding or (ii) through selling agents acting either as agent or as principal for resale to the public either directly or through dealers.

The liquidation preference, dividend or distribution rates, redemption provisions, voting rights, conversion or exchange rights, and other terms and conditions of a particular series of preferred securities, as well as any associated placement, underwriting, structuring or selling agent fees, commissions and discounts, if any, would be established by negotiation or competitive bidding and reflected in the applicable certificate of designation, purchase agreement or underwriting agreement, and other relevant instruments setting forth the terms.

(2) Debt Securities

(a) *Short-Term Notes.* Subject to the limits and conditions in this Application, each of DRI and CNG seeks authorization to make unsecured short-term borrowings from banks or other financial institutions, and when combined with issuance of common stock, preferred securities, equity-linked securities and long-term debt not to exceed $12.5 billion with respect to DRI and $9.25 billion with respect to CNG. The borrowings would be unsecured and evidenced by (1) ''transactional'' promissory notes to be dated the date of the borrowings and to mature not more than one year after the date thereof or (2) ''grid'' promissory notes evidencing all outstanding borrowings from the respective lender, to be dated as of the date of the first borrowing evidenced

thereby, with each borrowing maturing not more than one year thereafter. The notes may or may not be prepayable, in whole or in part, with or without a premium in the event of prepayment. Each of DRI and CNG states that, at any given time, some or all of its outstanding short-term notes would be issuable in connection with the establishment of back-up credit facilities to support its commercial paper program but that these credit facilities would not be drawn upon and no borrowings would occur under these facilities, except in certain limited circumstances at which time obligations under the related commercial paper would be paid. Thus, short-term notes issued in connection with the establishment of commercial paper back-up facilities backstop and duplicate commercial paper issuances and should not be deemed to be borrowings under DRI's or CNG's, as applicable, financing authorization unless and until an actual borrowing occurs under the related credit facility. Any other result would ''double count'' DRI's and CNG's, as applicable, actual financial obligation. Additionally, with respect to any ''grid'' notes issued by DRI or CNG, as applicable, only the amount actually outstanding at any given time shall be considered a borrowing.

(b) *Commercial Paper.* Subject to the limits and conditions in this Application, each of DRI and CNG also seeks authority to issue and sell commercial paper through one or more dealers or agents or directly to purchasers.

Each of DRI and CNG proposes to issue and sell the commercial paper at market rates with varying maturities not to exceed 270 days. The commercial paper would be in the form of book-entry unsecured promissory notes with varying denominations of not less than $1,000 each. In commercial paper sales effected on a discount basis, no commission or fee would be payable; however, the purchasing dealer would re-offer the commercial paper at a rate less than the rate offered to the DRI or CNG, as applicable. The discount rate to dealers would not exceed the maximum market clearing discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and the same maturity. The purchasing dealer would re-offer the commercial paper in a manner as not to constitute a public offering within the meaning of the Securities Act.

(c) *Long-Term Notes.* Subject to the limits and conditions in this Application, each of the DRI and CNG also seeks authority to issue and sell unsecured long-term debt securities (''Notes'') in one or more series.

Notes of any series may be either senior or subordinated obligations of DRI or CNG, as applicable. Notes of any series (a) would have maturities of greater than one year, (b) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount, (c) may be entitled to mandatory or optional sinking fund provisions, and (d) may be convertible or exchangeable into common stock of DRI or CNG, as applicable. Interest accruing on Notes of any series may be fixed or floating or ''multi-modal'' (where the interest is periodically reset, alternating between fixed and floating interest rates for each reset period, with all accrued and unpaid interest together with interest becoming due and payable at the end of each reset period, or at maturity). Notes may be issued under one or more indentures to be entered into between DRI or CNG, as applicable, and financial institutions acting as trustee(s); supplemental indentures may be executed in respect of separate offerings of one or more series of Notes.

Notes may be issued in private or public transactions. With respect to the former, Notes of any series may be issued and sold directly to one or more purchasers in privately negotiated transactions or to one or more investment banking or underwriting firms or other entities who would resell the Notes without registration under the Securities Act in reliance upon one or more applicable exemptions from registration. From time to time each of DRI and CNG may also issue and sell Notes of one or more series to the public either (i) through underwriters selected by negotiation or competitive bidding or (ii) through selling agents acting either as agent or as principal for resale to the public either directly or through dealers.

The maturity dates, interest rates, redemption and sinking fund provisions, and conversion features, if any, with respect to the Notes of a particular series, as well as any associated placement, underwriting, structuring or selling agent fees, commissions and discounts, if any, would be established by negotiation or competitive bidding and reflected in the applicable purchase agreement or underwriting agreement setting forth the terms.

(3) Financing Conduits

In addition to issuing any of the foregoing debt or equity securities directly, DRI and CNG request approval to form one or more entities for the primary purpose of issuing and selling any of the foregoing securities, lending, dividending or otherwise transferring the proceeds to DRI or CNG, as applicable, or an entity designated by DRI or CNG, and engaging in incidental transactions, subject to the limits and conditions of this Application.

The proposed entities would comprise one or more financing entities (each, a ''Financing Entity'') and one or more special-purpose entities (each, a ''Special-Purpose Entity,'' and together with Financing Entities, ''Financing Conduits''). In either case the entities' businesses may include issuing and selling securities on behalf of, or to benefit, DRI or CNG. Any securities issued by the Financing Conduits may be guaranteed by DRI and/or CNG, either directly or indirectly.

DRI or CNG would acquire a portion of the outstanding shares of common stock or other equity, membership or controlling interests of the Financing Entity for an amount not less than the minimum required by applicable law. A primary function of the Financing Entity would be effecting financing transactions with third parties for the benefit of DRI or CNG and their respective subsidiaries. As an alternative in a particular instance to DRI or CNG directly issuing debt or equity securities, or through a Special-Purpose Entity, DRI or CNG may determine to use a Financing Entity as the nominal issuer of the particular debt or equity security. In that circumstance, the participating Applicant may provide a guarantee or other credit support with respect to the securities issued by the Financing Entity, the proceeds of which would be lent, dividended or otherwise transferred to the applicable Applicant or an entity designated by the Applicant.

One of the primary strategic reasons behind the use of a Financing Entity would be to segregate financings for the different businesses conducted by DRI or CNG, distinguishing between securities issued by the DRI or CNG to finance their investments in nonutility businesses from those issued to finance their investments in the core utility business. A separate Financing Entity may be used by DRI or CNG with respect to different types of nonutility businesses. DRI or CNG would use Special-Purpose Entities in connection with certain financing structures for issuing debt, preferred, equity-linked or equity securities, in order to achieve a lower cost of capital, or incrementally greater financial flexibility or other benefits, than would otherwise be the case.

(4) Interest Rate, Credit and Equity Price Risk Management

In connection with the issuance and sale of securities, each of DRI, CNG and the Utility Subsidiaries requests authority to manage equity price (with regard to DRI common stock), credit and interest rate risk through the entering into, purchasing and selling of various risk management instruments commonly used in today's capital markets, such as interest rate, credit and equity swaps, caps, collars, floors, options, forwards, futures, forward issuance agreements, call spread options, the sale and/or purchase of various call or put options or warrants and similar products designed to manage market, price, rate or credit risks (collectively ''Hedging Instruments'').

Each of DRI, CNG, and the Utility Subsidiaries, as applicable, would enter into Hedging Instruments (either directly or indirectly through subsidiaries) pursuant to agreements with counterparties that are rated at least investment grade, *i.e.*, who, at the date of execution of the agreement with DRI, CNG, or a Utility Subsidiary, are rated (or have a parent issuing a guaranty that is rated) at least investment grade by at least one nationally recognized statistical rating organization, as defined in rule 15c3–1(c)(2)(vi)(F) under the Securities Exchange Act (''Authorized Counterparties''). The derivative transactions would be for fixed periods and the notional principal amount would not exceed the principal amount of the underlying security except to the extent necessary to adjust for differing price movements between the underlying and hedged securities or to allow for the fees related to the transaction. None of DRI, CNG or the Utility Subsidiaries would engage in ''leveraged'' or ''speculative'' derivative transactions pursuant to the authority granted under this Application.

In addition, each of DRI, CNG and the Utility Subsidiaries requests authorization to enter into interest rate and credit hedging transactions with respect to anticipated debt offerings (the ''Anticipatory Hedges''), subject to certain limitations and restrictions. The Anticipatory Hedges would only be entered into with Authorized Counterparties, and would be utilized to fix and/or limit the interest rate risk associated with any new issuance through (i) a forward sale of exchange-traded Hedging Instruments (a ''Forward Sale''), (ii) the purchase of put options on Hedge Instruments (a ''Put Options Purchase''), (iii) a Put Options Purchase in combination with the sale of call options Hedging Instruments (a ''Zero Cost Collar''), (iv) transactions involving the purchase or sale, including short sales, of Hedging Instruments, or (v) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, structured notes, caps and collars, appropriate for the Anticipatory Hedges. Anticipatory Hedges may be executed on-exchange (''On-Exchange Trades'') with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade or New York Mercantile Exchange, the opening of over-the-counter positions with one or more counterparties (''Off-Exchange Trades'') or a combination of On-Exchange Trades and Off-Exchange Trades. DRI, CNG, or the Utility Subsidiary would determine the optimal structure of each Anticipatory Hedge transaction at the time of execution. DRI, CNG or the Utility Subsidiary may decide to lock in interest rates and/or limit its exposure to interest rate increases.

Fees and commissions charged or required in connection with any interest rate, credit or equity price risk management agreement would not exceed the then current market level.

DRI and CNG represent that each would comply with Statement of Financial Accounting Standards 133 (''SFAS''), SFAS 138 or other standards relating to accounting for derivative transactions as are adopted and implemented by the Financial Accounting Standards Board (''FASB''). DRI and CNG state that Hedge Instruments and Anticipatory Hedges would qualify for hedge accounting treatment under the current FASB standards in effect and as determined at the date Hedging Instruments or Anticipatory Hedges are entered into.

(5) Guarantees

From time to time through the Authorization Period, DRI requests authority to guarantee, issue and/or obtain letters of credit, enter into financing arrangements and otherwise provide credit support (each, a ''DRI Guarantee'') in respect of the debt or other securities or obligations of any or all of DRI's subsidiary or associate companies (including any formed or acquired at any time during the Authorization Period), and otherwise to further the business of DRI, provided that the total amount of Guarantees at any time outstanding does not exceed $10 billion (the ''DRI Guarantee Limit''), and provided further, that (i) any DRI Guarantees of EWGs and FUCOs shall also be subject to DRI's limitation on investment in EWGs and FUCOs; (ii) any Guarantees of energy-related companies within the meaning of Rule 58 (''Rule 58 Companies'') shall also be subject to the aggregate investment limit of Rule 58; and (iii) any security guaranteed by DRI shall itself be in compliance with the financing parameters authorized in this Application or be exempt. The terms and conditions of any DRI Guarantees, and the underlying liabilities covered, would be established at arm's-length based upon market conditions.

From time to time through the Authorization Period, CNG requests authority to guarantee, issue and/or obtain letters of credit, enter into financing arrangements and otherwise provide credit support (each, a ''CNG Guarantee'', and together with DRI Guarantees, collectively the ''Guarantees'' and individually, a ''Guarantee'') in respect of the debt or other securities or obligations of any or all of CNG's subsidiary or associate companies (including any formed or acquired at any time during the Authorization Period), and otherwise to further the business of CNG, up to $5 billion (the ''CNG Guarantee Limit'') on the same terms and conditions as specified above for DRI.

DRI and CNG may charge a fee to its subsidiaries for each Guarantee provided on their behalf that is not greater than cost, if any, of obtaining from any unrelated third party the liquidity necessary to perform the guarantee for the period of time the Guarantee remains outstanding.

In the event that DRI or CNG issues any debt or equity securities authorized in this Application by means of any Financing Conduits, DRI or CNG may provide a Guarantee in respect of the payment and other obligations of the Financing Conduits under the securities issued by it. Given that any securities nominally issued by any Financing Conduits are in substance securities issued by DRI or CNG itself, any securities issued by Financing Conduits would count dollar-for-dollar against DRI's or CNG's financing authority. However, DRI and CNG submit that any Guarantees of securities of Financing Conduits should be excluded entirely from the DRI or CNG Guarantee Limit, as applicable, since inclusion would amount to ''double counting,'' in effect penalizing DRI or CNG for using Financing Conduits.

As stated above, DRI and CNG request the authority to extend its credit through entry into performance guarantees that will be a part of the definition of ''Guarantee''. Such performance Guarantees may be in

support of the obligations of affiliates undertaking the development or operation of projects authorized under the Act. However, performance Guarantees and certain other Guarantees may be in support of obligations that are not capable of exact quantification. In such cases, DRI and CNG state that each will determine the exposure under such Guarantees for purposes of measuring compliance with the DRI Guarantee Limit or CNG Guarantee Limit, as applicable, by appropriate means, including estimation of exposure based on loss experience or projected potential payment amounts. If appropriate, DRI and CNG state that these estimates will be made in accordance with generally accepted accounting practices.

DRI and CNG also request authority to guarantee the obligations of unrelated third parties (''Third Party Guarantees''). From time to time, it is appropriate for DRI or CNG or one of their subsidiaries to guarantee, as part of their normal business activities, the obligations of a third party with whom DRI or CNG or their subsidiary has a business relationship. For example, a subsidiary of DRI or CNG may enter into a joint venture to construct certain power generation assets where such subsidiary manages the power generation assets on behalf of the joint venture and DRI or CNG would guarantee the performance of such subsidiary. Third Party Guarantees will be Guarantees only of long- or short-term indebtedness or Guarantees of performance of contractual obligations of such third parties with whom DRI or CNG or their subsidiary has, or had, a business relationship.

D. DRI Money Pool

DRI, CNG and the subsidiaries listed on Exhibit B–2 to the Application (the ''Participants'') request authorization to operate in a system money pool (the ''DRI Money Pool''). The DRI Money Pool would be operated in the same manner as previously authorized by the Commission. The only change to be made to the DRI Money Pool is the list of Participants.[6]

DRI, CNG and the Participants would invest their surplus funds in the DRI Money Pool, and the Participants would borrow funds from the DRI Money Pool, provided that, with respect to each of the CNG utility companies (The East Ohio Gas Company, Hope Gas, Inc. and The Peoples Natural Gas Company), outstanding borrowings from the DRI Money Pool shall not exceed $750 million at any one time.

DRI and CNG would not borrow from the DRI Money Pool, but may be the ultimate providers of funds to the DRI Money Pool as needed. DRI and/or CNG would obtain the funds to invest in the DRI Money Pool (i) from internally generated funds, (ii) under the prior orders, and/or (iii) any other current financing authorizations or exemptions that may be available to DRI or CNG. Dominion Resources Services, Inc. (''DRI Services'') would administer the DRI Money Pool on an ''at cost'' basis. In providing funds to DRI Money Pool Participants, DRI and CNG would give preference to the needs of the Utility Subsidiaries that are Participants. DRI would report any default under any external loan agreement within ten (10) days of the occurrence in a filing with the Commission. The filing would describe how the default under the loan agreement would affect preceding representations of preference to the needs of the Utility Subsidiary Participants.

Funds in the DRI Money Pool would be held in two separate accounts—one for public utility company participants (''Account A'') and another for the Participants which are not public utility companies (''Account B''). Account A funds would not be loaned to non-public utility company Participants. Account B funds may be loaned to public utility company Participants provided that the interest charged is not greater than the cost of borrowing the funds to DRI or CNG, as applicable. A list of the Account A and Account B participants is filed as Exhibit B–2 to the Application. Participants that are EWGs, FUCOs, or exempt telecommunication companies (''ETC'') shall be permitted to loan funds to Account A or Account B, but shall not be permitted to borrow funds from either Account A or Account B.

For each of Account A and Account B Participants, respectively, DRI Services would maintain a record reflecting the Participant's daily balance. The record would indicate the amount of the Participant's lending, investment or borrowing balance, as the case may be, as well as the Participant's share of interest and investment income and interest owed, if any.

The purpose of the DRI Money Pool is to provide the Participants with internal and external funds and to invest surplus funds of DRI and the Participants in short-term money market instruments. The DRI Money Pool would offer the Participants lower short-term borrowing costs due to the elimination of banking fees, a mechanism to earn a higher return on interest from surplus funds that are loaned to other Participants, and decreased reliance on external funding sources.

Proceeds of any short-term borrowings from the DRI Money Pool by the Participants may be used (i) for the interim financing of construction and capital expenditure programs, (ii) for working capital needs, (iii) for the repayment or refinancing of debt, (iv) to meet unexpected contingencies, payment and timing differences and cash requirements, (v) to otherwise finance the borrower's own business, and (vi) for other lawful general purposes.

The daily interest rate on loans from the DRI Money Pool and on all deposits of cash in the DRI Money Pool would equal the effective weighted average rate of interest on DRI's outstanding commercial paper and/or revolving credit borrowings. If no DRI borrowings are outstanding on the date of any outstanding loan, then the interest rate would be the Federal Funds' effective rate of interest as quoted daily by the Federal Reserve Bank of New York. The rate to be used for weekends and holidays would be the rate on the prior business day. Funds not required by the DRI Money Pool to make loans to Participants or to repay borrowings incurred to provide funds to Participants would ordinarily be invested in one or more short-term investments including: (i) Obligations issued or guaranteed by the U.S. government and/or its agencies and instrumentalities; (ii) commercial paper; (iii) certificates of deposit; (iv) bankers' acceptances; (v) repurchase agreements; (vi) tax exempt notes; and (vii) other investments that are permitted by Section 9(c) of the Act and Rule 40 promulgated under the Act. The interest income and investment income earned on loans and investments of surplus funds would be allocated among the Participants in the DRI Money Pool in accordance with the proportion each Participant's contribution of funds bears to the total amount of funds in the DRI Money Pool.

Each Participant receiving a loan through the DRI Money Pool would be required to repay the principal amount of the loan, together with all accrued

[6] The following Participants have been deleted from the DRI Money Pool agreement from the original Money Pool Order: Elwood II Holding, LLC, Elwood III Holdings, LLC, Kincaid Generation, LLC, Dominion Metering Services, Inc., and CNG Pipeline Company. No new Participants have been added to Account A of the DRI Money Pool. The following Participants have been added to Account B of the DRI Money Pool: NE Hub Partners L.L.C., Farmington Properties, Inc., Dominion Capital, Inc., Dominion Technical Solutions, Inc., Virginia Power Nuclear Services, Inc., Virginia Power Energy Marketing, Inc., Virginia Power Services Energy Corp., Inc., CNG Coal Company, Dominion Member Services, Inc., Tioga Properties, LLC, Dominion Cove Point, Inc., and Dominion South Pipeline, LP.

interest, on demand. Interest on outstanding loans would be paid to the DRI Money Pool monthly. All loans made through the DRI Money Pool could be repaid by the borrower without premium or penalty.

All terms and conditions governing the operations of, and the participation by DRI, CNG and the Participants in, the DRI Money Pool are contained in a written agreement in the form as provided in Exhibit B–1 attached to the Application. DRI states that such agreement will be the same as approved in the Money Pool Order, with the inclusion of the restrictions on borrowing for EWGS, FUCOs and ETC as set forth above.

E. Investments in Nonutility Subsidiaries

DRI and CNG request authority to engage in certain activities described below relating to EWGs, FUCOs, ETCs, and Rule 58 Companies (collectively, ''Exempt Subsidiaries'') and other nonutility subsidiaries approved by the Commission (collectively, ''Non-Exempt Subsidiaries''). To the extent any of these activities described in this Application constitute the providing of goods, services or construction from one associate company to another in the DRI system which would be subject to section 13 of the Act, these goods, services or construction would be provided at cost as defined in rules 90 and 91 unless an exemption from the at cost requirement is available under the Act or otherwise approved in the Commission's order in this matter.

DRI and CNG request authority to make additional investments in Exempt Subsidiaries and Non-Exempt Subsidiaries in the form of purchases of common stock and other securities, capital contributions, loans or open account advances, guarantees, or any combination of the foregoing. Direct or indirect investments by DRI and CNG in Exempt Subsidiaries and Non-Exempt Subsidiaries would be subject to the limitations applicable to investments for the subsidiaries.

In connection with existing and future nonutility businesses, DRI and CNG would engage directly or through subsidiaries in preliminary development activities (''Development Activities'') and administrative and management activities (''Administrative Activities'') associated with the investments. Development Activities would be limited to: due diligence and design review; market studies; preliminary engineering; site inspection; preparation of bid proposals, including, posting of bid bonds; application for required permits and/or regulatory approvals; acquisition of site options and options on other necessary rights; negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms, power purchasers, thermal ''hosts,'' fuel suppliers and other project contractors; negotiation of financing commitments with lenders and other third-party investors; and other preliminary activities as may be required in connection with the purchase, acquisition or construction of facilities or the securities of other companies. DRI and CNG propose to expend directly or through Exempt Subsidiaries or Non-Exempt Subsidiaries up to $300 million in the aggregate outstanding at any time during the Authorization Period on all the Development Activities. Amounts expended in the development of projects that result in an investment in an Exempt Subsidiary or a Non-Exempt Subsidiary would not count against the limitation on expenditures for Development Activities. Administrative Activities would include ongoing personnel, accounting, engineering, legal, financial and other support activities necessary to manage Development Activities and investments in subsidiaries.

DRI and CNG request authority to acquire directly or indirectly the securities of one or more corporations, trusts, partnerships, limited liability companies or other entities (collectively, ''Intermediate Subsidiaries''), which would be organized exclusively for the purpose of acquiring, holding and/or financing the acquisition of the securities of or other interest in one or more Exempt Subsidiaries or Non-Exempt Subsidiaries, provided that Intermediate Subsidiaries may also engage in Development Activities and Administrative Activities (collectively, the ''Activities''). To the extent the transactions are not exempt from the Act or otherwise authorized or permitted by rule, regulation or order of the Commission, DRI and CNG request authority for Intermediate Subsidiaries to engage in the Activities described above. To the extent that DRI and CNG provide funds directly or indirectly to an Intermediate Subsidiary which are used for the purpose of making an investment in any Exempt Subsidiary or Non-Exempt Subsidiary, the amount of the funds would be included in DRI's ''aggregate investment'' in these entities, as calculated in accordance with rule 53 or rule 58, as applicable.

F. Direct Investment, Incentive Compensation Plans and Other Employee Benefit Plans

DRI requests authority, from time to time during the Authorization Period, to issue and/or acquire in open market transactions or by some other method which complies with applicable law and Commission interpretations then in effect up to 50 million shares of DRI common stock under DRI's direct stock purchase and dividend reinvestment plan, certain incentive compensation plans and certain other employee benefit plans described below.

(1) Dominion Direct Investment

DRI maintains Dominion Direct Investment (''Dominion Direct''), a direct stock purchase plan with a dividend reinvestment feature. The purpose of Dominion Direct is to provide eligible participants with a convenient and economical way to purchase DRI common stock and to increase ownership in DRI by reinvesting dividends and/or making optional monthly investments. Current shareholders of DRI and new investors residing in the U.S. who would like to become DRI shareholders are eligible to participate. Foreign citizens are eligible to participate as long as their participation would not violate any laws in their home countries.

At DRI's discretion, shares of DRI common stock purchased under Dominion Direct would be either newly issued or purchased on the open market by an independent agent selected by the Dominion Direct administrator. The decision whether shares are to be purchased directly from DRI or in the open market would be based on DRI's need for common equity and other factors considered relevant by DRI. Any determination by DRI to change the manner in which shares would be purchased for Dominion Direct, and the implementation of any change, would comply with applicable law and Commission interpretations then in effect.

Net proceeds from the sale of newly issued shares of DRI common stock would be added to the general corporate funds of DRI and would be used to meet its capital requirements and the capital requirements of its subsidiaries. DRI would not receive any proceeds from shares acquired in the open market.

(2) Incentive Compensation Plans

DRI currently maintains the DRI Incentive Compensation Plan (the ''DRI Incentive Compensation Plan'') in which employees of DRI's subsidiaries and employees and certain outside directors of DRI participate.

The DRI Incentive Compensation Plan is administered by a committee comprised of DRI outside directors. All employees of DRI and its subsidiaries are eligible to receive incentive awards under the DRI Incentive Compensation Plan if the committee determines that the employee has contributed, or can be expected to contribute, significantly to his or her employer. The committee has the power and complete discretion to select eligible employees and outside directors to receive awards, the type of awards granted and the terms and conditions of the awards.

As of June 30, 2004 there were 7,953,009 shares available under the DRI Incentive Compensation Plan and the annual limit of awards to any one individual is 1.5 million shares.

The following types of awards may be granted under the DRI Incentive Compensation Plan: Performance grants; restricted stock; goal-based stock; stock options; and stock appreciation rights.

Performance Grants. Performance grants are subject to the achievement of pre-established performance goals comprised of objective and quantifiable performance criteria. The committee sets target and maximum amounts payable under each performance grant. The employee receives appropriate payments at the end of the performance period if the performance goals (and other terms and conditions of the award) were met. The actual payments under a performance grant can be cash, DRI common stock, or both. Performance grants are administered to comply with Section 162(m) of the Internal Revenue Code of 1986, as amended (the ''Code'').

The aggregate maximum cash amount payable pursuant to a performance grant to any employee in any year cannot exceed 0.5% of DRI's consolidated operating income, before taxes and interest. The committee must make performance grants prior to the 90th day of the period for which the performance grants relates or the completion of 25% of the period.

Restricted Stock Awards. Restricted stock awards consist of shares of DRI common stock which are subject to certain terms and conditions. Recipients are not able to sell or transfer restricted stock until the restrictions stated in the award agreement have been met. The restricted stock is forfeited if the applicable terms and conditions are not met.

Goal-Based Stock Awards. Goal-based stock is DRI common stock subject to performance goals. The stock is not issued to the employee until the committee certifies that the performance goals (and any other terms and conditions) have been met.

Stock Options and Stock Appreciation Rights. Stock options may be granted to eligible employees subject to terms and conditions established by the committee. The exercise price of an option must be at least 100% of the fair market value of DRI common stock on the date that the option is granted. Options may be either incentive stock options or nonqualified stock options. Stock appreciation rights may be granted on all or any part of an option, and are subject to the terms and conditions established by the committee. Stock appreciation rights also may be granted separately. A stock appreciation right entitles the employee to receive an amount equal to the excess of (i) the fair market value on the date of exercise of stock covered by the surrendered stock appreciation right over (ii) the exercise price of the stock on the date the stock appreciation right was granted. The award can be paid in stock or cash, or both.

When granting incentive awards, the committee can allow the awards to become fully exercisable upon a change in control. Employees cannot sell, transfer or pledge their interest in performance grants and goal-based stock awards. Employees cannot sell, transfer or pledge shares of restricted stock until the stock becomes unrestricted. Options and stock appreciation rights may be transferred by a participant according to the terms and conditions for the awards.

The DRI board of directors can amend or terminate the DRI Incentive Compensation Plan; however, shareholder approval is required of amendments that would (i) increase the number of shares of DRI common stock that is reserved and available for issuance under the DRI Incentive Compensation Plan; (ii) materially change or impact which employees are eligible to participate in the DRI Incentive Compensation Plan; or (iii) materially change the benefits that eligible employees may receive under the DRI Incentive Compensation Plan. Notwithstanding the foregoing, the DRI board can amend the DRI Incentive Compensation Plan as necessary and without shareholder approval to ensure that the DRI Incentive Compensation Plan continues to comply with Section 162(m) of the Code and Rule 16b-3. The DRI Incentive Compensation Plan would terminate at the close of business on December 31, 2006 unless the DRI board of directors terminates the DRI Incentive Compensation Plan prior to that date.

(3) Other Benefit Plans

In addition to the plans described above, DRI has plans that provide for the issuance of shares of common stock. For example, DRI maintains the DRI Hourly Employee Savings Plan, the Dominon Salaried Savings Plan and certain CNG employee savings plans (the ''DRI 401(k) Plans''). The DRI 401(k) Plans allow participating employees to elect to defer a portion of their compensation and have the funds invested in designated investment media selected by participants, including a common stock fund of the sponsoring company.

G. Payment of Dividends Out of Capital or Unearned Surplus by Nonutility Subsidiaries

DRI and CNG seek authority, on behalf of every direct or indirect Nonutility Subsidiary, that the companies be permitted to pay dividends with respect to the securities of the companies and/or acquire, retire or redeem any securities of the companies that are held by an associated company or affiliate, from time to time, through the Authorization Period, out of capital or unearned surplus, to the extent permitted under applicable corporate law, provided that no Nonutility Subsidiary would declare or pay any dividend out of capital or unearned surplus unless it: (i) Has received excess cash as a result of the sale of its assets, (ii) has engaged in a restructuring or reorganization; and/or (iii) is returning capital to an associate company. Further, no Nonutility Subsidiary that derives any material part of its revenues from the sale of goods, services or electricity to Utility Subsidiaries would declare or pay any dividend out or capital or unearned surplus. DRI and CNG request that the Commission reserve jurisdiction over the payment of such dividends out of capital or unearned surplus when any of these conditions are not met.

H. Changes in Capital Stock of Subsidiaries

The portion of an individual subsidiary's aggregate financing to be effected through the sale of stock to DRI or other immediate parent company during the Authorization Period pursuant to Rule 52 and/or pursuant to an order issued in this proceeding cannot be ascertained at this time. It may happen that the proposed sale of capital securities may in some cases exceed the then-authorized capital stock of the subsidiary. In addition, the subsidiary may choose to use capital stock with no par value or receive a

capital contribution without issuing capital stock. Also, a wholly-owned subsidiary may wish to engage in a reverse stock split to reduce franchise taxes. As needed to accommodate these proposed transactions, Applicants request authority to change the terms of any wholly-owned subsidiary's authorized capital stock capitalization by an amount deemed appropriate by DRI or other intermediate parent company in the instant case. A subsidiary would be able to change the par value, or change between par value and no-par stock, without additional Commission approval. Any action by a Utility Subsidiary would be subject to and would only be taken upon the receipt of any necessary approvals by the state commission(s) in the state or states in which the Utility Subsidiary is incorporated and doing business. DRI states that in the event that proxy solicitations are necessary with respect to any change to a subsidiary's corporate structure or internal corporate reorganizations, DRI would seek the necessary Commission approvals, under section 6(a)(2) and 12(e) of the Act, through the appropriate filling of a declaration.

I. Investment and Development of Nonutility Real Property

DRI, on behalf of itself and its subsidiaries, requests authorization to lease, sell or otherwise grant third persons access to or rights in excess or unwanted real estate and to permit the extraction or harvesting of mineral or other resources contained on or in that real estate.

DRI also requests authority to either designate an already existing nonutility subsidiary or form one or more new nonutility subsidiaries in which the real-estate activities of the DRI System would be centralized, so that it could act as agent for DRI System companies for these activities, manage the real estate portfolio of DRI and its associate companies, market excess or unwanted real estate and facilitate the development of nonutility property on or in DRI System real estate. The net proceeds realized from any sale or from development of nonutility property would be credited to the company that owns the subject asset. Services performed for associate companies would be provided at cost in compliance with Rules 90 and 91. No DRI company would acquire any real estate in connection with its activities pursuant to this authorization.

J. Tax Allocation Agreement

DRI also requests approval to continue to operate under an agreement dated May 13, 2004 for the allocation of consolidated income tax among DRI and its subsidiaries (''Tax Allocation Agreement''). DRI requires the continuation of the Tax Allocation Agreement for the retention by DRI of certain payments for tax losses incurred from time to time, rather than the allocation of those losses to subsidiaries without payment as would otherwise be required by Rule 45(c)(5). As a result of its financing, DRI would be creating tax credits that are non-recourse to the subsidiaries. DRI states that the Tax Allocation Agreement is the same as approved by the Tax Allocation Order.

K. EWG/FUCO Investment Limit

Under a prior order,[7] the Commission authorized DRI to make investments in EWGs and FUCOs up to an aggregate investment (as defined in Rule 53) of 100% of consolidated retained earnings plus $4.5 billion. DRI now requests that the Commission authorize DRI to make investments in EWGs and FUCOs up to an aggregate investment of 100% of consolidated retained earnings plus $8 billion.

Southwestern Electric Power Company et al. (70–10252)

Southwestern Electric Power Company, a Delaware corporation (''SWEPCO''), an indirect public utility subsidiary of American Electric Power Company, Inc. (''AEP''), a registered public utility holding company under the Public Utility Holding Company Act of 1935, as amended (''Act''), and Dolet Hills Lignite Company, LLC, a Delaware limited liability company (''Dolet Hills''), a wholly-owned nonutility subsidiary of SWEPCO, all at 1 Riverside Plaza, Columbus, Ohio 43215, have filed a declaration under section 12(c) of the Act and rules 46 and 54 under the Act.

By order dated July 1, 2004, HCAR No. 27872, the Commission granted the direct and indirect nonutility subsidiaries of AEP authority to pay dividends out of capital or unearned surplus to the fullest extent of the law, providing however that without further approval of the Commission, no nonutility subsidiary would declare or pay any dividend out of capital or unearned surplus if the nonutility subsidiary derived any material part of its revenues from the sale of goods, services or electricity to any public utility subsidiary of its parent.

Dolet Hills is a mining company which provides lignite to the Dolet Hills Power Plant (the ''Plant''), a 650-megawatt lignite fired generating plant located in north Louisiana. The Plant is jointly owned by SWEPCO, the nonaffiliate plant operator, Cleco Power LLC, and two other nonaffiliated minority owners. Because Dolet Hillsderives a material part of its revenue from the sale of lignite to its parent SWEPCO, the Commission's approval is required for Dolet Hills to pay dividends out of capital to SWEPCO.

Dolet Hills proposes that its Board of Managers declare and pay dividends out of its capital surplus over time in an amount up to the full amount of $4,712,000, when cash is available. As of June 30, 2004, Dolet Hills has paid in capital of $4,712,000.

The Delaware Limited Liability Company Act (Title 6, Chapter 18, Section 607) provides that: ''A limited liability company shall not make a distribution to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the limited liability company, other than liabilities to members on account of their limited liability company interests and liabilities for which the recourse of creditors is limited to specified property of the limited liability company, exceed the fair value of the assets of the limited liability company, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the limited liability company only to the extent that the fair value of that property exceeds that liability.''

SWEPCO is entitled to earn a specified rate of return on its capital contributions to Dolet Hills. [Louisiana Order No. U–21453, U–20925(SC), and U–2092(SC)(Subdocket G)] This return is factored in to the cost of the lignite sold to the Plant. If the Commission authorizes Dolet Hills to pay the requested dividends out of capital, SWEPCO's total capital investment in Dolet Hills will be reduced by the amount of those dividends. The effect of this reduction in SWEPCO's capital investment will be to reduce the cost of the lignite provided to the Plant.

Dolet Hills is therefore seeking authorization from the Commission to pay SWEPCO dividends in an amount up to the full amount of its capital surplus on its common stock to the full extent of the Delaware Limited Liability Company Act.

[7] See HCAR No. 27485 (December 28, 2001).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3335 Filed 11–24–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27914]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

November 19, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 13, 2004, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 13, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Xcel Energy Inc., et al. (70–10229)

Xcel Energy Inc. (''Xcel Energy''), a registered public-utility holding company under the Act, and Xcel Energy Services, Inc. (''Xcel Energy Services''), a wholly owned subsidiary services company, both located at 800 Nicollet Mall, Minneapolis, MN 55402, and Public Service Company of Colorado (''PSCo''), one of Xcel Energy's wholly owned utility companies, 1225 17th Street, Denver, CO 80202 (collectively, ''Applicants''), have filed an application-declaration, as amended (''Application''), with the Commission under sections 9(a)(1), 10 and 12(d) of the Act and rules 44 and 54.

Xcel Energy proposes to sell one of its wholly owned public-utility company subsidiaries, Cheyenne Light, Fuel & Power Company (''Cheyenne''), to Black Hills Corporation (''Black Hills''), a public-utility holding company exempt from registration under section 3(a)(1) of the Act by rule 2.[1] Cheyenne is an electric- and gas-utility company, operating in and around Cheyenne, Wyoming, and serving approximately 38,000 electric and 31,000 natural gas customers.[2] It is subject to the jurisdiction of the Wyoming Public Service Commission (''Wyoming Commission'') and the Federal Energy Regulatory Commission (''FERC'').[3]

Xcel Energy directly owns five utility subsidiaries, serving electric or natural gas customers in 11 states: Cheyenne, Northern States Power Company, Northern States Power Company, PSCo and Southwestern Public Service Co. The proposed buyer of Cheyenne, Black Hills, is headquartered in Rapid City, South Dakota. Its sole public-utility company subsidiary, Black Hills Power, Inc., has customers in eleven counties in western South Dakota, eastern Wyoming and southwestern Montana. Its nonutility subsidiaries are engaged in other energy-related and telecommunications activities.

Xcel Energy states that its agreement to sell Cheyenne to Black Hills was the result of an auction in which Black Hills was the successful bidder. On January 13, 2004, Xcel Energy and Black Hills entered into a stock purchase agreement in which Xcel Energy agreed to sell and transfer to Black Hills, and Black Hills agreed to purchase from Xcel Energy, all of the common stock of Cheyenne. The purchase price that Black Hills agreed to pay for Cheyenne's stock is the sum of (i) $82,000,000 in cash, (ii) minus the principal amount of indebtedness and all accrued and unpaid interest owed by Cheyenne on Cheyenne's bond issuance (as of the closing date on the sale),[4] (iii) plus or minus any adjustments due under the working capital and the capital expenditure adjustments provided for in the agreement.

Xcel Energy, Xcel Energy Services and PSCo also request authority to enter into a transition services agreement with Black Hills under which they will provide certain services to Cheyenne, including certain (i) operational services, (ii) corporate services, (iii) information services, and (iv) other services, for a period not to exceed 6 months (9 months for operational services), with a possible extension period of 3 months.

Black Hills Corporation, et al. (70–10255)

Black Hills Corporation (''Black Hills''), a South Dakota holding company exempt from registration under section 3(a)(1) of the Act by rule 2, and its subsidiaries, including Black Hills Power, Inc. (''Black Hills Power'' or ''Utility Subsidiary''), its electric public-utility subsidiary (collectively, ''Subsidiaries''), all located at 625 Ninth Street, Rapid City, SD 57701 (together, ''Applicants''), have filed an application-declaration, as amended (''Application'') with the Commission under sections 6, 7, 9, 10, 11, 12(b) and (c) and 13(b) of the Act and rules 43, 45, 54 and 88 through 92 of the Act.

Black Hills seeks to purchase Cheyenne Light, Fuel & Power Company (''Cheyenne''), an electric- and gas-utility company subsidiary of Xcel Energy Inc. (''Xcel Energy''), a registered holding company, (''Acquisition'') and requests certain related authorizations.[5] Cheyenne is a retail utility serving customers located in Wyoming exclusively. Cheyenne would be Black Hills' second public-utility company subsidiary upon completion of the Acquisition (together with Black Hills Power, ''Utility Subsidiaries'').[6]

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[1] Black Hills has stated its intention to register as a public-utility holding company under section 5 of the Act upon receipt of Commission financing and other related authorizations (for which it has filed and which are currently pending). *See* Black Hills Corporation, *et al.*, Holding Co. Act Release No. 27907 (November 1, 2004).

[2] Cheyenne had revenues of approximately $97 million as of December 31, 2003, with net income of approximately $2.1 million. Cheyenne was incorporated in 1900 under the laws of Wyoming and was acquired in October 1923 by PSCo.

[3] The Wyoming Commission's jurisdiction extends to Cheyenne's facilities, rates, services, accounts and issuance of securities. The FERC's jurisdiction extends to Cheyenne's accounting practices, transmission and sales of electricity in interstate commerce.

[4] The bonds were issued under an indenture dated March 1, 1948, as amended, between Cheyenne and U.S. National Bank of Denver. As of March 31, 2004, about $25 million in principal was outstanding.

[5] Xcel Energy has filed an application with the Commission for authorization to sell Cheyenne to Black Hills. *See* SEC File No. 70–10229 (May 14, 2004). Xcel Energy has also requested authority to enter into a transition services agreement with Black Hills, for a brief period, to provide Cheyenne with certain continued operational and administrative services immediately following the Acquisition to assure the transition of Cheyenne.

[6] Black Hills intends to register as a holding company under section 5 of the Act upon receipt of Commission authorizations (for which it has filed and which are currently pending) enabling it and its Subsidiaries and businesses to operate and engage in various financing and investment activities, intrasystem services and other related

Continued

Black Hills is an energy company with three principal subsidiaries: (i) Black Hills Power, which is engaged in the generation, transmission, distribution and sale of electricity to customers in South Dakota, Wyoming and Montana and the wholesale sale of power in the western United States; (ii) Black Hills Energy, Inc. (''Black Hills Energy''), a direct wholly owned subsidiary engaged, through subsidiaries, in the development, ownership and operation of exempt wholesale generators, as defined in section 32 of the Act, and qualifying facilities as defined in the Public Utility Regulatory Policies Act of 1978, the production, transportation and marketing of natural gas, oil, coal and other energy commodities, power marketing and other energy-related activities; and (iii) Black Hills FiberCom, LLC, a wholly owned subsidiary of Black Hills Energy, engaged in telecommunications activities and which Applicants anticipate will become an exempt telecommunications company, as defined in section 34 of the Act.

Black Hills states that its common stock issued and outstanding was 32,458,000 and its total assets were $2,014,667,000 ($486,827,600 in total electric utility assets and $1,556,951,840 in other corporate assets), as of June 30, 2004. For the six months ended June 30, 2004, Black Hills Power had electric utility revenues of $81,414,000. For the year ended December 31, 2003, Black Hills Power had electric utility revenues of $170,942,000. Black Hills has investment grade ratings from two major rating agencies (Baa3 from Moody's and BBB− from Standard & Poor's). Black Hills anticipates that, upon the consummation of the Acquisition, its ratio of common equity as a percentage of total capitalization of Black Hills will be approximately 44%.

In connection with the request for authorization to make the Acquisition, Black Hills also requests certain authorizations to enable it, its Subsidiaries and Cheyenne, to operate and engage in certain financing and investment activities, intrasystem services and other related activities and transactions following the Acquisition, to facilitate Cheyenne's operation in the Black Hills system (''Black Hills System''). Black Hills proposes that these authorizations, for, or related to, Cheyenne, be subject to the limitations contained in any Commission order resulting from Black Hills' pending Financing Application, with none of these Cheyenne proposals causing any change in the limitations proposed in the Financing Application (other than the inclusion of Cheyenne as an authorized participant in the relevant respects).[7] Black Hills' requests for Cheyenne financing authorizations, for the period beginning with the effective date of an order issued in this matter, through December 31, 2007 (''Authorization Period''), and for certain related activities are summarized as follows:

1. For Black Hills, directly or indirectly, to retain or refinance Cheyenne's existing outstanding long-term utility financing arrangements and debt issuances in the total amount of approximately $25 million (''Cheyenne's Existing Long-Term Debt'' or ''Cheyenne's Existing Financings'');

2. For Cheyenne (like the other Subsidiaries), to issue and sell securities, comprised of: (a) Common stock (''Subsidiary Common Stock'') (b) preferred stock and preferred stock equivalent securities (''Subsidiary Preferred Securities,'' as defined below), (c) unsecured and secured short-term debt (''Subsidiary Short-Term Debt'') and (d) unsecured and secured long-term debt (''Subsidiary Long-Term Debt'') (subject to the same limitations as the other Subsidiaries, including in the limit of up to an aggregate amount of an additional $1 billion in securities outstanding at any one time (''Aggregate Additional Financing Limit''), as described in the Financing Application);

3. For Cheyenne (like the other Subsidiaries), to enter into transactions to manage interest rate risk, including anticipatory hedging transactions (together, ''Interest Rate Hedging Transactions'') (subject to the same limitations as the other Subsidiaries described in the Financing Application);

4. For Cheyenne (like the other Subsidiaries), to issue guarantees and other credit support (''Guarantees'') (subject to the same limitations as the other Subsidiaries, including the limit of up to an aggregate amount of $400 million (''Additional Guarantee Limit'') described in the Financing Application);

5. For Cheyenne (like the other Subsidiaries), (a) to form financing entities (''Financing Subsidiaries,'' as defined below) and (b) to issue and sell securities through Financing Subsidiaries, subject to the Aggregate Additional Financing Limit;

6. For Cheyenne (like the other Utility Subsidiary), to participate in the money pool to be established by Black Hills and enter into certain intrasystem financing arrangements (subject to the same limitations as Black Hills Power, described in the Financing Application); and

7. For Cheyenne (like the other Subsidiaries), to obtain services from the service company established by Black Hills, to provide certain services among the Subsidiaries and to be excepted, among other things, from various at-cost rules applicable to transactions among Black Hills System companies (subject to the same limitations as Black Hills Power, described in the Financing Application).

Proposed Acquisition

Black Hills states that it and Xcel Energy entered into a stock purchase agreement, dated as of January 13, 2004 (''Acquisition Agreement''), in which Black Hills agreed to acquire all the common stock of Cheyenne for $82 million, payable in cash at closing, less principal and accrued interest on all Cheyenne's indebtedness, with appropriate adjustments for working capital and capital expenditures. Black Hills expects the purchase price to be approximately equal to Cheyenne's book value as of the date of the Acquisition Agreement. Black Hills does not expect any new long-term debt to be issued to finance Black Hills' cash payment to Xcel Energy, although Black Hills, indirectly, will be assuming approximately $25 million of Cheyenne's Existing Long-Term Debt.[8]

Black Hills states that Cheyenne will be operated as a subsidiary. Furthermore, it has not yet determined Cheyenne's leadership and the exact composition of the Cheyenne Board of Directors, but it expects the Cheyenne official in charge of day-to-day operations at Cheyenne will be a Wyoming resident, as will certain

activities and transactions following its registration (''Financing Application''). *See* Black Hills Corporation, *et al.*, Holding Co. Act Release No. 27907 (November 1, 2004). Black Hills Power is regulated as a public-utility company by the states of South Dakota, Wyoming and Montana (which regulate its retail electric rates and charges and most of its securities issuances) and, under the Federal Power Act, by the Federal Energy Regulatory Commission (''FERC''). Black Hills Energy, directly and indirectly, owns the Black Hills' interests in nonutility subsidiaries (''Nonutility Subsidiaries'').

[7] *See supra* note 6.

[8] Black Hills states that the Acquisition Agreement has been approved by the Boards of Directors of Black Hills and Xcel Energy and no shareholder approval is required. Black Hills also states that it will use the purchase method of accounting for the Acquisition, in accordance with Statement of Financial Accounting Standards (''SFAS'') No. 141 (''Business Combinations'') (*i.e.*, the total cost of acquiring Cheyenne will be assigned to the tangible and identifiable intangible assets acquired and liabilities assumed in the Acquisition based on their fair values on the date of Acquisition). Black Hills states that it intends to ''push down'' the purchase accounting and establish a new basis of accounting for the stand-alone financial statements of Cheyenne.

members of Cheyenne's Board of Directors. Cheyenne's corporate headquarters will remain in Cheyenne and Cheyenne will retain local Wyoming facilities for customer service, maintenance and fieldwork operations.

Black Hills' current (and, at this time, its only) Utility Subsidiary, Black Hills Power, a South Dakota corporation, has its principal office in Rapid City, South Dakota, and is engaged in the generation, transmission, distribution and sale of electricity to approximately 60,000 retail customers in eleven counties throughout a 9,300 square mile service territory comprising portions of western South Dakota, eastern Wyoming and southern Montana.[9] Black Hills Power also sells bundled capacity and energy service to the municipal electric system of the City of Gillette, Wyoming, and wholesale capacity and energy to other wholesale customers under a market-based rate wholesale power sales tariff on file with FERC. It owns generating facilities in its South Dakota service area and in Wyoming's Powder River Basin, just west of Black Hills Power's service territory. In addition, Black Hills Power owns and operates a small transmission system of 230 kV and smaller transmission facilities located in southwest South Dakota and northeast Wyoming, with a 69 kV distribution extension into southeast Montana.[10] Black Hills Power's transmission system totals 2,195 miles of transmission facilities.[11] It provides transmission service over its system under a joint open access transmission tariff on file with FERC (''Black Hills Power Joint Tariff'').[12]

Black Hills states that Cheyenne is a small combination retail electric and gas operating utility, serving 37,806 electric retail customers and 30,709 gas retail customers, in and around the City of Cheyenne in southeast Wyoming, as of December 31, 2003. Cheyenne makes no wholesale sales of electricity.

Cheyenne's authorized capitalization consists of 100 shares of common stock, par value $0.01 per share, and 1,000,000 shares of preferred stock, par value $100 per share. There are 100 shares of Cheyenne common stock issued and outstanding, as of December 31, 2003. Cheyenne's other outstanding securities consists of $25 million in long-term debt, as of December 31, 2003. Cheyenne has no subsidiaries.

Its property, plant and equipment was valued at approximately $82,642,100 ($49,544,478 (net electric utility property, plant and equipment), $29,357,486 (net gas utility property, plant and equipment), and $3,740,136 (net other corporate assets)), as of December 31, 2003. Cheyenne had electric-utility revenues of $72,107,894 and gas-utility revenues of $24,926,180, for the year ended December 31, 2003. Black Hills states that Cheyenne averaged over $4 million per year in net operating income over the last ten years.

Black Hills states that all generating facilities in the Black Hills System owned by utilities will be owned or operated, maintained and dispatched by Black Hills Power. Some generating resources owned by Black Hills Energy also may be scheduled or operated, maintained and dispatched by Black Hills Power as part of a coordinated operating function for the Black Hills System. Cheyenne does not currently own any generating facilities and, as a result, historically, has obtained its full electric requirements for its retail loads from off-system suppliers. Since 2001, the full requirements service has been provided by its Xcel Energy affiliate PSCo. Black Hills supplies power to PSCo; consequently, it may, from time to time, indirectly be supplying a portion of Cheyenne's requirements.[13]

Black Hills states that Cheyenne is not directly interconnected with any of the Xcel Energy operating companies, is not considered part of the primary Xcel Energy electric system and is not a party to the Xcel Energy system's joint operating agreement.[14] Cheyenne, along with the other Xcel Energy operating companies, offers transmission service on a joint basis under Xcel Energy's Open-Access Transmission Tariff (''Xcel Energy OATT'').

Cheyenne owns only limited transmission facilities. They are two 115 kV transmission line segments that total 25.5 miles in length (and are situated wholly within, and operated by, the WAPA Rocky Mountain Region control area), and certain limited transmission facilities in two WAPA transmission substations and a switching station. Cheyenne uses them to interconnect its distribution system with the WAPA transmission system.[15] Although Cheyenne's transmission facilities lines operate at transmission voltage (115 kV) and enable Cheyenne's interconnection with the WAPA system, effectively, they serve only to extend Cheyenne's distribution system.[16] Cheyenne does not have any rate schedules or tariffs on file with FERC. Black Hills states that Cheyenne is a ''public utility,'' as defined in section 201(e) of the Federal Power Act, solely due to its ownership of this limited set of transmission facilities.

Cheyenne also provides natural gas distribution service to over 30,000 retail customers in a 1,200 square mile service area of southeastern Wyoming, in and adjacent to Cheyenne, which substantially overlaps its electric service area. In 2003, 26% of Cheyenne's operating revenues and 36% of operating income came from its gas operations.

[9] Black Hills Power's distribution facilities in Montana are limited and Black Hills Power served only 34 retail customers in Montana in 2003.

[10] Black Hills Power also shares an ownership interest with Basin Electric in a new 200–MW capacity AC/DC/AC converter tie facility located at Rapid City, South Dakota (''Rapid City Tie'') that interconnects the Western and Eastern electric grids. Due to its system's isolated location, Black Hills Power provides transmission service to only a small number of third-party customers.

[11] The Black Hills Power transmission system is integrated with the regional transmission system, with interconnections with the Western Area Power Administration (''WAPA'') and PacifiCorp transmission systems, and Black Hills Power provides transmission service to itself and third-party transmission customers. Black Hills Power's transmission system is located within WAPA's Rocky Mountain Region (''RMR'') transmission control area. Black Hills Power operates its transmission system as a subcontrol area within the WAPA RMR control area. Black Hills Power's system is directly interconnected with the WAPA system at Stegall West substation, in Nebraska, and can also reach WAPA's system through a short transmission path over PacifiCorp's transmission system to PacifiCorp's Dave Johnston/Casper substation, which is directly interconnected with the WAPA system.

[12] The Black Hills Power Joint Tariff governs transmission on the combined transmission systems of Black Hills Power and neighboring transmission systems of Basin Electric Power Cooperative and Powder River Energy Corporation. Transmission service over the Rapid City Tie is available under the Black Hills Power Joint Tariff.

[13] Specifically, in 2001, Black Hills Wyoming, Inc. (''Black Hills Wyoming''), a wholly owned indirect Nonutility Subsidiary that owns and operates electric generating facilities in Wyoming, entered into two long-term power sales agreements with Cheyenne to supply up to 100 MW of electric capacity, associated energy and some ancillary services on a unit-contingent basis (''PPAs''). One PPA expires in 2011, the other expires in 2013. Cheyenne later assigned the PPAs to PSCo through 2003 and again from 2004 through 2007, periods when PSCo was, or will be, Cheyenne's full requirements supplier. After 2007, the PPAs automatically will revert back from PSCo to Cheyenne. Under the PPAs through 2007, PSCo may from time to time dispatch Black Hills Wyoming's generation to serve Cheyenne's load. Black Hills Wyoming (formerly known as Black Hills Generation, Inc.) is an exempt wholesale generator, as defined in section 32 of the Act. *See also* Black Hills Generation, Inc., 95 FERC ¶ 62,025 (2001).

[14] Black Hills states that Cheyenne is a separate system that Xcel Energy was permitted to retain under the Act. Xcel Energy operates an electric system, coordinating certain operations under a joint operating agreement.

[15] Cheyenne has a renewable, firm network integration transmission service agreement with WAPA, with three WAPA-defined interconnection points where Cheyenne can accept defined amounts of power delivered over the WAPA system.

[16] Black Hills states that, while transmission over the Cheyenne transmission facilities is offered under Xcel Energy's OATT, Xcel Energy has never received any request for transmission service over the Cheyenne transmission facilities.

The Related Financing and Other Authorizations

Black Hills proposes that the same general financing parameters that it has proposed in its Financing Application for it and its other Subsidiaries be applicable to Cheyenne's External Financings.[17] These parameters are as follows.

Black Hills proposes that the effective cost of capital on any of Cheyenne's preferred securities, short-term debt and long-term debt will not exceed competitive market rates available at the time of the issuance of securities, having the same or reasonably similar terms and conditions issued by companies of reasonably comparable credit quality; provided that in no event will the effective cost of capital exceed, (1) on any series of Subsidiary Preferred Securities or Subsidiary Long-Term Debt, 500 basis points over a U.S. Treasury security having a remaining term equal to the term of the series; and (2) on Subsidiary Short-Term Debt, 300 basis points over the London Interbank Offered Rate (''LIBOR'') for maturities of less than one year.

Black Hills also states that the maturity of any long-term indebtedness will not exceed 50 years and that all preferred securities will be redeemed no later than 50 years after their issuance.

In addition, with respect to issuance expenses, Black Hills states that the underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of a security that is the subject of this Application (not including any original issue discount) will not exceed 5% of the principal or total amount of the security being issued.

With respect to the applicable common equity ratio and any investment grade ratings by the rating agencies, Black Hills states that the consolidated common equity of Black Hills was 47% of total consolidated capitalization (common equity, preferred stock and long-term and short-term debt, including current maturities on long-term debt), as of June 30, 2004. Black Hills commits that it and its Utility Subsidiaries will each maintain a common equity ratio (as reflected in the most recent 10–K or 10–Q (filed with the Commission as required by the Securities Exchange Act of 1934, as amended (''34 Act''), and as adjusted to reflect subsequent events that affect capitalization) of at least 30% of capitalization. Black Hills also represents that, apart from securities issued for the purpose of funding money pool operations, no guarantees or other securities, other than common stock, may be issued in reliance upon the authorization to be granted by the Commission in this matter, unless (i) the security to be issued, if rated, is rated investment grade; (ii) all outstanding securities of the issuer, that are rated, are rated investment grade; and (iii) all outstanding securities of Black Hills (the holding company in the Black Hills System), that will be registered, that are rated, are rated investment grade (''Investment Grade Condition''). For purposes of this Investment Grade Condition, a security will be deemed to be rated ''investment grade,'' if it is rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3–1 under the 34 Act. The Investment Grade Condition ratings test will not apply to any issuance of common stock. Black Hills also requests that the Commission reserve jurisdiction over the issuance of any securities that are rated below investment grade. Black Hills further requests that the Commission reserve jurisdiction over the issuance of any guarantee or other securities at any time that the conditions set forth in clauses (i) through (iii) above are not satisfied.

Black Hills also states that proceeds from the sale of securities in any Cheyenne external financing transactions will be used for general corporate purposes.

Black Hills requests that Cheyenne be authorized to issue and sell securities, comprised of: (a) Subsidiary Common Stock, (b) Subsidiary Preferred Securities,[18] (c) Subsidiary Short-Term Debt and (d) Subsidiary Long-Term Debt (and included in the limit of up to an additional $1 billion in securities outstanding at any one time, Black Hills' Aggregate Additional Financing Limit (as also described in the Financing Application). Black Hills also requests that Cheyenne be authorized (like the other Subsidiaries) to issue Guarantees (subject to the same limitations as the other Subsidiaries described in the Financing Application (including the limit of up to an aggregate amount of $400 million, Black Hills' Additional Guarantee Limit).

In addition, Black Hills requests authorization for Cheyenne (like the other Subsidiaries) to enter into Interest Rate Hedging Transactions of outstanding indebtedness (collectively, ''Interest Rate Hedges'')[19] and for anticipated debt offerings (collectively, ''Anticipatory Hedges''),[20] subject to certain limitations and restrictions, in order to reduce or manage its interest rate costs. Interest Rate Hedging Transactions may be executed on-exchange (''On-Exchange Trades'') through brokers by the opening of futures and/or options positions traded on the Chicago Board of Trade or other futures exchange, the opening of over-the-counter positions with one or more Approved Counterparties (''Off-Exchange Trades''), or a combination of On-Exchange Trades and Off-Exchange Trades. Black Hills states that Cheyenne will not engage in speculative transactions. Black Hills states that it and Cheyenne will comply with SFAS No. 133 (''Accounting for Derivatives Instruments and Hedging Activities''), as adopted and implemented by the Financial Accounting Standards Board (''FASB''). Interest Rate Hedges and Anticipatory Hedges will qualify for hedge accounting treatment under the FASB standards in effect and as

[17] *See also,* Financing Application, *supra* note 6.

[18] ''Subsidiary Preferred Securities'' is defined to include preferred stock or other types of preferred securities of Cheyenne (including securities such as trust-preferred securities, monthly income preferred securities and equity-linked securities).

[19] Interest Rate Hedges will make use of financial instruments commonly used in today's capital markets, such as exchange-traded interest rate futures contracts and over-the-counter interest rate swaps, caps, collars, floors, swaptions, and structured notes (*i.e.,* a debt instrument in which the principal and/or interest payments are linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury or U.S. governmental (*e.g.,* Fannie Mae) obligations, or LIBOR-based swap instruments. In addition, Interest Rate Hedges (other than exchange-traded interest rate futures or options contracts) would only be entered into with counterparties whose senior debt ratings, or the senior debt ratings of any credit support providers who have guaranteed the obligations of such counterparties, as published by Standard & Poor's, are equal to or greater than BBB, or an equivalent rating from Moody's or Fitch, Inc. (''Approved Counterparties''). Black Hills also states that fees, commissions and other amounts payable to an Approved Counterparty or exchange or other party (excluding, however, the swap or option payments) related to an Interest Rate Hedge will not exceed those generally obtainable in competitive markets for parties of comparable credit quality.

[20] Anticipatory Hedges (other than exchange-traded interest rate futures or options contracts) would only be entered into with Approved Counterparties and would be used to fix the interest rate and/or limit the interest rate risk associated with any new issuance. Anticipatory Hedges may be implemented through: (i) A forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury securities and/or a forward swap (each a ''Forward Sale''), (ii) the purchase of put options on U.S. Treasury securities (''Put Options Purchase''), (iii) a Put Options Purchase in combination with the sale of call options on U.S. Treasury securities (''Zero Cost Collar''), (iv) transactions involving the purchase or sale, including short sales, of U.S. Treasury securities, or (v) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar, and/or other derivative or cash transactions, including, but not limited to, appropriate structured notes, caps and collars.

determined at the date the Interest Rate Hedges or Anticipatory Hedges are entered into.

Black Hills also requests authorization for Cheyenne to acquire, directly or indirectly, the common stock or other equity securities of one or more entities formed exclusively for the purpose of facilitating the issuance of long-term debt and/or preferred securities and for the loan or other transfer of the proceeds of those issuances to Cheyenne (''Financing Subsidiaries''). Black Hills also requests that Cheyenne be permitted to enter into one or more Guarantees for its Financing Subsidiary, subject to the Additional Guarantee Limit. Black Hills also requests authority for Cheyenne to enter into expense agreements (''Expense Agreements'') with any Financing Subsidiary, under which Cheyenne would agree to pay all expenses of the Financing Subsidiary. Black Hills states that no Financing Subsidiary will acquire or dispose of, directly or indirectly, any interest in any ''utility asset,'' as that term is defined under the Act.

Black Hills also requests authorization for Cheyenne to issue to any Financing Subsidiary, from time to time, in one or more series, unsecured debentures, unsecured promissory notes, or other unsecured debt instruments (''Notes''). Black Hills also asks that a Financing Subsidiary be permitted to apply the proceeds of any external financing by it, plus the amount of any equity contribution made to it, from time to time, to purchase the Notes.[21]

Black Hills also requests that Cheyenne be permitted to participate in any Utility Money Pool established by Black Hills in accordance with authorizations resulting from the Financing Application, on the same basis as Black Hills Power. Black Hills further requests that Cheyenne be permitted (like the other Subsidiaries), to undertake internal reorganizations of subsidiaries and businesses, as described in the Financing Application.

In the Financing Application, Black Hills requests authority to organize Black Hills Services Company, Inc., a services company for the Black Hills System in connection with Black Hills' anticipated holding company registration and to engage in various affiliate transactions for the provision of goods, services and construction.[22] Black Hills requests that Cheyenne, like Black Hills Power, be permitted to provide to other associate companies, services that are incidental to its utility businesses, including, but not limited to, infrastructure services maintenance, storm outage emergency repairs, supply planning services, switchyard activities and services of personnel with specialized expertise related to the operation of the utility, to the extent any of these services might exceed those allowable under applicable rules, as well as provide certain other services and engage in certain affiliate transactions to the same extent that Black Hills Power may be permitted to act by the Commission in connection with the Financing Application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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[21] The terms (*e.g.*, interest rate, maturity, amortization, prepayment and default provisions, etc.) of Notes would be designed to parallel the terms of the securities issued by the Financing Subsidiary to which the Notes relate.

[22] *See supra* note 6.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27913]

Filing Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

November 19, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission under provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 15, 2004, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 15, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Alliant Energy Corporation, et al. (70–10249)

Alliant Energy Corporation (''Alliant Energy''), a registered holding company, 4902 N. Biltmore Lane, Madison, Wisconsin 53718; Wisconsin Power and Light Company (''WP&L''), Interstate Power and Light Company (''IP&L''), and Wisconsin River Power Company (''WRP''), public-utility subsidiaries of Alliant Energy; Alliant Energy Corporate Services, Inc. (''Alliant Services''), Alliant Energy's subsidiary service company; and the following non-utility subsidiaries of Alliant Energy: Alliant Energy Resources, Inc. (''AER''), Alliant Energy Nuclear LLC and its subsidiary, Alliant Energy Synfuel LLC and its subsidiaries, Alliant Energy EPC, LLC, Alliant Energy TransCo LLC and its subsidiary, Distribution Vision 2010, WPL Transco, LLC, AER Holding Company, AEG Worldwide, Inc. and its subsidiaries, Alliant Energy Neenah, LLC, Alliant Energy Transportation, Inc. and its subsidiaries, Alliant Energy Investments, Inc. and its subsidiaries, Alliant Energy International, Inc. and its subsidiaries, and Alliant Energy Integrated Services Company and its subsidiaries (collectively, ''Applicants''), have filed an application/declaration (''Application'') with the Commission in this proceeding pursuant to sections 6(a), 7, 9(a), 10, 12(b), 13(b), 32, 33 and 34 of the Act and rules 43, 45(a), 46(a), 53, 54, 58 and 80–92 under the Act.

Applicants request authority to engage in a variety of financing transactions, credit support arrangements, hedging transactions and other related proposals, as more fully discussed below, commencing on the effective date of an order issued under this filing and ending December 31, 2007 (''Authorization Period''). Among other things:

1. Alliant Energy requests authorization to issue and sell during the Authorization Period any combination of the following types of securities: common stock, preferred securities, long-term debt securities having maturities of one to fifty years and short-term debt securities having maturities of less than one year, all subject to an aggregate limitation not to exceed $500 million at any time outstanding and excluding shares of common stock separately authorized by the Commission in connection with Alliant Energy's Rights Agreement. Further, Alliant Energy requests authorization to issue guarantees and

provide other forms of credit support with respect to securities issued by, or other obligations of, its subsidiaries in an aggregate principal amount not to exceed $3.0 billion at any time outstanding.

2. IP&L requests authorization to issue and sell during the Authorization Period any combination of the following types of securities: preferred securities, long-term debt securities and short-term debt securities, all subject to an aggregate limitation not to exceed $700 million at any time outstanding or such lesser amount as may be authorized from time to time by the Minnesota Public Utilities Commission (''MPUC'').

3. WRP requests authorization to issue and sell during the Authorization Period long-term debt and short-term debt in an aggregate amount not to exceed $2.5 million at any time outstanding.

4. Further, Alliant Energy, IP&L and WRP request approval of certain general terms and conditions, including limits on the effective cost of funds, in connection with the above, and certain other proposed transactions for which the Applicants seek authority.

5. AER and certain non-utility subsidiaries request authorization to provide guarantees and other forms of credit support with respect to securities issued by, and other obligations of, other non-utility subsidiaries in an aggregate amount not to exceed $600 million at any time outstanding, in addition to guarantees exempt under rules 45(b) and 52 under the Act.

6. Alliant Energy, AER and certain non-utility subsidiaries request authorization to continue their participation in the Non-Utility Money Pool as previously authorized and Alliant Services requests authorization to become a participant in the Non-Utility Money Pool.

7. Applicants seek authority to maintain the previously authorized level of aggregate investment in foreign utility companies (''FUCOs'') and exempt wholesale generators (''EWGs'').[1]

I. The Alliant Energy System

According to the Application, Alliant Energy's principal public-utility subsidiaries are IP&L, WP&L and South Beloit Water, Gas and Electric Company (''SBWG&E''). Together, IP&L, WP&L and SBWG&E provide public-utility service to approximately 970,000 electric and 409,000 retail gas customers in parts of Wisconsin, Iowa, Minnesota, and Illinois. WP&L also owns 50% of the issued and outstanding common stock of WRP, which owns and operates hydroelectric generating facilities in Wisconsin. IP&L, WP&L, SBWG&E, and WRP are herein referred to collectively as the ''Utility Subsidiaries.'' [2]

In addition to Alliant Services, the Application states that Alliant Energy's principal non-utility subsidiary is AER, which serves as the holding company for substantially all of Alliant Energy's non-utility investments and subsidiaries. AER has ten direct wholly-owned non-utility subsidiaries (Alliant Energy Transportation, Inc., Alliant Energy International, Inc., Alliant Energy Investments, Inc., Alliant Energy Integrated Services Company, AER Holding Company, AEG Worldwide, Inc., Alliant Energy Synfuel LLC, Alliant Energy Neenah, LLC, Alliant Energy EPC, LLC, and LNT Communications L.L.C.) that are engaged, directly and indirectly through other non-utility subsidiaries, principally in (i) rail transportation, barge terminal and hauling, and fuel transportation and handling operations; (ii) developing, owning and operating domestic generation projects and foreign utility systems and providing technical and operational services to owners of wind power projects; (iii) various other unregulated energy-related businesses, including steam production, fuel management services and energy management services; (iv) providing environmental consulting and engineering services; (v) synthetic fuels processing; and (vi) management of investments in telecommunications operations, undeveloped real estate, and affordable housing projects. Alliant Services, AER, AER's direct non-utility subsidiaries named above, and the other direct and indirect non-utility subsidiaries of Alliant Energy named in the application/declaration, and their respective non-utility subsidiaries, are referred to as the ''Non-Utility Subsidiaries.''

The Utility Subsidiaries and Non-Utility Subsidiaries are referred to collectively as the ''Subsidiaries.'' The term Subsidiaries also includes any other subsidiaries hereafter acquired, directly or indirectly, by Alliant Energy in a transaction that is exempt under the Act or rules thereunder (in particular, Rule 58) or in a transaction that has been approved by the Commission either in this proceeding (*e.g.*, a ''Financing Subsidiary'' or ''Intermediate Subsidiary,'' as described below) or in a separate proceeding. Alliant Energy and the Subsidiaries are sometimes referred to as the ''Applicants.''

II. Requests for Authority

Applicants request authority to engage in a program of external financing by Alliant Energy, IP&L and WRP, credit support arrangements, continuation of the Non-Utility Money Pool, interest rate hedging transactions, and other related proposals for the period commencing January 1, 2005 and extending through December 31, 2007 (the ''Authorization Period'').[3] Specifically, Applicants seek authority for the following:

A. General Terms and Conditions

Applicant proposes to make the following general terms applicable where appropriate to the proposed external financing activities of Alliant Energy, IP&L and WRP as described below:

(a) *Effective Cost of Funds.* The effective cost of money (*i.e.*, the aggregate of all payments, including interest and other periodic payments) in respect of stock purchase contracts and stock purchase units issued by Alliant Energy will not exceed at the time of issuance the greater of (a) 700 basis points over the yield to maturity of comparable-term U.S. Treasury securities or (b) a gross spread over U.S. Treasury securities that is consistent with similar securities of comparable credit quality and maturities issued by other companies. The effective cost of money on long-term debt securities issued by Alliant Energy, IP&L and WRP will not exceed at the time of issuance the greater of (a) 500 basis points over the yield to maturity of comparable-term U.S. Treasury securities if the interest

[1] The previously authorized level of aggregate investment was set at 100% of Alliant Energy's consolidated retained earnings which, at the time, as $805.7 million.

[2] Alliant Energy also indirectly holds approximately 25% of the common stock of ATC Management, Inc. and an approximately 25% membership interest in American Transmission Company, LLC, which were formed to acquire, own and manage the Wisconsin transmission assets of Alliant Energy and certain other Wisconsin electric utility companies. These subsidiaries are not applicants in this proceeding.

[3] The current financing authority for Alliant Energy and its Subsidiaries is contained in a number of separate orders: *Alliant Energy et al., HCAR No. 27448 (October 3, 2001) (''October 2001 Order''), as modified by Alliant Energy, et al., HCAR No. 27620 (December 17, 2002); Alliant Energy et al., HCAR No. 27542 (June 21, 2002), as modified by Alliant Energy et al., HCAR No. 27575 (October 10, 2002) and Alliant Energy et al., HCAR No. 27615 (December 12, 2002); IES Utilities, Inc. HCAR No. 26945 (November 25, 1998) as modified by IES Utilities, Inc. HCAR No. 27306 (December 15, 2000) and Interstate Power Company, HCAR No. 27456 (October 24, 2001) and Interstate Power and Light Company, HCAR No. 27863 (June 25, 2004); and Interstate Power and Light Company, HCAR No. 27614 (December 12, 2002).* Applicants state that IP&L will relinquish its authority under this last referenced order upon the effective date of the Commission's order in this proceeding.

rate on such long-term debt securities is a fixed rate or 500 basis points over the London Interbank Offered Rate (''LIBOR'') for maturities of less than one year if the rate on such long-term debt securities is a floating rate, or (b) a gross spread over U.S. Treasury securities or LIBOR, as applicable, that is consistent with similar securities of comparable credit quality and maturities issued by other companies. The effective cost of money on preferred stock issued by IP&L and preferred securities issued by Alliant Energy and IP&L will not exceed at the time of issuance the greater of (a) 600 basis points over the yield to maturity of comparable-term U.S. Treasury securities or (b) a gross spread over U.S. Treasury securities that is consistent with similar securities of comparable credit quality and maturities issued by other companies. The effective cost of money on short-term debt securities issued by Alliant Energy, IP&L and WRP will not exceed at the time of issuance the greater of (a) 500 basis points over the applicable reference rate (*e.g.* LIBOR, prime lending rate, *etc.*) or (b) a gross spread over LIBOR that is consistent with similar securities of comparable credit quality and maturities issued by other companies.

(b) *Maturity.* The maturity of long-term debt securities will be between one year and 50 years after the issuance thereof. Preferred securities, stock purchase contracts and stock purchase units will be redeemed no later than 50 years after the issuance thereof, unless converted into common stock. Preferred stock of IP&L may be perpetual in duration.

(c) *Issuance Expenses.* The underwriting fees, commissions or other similar remuneration paid in connection with any non-competitive issuance, sale or distribution of securities will not exceed the greater of (a) 5% of the principal or total amount of the securities being issued or (b) issuance expenses that are generally paid at the time of the pricing for sales of similar securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality.

(d) *Common Equity Ratio.* At all times during the Authorization Period, Alliant Energy and each Utility Subsidiary will maintain common equity of at least 30% of its consolidated capitalization (common stock equity, preferred stock equity, long-term debt and short-term debt); *provided* that Alliant Energy will in any event be authorized to issue common stock (including pursuant to stock-based plans maintained for shareholders, including new investors, officers, employees and non-employee directors) to the extent authorized herein.

(e) *Investment Grade Ratings.* The Applicants further represent that, except for securities issued to fund intrasystem financings, no guarantees or other securities, other than common stock, may be issued in reliance upon the authorization granted by the Commission, unless (i) the security to be issued, if rated, is rated investment grade; (ii) all outstanding securities of the issuer that are rated are rated investment grade; and (iii) all outstanding securities of Alliant Energy that are rated are rated investment grade. For purposes of this provision, a security will be deemed to be rated ''investment grade'' if it is rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of Rule 15c3–1 under the Securities Exchange Act of 1934, as amended (''1934 Act''). The ratings test will not apply to any issuance of common stock. The Applicants further request that the Commission reserve jurisdiction over the issuance of any guarantee or other securities in reliance upon the authorization granted by the Commission at any time that the conditions set forth in clauses (i) through (iii) above are not satisfied.

It is stated that the proceeds from the financings authorized by the Commission pursuant to this application/declaration will be used for general corporate purposes, including (i) financing, in part, investments by and capital expenditures of Alliant Energy and its Subsidiaries, (ii) funding of future investments in EWGs, FUCOs, and ''energy-related companies'' under Rule 58 (''Rule 58 Companies''), (iii) the acquisition, retirement or redemption by Alliant Energy or any Subsidiary of any of its own securities pursuant to Rule 42 or as authorized by the Commission in this proceeding, (iv) financing working capital requirements of Alliant Energy and its Subsidiaries, including by making contributions to the Non-Utility Money Pool, and/or (v) the acquisition of the securities or assets of other companies, as authorized in this proceeding or as may be authorized by the Commission in a separate proceeding. The Applicants represent that no financing proceeds will be used to acquire the equity securities of any new subsidiary unless such acquisition has been approved by the Commission in this proceeding or in a separate proceeding or in accordance with an available exemption under the Act or rules thereunder, including Sections 32 and 33 and Rule 58. Alliant Energy states that the aggregate amount of the proceeds of securities (including guarantees) issued by Alliant Energy to fund investments in EWGs and FUCOs will not, when added to Alliant Energy's ''aggregate investment'' in all such entities at any point in time, exceed the EWG/FUCO Investment Limitation authorized under the October 2001 Order. Alliant Energy requests the Commission to continue its reservation of jurisdiction over Alliant Energy's use of financing proceeds to fund investments in EWGs and FUCOs in an amount which, when added to Alliant Energy's ''aggregate investment'' in such entities from time to time, would equal $1.75 billion. The Applicants further represents that the proceeds of securities (including guarantees) used by Alliant Energy or any Subsidiary to fund investments in Rule 58 Companies will be subject to the limitations of that rule.

B. External Financing by Alliant Energy, IP&L and WRP

1. *Alliant Energy.* Alliant Energy requests authorization to issue and sell, from time to time during the Authorization Period, any combination of the following types of securities: (A) Common stock (''Common Stock'') (including options and warrants exercisable for Common Stock), forward stock purchase contracts (''Stock Purchase Contracts'') and stock units consisting of a Stock Purchase Contract coupled with an intermediate-term debt security of Alliant Energy (''Stock Purchase Units''), (B) preferred securities (including without limitation monthly income preferred trust securities) (''Preferred Securities''), (C) long-term debt securities having maturities of one to fifty years (''Long-term Debt''), and (D) and short-term debt securities having maturities of less than one year (''Short-term Debt''), *provided* that the aggregate amount of all such new securities issued during the Authorization Period shall not exceed $500 million at any time outstanding, and *provided further* that any shares of Common Stock sold pursuant to Alliant Energy's Rights Agreement (as separately authorized by the Commission) will not count against this limit.

Alliant Energy contemplates that such securities would be issued and sold directly to the public in one or more offerings registered under the Securities Act of 1933, as amended (the ''1933 Act'') either (i) through underwriters selected by negotiation or competitive bidding or (ii) through a selling agent acting either as agent or as principal for

resale to the public either directly or through dealers, or to one or more purchasers in privately-negotiated transactions or to one or more investment banking or underwriting firms or other entities who would resell such securities without registration under the 1933 Act in reliance upon one or more applicable exemptions from registration thereunder. All such securities sales will be at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets.

Alliant Energy may issue and sell Common Stock, Stock Purchase Contracts and Stock Purchase Units pursuant to underwriting agreements of a type generally standard in the industry. Public distributions may be pursuant to private negotiation with underwriters, dealers or agents, as discussed below, or effected through competitive bidding among underwriters. In addition, sales may be made through private placements or other non-public offerings to one or more persons. If underwriters are used in the sale of such securities, such securities will be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. Such securities may be offered to the public either through underwriting syndicates (which may be represented by a managing underwriter or underwriters designated by Alliant Energy) or directly by one or more underwriters acting alone, or may be sold directly by Alliant Energy or through agents designated by Alliant Energy from time to time. If dealers are used in the sale of such securities, Alliant Energy will sell such securities to the dealers, as principals. Any dealer may then resell such securities to the public at varying prices to be determined by such dealer at the time of resale. If Common Stock is being sold in an underwritten offering, Alliant Energy may grant the underwriters thereof a ''green shoe'' option permitting the purchase from Alliant Energy at the same price additional shares then being offered.

Alliant Energy also requests authorization to issue Common Stock or options, warrants or other stock purchase rights exercisable for Common Stock in public or privately-negotiated transactions in exchange for the equity securities or assets of other companies, *provided* that the acquisition of any such equity securities or assets has been authorized in a separate proceeding or is exempt under the Act or the rules thereunder (specifically, Rule 58).

Stock Purchase Contracts would obligate holders to purchase from Alliant Energy, and Alliant Energy to sell to the holders, a specified number of shares of Common Stock at a future date or dates (typically between three and five years after the date of issuance). The price per share of Common Stock may be fixed at the time the Stock Purchase Contracts are issued or may be determined by reference to a specific formula set forth in the Stock Purchase Contracts. Stock Purchase Contracts may be issued separately or as a part of Stock Purchase Units (a form of ''equity-linked'' security), which would consist of a Stock Purchase Contract and either Long-term Debt, debt securities of a Non-Utility Subsidiary or debt obligations of third parties, including U.S. Treasury securities, securing the holders' obligations to purchase the Common Stock under the Stock Purchase Contracts. Stock Purchase Contracts may require Alliant Energy and/or AER to make periodic payments to the holders of some or all of the Stock Purchase Units or vice versa, and such payments may be unsecured or prefunded on some basis. The Stock Purchase Contracts may require holders to secure their obligations under these Stock Purchase Contracts in a specified manner.

Preferred Securities (including but not limited to monthly income preferred securities) may be issued in one or more series with such rights, preferences, and priorities as may be designated in the instrument creating each such series, as determined by Alliant Energy's board of directors. Dividends or distributions on Preferred Securities will be made periodically and to the extent funds are legally available for such purpose, but may be made subject to terms which allow the issuer to defer dividend payments or distributions for specified periods. Preferred Securities may be convertible or exchangeable into shares of Common Stock or other securities that Alliant Energy is authorized to issue.

Long-term Debt may be issued in one or more series in the form of unsecured notes or debentures with such rights, preferences, and priorities as may be designated in the instrument creating each such series, as determined by Alliant Energy's board of directors. Long-term Debt of a particular series (a) may be convertible into any other securities that Alliant Energy is authorized to issue, (b) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount thereof, (c) may be entitled to mandatory or optional sinking fund provisions, (d) may provide for reset of the coupon pursuant to a remarketing arrangement, and (e) may be called from existing investors by a third party. The maturity dates, interest rates, redemption and sinking fund provisions and conversion features, if any, with respect to the Long-term Debt of a particular series, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding.

Short-term Debt may include commercial paper, unsecured bank notes and other forms of unsecured short-term indebtedness having maturities of less than one year from the date of issuance. Commercial paper may be sold in established domestic or European commercial paper markets. Such commercial paper would typically be sold to dealers at the discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally. It is expected that the dealers acquiring such commercial paper will reoffer it at a discount to corporate, institutional and, with respect to European commercial paper, individual investors. It is anticipated that such commercial paper will be reoffered to investors such as commercial banks, insurance companies, pension funds, investment trusts, foundations, colleges and universities, finance companies and nonfinancial corporations.

Alliant Energy may also establish and maintain back-up credit lines with banks or other institutional lenders to support its commercial paper program and other credit arrangements and/or borrowing facilities generally available to borrowers with comparable credit ratings as they may deem appropriate in light of their needs and existing market conditions providing for revolving credit or other loans and having commitment periods not longer than the Authorization Period. Only the amounts drawn and outstanding under these agreements and facilities will be counted against the proposed limit on new financing by Alliant Energy.

In additional to the foregoing requested authorizations, Alliant Energy also requests authorization to issue, from time to time during the Authorization Period, up to 8.5 million shares of Common Stock pursuant to its dividend reinvestment plan and incentive compensation and stock-purchase plans maintained for its and

its Subsidiaries' officers and employees and non-management directors.

2. *IP&L.* IP&L requests authorization to issue and sell, from time to time during the Authorization Period, any combination of the following types of securities: (A) Preferred stock (''Preferred Stock'') or other types of Preferred Securities, (B) Long-term Debt, and (C) Short-term Debt, *provided* that the aggregate amount of all such new securities issued during the Authorization Period shall not exceed $700 million at any time outstanding or such lesser amount as may be authorized from time to time by the MPUC.

Preferred Stock or Preferred Securities may be issued in one or more series with such rights, preferences, and priorities as may be designated in the instrument creating each such series, as determined by IP&L's board of directors. Dividends or distributions on Preferred Stock or Preferred Securities will be made periodically and to the extent funds are legally available for such purpose, but may be made subject to terms which allow the issuer to defer dividend payments or distributions for specified periods.

Long-term Debt of IP&L may be in the form of (a) one or more series of collateral trust bonds (''Trust Bonds'') issued under an Indenture of Mortgage and Deed of Trust, dated as of September 1, 1993, between IP&L and J.P. Morgan Trust Company, National Association, successor, as Trustee, as supplemented from time to time, (b) one or more series of senior unsecured debentures (''Senior Debentures'') issued under an Indenture, dated as of August 20, 2003, between IP&L and J.P. Morgan Trust Company, National Association, successor, as Trustee, or (c) agreements with issuing authorities for the issuance and sale of one or more series of tax-exempt bonds (''Tax-Exempt Bonds'') for the financing or refinancing of air and water pollution control facilities and sewage and solid waste disposal facilities (''Facilities''). As security for IP&L's obligations under any agreement relating to any series of Tax-Exempt Bonds, IP&L requests authority to (1) issue its promissory note or notes to evidence the loan to IP&L of the proceeds of the Tax-Exempt Bonds by the issuer thereof, (2) convey a subordinated security interest in any Facilities that are financed through the issuance of Tax-Exempt Bonds, (3) issue and pledge one or more new series of Trust Bonds (''Tax-Exempt Collateral Bonds''), (4) acquire and deliver letters of credit guaranteeing payment of the Tax-Exempt Bonds and enter into reimbursement agreements with respect to any such letters of credit, (5) acquire insurance policies guaranteeing payment of the Tax-Exempt Bonds, and (6) provide a direct guarantee of payment of the principal of and premium, if any, and interest on the Tax-Exempt Bonds. Consistent with the terms of the IP&L Long-term Debt Order, it is proposed that the principal amount of any Tax-Exempt Collateral Bonds issued by IP&L as collateral security for Tax-Exempt Bond obligations and any other forms of collateral related to the Tax-Exempt Bonds be excluded from the proposed overall financing limit on long-term financing by IP&L.

Short-term Debt of IP&L may include commercial paper notes and secured or unsecured bank notes or other forms of secured or unsecured short-term indebtedness having maturities of less than one year from the date of issuance. Commercial paper may be sold in established domestic or European commercial paper markets. Such commercial paper would typically be sold to dealers at the discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally. It is expected that the dealers acquiring such commercial paper will reoffer it at a discount to corporate, institutional and, with respect to European commercial paper, individual investors. It is anticipated that such commercial paper will be reoffered to investors such as commercial banks, insurance companies, pension funds, investment trusts, foundations, colleges and universities, finance companies and nonfinancial corporations.

IP&L may also establish and maintain back-up credit lines with banks or other institutional lenders to support its commercial paper program and other credit arrangements and/or borrowing facilities generally available to borrowers with comparable credit ratings as it may deem appropriate in light of its needs and existing market conditions providing for revolving credit or other loans and having commitment periods not longer than the Authorization Period. Only the amounts drawn and outstanding under these agreements and facilities will be counted against the proposed limit on new financing by IP&L.

The issuance of secured Short-term Debt by IP&L would be limited to those circumstances in which IP&L can expect a lower effective cost of borrowing compared to issuing unsecured Short-term Debt or in which unsecured credit is unavailable, except at a higher cost than secured Short-term Debt. IP&L anticipates that the collateral offered as security for any secured Short-term Debt would generally be limited to current assets, such as inventory and/or accounts receivable.

3. *WRP.* WRP requests authorization to issue and sell, from time to time during the Authorization Period, Long-term Debt and Short-term Debt, *provided* that the aggregate principal amount of all such new securities issued during the Authorization Period shall not exceed $2.5 million at any time outstanding. Such securities would be subject to the same general limitations and restrictions described above applicable to Long-term Debt and Short-term Debt of IP&L.

C. Guarantees and Other Forms of Credit Support

Alliant Energy requests authorization to issue guarantees and provide other forms of credit support (''Alliant Energy Guarantees'') with respect to securities issued by or other obligations of its Subsidiaries in an aggregate principal or nominal amount not to exceed $3.0 billion at any time outstanding. Alliant Energy Guarantees may be in the form of, among other things, direct parent guarantees, reimbursement obligations in respect of letters of credit, indemnities, and capital maintenance or ''keep well'' agreements. Alliant Energy requests authority to charge each Subsidiary a fee for providing credit support that is determined by multiplying the amount of the Alliant Energy Guarantee provided by the cost of obtaining the liquidity necessary to perform the guarantee (for example, bank line commitment fees or letter of credit fees, plus other transactional expenses) for the period of time the guarantee remains outstanding.

Alliant Energy Guarantees may, in some cases, be provided to support obligations of Subsidiaries that are not readily susceptible to exact quantification or that may be subject to varying quantification. In such cases, Alliant Energy will determine the exposure under such guarantee for purposes of measuring compliance with the proposed limitation on Alliant Energy Guarantees by appropriate means, including estimation of exposure based on loss experience or projected potential payment amounts. If appropriate, such estimates will be made in accordance with U.S. Generally Accepted Accounting Principles (''U.S. GAAP''). Such estimation will be reevaluated periodically.

AER and other Non-Utility Subsidiaries also request authorization to provide guarantees and other forms of credit support (''Non-Utility Guarantees'') with respect to securities

issued by and other obligations of other Non-Utility Subsidiaries in an aggregate principal or nominal amount not to exceed $600 million at any time outstanding, in addition to any guarantees that are exempt pursuant to Rule 45(b) and Rule 52. The types and terms of any Non-Utility Guarantee would be the same as described immediately above.

D. Interest Rate Hedging Transactions

Alliant Energy and, to the extent not exempt under Rule 52, any Subsidiary requests authorization to enter into hedging transactions (''Interest Rate Hedges'') with respect to existing indebtedness of such company in order to manage and minimize interest costs, and to enter into hedging transactions (''Anticipatory Hedges'') with respect to anticipatory debt issuances in order to lock in current interest rates and/or manage interest rate risk exposure.

It is stated that Interest Rate Hedges would be used as a means of prudently managing the risk associated with outstanding debt issued pursuant to the authorization requested in this Application/Declaration or an applicable exemption by, in effect, synthetically (i) converting variable-rate debt to fixed-rate debt, (ii) converting fixed-rate debt to variable-rate debt, and (iii) limiting the impact of changes in interest rates resulting from variable-rate debt. In no case will the notional principal amount of any interest rate swap exceed the face value of the underlying debt instrument and related interest rate exposure. Transactions will be entered into for a fixed or determinable period. Thus, the Applicants will not engage in speculative transactions. Interest Rate Hedges (other than exchange-traded Interest Rate Hedges) would only be entered into with counterparties (''Approved Counterparties'') whose senior unsecured debt ratings, or the senior unsecured debt ratings of the parent companies of the counterparties, as published by S&P, are equal to or greater than BBB, or an equivalent rating from Moody's or Fitch Inc.

Anticipatory Hedges (other than exchange-traded Anticipatory Hedges) would only be entered into with Approved Counterparties, and would be utilized to fix and/or limit the interest rate risk associated with any new issuance through (i) a forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury Securities and/or a forward swap (each a ''Forward Sale''), (ii) the purchase of put options on U.S. Treasury Securities (a ''Put Options Purchase''), (iii) a Put Options Purchase in combination with the sale of call options on U.S. Treasury Securities (a ''Zero Cost Collar''), (iv) transactions involving the purchase or sale, including short sales, of U.S. Treasury Securities, or (v) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to structured notes, caps and collars, appropriate for the Anticipatory Hedges.

The Applicants represent that they will comply with Statement of Financial Accounting Standards (''SFAS'') 133 (''Accounting for Derivative Instruments and Hedging Activities'') and SFAS 138 (''Accounting for Certain Derivative Instruments and Certain Hedging Activities'') or other standards relating to accounting for derivative transactions as are adopted and implemented by the Financial Accounting Standards Board (''FASB''). The Applicants represent that each Interest Rate Hedge and each Anticipatory Hedge will qualify for hedge accounting treatment under the current FASB standards in effect and as determined as of the date such Interest Rate Hedge or Anticipatory Hedge is entered into. The Applicants will also comply with any future FASB financial disclosure requirements associated with hedging transactions.

E. Continuation of Non-Utility Money Pool

Alliant Energy, AER and certain other Non-Utility Subsidiaries request authorization to continue their participation in the Non-Utility Money Pool as previously authorized.[4] Under the terms of the Amended and Restated Non-Utility Money Pool Agreement, funds would be available from the following sources for short-term loans to the Non-Utility Money Pool participants (other than Alliant Energy) from time to time: (1) Surplus funds in the treasuries of any of the Non-Utility Money Pool participants (''Internal Funds''), and (2) proceeds received by any of the Non-Utility Money Pool participants from the issuance of Short-term Debt (''External Funds''), in each case to the extent permitted by applicable laws and regulatory orders. Funds would be made available from such sources in such order as Alliant Services, as the administrator of the Non-Utility Money Pool, may determine would result in a lower cost of borrowing, consistent with the individual borrowing needs and financial standing of Non-Utility Money Pool participants that invest funds in the Non-Utility Money Pool.

Each Non-Utility Money Pool participant that is authorized or permitted to borrow from the Non-Utility Money Pool would borrow *pro rata* from each Non-Utility Money Pool participant that advances funds to the Non-Utility Money Pool in the proportion that the total amount advanced by such participant bears to the total amount then advanced to the Non-Utility Money Pool by all participants. On any day when more than one source of funds (*i.e.*, both Internal Funds and External Funds), with different rates of interest, are used to fund loans through the Non-Utility Money Pool, each borrowing participant would borrow *pro rata* from each such funding source in the same proportion that the amount of funds provided by that funding source bears to the total amount of funds advanced to the Non-Utility Money Pool.

The cost of compensating balances, if any, and fees paid to banks to maintain credit lines by Alliant Energy that are used to fund loans to the Non-Utility Money Pool would initially be paid by Alliant Energy. These costs would be retroactively allocated every month among the Non-Utility Money Pool borrowers in proportion to each such borrower's estimated peak short-term borrowing requirements.

The daily outstanding balance of all loans to the Non-Utility Money Pool participants shall accrue interest as follows: (a) If only Internal Funds comprise the daily outstanding balance of all loans outstanding during a calendar month, the interest rate applicable to such daily balances shall be the average for the month of the CD yield equivalent of the 30-day Federal Reserve ''AA'' Industrial Commercial Paper Composite Rate (the daily rate, ''Composite,'' and the monthly average of such Composite, the ''Average Composite''), or, if no such Composite was established for that particular day, then the applicable rate would be the Composite for the next preceding day for which such Composite was established, and (b) if only External Funds comprise the daily outstanding balance of all loans outstanding during a calendar month, the interest rate applicable to such daily outstanding balance shall be the lending participant's cost for such External Funds or, if more than one participant had made available External Funds at any time during the month, the applicable interest rate shall be a composite rate, equal to the weighted average of the costs incurred by the

[4] Alliant Energy states that it is not seeking authority to continue to maintain a separate Utility money Pool, as previously authorized. Instead, it is proposed that Alliant Services, which is currently the only subsidiary actively participating in the Utility Money Pool, become a participant in the Non-Utility Money Pool.

respective participants for such External Funds. In cases where the daily outstanding balances of all loans outstanding at any time during the month include both Internal Funds and External Funds, the interest rate applicable to the daily outstanding balances for the month shall be the weighted average of the (i) cost of all Internal Funds contributed by participants, and (ii) the cost of all such External Funds. The interest rate paid on funds advanced to the Non-Utility Money Pool by any participant will be equal to the cost of borrowing from the Non-Utility Money Pool. That is, the applicable rate would be the Composite rate in the case of Internal Funds, the lending company's cost of borrowing in the case of External Funds, and a weighted average cost of funds if funds advanced to the Non-Utility Money Pool at any one time consist of both Internal Funds and External Funds.

Funds not required by the Non-Utility Money Pool participants to make loans (with the exception of funds required to satisfy the Non-Utility Money Pool's liquidity requirements) will be invested in one or more short-term investments: (i) Interest-bearing accounts with banks; (ii) obligations issued or guaranteed by the U.S. government and/or its agencies and instrumentalities, including obligations under repurchase agreements; (iii) commercial paper rated not less than A–1 by S&P or P–1 by Moody's, or their equivalent by a nationally recognized rating agency; (iv) obligations issued or guaranteed by any state or political subdivision thereof, provided that such obligations are rated not less than ''A'' by a nationally recognized rating agency; (v) bankers' acceptances; (vi) money market funds; (vii) bank certificates of deposit; (viii) Eurodollar funds; and (ix) such other investments as are permitted by Section 9(c) of the Act and Rule 40 thereunder.

Any income earned on investments of surplus funds would be allocated at the end of each calendar month among those Non-Utility Money Pool participants that have invested funds in accordance with the proportion that each participant's average contribution of funds in the Non-Utility Money Pool for the month bears to the average total amount of funds invested in the Non-Utility Money Pool for the month.

Each participant receiving a loan through the Non-Utility Money Pool would be required to repay the principal amount of such loan, together with all interest accrued thereon, on demand and in any event within 365 days of the date of such loan. All loans made through the Non-Utility Money Pool may be prepaid by the borrower without premium or penalty and without prior notice. All loans to, and borrowings from, the Non-Utility Money Pool to finance the existing businesses of the Non-Utility Money Pool participants will be exempt pursuant to the terms of Rule 52 under the Act. No loans through the Non-Utility Money Pool would be made to, and no borrowings through the Non-Utility Money Pool would be made by, Alliant Energy.

Authorization is requested for the following direct and indirect Non-Utility Subsidiaries of Alliant Energy to participate in the Non-Utility Money Pool: (1) *Direct Subsidiaries of Alliant Energy:* Alliant Services, AER and Alliant Energy Nuclear LLC; (2) *Direct Subsidiaries of AER:* Alliant Energy Integrated Services Company, Alliant Energy Investments, Inc., Alliant Energy International, Inc., Alliant Energy Transportation Inc., Alliant Energy Synfuel LLC, Alliant Energy Generation, Inc., Alliant Energy Neenah, LLC and Alliant Energy EPC, LLC; (3) *Direct and Indirect Subsidiaries of Alliant Energy Integrated Services Company:* Alliant Energy Field Services, LLC, Alliant Energy Integrated Services—Energy Management LLC, Alliant Energy Integrated Services—Energy Solutions LLC, Cogenex Corporation, Energy Performance Services, Inc., Heartland Energy Group, Inc., Industrial Energy Applications, Inc., Industrial Energy Applications Delaware Inc. and RMT, Inc; (4) *Direct and Indirect Subsidiaries of Alliant Energy Investments, Inc.:* Heartland Energy Services, Inc., Iowa Land and Building Company, Prairie Ridge Business Park, L.C. and Village Lakeshares LP; (5) *Direct Subsidiary of Alliant Energy International, Inc.:* Alliant Energy de Mexico, S. de R.L. de C.V.; (6) *Direct Subsidiaries of Alliant Energy Transportation, Inc.:* Transfer Services, Inc., Cedar Rapids and Iowa City Railway Company, IEI Barge Services, Inc. and Williams Bulk Transfer Inc.; (7) *Direct Subsidiary of Alliant Energy Generation, Inc.:* Sheboygan Power, LLC.

F. Certain Intercompany Loans

Alliant Energy and Non-Utility Subsidiaries request authorization to make loans to any other Non-Utility Subsidiary of Alliant Energy that is less than wholly-owned at interest rates and maturities designed to provide a return to the lending company of not less than its effective cost of capital, provided that the borrowing Non-Utility Subsidiary may not sell any services to any associate Non-Utility Subsidiary unless such company falls within one of the categories of companies to which goods and services may be sold on a basis other than ''at cost,'' as described below.

G. Changes to Capital Structure of Subsidiaries

Alliant Energy and the Subsidiaries request authorization to change the terms of the authorized capitalization of any other majority-owned Subsidiary, *provided* that, if such Subsidiary is less than wholly-owned, all other equity owners consent to such change. Thus, a Subsidiary would be able to change the par value, or change between par value and no-par stock, or change the form of such equity from common stock to limited partnership or limited liability company interests or similar instruments, or from such instruments to common stock, without additional Commission approval. Any such action by a Utility Subsidiary would be subject to and would only be taken upon the receipt of any necessary approvals by the state commission in the state or states where the Utility Subsidiary is incorporated and doing business.

H. Acquisition of Securities of Financing Subsidiaries

Alliant Energy, IP&L, WP&L and the Non-Utility Subsidiaries request authorization to acquire the equity securities of one or more Financing Subsidiaries and to guarantee the securities issued by such Financing Subsidiaries, to the extent not exempt pursuant to Rule 45(b) and Rule 52, and Financing Subsidiaries to transfer the proceeds of any financing to its parent or as directed by its parent. Financing Subsidiaries would be organized specifically for the purpose of facilitating the financing of the authorized and exempt activities (including exempt and authorized acquisitions) of Alliant Energy and the Subsidiaries through the issuance of Long-term Debt or Preferred Securities (including but not limited to monthly income preferred securities) to third parties, and to transfer the proceeds of such financings to or as directed by the Financing Subsidiary's parent. Alliant Energy may, if required, guarantee or enter into expense agreements in respect of the obligations of any Financing Subsidiary that it organizes. IP&L, WP&L or any Non-Utility Subsidiary may also provide guarantees and enter into expense agreements, if required, on behalf of any of its Financing Subsidiaries pursuant to Rules 45(b)(7) and 52, as applicable. The amount of any securities issued by a Financing Subsidiary of Alliant Energy would be counted against the limitation on the amounts of similar types of securities that Alliant Energy is authorized to

issue directly, as set forth above. To avoid double counting, however, any such credit support provided by Alliant Energy would not also be counted against the limitation on Alliant Energy Guarantees. Similarly, the amount of any securities issued by a Financing Subsidiary of IP&L would be counted against the limitation on the amounts of similar types of securities that IP&L is authorized to issue directly, as set forth above.

In cases where it is necessary or desirable to ensure legal separation for purposes of isolating a Financing Subsidiary from its parent or another subsidiary for bankruptcy purposes, the ratings agencies require that any Expense Agreement whereby the parent or Subsidiary provides services related to the financing to the Financing Subsidiary be at a market price so that a successor service provider could assume the duties of the parent or Subsidiary in the event of the bankruptcy of the parent or Subsidiary without interruption or an increase in fees. Therefore Applicants seek approval under section 13(b) of the Act and rules 87 and 90 to provide the services described in this paragraph at a market price but only for so long as the Expense Agreement established by the Financing Subsidiary is in place.

I. Acquisition of Securities of Intermediate Subsidiaries; Certain Reorganizations

Alliant Energy and AER request authorization to acquire, directly or indirectly, the equity securities of one or more Intermediate Subsidiaries, which would be organized exclusively for the purpose of acquiring, financing, and holding the securities of one or more existing or future Non-Utility Subsidiaries, including, but not limited to, EWGs, FUCOs, ''energy-related companies'' under Rule 58 (''Rule 58 Companies''), and ''exempt telecommunications companies'' (''ETCs'') under Section 34 of the Act, *provided* that such companies may also engage in preliminary development and administrative activities relating to investments in such entities.

AER, Intermediate Subsidiaries and other Non-Utility Subsidiaries further request authorization to make expenditures of up to $200 million at any time outstanding during the Authorization Period on preliminary development activities, which would be limited to due diligence and design review; market studies; preliminary engineering; site inspection; preparation of bid proposals, including, in connection therewith, posting of bid bonds; application for required permits and/or regulatory approvals; acquisition of site options and options on other necessary rights; negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms, power purchasers, thermal ''hosts,'' fuel suppliers and other project contractors; negotiation of financing commitments with lenders and other third-party investors; and such other preliminary activities as may be required in connection with the purchase, acquisition, financing or construction of facilities or the acquisition of securities of or interests in new businesses.

In addition, to the extent that such transactions are not otherwise exempt under the Act or Rules thereunder, Alliant Energy requests authorization to consolidate or otherwise reorganize all or any part of its direct and indirect ownership interests in Non-Utility Subsidiaries, and the activities and functions related to such investments. To effect any such consolidation or other reorganization, Alliant Energy or AER may wish to either contribute the equity securities of one Non-Utility Subsidiary to another Non-Utility Subsidiary (including a newly formed Intermediate Subsidiary) or sell (or cause a Non-Utility Subsidiary to sell) the equity securities or all or part of the assets of one Non-Utility Subsidiary to another one. Such transactions may also take the form of a Non-Utility Subsidiary selling or transferring the equity securities of a subsidiary or all or part of such subsidiary's assets as a dividend to an Intermediate Subsidiary or to another Non-Utility Subsidiary, and the acquisition, directly or indirectly, of the equity securities or assets of such subsidiary, either by purchase or by receipt of a dividend. The purchasing Non-Utility Subsidiary in any transaction structured as an intrasystem sale of equity securities or assets may execute and deliver its promissory note evidencing all or a portion of the consideration given. Each transaction would be carried out in compliance with all applicable U.S. or foreign laws and accounting requirements, and any transaction structured as a sale would be carried out for a consideration equal to the book value of the equity securities being sold.

J. New Investments in Energy Assets

AER and other Non-Utility Subsidiaries request authorization to expend up to $100 million at any time outstanding during the Authorization Period to construct or acquire Energy Assets that are incidental and related to the energy marketing and oil and gas production operations of its subsidiaries, and/or the securities of one or more existing or new companies substantially all of whose physical properties consist or will consist of Energy Assets, *provided* that the acquisition and ownership of such Energy Assets would not cause AER or any other Non-Utility Subsidiary to be or become an ''electric utility company'' or ''gas utility company,'' as defined in Sections 2(a)(3) and 2(a)(4), respectively.

K. Exemption From Section 13(b)

To the extent that Rule 90(d) does not otherwise apply, AER and other Non-Utility Subsidiaries request authorization to provide services and sell goods to each other at fair market prices, in any case in which the Non-Utility Subsidiary purchasing such goods or services is:

(a) A FUCO or foreign EWG that derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States;

(b) An EWG that sells electricity at market-based rates which have been approved by the Federal Energy Regulatory Commission (''FERC''), provided that the purchaser is not one of the Utility Subsidiaries;

(c) A ''qualifying facility'' (''QF'') within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended (''PURPA'') that sells electricity exclusively (a) at rates negotiated at arms'-length to one or more industrial or commercial customers purchasing such electricity for their own use and not for resale, and/or (b) to an electric utility company (other than one of the Utility Subsidiaries) at the purchaser's ''avoided cost'' as determined in accordance with the regulations under PURPA;

(d) A domestic EWG or QF that sells electricity at rates based upon its cost of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser thereof is not one of the Utility Subsidiaries; or

(e) A Rule 58 Company or any other Non-Utility Subsidiary that (a) is partially-owned, provided that the ultimate purchaser of such goods or services is not a Utility Subsidiary or Alliant Services (or any other entity within the Alliant Energy system whose activities and operations are primarily related to the provision of goods and services to the Utility Subsidiaries, (b) is engaged solely in the business of developing, owning, operating and/or providing services or goods to Non-Utility Subsidiaries described in clauses

(i) through (iv) immediately above, or (c) does not derive, directly or indirectly, any material part of its income from sources within the United States and is not a public-utility company operating within the United States.

L. Activities of Non-Utility Subsidiaries Outside the United States

The Applicants, on behalf of any current or future Non-Utility Subsidiaries, request authorization to engage in certain energy-related, non-utility, activities outside the United States. Such activities include:

(a) The brokering and marketing of electricity, natural gas and other energy commodities (''Energy Marketing'');

(b) Energy management services (''Energy Management Services''), including the marketing, sale, installation, operation and maintenance of various products and services related to energy management and demand-side management, including energy and efficiency audits; facility design and process control and enhancements; construction, installation, testing, sales and maintenance of (and training client personnel to operate) energy conservation equipment; design, implementation, monitoring and evaluation of energy conservation programs; development and review of architectural, structural and engineering drawings for energy efficiencies, design and specification of energy consuming equipment; general advice on programs; the design, construction, installation, testing, sales and maintenance of new and retrofit heating, ventilating, and air conditioning (''HVAC''), electrical and power systems, alarm and warning systems, motors, pumps, lighting, water, water-purification and plumbing systems, and related structures, in connection with energy-related needs; and the provision of services and products designed to prevent, control, or mitigate adverse effects of power disturbances on a customer's electrical systems; and

(c) Engineering, consulting and other technical support services (''Consulting Services'') with respect to energy-related businesses, as well as for individuals. Such Consulting Services would include technology assessments, power factor correction and harmonics mitigation analysis, meter reading and repair, rate schedule design and analysis, environmental services, engineering services, billing services (including consolidation billing and bill disaggregation tools), risk management services, communications systems, information systems/data processing, system planning, strategic planning, finance, feasibility studies, and other similar services.

The Applicants request that the Commission (i) authorize Non-Utility Subsidiaries to engage in Energy Marketing activities in Canada and reserve jurisdiction over Energy Marketing activities outside of Canada pending completion of the record in this proceeding, (ii) authorize Non-Utility Subsidiaries to provide Energy Management Services and Consulting Services anywhere outside the United States, and (iii) reserve jurisdiction over other energy-related, non-utility, activities of Non-Utility Subsidiaries outside the United States, pending completion of the record.

M. Dividends Out of Capital and Unearned Surplus

AER and other Non-Utility Subsidiaries request authorization to pay dividends out of capital and unearned surplus and/or acquire, retire or redeem securities issued to associate companies to the extent allowed under applicable law and the terms of any credit or security instruments to which they may be parties. Likewise, AER or other Non-Utility Subsidiary also request authorization to utilize freely distributable cash to acquire, retire or redeem any securities of which it is the issuer that are held by any associate company. It is stated that such transactions are a means to reduce the capitalization of a company and serve essentially the same purpose as a dividend paid out of capital or unearned surplus.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

[SSA/States, SDX–BENDEX–SVES Files—Matches 6001, 6002, and 6004]

Privacy Act of 1974 as Amended; Computer Matching Program

AGENCY: Social Security Administration (SSA).

ACTION: Notice of the renewal of an existing computer matching program which is scheduled to expire on December 31, 2004.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces the renewal of an existing computer matching program that SSA is currently conducting with the States.

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate; the Committee on Government Reform of the House of Representatives; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The renewal of the matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 965–8582 or writing to the Associate Commissioner for Income Security Programs, 245 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Income Security Programs as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by establishing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the Data Integrity Boards' approval of the match agreements;

(3) Publish notice of the computer matching programs in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: November 17, 2004.

Martin H. Gerry,

Deputy Commissioner for Disability and Income Security Programs.

Notice of Computer Matching Program, Social Security Administration (SSA) with the States

A. Participating Agencies

SSA and the States.

B. Purpose of the Matching Program

Section 1137 of the Social Security Act requires individual States to have in effect an income and eligibility verification system meeting certain requirements in order to administer certain State-administered income, food assistance, and medical assistance programs.

A chief purpose of this matching program is to facilitate administration of this provision. Individual agreements with the States will describe the conditions under which SSA agrees to disclose information to the States relating to the eligibility for, and payment of, Social Security, supplemental security income, and special veterans benefits, including certain tax return information disclosed by SSA, in accordance with applicable provisions of the Internal Revenue Code, as well as quarters of coverage, prisoner, and death information.

The matching program will also be used to implement provisions of Public Law 104–193, the Personal Responsibility and Work Reconciliation Act of 1996, involving the significance of Social Security coverage information to the eligibility of certain aliens for some Federal and State public benefits. Under this matching program, SSA will disclose certain Social Security coverage information on specific persons to States administering appropriate benefit programs.

C. Authority for Conducting the Matching Program

Sections 1106 and 1137 of the Social Security Act; sections 402, 412, 421 and 435 of Public Law 104–193; section 202(x)(3)(B)(iv) of the Social Security Act; section 205(r)(3) of the Social Security Act; and section 6103(p)(4) of Title 26 of the Internal Revenue Code.

D. Categories of Records and Individuals Covered by the Matching Program

States will provide SSA with names and other identifying information of appropriate benefit applicants or recipients. Specific information from participating States will be matched, as provided in the agreement for the specific programs, with the following systems of records maintained by SSA:

1. SDX—Supplemental Security Income Record and Special Veterans Benefits (SSR/SVB), SSA/ODSSIS (60–0103);
2. BENDEX—Master Beneficiary Record (MBR), SSA/ORSIS (60–0090) and the Earnings Recording and Self-Employment Income System, SSA/OEEAS (60–0059);
3. EVS—Master Files of Social Security Number (SSN) Holders and SSN Applications, SSA/OEEAS (60–0058);
4. SVES—SSR/SVB, SSA/ODSSIS (60–0103); MBR, SSA/ORSIS (60–0090); the Earnings Recording and Self-Employment Income System, SSA/OEEAS (60–0059); the Master Files of SSN Holders and SSN Applications, SSA/OEEAS (60–0058); and the Prisoner Update Processing System (PUPS), SSA/OEEAS (60–0269);
5. Quarters of Coverage Query—The Earnings Recording and Self-Employment Income System, SSA/OEEAS (60–0059) and the Master Files of SSN Holders and SSN Applications, SSA/OEEAS (60–0058);
6. Prisoner Query—PUPS, SSA/OEEAS (60–0269); and
7. Death Query—Master Files of SSN Holders and SSN Applications, SSA/OEEAS (60–0058)—subsection referred to as the NUMIDENT.

SSA and the States will exchange information through the File Transfer Management System (FTMS) or online through the Interstate Connection Network. Cartridge or magnetic tape will be used in the event FTMS is inoperable.

E. Inclusive Dates of the Matching Program

The matching program will become effective no sooner than 40 days after notice of the matching program is sent to Congress and OMB, or 30 days after publication of this notice in the **Federal Register**, whichever is later. Individual State matching agreements under the program may also become effective upon the signing of the agreements by the parties to the agreements. The agreements with individual States will continue for 18 months from the effective date and may be extended for a period of time, up to 12 months, but not to exceed June 30, 2007, if certain conditions are met.

[FR Doc. 04–26087 Filed 11–24–04; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974; as Amended; New Routine Use Disclosure

AGENCY: Social Security Administration (SSA).

ACTION: Proposed new routine use.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), we are issuing public notice of our intent to establish a new routine use disclosure of information SSA maintains in the Privacy Act system of records entitled *Supplemental Security Income Record and Special Veterans Benefits System, 60–0103* (SSR/SVB System). The proposed routine use will allow SSA to verify Social Security numbers (SSN) provided by foreign Social Security agencies with whom SSA has a totalization agreement or a mutual assistance arrangement under section 233 of the Social Security Act (42 U.S.C. 433). The routine use proposal is discussed in the Supplementary Information section below. We invite public comments on this proposal.

DATES: We filed a report of the proposed new routine use with the Chairman of the Senate Committee on Governmental Affairs, the Chairman of the House Government Reform Committee, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget on November 18, 2004. The proposed new routine use will become effective on December 28, 2004 unless we receive comments that would result in a contrary determination.

ADDRESSES: Interested individuals may comment on this publication by writing to the Executive Director, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Willie J. Polk, Team Leader, Strategic Issues Team, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–

6401, telephone (410) 965–1753, e-mail: *willie.j.polk@ssa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Proposed New Routine Use Disclosure

A. General Background

Section 233 of the Social Security Act (Act) (42 U.S.C. 433) authorizes the President to enter into agreements with other countries for the purpose of coordinating the Social Security systems of both countries. These agreements, frequently called ''totalization agreements,'' help fill gaps in benefit protection for workers who divide their careers between the United States and the other country. Such workers may fail to qualify for Social Security benefits from the United States or the other country because they have not worked long enough to meet minimum eligibility requirements. Under these agreements, each country can count credits earned under the other country's system if this will help the worker meet the minimum length-of-work requirements to qualify. Where eligibility is established by counting credits in both countries, the benefit is prorated to reflect the amount of credit earned in the paying country. To facilitate this process, SSA shares personal information in its files with the Social Security agencies of the countries which are parties to the agreements.

Consistent with section 233 of the Act, SSA enters into mutual assistance arrangements with totalization countries. Under the mutual assistance arrangements, the foreign country assists SSA generally in the administration of its programs in the foreign country and SSA provides reciprocal services for the foreign country. This includes, but may not be limited to, providing services such as post-entitlement reviews and redeterminations, program and operational studies, and integrity reviews and evaluations.

SSA currently verifies SSNs provided by foreign countries with which we have totalization agreements and mutual assistance arrangements under those agreements. We have an established routine use applicable to the *Master Files of Social Security Number (SSN) Holders and SSN Applications System, 60–0058; Earnings Recording and Self-Employment Income System; and the Master Beneficiary Record, 60–0090;* Privacy Act systems of records that allows SSA to verify SSNs and disclose other information to countries with which we have totalization agreements and mutual assistance arrangements. We have identified the need to establish a new routine use that would allow SSA to verify SSNs provided by those countries, using information we maintain in the SSR/SVB System Privacy Act system of records. The proposed routine use will read as follows:

To the Social Security agency of a foreign country, for the purpose of verifying Social Security numbers, to carry out the purposes of an international Social Security agreement entered into between the United States and the other country, pursuant to section 233 of the Social Security Act (42 U.S.C. 433).

The proposed routine use will be numbered 36 in the notice of the SSR/SVB System. We are not republishing the notice of this system of records at this time. A notice of the system of records last was published in its entirety in the **Federal Register** (FR) on February 21, 2001. See 66 FR 11079, February 21, 2001.

B. Compatibility of Proposed New Routine Use Disclosure

The Privacy Act (5 U.S.C. 552a(b)(3)) and our disclosure regulations (20 CFR Part 401) permit us to disclose information under a published routine use for a purpose which is compatible with the purpose for which we collected the information. Section 401.150(c) of the regulations permits us to disclose information under a routine use where necessary to carry out SSA programs or assist other agencies in administering similar programs. The disclosures under the proposed new routine use will be compatible since, by the nature of the totalization agreement with a foreign country under section 233 of the Social Security Act (42 U.S.C 433), the foreign country will be administering a program comparable to the Social Security program of the United States.

II. Effect of the Proposed Routine Use on the Rights of Individuals

Whenever SSA enters into a totalization agreement with a foreign country, SSA always requires the other country's assurance that appropriate laws of that country protect the confidentiality of personal data. SSA always considers how compatible the other country's privacy laws are with those of the United States. Unless the other country's laws allow disclosure, the information which SSA furnishes to a foreign country's Social Security agency under a totalization agreement must be kept confidential and, to the extent possible, used exclusively for implementing the agreement (Social Security Ruling 80–15 and 20 CFR 404.1930). Verifications of SSNs provided by foreign Social Security agencies will be done only as discussed in section I.A. above. To this end, we do not anticipate any unwarranted effects on the rights of individuals from our implementation of the proposed routine use.

Dated: November 18, 2004.

Jo Anne B. Barnhart,

Commissioner.

[FR Doc. 04–26141 Filed 11–24–04; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4908]

Culturally Significant Object Imported for Exhibition Determinations: ''Raphael's La Fornarina''

SUMMARY: Notice is hereby given of the following determinations: 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, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object to be included in the exhibition ''Raphael La Fornarina,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit object at the The Frick Collection, New York, NY from on or about December 2, 2004 to on or about January 30, 2005, the Museum of Fine Arts, Houston, TX from on or about February 13, 2005 to on or about April 17, 2005, the Indianapolis Museum of Art, Indianapolis, IN from on or about May 6, 2005, to on or about June 26, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit object, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: 202/453–8048). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: November 22, 2004.

Patricia Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–26292 Filed 11–24–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4904]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Partnership for Learning (P4L) Undergraduate Program

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/A/E/EUR–05–06.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates:

Application Deadline: January 21, 2005.

Executive Summary: The Office of Academic Exchange Programs (ECA/A/E) of the Bureau of Educational and Cultural Affairs announces an open competition for the Partnership for Learning (P4L) Undergraduate Program for participants from Bosnia and Herzegovina, Macedonia, and Serbia. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to administer the placement, monitoring, and evaluation for the FY 2005 P4L Undergraduate Program. One cooperative agreement will be awarded to administer the program. Organizations with less than four years of experience in conducting international exchange programs are not eligible for this competition.

I. Funding Opportunity Description

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose: The Partnership for Learning (P4L) Undergraduate Program provides scholarships for one-year, non-degree study at U.S. institutes of higher education to outstanding students from Bosnia and Herzegovina, Macedonia, and Serbia. Scholarships are available in humanities and social sciences. Scholarships are granted to students who have completed at least two years of study at an accredited university in their home countries. Students must be citizens of Bosnia and Herzegovina, Macedonia or Serbia. Participants will be enrolled in one-year, non-degree programs at four-year colleges and universities. Students will enhance their academic education with participation in community service and an internship. Interested organizations should read the entire **Federal Register** announcement for all information prior to preparing a proposal. Programs must comply with J–1 Visa regulations. Please refer to the Solicitation Package for further information. Pending the availability of funds, it is anticipated that this cooperative agreement award will begin in March, 2005.

In a cooperative agreement, ECA/A/E is substantially involved in program activities above and beyond routine grant monitoring. ECA/A/E activities and responsibilities for this program are as follows:

(1) Participating in the design and direction of program activities;

(2) Approval of key personnel;

(3) Approval and input for all program agendas and timelines;

(4) Guidance in execution of all project components;

(5) Arrangement for State Department speakers during workshops;

(6) Assistance with SEVIS-related issues;

(7) Assistance with participant emergencies;

(8) Providing background information related to participants' home countries and cultures;

(9) Liaison with Public Affairs Sections of the U.S. Embassies and country desk officers at the State Department;

(10) Participating in selection of evaluation mechanisms.

II. Award Information

Type of Award: Cooperative Agreement. The Bureau's level of involvement in this program is listed under number I above.

Fiscal Year Funds: 2005.

Approximate Total Funding: 400,000.

Approximate Number of Awards: 1.

Anticipated Award Date: Pending availability of funds, March 2005.

Anticipated Project Completion Date: December 2006.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant for two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. Eligible applicants: Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds: There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements: Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding one grant, in an amount up to $400,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may

not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information to Request an Application Package: Please contact the Office of Academic Exchange Programs, ECA/A/E/EUR, Room 246, Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, Phone: (202) 619–4060; Fax: (202) 260–7985, *boreckaom@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/E/EUR–05–06 located at the top of this announcement when making your request.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation. It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Bureau Program Officer Olivia Borecka and refer to the Funding Opportunity Number ECA/A/E/EUR–05–06 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm*. Please read all information before downloading.

IV.3. Content and Form of Submission: Applicants must follow all instructions in the Solicitation Package. The original and eight (8) copies of the application should be sent per the instructions under IV.3e. ''Submission Dates and Times section'' below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to All Regulations Governing the J Visa. The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, recordkeeping, reporting and other requirements. The Grantee will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Please refer to Solicitation Package for further information.

IV.3d.2 Diversity, Freedom and Democracy Guidelines. Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation. Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes*. *Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it

cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes*, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change.

Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.
2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.
3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.
4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

Describe your plans for: *i.e.*, sustainability, overall program management, staffing, coordination with ECA and PAS or any other requirements, etc.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. The level of funding for FY 2005 is uncertain, but is anticipated to be approximately $400,000. Based on this figure, applicant organizations should submit a budget which will fund 12–15 participants. ECA anticipates awarding one grant under this competition. Applicant organizations are encouraged, through cost sharing and other methods, to provide for as many scholarships as possible based on estimated funding. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3e.2. Allowable costs for the program include the following:

(1) Participant expenses.
(2) Administrative costs.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Submission Dates and Times: Application Deadline Date: January 21, 2005. *Explanation of Deadlines:* In light of recent events and heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. ECA will *not* notify you upon receipt of application. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered. Applications may not be submitted electronically at this time.

Applicants must follow all instructions in the Solicitation Package.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and eight (8) copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/E/EUR–05–06, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. Embassies for their review.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to

the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended.

9. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

10. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

VI. Award Administration Information

VI.1a. Award Notices: Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 Administrative and National Policy Requirements: Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations

Please reference the following websites for additional information: *http://www.whitehouse.gov/omb/grants*; *http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI*

VI.3. Reporting Requirements: You must provide ECA with a hard copy original plus one copy of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) Quarterly program and financial reports which should include record of program activities from that period.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. Program Data Requirements: Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Olivia Borecka, Office of Academic Exchange Programs, ECA/A/E/EUR, Room 246, ECA/A/E/EUR–05–06, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, Phone: 202–619–4060; Fax: 202–260–7985, *boreckaom@state.gov*.

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/E/EUR–05–06.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or

increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: November 16, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 04–26175 Filed 11–24–04; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4905]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: The Future Leaders Exchange Program: Host Family and School Placement

Announcement Type: New Grant.

Funding Opportunity Number: ECA/PE/C/PY–05–12.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates:

Application Deadline: January 28, 2005.

Executive:

Summary: The Youth Programs Division of the Bureau of Educational and Cultural Affairs announces an open competition for the placement component of the Future Leaders Exchange (FLEX) program. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to recruit and select host families and schools for high school students between the ages of 15 and 17 from countries of the former Soviet Union, thereafter referred to as Eurasia. In addition to identifying schools and screening, selecting, and orienting families, organizations will be responsible for: providing English language enhancement activities for a small percentage of students who are specially identified; orienting all students at the local level; providing support services for students; arranging enhancement activities and leadership opportunities that reinforce program goals; monitoring students during their stay in the U.S.; providing mid-year programming and re-entry training; and assessing student performance and progress. Preference will be given to those organizations that offer participants opportunities to develop leadership skills and raise their awareness of tolerance and social justice through community activities and networks. The award of grants and the number of students who will participate is subject to the availability of funding in fiscal year 2005.

I. Funding Opportunity Description

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Overview

Background: Academic year 2005/2006 will be the thirteenth year of the FLEX program, which now includes over 13,000 alumni. The goals of the program are to promote mutual understanding and foster a relationship between the people of Eurasia and the U.S.; to assist the successor generation of Eurasian countries in developing the qualities it will need to lead in their aspirations for transformation in the 21st century; and to promote democratic values and civic responsibility by giving Eurasian youth the opportunity to live in American society and participate in focused activities for an academic year.

Objectives:

- To place approximately 1,200 pre-selected high school students from Eurasian countries in qualified, well-motivated host families.
- To place students in schools that have been accredited by the respective state departments of education.
- To expose program participants to American culture and democracy through homestay experiences and enhancement activities that will enable them to attain a broad view of the society and culture of the U.S.
- To encourage FLEX program participants to share their culture, lifestyle and traditions with U.S. citizens.
- To provide Eurasian students with leadership opportunities that will foster skills they can take back with them and use in their home countries.
- To provide activities that will increase and enhance students' understanding of the importance of tolerance and respect for the views and beliefs of others in a civil society.

Through participation in the FLEX program, students should:

1. Acquire an understanding of important elements of a civil society. This includes concepts such as volunteerism, the idea that American citizens can and do act at the grassroots level to deal with societal problems, and an awareness of and respect for the rule of law.
2. Acquire an understanding of a free market economy and private enterprise. This includes awareness of privatization and an appreciation of the role of the entrepreneur in economic growth.
3. Develop an appreciation for American culture, an understanding of the diversity of American society and increased tolerance and respect for others with differing views and beliefs.
4. Interact with Americans and generate enduring ties.
5. Teach Americans about the cultures of their home countries.
6. Gain leadership capacity that will enable them to initiate and support activities in their home countries that focus on development and community service in their role as FLEX alumni.

Other Components: One organization has been awarded a grant to perform the following functions: recruitment and selection of students; targeting recruitment for students with disabilities; assistance in documentation and preparation of DS–2019 visa forms; preparation of cross-cultural materials; pre-departure orientation; international travel from home to host community and return; facilitation of ongoing communication between the natural parents and placement organization, as needed; maintenance of a student database and provision of data to the U.S. Department of State; and ongoing follow-up with alumni after their return to Eurasia. Other organizations have

received grants to conduct Civic Education Week and the Technology Ambassadors Program. A grant has also been awarded to another organization to conduct a post-arrival orientation and reentry training and to provide ongoing support for physically challenged students in order to help them cope with challenges specific to their circumstances. Placement organizations will be responsible for providing appropriate tutoring for students who have been identified as needing English language enhancement. Organizations may also be responsible for providing supplementary independence skills training for students with disabilities.

Guidelines

Organizations chosen under this competition will be responsible for the following:

(1) Recruitment, screening, selection, and Eurasia/FLEX-specific orientation of host families;

(2) Providing language enhancement activities for a small number of identified students who will arrive early for this purpose;

(3) Enrollment in an accredited school;

(4) Local orientation for participants;

(5) Placement of a small number of students with disabilities;

(6) Specialized training of local staff and volunteers to work with FLEX students from Eurasia;

(7) Preparation and dissemination of materials to students pertaining to the respective placement organization;

(8) Specialized English language tutoring for pre-selected students who require focused preparation for their academic year;

(9) Dispersal of program-specific information, such as alumni activity reports and Host Family and School Administrator handbooks, to respective persons involved with the program (*e.g.*, host families, school administrators, local coordinators);

(10) Program-related enhancement and leadership training activities;

(11) Troubleshooting;

(12) Communication with the organizations conducting other program components, when appropriate;

(13) Evaluation of the students' performance;

(14) Quarterly evaluation of the organization's success in achieving program goals;

(15) Post-arrival and mid-year orientations;

(16) Eurasia-specific re-entry training to prepare students for readjustment to their home environments.

Applicants must request a grant for the placement of at least 40 students. There is no ceiling on the number of students who may be placed by one organization. It is anticipated that approximately 10–15 grants will be awarded for this component of the FLEX program. Placements may be in any region in the U.S. Strong preference will be given to organizations that choose to place participants in clusters of at least three students. Applicants must demonstrate that training of local staff ensures their competence in providing Eurasia-specific orientation programs, appropriate enhancement activities, and quality supervision and counseling of students from Eurasian countries. Please refer to the Solicitation Package, available on request from the address listed below, for details on essential program elements, permissible costs, and criteria used to select students.

We anticipate grants beginning no later than April, 2005, subject to the availability of funds.

Most participants arrive in their host communities during the month of August and remain for 10 or 11 months until their departure during the period mid-May to late June 2006. Students with disabilities and students requiring additional language instruction may arrive at the end of July.

Administration of the program must be in compliance with reporting and withholding regulations for federal, state, and local taxes as applicable. Recipient organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

Applicants should submit the health and accident insurance plans they intend to use for students on this program. If use of a private plan is proposed, the State Department will compare that plan with the Bureau plan and make a determination of which will be applicable.

II. Award Information

Type of Award: Grant Agreement.

Fiscal Year Funds: FY 2005.

Approximate Total Funding: $6,600,000.

Approximate Number of Awards: Approximately 10–15 grants will be awarded.

Anticipated Award Date: Pending availability of funds, April 2005.

Additional Information

Budget Guidelines: Applicants must submit a comprehensive budget for the entire program. Per capita costs are not to exceed $5,500 per participant. The budget must reflect costs for a minimum of 40 participants.

There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Allowable costs for the program include the following:

(1) A monthly stipend and a one-time incidentals allowance for participants, as established by the Department of State;

(2) Costs associated with program-related student enhancement activities and orientations;

(3) Health and accident insurance.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

III. Eligibility Information

III. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III. 2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs that are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III. 3. Other Eligibility Requirements

(a) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding multiple grants all in excess of $60,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to

apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information To Request an Application Package

Please contact The Office of Youth Programs, ECA/PE/C/PY, Room 568, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone (202) 203–7527, and fax (202) 203–7529, e-mail Linda Beach at *beachlf@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/PE/C/PY–05–12 located at the top of this announcement when making your request. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal presentation. Please specify Bureau of Educational and Cultural Affairs Program Officer Anna Mussman on all other inquiries and correspondence.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document, which consists of required application forms and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm*. Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The original and 8 copies of the application should be sent per the instructions under IV.3e. ''Submission Dates and Times section'' below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please refer to the solicitation package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. Adherence to All Regulations Governing the J Visa: The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR 62, organizations receiving grants under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of grantee program organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR 62 *et seq.*

The Bureau of Educational and Cultural Affairs places great emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee program organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR 62 *et. seq.*, including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

IV.3.d.2. Diversity, Freedom and Democracy Guidelines: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of

these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation: The Bureau places significant emphasis on monitoring and evaluation of its initiatives. Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please Note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget: Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3f. Submission Dates and Times:

Application Deadline Date: January 28, 2005.

Explanation of Deadlines: In light of recent events and heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, *etc.*) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. ECA will *not* notify you upon receipt of application. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered. Applications may not be submitted electronically at this time.

Applicants must follow all instructions in the Solicitation Package.

Important Note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and eight (8) copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY–05–12, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and

Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards grants resides with the Bureau's Grants Officer.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the State Department's Bureau of European and Eurasian Affairs Office of Press and Public Diplomacy (EUR/PPD) and Public Diplomacy section at the U.S. embassy overseas, where appropriate. Eligible proposals will be forwarded to panels of Bureau officers for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the Program Idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission. Proposals should demonstrate how students will be monitored, trained and prepared for their role as FLEX alumni. The level of creativity, resources, and effectiveness will be primary factors for review. Proposals should be clearly and accurately written, with sufficient, relevant detail. The Narrative should address all of the items in the Statement of Work and Guidelines described above.

2. *Program Planning/Ability to Achieve Program Objectives:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. The pre-program language enhancement activities should be clearly described. Reviewers will assess how proposals involve participants in community activities, including leadership training, increasing awareness of tolerance and social justice, and other relevant endeavors. Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the organization will meet the program's objectives and plan. With respect to anticipated program outcomes, reviewers will assess the degree to which the proposed outcomes of the project are realistic and measurable. Strategies should creatively utilize and reinforce activities to ensure an efficient use of program resources.

3. *Multiplier Effect/Impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages. Proposals should include innovative ways to involve students in their U.S. communities and substantive plans to prepare them for their role as active, effective FLEX alumni.

4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, host families, schools, program venue and program evaluation) and program content (orientations, program meetings, resource materials and follow-up activities).

5. *Organization's Record/ Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. In assessing institutional capacity, reviewers will assess the applicant and its partners to determine if they offer adequate resources, expertise, and experience to fulfill program objectives. Partner activities should be clearly defined. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting and J–1 Visa requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

6. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. Reviewers will assess a sample FLEX-specific draft survey questionnaire, or other technique, attached to each proposal, plus a description of a methodology used to link outcomes to original project objectives. The final project evaluation should provide qualitative and quantitative data about the project's influence on the participants as well as their surrounding communities. Successful applicants will be expected to submit quarterly reports, which should be included as an inherent component of the work plan.

7. *Cost-effectiveness/Cost Sharing:* Reviewers will analyze the budget for clarity and cost-effectiveness. They will also assess the rationale of the proposed budget and whether the allocation of funds is appropriate to complete tasks outlined in the project narrative. The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions. Preference will be given to organizations whose proposals demonstrate a quality, cost-effective program.

VI. Award Administration Information

VI.1. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments.''

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information:

http://www.whitehouse.gov/omb/grants.

http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus one copy of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) Quarterly program and financial reports which should include both quantitative and qualitative data you have available.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. Program Data Requirements

Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required.

VII. Agency Contacts

For questions about this announcement, contact: Anna Mussman, Office of Citizen Exchanges, ECA/PE/C/PY, Room 568, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547. Telephone: (202) 203–7506, Fax number: (202) 203–7529, Internet address: *mussmanap@state.gov.* All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/PY–05–12.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Notification: Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: November 18, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affair, Department of State.

[FR Doc. 04–26172 Filed 11–24–04; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4906]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals for the Middle East Partnership Initiative Study of the United States (U.S.) Institutes for Student Leaders From the Middle East/North Africa

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/A/E/USS–05–07.

Catalog of Federal Domestic Assistance Number: 0000.

Key Dates:

Application Deadline: February 4, 2005.

Executive Summary: The Study of the U.S. Branch, Office of Academic Exchange Programs, Bureau of Educational and Cultural Affairs, announces an open competition for public and private non-profit organizations to develop and implement two Middle East Partnership Initiative (MEPI) Study of the United States Institutes for Undergraduate Student Leaders, and one Middle East Partnership Initiative (MEPI) Study of the United States Institute for Recent High School Graduates. Funding for these institutes is being provided by the Department of State's Middle East Partnership Initiative, the U.S. Government's primary policy and programmatic mechanism to address reform in the Middle East.

The Bureau anticipates awarding two separate assistance awards to support the institutes targeting undergraduate student leaders, and one assistance award to support a single institute for recent high school graduates (three assistance awards total). Prospective applicants are limited to submitting one proposal only to conduct one of these three programs.

I. Funding Opportunity Description

Authority: Overall grant making authority for these programs is contained inthe Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations. * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' Funding for these institutes is being provided from a transfer of FY–2005 Economic Support Funds for the Middle East Partnership Initiative.

Purpose: The Bureau is seeking detailed proposals for each ''Middle East Partnership Initiative Study of the United States Institute for Undergraduate Student Leaders'' and the ''Middle East Partnership Initiative Study of the United States Institute for Recent High School Graduates'' from accredited U.S. colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations, that have an established reputation in one or more of the following fields: political science, international relations, law, history, sociology, U.S. studies, and/or other disciplines or sub-disciplines related to the study of the United States.

The academic program for the institutes should include attention to the role and influence of principles and values such as democracy, the rule of

law, individual rights, freedom of expression, equality, diversity and tolerance. Historical political, social and economic debates that have shaped U.S. society and/or current issues may be examined. The concepts of individual and civic responsibility, volunteerism and community involvement should also be addressed, and hands-on activities related to these areas should be included in the program. The grantee institution should take into account that the participants may have little or prior knowledge of the U.S. and varying degrees of experience in expressing their opinions, and should tailor the curriculum and classroom activities accordingly.

In addition to promoting a better understanding of the United States, the institute emphasizes developing the participants' leadership and collective problem solving skills. In this context, the program should include lectures as well as group discussions and exercises focusing on such topics as the essential attributes of leadership; ''teambuilding;'' effective communication and problem-solving skills; and management skills for diverse organizational settings.

The institutes must be serious academic programs and grantee institutions will be expected to demonstrate sensitivity in explaining the students' responsibility to take full advantage of the opportunity, fully participate in all elements of the program and prepare for discussions and activities in a serious way.

Each program should be 47 days in length including participant arrival and departure days, a 2-day pre-program orientation in Washington, DC, and a domestic travel component up to fourteen days, of which 3–4 days should be spent in Washington, DC, at the end of the program. This travel component should directly complement the academic residency segment. It should include visits to cities and other sites of interest in the region of the grantee institution.

The project director or one of the key program staff responsible for the academic program must have an advanced degree in political science, international relations, law, history, sociology, American studies and/or other disciplines or sub-disciplines related to the study of the United States. Programs must conform with Bureau requirements and guidelines outlined in the Solicitation Package. Bureau programs are subject to the availability of funds.

The institutes should be organized through an integrated, balanced series of lectures and seminar discussions that leave ample time for discussion and interaction among students, lecturers and guest speakers. Reading and writing assignments need to be adjusted to the participants' familiarity with English. Grantee institutions need to recognize the diverse characteristics and academic preparation of the students who are recent secondary school graduates or university students. Experiential learning exercises, regional travel, and site visits are important elements of the program. Institutes should also include opportunities for participants to meet American citizens from a variety of backgrounds, to interact with peers, and to speak to appropriate student and civic groups about their experiences and life in their home countries.

Applicants are encouraged to design thematically coherent programs that draw upon the particular strengths, faculty and resources of their institutions as well as upon the nationally recognized expertise of scholars and other experts throughout the United States. Within the limits of their thematic focus and organizing framework, Institute programs should also be designed to:

1. Give participants a multi-dimensional view of U.S. society and institutions that includes a broad and balanced range of perspectives. Where possible, programs should therefore include the views not only of scholars, cultural critics and public intellectuals, but also those of other professionals such as government officials, journalists and others who can substantively contribute to the topics at issue;

2. Ensure access to library and material resources that will enable grantees to continue their studies and develop follow-on projects related to the summer institute curriculum upon returning to their home institutions; and,

3. Bring an interdisciplinary or multi-disciplinary focus to bear on the program content, if appropriate.

The grantee institutions will also be expected to provide participants post-program opportunities for further investigation and research on the topics and issues examined and discussed during the institute. The Bureau will work closely with the grantee organization and with U.S. Embassies abroad to organize an alumni workshop for participants in this program at a site to be determined in the Middle East/North Africa region within six-twelve months after the conclusion of the institute. The alumni workshop will provide the students opportunities to further develop their leadership potential and interact with leaders and professionals from the Middle East/North Africa region.

The MEPI Study of the U.S. Institute for Undergraduate Student Leaders

This program is intended for 21 highly motivated undergraduates who will be entering the second or third year of college or university study in fall 2005, and who demonstrate leadership through academic work, community involvement, and extracurricular activities.

For these undergraduate institutes, leadership training and related activities should ideally be scheduled to take place at least on a weekly basis, if not more frequently, during the academic residency period, and should be integrated into the academic program wherever possible.

The MEPI Study of the U.S. Institute for Recent High School Graduates

This program is intended for a group of highly motivated students from the Middle East and North Africa who will have completed their high school studies in the summer of 2005 and who will be commencing undergraduate studies in their home countries the fall of 2005.

The expectation is that the institute for recent high school graduates will incorporate even greater emphasis on leadership and related (teambuilding, critical thinking) skills development. The program for recent high school graduates should assign roughly equal weight to the ''Study of the U.S'' and leadership development components.

Participants: As specified in the Project Objectives, Goals and Implementation (POGI) guidelines in the solicitation package, the MEPI Study of the U.S. Institute for Undergraduate Student Leaders should be designed for highly motivated and exemplary first and second year undergraduate students from colleges, universities and teacher training institutions in Algeria, Bahrain, Egypt, Iraq, Israel, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Qatar, Saudi Arabia, Syria, Tunisia, the United Arab Emirates, the West Bank and Gaza, and Yemen who demonstrate leadership through academic work, community involvement, and extracurricular activities. [**Note:** Israeli participants will be Arab-Israelis only.]

The MEPI Study of the U.S. Institute for Recent High School Graduates should be designed for highly motivated students from these same countries who will have completed their high school studies in the summer of 2005 and who will be commencing undergraduate studies in the fall of 2005.

Participants will be identified and nominated by U.S. embassies and consulates in those countries, with final

selection made by the Study of the U.S. Branch in consultation with the MEPI office. A mix of male and female participants will be included, and a mix of religious and cultural backgrounds represented. Their major fields will be varied, including the humanities, social sciences, education, business, and other professional fields. All participants will have good knowledge of English.

Please Note: While the participants will have good knowledge of English, the level of comprehension and speaking ability may vary. Therefore, the grantee institutions will be required to prepare lectures and discussions that meet high academic standards while using language appropriate for students for whom English is their second or third language.

Efforts will be made to recruit participants from non-elite backgrounds from both rural and urban sectors of the home country, and who have had little or no prior study or travel experience in the United States or elsewhere outside of their home country. All participants will be required and committed to return to their home countries to continue or commence their university studies in the fall of 2005 following completion of their institute program; be willing and able to fully participate in an intensive academic program, community service, and active educational travel program. Participants and grantee institutions must recognize that the primary purpose of the program is to develop understanding of the U.S. in a structured environment managed by the Department of State and the grantee institution. Personal travel during or after the program is not a benefit of participating in the institute. As participants will be selected in large part on the basis of their demonstrated leadership capacity, it is expected they will eventually utilize the experience derived from the program in positions of responsibility in their home countries.

The grantee institution will show sensitivity to the cultural traditions and religious practices of the participating students, who will represent a variety of Muslim and other religious traditions. Special requirements and restrictions regarding diet, daily worship, housing and medical care should be considered. The Branch will provide guidance and assistance, as needed.

Program Dates: Each program should be 47 days in length (including participant arrival and departure days and a two day pre-program orientation). The institute for undergraduate student leaders is anticipated to begin early July 2005. The institute for recent high school graduates is anticipated to begin mid-July 2005.

Program Guidelines: While the conception and structure of the institute program is the responsibility of the organizers, it is critically important that proposals provide a full, detailed and comprehensive narrative describing the objectives of the institute; the title, scope and content of each session; planned site visits; and, how each session relates to the overall institute theme. A proposed syllabus must therefore be provided indicating the subject matter for each lecture, panel discussion or other activity (*e.g.*, group exercises), confirm or provisionally identify proposed lecturers and session leaders, and clearly shows how assigned readings will support each session. A calendar of all program activities must also be included. Additionally, applicant institutions should describe their plans for public and media outreach in connection with the program.

Note: In a cooperative agreement, the Study of the U.S. Branch is substantially involved in program activities above and beyond routine grant monitoring. Branch activities and responsibilities for this program are as follows: the Branch will participate in the selection of participants, will conduct a pre-program orientation, will exercise oversight with one or more site visits and will debrief participants while in the U.S. and also engage in follow-up communications with the participants upon their return home. The Branch may require changes in the content of the program as well as the activities proposed after the grant is awarded. The recipient will be required to obtain review and approval of significant agenda/syllabus changes in advance of their implementation.

II. Award Information

Type of Award: Cooperative Agreement. ECA's level of involvement in this program is listed under number I above.

Fiscal Year Funds: FY–2005.

Approximate Total Funding: $990,000.

Approximate Number of Awards: 3.

Approximate Average Award: $350,000.

Floor of Award Range: $285,000.

Ceiling of Award Range: $350,000.

Anticipated Award Date: Pending availability of funds, March 1, 2005.

Anticipated Project Completion Date: September 30, 2006.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant for two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

(a) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding two assistance awards in an amount up to $320,000 each for the MEPI Study of the U.S. Institutes for Undergraduate Student Leaders and one assistance award in an amount up to $350,000 for one MEPI Study of the U.S. Institute for Recent High School Graduates. (These are the estimated sums required to support program and administrative costs to carry out these exchange programs.) Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition.

(b) *Technical Eligibility:* All proposals must comply with the following: The project director or one of the key program staff responsible for the academic program must have an advanced degree in one of the following fields: political science, international relations, law, history, sociology, literature, a U.S. studies field, and/or

other disciplines or sub-disciplines related to the program themes.

Failure to meet these criteria will result in your proposal being declared technically ineligible and given no further consideration in the review process.

IV. Application and Submission Information

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. The Branch staff will be available to consult with prospective applicant institutions about proposal preparation and program design and content up until the proposal submission deadline. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information To Request an Application Package

Please contact the Branch for the Study of the U.S., ECA/A/E/USS, Room Number 252, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone number (202) 260–0535 and fax number (202) 619–6790, e-mail *PallaresJE@State.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number: ECA/A/E/USS–05–07-MEU (Institute for Undergraduate Student Leaders) or ECA/A/E/USS–05–07-MEHS (Institute for Recent High School Graduates) when making your request.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify program officer Julia Pallares and refer to the Funding Opportunity Number ECA/A/E/USS–05–07 located on the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm*. Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The original and ten (10) copies of the application should be sent per the instructions under IV.3e. ''Submission Dates and Times section'' below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please refer to the solicitation package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. Adherence to All Regulations Governing the J Visa. The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Please refer to Solicitation Package for further information.

IV.3d.2. Diversity, Freedom and Democracy Guidelines. Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation. Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that

measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes*, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please Note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3d.4. Describe Your Plans for Overall Program Management, Staffing, and Coordination With the Study of the U.S. Branch. The Branch considers program management, staffing and coordination with the Department of State essential elements of your program. Please be sure to give sufficient attention to these elements in your proposal. Please refer to the Technical Eligibility Requirements and the POGI in the Solicitation package for specific guidelines.

IV.3e. Please Take the Following Information Into Consideration When Preparing Your Budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

MEPI Study of the U.S. Institute for Undergraduate Student Leaders

Based on a group of 21 participants, the total Bureau-funded budget (program and administrative) for this institute should be up to approximately $320,000.

MEPI Study of the U.S. Institute for Recent High School Graduates

Based on a group of 21 participants, the total Bureau-funded budget (program and administrative) for this institute should be up to approximately $350,000.

Justifications for any costs above these amounts must be clearly indicated in the proposal submission. Proposals should try to maximize cost-sharing in all facets of the program and to stimulate U.S. private sector, including foundation and corporate, support. Applicants must submit a comprehensive budget for the entire program. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program, and availability of U.S. government funding.

Please refer to the ''POGI'' in the Solicitation Package for complete institute budget guidelines and formatting instructions.

IV.3e.2. Allowable Costs for the Program Include the Following:

(1) Institute staff salary and benefits.

(2) Honoraria for guest speakers.

(3) Participant per diem.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Submission Dates and Times:

Application Deadline Date: Friday, February 4, 2005.

Explanation of Deadlines: In light of recent events and heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, *etc.*) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. ECA will *not* notify you upon receipt of application. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered. Applications may not be submitted electronically at this time.

Applicants must follow all instructions in the Solicitation Package.

Important Note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM.''

The original and ten (10) copies of the application for the MEPI Study of the U.S. Institute for Student Leaders should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Please Note: For the MEPI Study of the U.S. Undergraduate Student Leaders Program use reference number: ECA/A/E/USS–05–07–MEU.

For the MEPI Study of the U.S. Institute for Recent High School Graduates use reference number: ECA/A/E/USS–05–07–MEHS.

Along with the Project Title, all applicants must enter the above Reference Numbers in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

Applicants are also requested to submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Overall Quality:* Proposals should exhibit originality and substance, consonant with the highest standards of American teaching and scholarship, and be suitable for students with English as their second or third language. Program elements should be tailored for students with limited knowledge of the U.S. and with varying degrees of experience in expressing their opinions. Lectures, panels, and other interactive classroom activities, readings, community service, and site visits, taken as a whole, should offer a balanced presentation of issues, reflecting both the continuity of the American experience as well as its inherent diversity and dynamism.

2. *Program Planning and Administration:* Proposals should demonstrate careful planning. The organization and structure of the institute should be clearly delineated and be fully responsive to all program objectives. A program syllabus (noting specific sessions and topical readings supporting each academic unit) should be included, as should a calendar of activities. The travel component should not simply be a tour, but should be an integral and substantive part of the program, reinforcing and complementing the academic segment. Proposals should provide evidence of continuous administrative and managerial capacity as well as the means by which program activities and logistical matters will be implemented.

3. *Ability to Achieve Program Objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Institutional Capacity:* Proposed personnel, including faculty and administrative staff as well as outside presenters, should be fully qualified to achieve the project's goals. Library and meeting facilities, housing, meals, transportation and other logistical arrangements should fully meet the needs of participants.

5. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange program activities, indicating the experience that the organization and its professional staff have had working with foreign students. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

6. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Applicant should highlight instances of diversity in their proposal.

7. *Evaluation and Follow-up:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to link outcomes to original project objectives is strongly recommended. Proposals should discuss provisions made for follow-up with returned grantees as a means of establishing longer-term individual and institutional linkages.

8. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

VI. Award Administration Information

VI.1. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments.''

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants. http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.*

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus two copies of the following reports:

Mandatory: (1.) A final program and financial report no more than 90 days after the conclusion of the institute;

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. Optional Program Data Requirements

Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Branch for the Study of the U.S., ECA/A/E/USS, Room Number 252, ECA/A/E/USS–05–07–MEU for the Institute for Undergraduate Student Leaders, and ECA/A/E/USS–05–07–MEHS for the Institute for Recent High School Graduates, the U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone number (202) 260–0535 and fax number (202) 619–6790, e-mail: *PallaresJE@State.gov*.

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/E/USS–05–07–MEU or ECA/A/E/USS–05–07–MEHS.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: November 18, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 04–26171 Filed 11–24–04; 8:45 am]

BILLING CODE 4710–05–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Public Law 104–13; Proposed Collection; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Proposed collection; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Alice D. Witt, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402–2801; (423) 751–6832. (SC: 000X1BL)

Comments should be sent to the Agency Clearance Officer no later than January 25, 2005.

SUPPLEMENTARY INFORMATION:

Type of Request: Regular submission; proposal for an extension of a currently approved collection, without revisions, which will expire April 30, 2005.

(*OMB Control number:* 3316–0099).

Title of Information Collection: TVA Aquatic Plant Management.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 2,000.

Estimated Total Annual Burden Hours: 400.

Estimated Average Burden Hours Per Response: 0.2 (12 minutes).

Need For and Use of Information: TVA committed to involving the public in developing plans for managing aquatic plants in individual TVA lakes under a Supplemental Environmental Impact Statement completed in August 1993. This proposed survey will provide a mechanism for obtaining input into this planning process from a representative sample of people living near each lake. The information obtained from the survey will be factored into the development of aquatic plant management plans for mainstream Tennessee River lakes.

Jacklyn J. Stephenson,

Senior Manager, Enterprise Operations, Information Services.

[FR Doc. 04–26189 Filed 11–24–04; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending November 12, 2004

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2004–19633.

Date Filed: November 9, 2004.

Parties: Members of the International Air Transport Association.

Subject:

PTC31 N&C/CIRC 0286 dated 12 November 2004

TC31 North and Central Pacific Japan-North American, Caribbean
Expedited Resolution 002bd
PTC31 N&C/CIRC 0287 dated 12 November 2004
TC31 North and Central Pacific
TC3–Central America, South America
Expedited Resolution 002bz r1–r4
Intended effective date: 15 January 2005.

Docket Number: OST–2004–19636.
Date Filed: November 10, 2004.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 EUR 0590 dated 5 November 2004
PTC2 Within Europe Resolutions r1–r21
Minutes: PTC2 EUR 0587 dated 2 November 2004
Tables: PTC2 EUR Fares 0107 dated 5 November 2004
Intended effective date: 1 March 2005.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 04–26095 Filed 11–24–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending November 12, 2004

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2004–19617.
Date Filed: November 8, 2004.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 29, 2004.
Description: Application of Atlantic Express, Inc. requesting a certificate of public convenience and necessity to engage in scheduled foreign air transportation of persons, property and mail between any point or points in the United States via intermediate points to a point or points in The Netherlands and beyond; from points behind the United States via the United States and intermediate points to a point or points in Germany and beyond; and between any point or points in the United States and any point or point in the United Kingdom (other than London's Heathrow or Gatwick Airports).

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 04–26094 Filed 11–24–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 04–04–C–00–PIT To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Pittsburgh International Airport, Pittsburgh, PA

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 Pittsburgh International Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 27, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Ms. Lori Ledebohm, PFC Contact, Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, PA 17011. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to John R. Serpa, of the Allegheny County Airport Authority at the following address: Allegheny County Airport Authority, P.O. Box 12370, Pittsburgh, Pennsylvania 15231–0370.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Allegheny County Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Lori Ledebohm, PFC Contact, Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, Pennsylvania 17011, 717–730–2835. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Pittsburgh International Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 17, 2004, the FAA determined that the application to impose and use the revenue from a PFC submitted by Allegheny County Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 31, 2004.

The following is a brief overview of the application.

Proposed charge effective date: October 1, 2006.
Proposed charge expiration date: October 1, 2017.
Level of the proposed PFC: $4.50.
Total estimated PFC revenue: $251,972,727.
Brief description of proposed project(s):

- Reimbursement for Multiple Past Pre-Application #1 Projects.
- Wastewater/Contaminated Stormwater Treatment Facility—Environmental Mitigation, Phase 1 Environmental/Design.
- Taxiways B2, C, N & R Pavement Rehabilitation.
- Airfield/Terminal Security Upgrades—Partially in response to 9/11/01.
- Field Maintenance Complex/Snow Removal Equipment Storage Building, Phase 1 Environmental/Design.
- Improve Runways 32 and 28R Runway Safety Areas; and Improve Runway 14 Safety Area, Environmental/Design.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Non-scheduled, on-demand air carriers filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Eastern Region, Airports Division, AEA–610, 1 Aviation Plaza, Jamaica, New York 11434.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Allegheny County Airport Authority.

Issued in Camp Hill, PA on November 17, 2004.

John B. Carter,

Acting Manager, Harrisburg Airports District Office, Eastern Region.

[FR Doc. 04–26102 Filed 11–24–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Chittenden County, VT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed transportation project in Chittenden County, Vermont.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Sikora, Jr., Environmental Program Manager, Federal Highway Administration, PO Box 568, Montpelier Vermont 05601, Telephone: (802) 828–4433.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Vermont Agency of Transportation (VTrans), will prepare an environmental impact statement (EIS) on a proposal to improve the transportation system from Interstate Route I–89 to the Towns of Williston and Essex and the Village of Essex Junction. The project study area is approximately 4 miles in length, and includes the corridor that would have been served by the previously proposed Chittenden County Circumferential Highway Project Construction Segments A and B. The Circumferential Highway Construction Segments G–J included in the Metropolitan Long Range Transportation Plan are not part of this proposed transportation project. The Circumferential Highway Construction Segments C–F have been partially constructed and open to traffic.

The EIS will identify transportation needs and deficiencies in the project study area, including mobility, access, system continuity, and safety. The range of transportation alternatives to be evaluated in the EIS will not be restricted to previously considered alternatives or the conclusions of previous studies. In addition, the EIS will specifically address the relationship between transportation and land use in and around the project study area.

The EIS will evaluate potential alternative transportation improvements to meet the existing and future demands on the transportation system serving the aforementioned communities. Potential alternatives and combinations thereof will include but are not limited to (1) taking no action, *i.e.*, the No-Build Alternative; (2) strategies to better manage transportation demand; (3) improving public transportation facilities and services: (4) improving existing roadways, pedestrian walkways, and bikeways; and (5) constructing a new roadway connection between Route I–89 and Vermont Route 289 and other roadways. Design variations of potential alternatives will also be studied, as appropriate.

The EIS will be initiated with a scoping process. The scoping process will include a program of public outreach and agency coordination will be conducted over the next several months in order to elicit input on project purpose and need, potential alternatives, significant and insignificant issues, and collaborative methods for analyzing transportation alternatives and environmental impacts. As part of scoping, VTrans plans to hold several public meetings at different locations in Chittenden County and to contact and meet with local, state, and federal agencies and officials as well as private individuals and organizations concerned with the project. In addition, a public hearing will be held in connection with the circulation of the draft EIS. Public notice will be given of the time and place of the meetings and hearing.

The information gained during the scoping process will be widely disseminated and used to guide the development of the EIS. An internet website and other communication media will be developed early in the scoping process and used to provide public information and to receive comments. All comments and input received during the scoping and subsequent steps of the EIS process will be considered and documented. Beginning with scoping, continuous and regular public involvement and agency coordination will continue throughout the preparation of the EIS.

(Catalog of Federal Domestic Assistance Program Number 20.205 Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: November 19, 2004.

Charles E. Basner,

Division Administrator, Montpelier, Vermont.

[FR Doc. 04–26192 Filed 11–24–04; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2004–19103; Notice 2]

The Goodyear Tire and Rubber Company, Grant of Petition for Decision of Inconsequential Noncompliance

The Goodyear Tire and Rubber Company (Goodyear) has determined that certain tires it produced in 2004 do not comply with S4.3(e) of 49 CFR 571.109, Federal Motor Vehicle Safety Standard (FMVSS) No. 109, ''New pneumatic tires.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Goodyear has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' Notice of receipt of the petition was published, with a 30-day comment period, on October 8, 2004, in the **Federal Register** (69 FR 60459). NHTSA received no comments.

A total of approximately 3,793 tires are involved. These include approximately 1,075 Kelly Charger HPT 235/45R18 tires manufactured from May 18, 2004, to May 27, 2004, and approximately 2,718 Essenza 210 Type R 235/45R18 tires manufactured from July 15, 2004, to August 15, 2004. Paragraph S4.3 of FMVSS No. 109 requires ''each tire shall have permanently molded into or onto both sidewalls * * * (e) Actual number of plies in the sidewall, and the actual number of plies in the tread area if different.'' The affected tires are incorrectly labeled to state that there is one nylon ply in the tread area when the actual number of nylon plies is two.

Goodyear believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted, because the mislabeling of these tires creates no unsafe condition. Goodyear states that the tires meet or exceed all applicable FMVSS performance requirements. In addition, Goodyear says that all markings related to tire service, including load capacity and corresponding inflation pressure, are correct.

The Transportation Recall, Enhancement, Accountability, and Documentation (TREAD) Act (Public Law 106–414) required, among other things, that the agency initiate rulemaking to improve tire label information. In response, the agency published an Advance Notice of Proposed Rulemaking (ANPRM) in the

Federal Register on December 1, 2000 (65 FR 75222).

The agency received more than 20 comments on the tire labeling information required by 49 CFR 571.109 and 119, part 567, part 574, and part 575. In addition, the agency conducted a series of focus groups, as required by the TREAD Act, to examine consumer perceptions and understanding of tire labeling. Few of the focus group participants had knowledge of tire labeling beyond the tire brand name, tire size, and tire pressure.

Based on the information obtained from comments to the ANPRM and the consumer focus groups, we have concluded that it is likely that few consumers have been influenced by the tire construction information (number of plies and cord material in the sidewall and tread plies) provided on the tire label when deciding to buy a motor vehicle or tire.

Therefore, the agency agrees with Goodyear's statement that the incorrect markings in this case do not present a serious safety concern.[1] There is no effect of the noncompliance on the operational safety of vehicles on which these tires are mounted. In the agency's judgment, the incorrect labeling of the tire construction information will have an inconsequential effect on motor vehicle safety because most consumers do not base tire purchases or vehicle operation parameters on the number of plies in the tire. In addition, the tires are certified to meet all the performance requirements of FMVSS No. 109 and all other informational markings as required by FMVSS No. 109 are present. Goodyear has corrected the problem.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Goodyear's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8.

Issued on: November 18, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–26103 Filed 11–24–04; 8:45 am]

BILLING CODE 4910–59–P

[1] This decision is limited to its specific facts. As some commenters on the ANPRM noted, the existence of steel in a tire's sidewall can be relevant to the manner in which it should be repaired or retreaded.

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Pipeline Safety: Operator Qualification Requirements

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice; issuance of advisory bulletin.

SUMMARY: RSPA's Office of Pipeline Safety (RSPA/OPS) is issuing this advisory bulletin to owners and operators of natural gas and hazardous liquid pipeline systems concerning the minimum requirements for operator qualification (OQ) programs for personnel performing covered tasks on a pipeline facility. The bulletin reminds system owners and operators that the deadline for modifying their OQ programs to comply with the additional statutory requirements in Section 13 of the Pipeline Safety Improvement Act of 2002 is December 17, 2004. The bulletin also advises system owners and operators that reviews of OQ programs conducted by RSPA/OPS inspectors after December 17, 2004, will consider whether the programs are in compliance with these additional statutory requirements, even if the relevant provisions of the pipeline safety regulations are not amended by that date.

ADDRESSES: This document can be viewed at the OPS home page at: *http://ops.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Stanley Kastanas, (202) 366–3844; or by e-mail, *stanley.kastanas@rspa.dot.gov.* This document can be viewed at the RSPA/OPS home page at *http://ops.dot.gov.* General information about the RSPA/OPS programs may be obtained by accessing RSPA's home page at *http://rspa.dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In 1999, RSPA/OPS issued regulations requiring operators of natural gas and hazardous liquid pipelines to establish and follow operator qualification (OQ) programs to ensure that pipeline personnel performing covered tasks on a pipeline facility were properly qualified to do so. (64 FR 46866; Aug. 27, 1999) (codified at 49 CFR Part 192, Subpart N, and 49 CFR Part 195, Subpart G). These regulations required pipeline operators to have a written OQ program in place by April 27, 2001, and to have completed the qualification of individuals performing covered tasks by October 28, 2002.

On December 17, 2002, the President signed the Pipeline Safety Improvement Act of 2002 (Pub. L. 107–355, 116 Stat. 2985) (PSIA 2002). Section 13 of PSIA 2002 (codified at 49 U.S.C. 60131) contains additional OQ program requirements that are not yet incorporated into the existing regulations, and requires that they be implemented by pipeline operators no later than December 17, 2004. Of particular note, Section 13 of PSIA 2002 requires that OQ programs provide for periodic requalification of pipeline personnel. In addition, once an OQ program has undergone compliance review by RSPA/OPS, operators must notify RSPA/OPS of any significant program modifications and those modifications are subject to RSPA/OPS review.

With respect to the time frame for pipeline operators to modify their OQ programs, paragraph (e)(6) of Section 13 of PSIA 2002 requires operators to comply with the new statutory OQ requirements:

> * * * Notwithstanding any failure of the Secretary to prescribe standards and criteria as described in subsection (b), an operator of a pipeline facility shall develop and adopt a qualification program that complies with the requirement of subsection (b)(2)(B) and includes the elements described in subsection (d) not later than 2 years after the date of enactment of this section [December 17, 2004].

RSPA/OPS has called attention to these additional OQ program requirements in public forums attended by operators as well as during reviews of OQ programs. RSPA/OPS is currently preparing amendments to the existing OQ regulations in Parts 192 and 195 to incorporate these additional program requirements. Operators are reminded that these requirements are part of public law, and reviews of OQ programs conducted by RSPA/OPS inspectors after December 17, 2004, will consider whether the programs were in compliance as of the required date, even if the relevant provisions of the pipeline safety regulations are not yet amended by that date.

II. Advisory Bulletin (ADB–04–05)

To: Owners and Operators of Gas and Hazardous Liquid Pipeline Systems.

Subject: Implementation of Operator Qualification (OQ) Requirements Mandated by the Pipeline Safety Improvement Act of 2002 (Pub. L. 107–355, 116 Stat. 2985) (PSIA 2002).

Purpose: To inform pipeline system owners and operators of congressionally mandated requirements for modifications to OQ programs for individuals performing covered tasks on

gas and hazardous liquid pipeline facilities.

Advisory: PSIA 2002 was signed into law on December 17, 2002. Certain provisions of Section 13 of PSIA 2002, which are not yet incorporated into the existing OQ regulations at 49 CFR Part 192, Subpart N, and 49 CFR 195, Subpart G, require that pipeline operators modify their existing OQ programs by December 17, 2004, as follows:

1. An operator OQ program must include a periodic requalification component that provides for examination or testing of individuals, including:

A method for examining or testing the qualifications of individuals, which may include written examination, oral examination, observation during on-the-job performance, on-the-job training, simulations, and other forms of assessment. The method may not be limited to observation of on-the-job performance, except with respect to tasks for which RSPA/OPS has determined that such observation is the best method of examining or testing qualifications. The results of any such observations shall be documented in writing.

In accordance with the OQ review protocols and existing industry practice, the requalification intervals established by operators must reflect the relevant factors including the complexity, criticality, and frequency of performance of the task, and be justified by appropriate documentation.

2. A program to provide training, as appropriate, to ensure that individuals performing covered tasks have the necessary knowledge and skills to perform the tasks in a manner that ensures the safe operation of pipeline facilities.

3. If the operator of a pipeline facility significantly modifies a program that has been reviewed for compliance by RSPA/OPS, the operator must notify RSPA/OPS of the modifications. RSPA/OPS will review such modifications in accordance with applicable laws and regulations.

Operators are again reminded that these OQ program requirements are part of public law, and reviews of programs conducted by RSPA/OPS inspectors after December 17, 2004, will consider whether the programs were in compliance as of the required date, even if the relevant provisions of the pipeline safety regulations are not yet amended by that date.

Issued in Washington, DC on November 19, 2004.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 04–26104 Filed 11–24–04; 8:45 am]

BILLING CODE 4910–60–P

Federal Register

Friday,
November 26, 2004

Part II

Department of Agriculture

Rural Housing Service
Rural Business—Cooperative Service
Rural Utilities Service
Farm Service Agency

7 CFR Parts 1806 et al.
Reinvention of the Sections 514, 515, 516, and 521 Multi-Family Housing Programs; Interim Rule

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business—Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1806, 1822, 1902, 1925,1930, 1940, 1942, 1944, 1951, 1955, 1956, 1965, 3560, and 3565

RIN 0575–AC13

Reinvention of the Sections 514, 515, 516, and 521 Multi-Family Housing Programs

AGENCIES: Rural Housing Service, Rural Business—Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Interim final rule; request for comments.

SUMMARY: The Rural Housing Service (RHS), formerly Rural Housing seand Community Development Service (RHCDS), a successor Agency to the Farmers Home Administration (FmHA), is streamlining and reengineering its regulations, as well as utilizing several private sector processes and techniques in the administration of the origination, management, servicing, and preservation of its Multi-Family Housing (MFH) programs. These programs include the section 515 Rural Rental Housing (RRH) loan program, the section 514/516 Farm Labor Housing loan and grant program, and the section 521 Rental Assistance (RA) program. This interim final rule combines the provisions of the Streamlining and Consolidation of the sections 514, 515, 516, and 521 Multi-Family Housing (MFH) Programs Proposed Rule published on June 2, 2003, and the Operating Assistance for Off-Farm Migrant Farmworker Projects Proposed Rule published on November 2, 2000.

EFFECTIVE DATE: February 24, 2005. Written or e-mail comments on this interim final rule must be received on or before December 27, 2004.

ADDRESSES: You may submit comments to this rule by any of the following methods:

- Agency Web site: *http://rdinit.usda.gov/regs/*. Follow the instructions for submitting comments on the Web Site.
- *E-Mail: comments@usda.gov*. Include the RIN number (0575–AC13) in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Submit written comments via Federal Express Mail or another mail courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., 7th Floor, Suite 701, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at the 300 7th Street, SW., address listed above.

FOR FURTHER INFORMATION CONTACT: Sue Harris-Green, Deputy Director, Multi-Family Housing Direct Loan Division, Rural Housing Service, U.S. Department of Agriculture, Room 1241, South Building, Stop 0781, 1400 Independence Avenue, SW., Washington, DC 20250–0781, telephone (202) 720–1660.

SUPPLEMENTARY INFORMATION:

Classification

The interim final rule has been determined to be significant, but not economically significant, and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Authority

The existing statutory authority for the MFH programs was established in title V of the Housing Act of 1949, which gave authority to the RHS (then the Farmers Home Administration) to make housing loans to farmers. As a result of this Act, the Agency established single-family and multi-family housing programs. Over time, the sections of the Housing Act of 1949 addressing MFH have been amended a number of times. Amendments have involved issues such as the provision of interest credit, broadening definitions of eligible areas and populations to be served, participation of limited-profit entities, establishment of a rental assistance program, and imposition of a number of restrictive-use provisions and prepayment restrictions.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' RHS has determined that this action does not constitute a major Federal action significantly affecting the quality of the environment. In accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

This interim final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature on this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

Federalism (Executive Order 13132)

The policies contained in this rule do not have any substantial direct effect on 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. This rule does not impose substantial direct compliance costs on State and local Governments; therefore, consultation with the States is not required.

Civil Justice Reform (Executive Order 12988)

This rule has been reviewed under Executive Order 12988. In accordance with this rule: (1) Unless otherwise specifically provided, all State and local laws that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division of the Department of Agriculture (7 CFR part 11) must be exhausted before bringing suit in court that challenges action taken under this rule.

Unfunded Mandate Reform Act (UMRA)

Title II of the UMRA, Pub. L. 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal Governments and on the private sector. Under section 202 of the UMRA, Federal Agencies generally must prepare a written statement, including cost-benefit analysis, for proposed and Final Rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal Governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires a Federal Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory

provisions of title II of the UMRA) for State, local, and tribal Governments or for the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act of 1995

The information collection requirements contained in this regulation have been approved by the OMB under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0575–0189, in accordance with the Paperwork Reduction Act (PRA) of 1995.

Collectively, 2,191,777 hours of paperwork burden will be made obsolete from 12 dockets. The new 3560 regulation imposes 907,389 hours of paperwork burden on the public. This is a decrease of 1,284,388 hours. However, only 111,552 hours of that are due to program changes.

Programs Affected

The programs affected by this regulation are listed in the Catalog of Federal Domestic Assistance under number 10.405—Farm Labor Housing Loans and Grants; 10.415—Rural Rental Housing Loans; and 10.427—Rural Rental Assistance Payments.

Intergovernmental Consultation

These loans are subject to the provisions of Executive Order 12372 that require intergovernmental consultation with State and local officials. RHS conducts intergovernmental consultations for each loan in a manner delineated in RD Instruction 1940-J (available in any Rural Development office and on the Internet at *http://www.rdinit.usda.gov/regs/*).

Background Information

An Overview

Most communities in the rural United States have a scarcity of decent rental housing that is affordable to very low-income families. In addition, migrant farmworkers and farm laborers, whose incomes are extremely limited, face some of the worst housing conditions in the nation. Despite improvements in housing quality, especially in the number of rural units with complete plumbing facilities, there are about 2.7 million families who live in substandard housing. In the Agency's experience, rural renters were more than twice as likely to live in substandard housing as people who owned their own homes. With lower median incomes and higher poverty rates than homeowners, many renters are simply unable to find decent housing that is affordable. RHS's rental housing programs are some of the few resources that enable the very low-income renters in the rural United States to access decent, safe, sanitary, and affordable housing. In many rural communities, there are simply no other safe and sanitary alternatives for very low-income people.

Through public and private partnerships, RHS enables limited profit and nonprofit developers to build rental housing for low-income and very low-income tenants across the rural United States. As of February 2004, the nearly $12 billion portfolio of 463,632 units and more than 17,100 projects often provides the only decent, affordable rental housing available in rural areas. The program provides affordable rental housing to very low- and low-income rural families, to disabled people, and to elderly residents. The average tenant has an adjusted income of $9,452.

The Agency operates a multifamily rural rental housing direct loan program under section 515 and section 514 for farm labor housing. The Agency also provides grants under the section 516 farm labor housing program. The direct loan program employs a public—private partnership by providing subsidized loans at an interest rate of 1 percent to developers to construct or renovate affordable rental complexes in rural areas. This 1 percent loan keeps the debt service on the property sufficiently low to support below-market rents affordable to low-income tenants. Many of these projects also utilize low-income housing tax credit (LIHTC) proceeds. This program is typically used in conjunction with the RHS section 521 Rental Assistance (RA) program, which provides project-based rental assistance payments to property owners to subsidize tenants' rents to an affordable level. With rental assistance, tenants pay 30 percent of income toward their rent (including utilities). Some section 515 projects also utilize the U.S. Department of Housing and Urban Development's (HUD's) section 8 project-based assistance, which enables additional very low-income families to be served.

The direct loan and grant programs under sections 514 and 516 provide low interest loans and grants to provide housing for farmworkers. These workers may work either at the borrower's farm (''on-farm'') or at the borrower's or any other farm (''off-farm'') so long as the tenants meet program eligibility requirements. Section 521 rental assistance is available for off-farm labor housing, but not on-farm labor housing. The Agency has decided to not provide RA to on-farm labor housing units because of its limited availability.

Goals of the Regulatory Streamlining Process

This rule results from RHS's pledge to make its programs more customer friendly, streamline the processes, reduce costs to the taxpayer, and increase the Agency's level of customer service. These goals were accomplished through the input and commitment that resulted from numerous stakeholder meetings with recognized leaders in the multi-family industry, including borrowers, management agents identified by industry groups, and tenant representatives. Representatives of State housing finance agencies, accounting firms, and the USDA Office of Inspector General (OIG) also participated. Through these meetings, RHS was able to draw on a vast amount of expertise and knowledge to meet the following objectives of multi-family housing reinvention:

- Assure affordable safe, decent, and sanitary housing for very low- and low-income residents in rural communities.
- Consolidate and simplify 14 regulations into one regulation for rural rental housing, farm labor housing, and rental assistance.
- Develop an efficient loan application process that supports the creation of partnerships and leveraging with local, State, and other Federal entities.
- Clarify RHS's existing policies and procedures to reflect the best practices within the Agency and within the multi-family field.
- Improve efficiency and service to RHS's customers, correcting past problems and addressing concerns raised by stakeholders so that particularly complex processes, such as preservation, work better.
- Make much of the farm labor housing review and approval processes the same as those for rural rental housing processes.
- Create a series of handbooks available to field staff and to applicants, borrowers, and partners that will give clear guidance on policies, such as developing project budget approvals, determining project feasibility, and servicing actions.

Streamlining and Consolidation

RHS is undertaking a major redevelopment and consolidation of Rural Development (RD) regulations affecting the sections 514, 515, 516, and 521 Multi-Family Housing programs. Current customers of these programs are affected by 14 separate regulations, but as a result of reinvention, the interim final rule revises and consolidates Agency regulations affecting the

sections 514, 515, 516, and 521 Multi-Family Housing programs. This rule consolidates the policies outlined in 14 separate regulations and a number of Administrative Notices into one regulation and moves the procedural guidance to program handbooks. A list of the regulations being consolidated follows:

- 7 CFR part 1806, subpart A—Real Property Insurance
- 7 CFR part 1930, subpart C—Management and Supervision of Multi-Family Housing Borrowers and Grant Recipients
- 7 CFR part 1944, subpart D—Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations
- 7 CFR part 1944, subpart E—Rural Rental and Rural Cooperative Housing Loan Policies, Procedures, and Authorizations
- 7 CFR part 1944, subpart L—Tenant Grievance and Appeals Procedure
- 7 CFR part 1951, subpart D—Final Payment on Loans
- 7 CFR part 1951, subpart K—Predetermined Amortization Schedule System (PASS) Account Servicing
- 7 CFR part 1951, subpart N—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Multi-Family Housing
- 7 CFR part 1955, subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property
- 7 CFR part 1955, subpart B—Management of Property
- 7 CFR part 1955, subpart C—Disposal of Inventory Property
- 7 CFR part 1956, subpart B—Debt Settlement Farm Loan Programs and Multi-Family Housing
- 7 CFR part 1965, subpart B—Security Servicing for Multiple Housing Loans
- 7 CFR part 1965, subpart E—Prepayment and Displacement Prevention of Multi-Family Housing Loans

These changes have two clear benefits. First, the consolidated, streamlined regulation makes information easier to access. Answers to policy questions are found in one document that has been shortened from over 1,500 pages to less than 200 pages.

Similarly, answers to process and implementation questions are found in three handbooks. These handbooks provide ''how-to'' guidance on loan origination, asset management, and loan servicing. Agency staff, property owners, property managers, and residents can look for most answers to day-to-day questions in the handbooks' plain English explanations and examples. If the regulatory basis for a procedure is in question, that information can be easily found in the streamlined regulation. The increased ease of finding information will help improve public understanding of the rules and eliminate inconsistencies in interpretation.

Second, the division of policy and procedure gives the Agency more flexibility to update and revise program procedures. For example, as automation changes the way program reporting occurs, relevant procedures can be updated in the handbooks without going through the complex process of changing the regulation. This will make the Agency more responsive to changes in the business environment, an important initiative as the Federal Government strives to have more of its business conducted online and through electronic submissions.

The paperwork burden reduction to the public resulting from this rule will be approximately 45 percent. This estimate is derived from the Paperwork Burden docket that RHS prepared.

The Handbooks

As stated above, the Agency is finalizing three separate handbooks that present the reader with administrative guidance on loan origination, asset management, and project servicing. The Loan Origination Handbook instructs the reader on application and processing procedures and provides information on matters such as what forms must be filed, where to submit loan requests, and the Agency's internal processing procedures. It also provides Agency staff with the guidance needed to originate loans and grants efficiently and effectively. The Asset Management Handbook provides RHS Multi-Family Housing staff with guidance about the Agency's procedures for overseeing borrowers' performance in meeting their responsibilities under the program. The Project Servicing Handbook provides loan servicers with guidance about the Agency's procedures for servicing actions involving borrowers that receive loans or grants for MFH projects.

The handbooks are not published in the **Federal Register** but are available to the public at no cost. The public can access the handbooks through their local RHS servicing office.

Exhibits

Many of the exhibits that were part of the expired regulations may be found in the three companion handbooks to 7 CFR part 3560: Loan Origination, Asset Management, and Project Servicing. As an example, exhibit B–1 of 7 CFR part 1930, subpart C, is found in exhibit 3–1 of chapter 3 of the Asset Management Handbook.

Discussion of the Interim Final Rule

This interim final rule combines the provisions of the Streamlining and Consolidation of the sections 514, 515, 516, and 521 Multi-Family Housing (MFH) Programs Proposed Rule published on June 2, 2003, and the Operating Assistance for Off-Farm Migrant Farmworker Projects Proposed Rule published on November 2, 2000.

RHS is issuing this regulation as an interim final rule, with an effective date 30 days after publication in the **Federal Register,** given that these regulatory changes are very extensive, affect all aspects of the programs, and seek to achieve significant streamlining of the programs' regulatory provisions. Delaying implementation of the rule to allow more time for further consideration would not be in the best interest of the direct MFH program or its recipients. All provisions of this regulation are adopted on an interim final basis, are subject to a 90-day comment period, and will remain in effect until the Agency adopts a final rule.

Changes Presented in the 7 CFR Part 3560 Proposed Rule That Remain Proposed, but Not Implemented in the Interim Final Rule

Reserve Requirements for Project Improvements

Current regulations include standards for physical condition, maintenance, and reserve levels to address the physical condition of the property. These regulations require that borrowers initially contribute 1 percent annually of total development costs toward a reserve for project improvements until a total of 10 percent is reached. While borrowers are permitted to request adjustments to their reserve contributions, there is no systematic provision for reevaluating reserves over the life of the project.

The proposed rule included language requiring a life-cycle cost analysis be used to establish the initial reserve amount needed to meet the capital needs of new projects. For existing projects, the proposed rule would have required that any servicing action that involves additional Agency funds must take into account physical needs of the project, based on a capital needs assessment. The regulatory impact analysis for the proposed rule indicated that these provisions would increase rents and result in additional demand for rental assistance payments.

Since the proposed rule was published, RHS has undertaken a comprehensive property assessment of the properties in the section 515 portfolio. The preliminary results provided useful information for reconsidering the extent of capital reserves that may be necessary to meet the capital needs of projects and to explore policy options for addressing these needs to be reflected in any necessary budgetary and legislative changes. More time is needed to properly address these matters. Accordingly, RHS has decided to publish an interim final rule that does not include these provisions—specifically § 3560.103(c)(3) and § 3560.306(k)(1) of the proposed rule—until their impacts can be assessed and policy decisions can be made for a long-term strategy.

For the interim final rule, the Agency is continuing the policy from the existing regulation 7 CFR part 1930, subpart C. Because 7 CFR part 1930, subpart C is being replaced by 7 CFR part 3560 in this rulemaking, the relevant language from the previous regulation is being carried forward and included in § 3560.306(j)(1) (Changes to Reserve Requirements), while the language from § 3560.103(c)(3) is removed and the paragraph marked as reserved.

Changes to the Rule With Significant Impact

Investment Earnings on Reserve Account Funds

RHS has found that most project owners are putting their reserve funds in accounts that earn no or minimal income. The average reserve account has been earning only 2 percent interest annually. Project owners indicate that, under current regulations and tax rules, they have few options for investing these funds and face a strong disincentive for investing them in a manner that maximizes their return. The disincentive is due to Internal Revenue Service (IRS) rules that treat income earned on reserve accounts as investment income for the owner and thus is taxable, rather than project, income.

This rule makes two changes to address these limitations. First, it allows a greater number of investment options, including relatively conservative investment vehicles that are used by public agencies and are not expected to pose a significant increased risk to the funds. This change would give owners more flexibility for investing their reserve account funds and is expected to result in greater returns on these funds and thus more income to be put toward better project operations and capital improvements. The increase in interest income would lower the amount needed from tenant rents and rental assistance to meet project needs.

Second, the rule addresses the issue of ''phantom income''—the interest income earned on reserve accounts. This income is committed to the project but not accessible to the owner. To ease the burden of paying taxes on this phantom income by for profit and limited profit entities, the rule allows owners, with RHS's approval, to withdraw up to 25 percent of the annual interest income earned on the reserve funds to cover the tax expense. The 25 percent allowance was determined to be a reasonable estimate of the tax rate for the average investor. It was decided to use a single rate for all owners to simplify the administration of this feature. RHS also consulted with the USDA OIG and the American Institute of Certified Public Accountants (AICPA) to arrive at the 25 percent figure.

Transferring Surplus Funds

Prior regulations required that if a property had a surplus in its general operating account at the end of the project's fiscal year in excess of 10 percent, the amount over 10 percent had to be transferred into the property's reserve for replacement account. This policy has been changed so that if a project has surplus cash in excess of 20 percent at the end of the project's fiscal year, the amount over 20 percent must be transferred to the reserve account. Numerous comments to the proposed rule said that the prior policy allows for no contingency should the project have an unplanned, extraordinary expense. The policy also results in project cash flows that are extremely tight. The new policy in the interim final rule should help to mitigate these cash flow problems.

Treatment of Surplus Operating Funds Transferred to the Reserve Account

As stated above, the Agency requires surplus funds in a project's operating account to be transferred into the project's reserve account. However, there was confusion about whether the amount transferred could be deducted from the scheduled contributions to the reserve account. This issue is clarified in the interim final rule, which states that transfers of surplus funds into the reserve account may not be deducted from the scheduled contribution. The surplus funds are to be used for addressing a project's capital needs.

Prepayment Policies and Procedures

The Agency, borrowers, and tenant advocates agreed that the prepayment request process is difficult and confusing. Agency staff in the National Office recognized that they were spending a great deal of time providing technical assistance to Field Offices in responding to prepayment requests. Borrowers commented that the process was unduly burdensome to borrowers who were within their rights to request prepayment. Tenant advocates pointed out that tenants are virtually excluded from the process because the process complexity makes it difficult for tenants to take action. Discussion of these concerns at the stakeholder meetings indicated that RHS needed to clarify many of the policies toward prepayment and, where possible, make policy changes that would help simplify the process. Consequently, this rule includes changes to Agency policy regarding tenant notification and projects on the waiting list for incentives.

Tenant Notifications

Stakeholders suggested changes to the content and timing of tenant notifications to provide tenants with the information they need to participate in the prepayment process. This rule replaces the requirement for one early tenant notification with a series of notifications aimed at keeping the tenants informed of the Agency's and the borrower's decisions throughout the process.

Alternatives to Acceleration When Needed To Preserve Affordable Units

The Agency received numerous comments on the proposed rule on the preservation process. One issue that was raised repeatedly is that the Agency should have alternative means to sanction a borrower for monetary or nonmonetary default without accelerating the borrower's account. Commenters expressed concern that a borrower could force the Agency to accelerate the loan to be able to prepay the loan. The Agency cannot prevent such an occurrence in all cases, but has added language to the interim final rule to acknowledge this problem and to demonstrate its intention to prevent it from occurring. Before accelerating a project loan, the Agency will consider the possibility that the borrower is forcing an acceleration to circumvent the prepayment process. If it is found that this is the borrower's motivation, the Agency will consider alternatives to acceleration, such as suing for specific performance under loan and

management documents. Subpart J of the interim final rule provides several alternatives to acceleration.

Waiting List

One of the most common complaints heard about the prepayment process is its open-ended nature. Borrowers who are approved for incentives and agree to stay in the program in exchange for incentives may have to wait years before the funds for the incentives become available. The interim final rule establishes a maximum time on the waiting list of 15 months and allows borrowers three choices at the end of that time: (1) Stay on the waiting list and continue waiting for the incentives; (2) withdraw from the list and continue operating the property for program purposes; or (3) offer to sell the property to a nonprofit organization. This last option may allow some properties to eventually prepay if they complete the process involved in offering the project for sale and fail to receive a bona fide offer. This option responds to the reality that the Agency may not always have the resources to keep borrowers in the program indefinitely and that costly legal battles are likely if it does not allow other options to the borrowers. Further, it is believed that many borrowers have not applied for prepayment incentives and joined the waiting list because of the extended time period they must currently remain on the list. If the 15-month maximum time period is implemented, a greater number of these borrowers may seek prepayment with the expectation that they will be allowed to exercise one of the three options at the end of the 15-month time period. If borrowers do prepay and convert their apartment complexes to market rate units, RHS will take measures to protect the tenants at these properties by providing them with a letter of priority entitlement (LOPE) that gives them priority in Agency-financed housing elsewhere. However, if alternative vacant RHS-financed rental housing is not available in the market, the impacted tenants face displacement or rent overburden if they remain in place.

Incentives

The interim final rule clarifies the Agency's policy on incentives and adds several requirements to help ensure that the limited amount of funding available for incentives, as discussed in the overview section of this analysis, is used efficiently to benefit the program. For example, this rule outlines the process a borrower must follow when requesting permission to prepay and be eligible to receive incentives.

In addition, the proposed rule clarifies that third-party equity loans are an option for borrowers who are seeking equity loans through the prepayment process. The use of third-party equity funding stretches RHS's incentive funds by providing resources from alternative funding sources. However, it should be noted that debt costs from other sources might be higher than financing received under the section 515 program. For example, section 515 funding is lent at an effective 1 percent interest rate and amortized for 50 years, whereas third-party funds may be lent at rates ranging from interest free to market rate depending upon the source of the funds, with amortization periods ranging from fully deferred to 30 years. All proposed third-party equity loans must be underwritten and reviewed to the same standard as section 515 loans to ensure that no project is made financially unfeasible as a result of a third-party loan.

Initial Operating Capital

Under previous regulations, borrowers were required to pay the equivalent of 2 percent of the cost of developing a project into an account for initial operating costs. They earned no interest on this account, which also received funds from other sources, including rental income. If within 2 years the project was operating successfully and there was sufficient capital in the operating account to maintain the financial soundness of the account, borrowers might take out up to the full amount of their contribution. While on deposit in the operating account, borrowers received no return on investment for the funds. After 2 years, any portion of the contribution that remained in the account must remain in the account to meet ongoing operating capital needs. During the stakeholder meetings, borrowers expressed concern that the previous regulation did not allow them sufficient time to recover their contribution, even when a project is functioning well and no longer needs the additional capital. RHS determined that the 2-year limit was originally set due to difficulties in tracking the funds within the project's overall budget, and that its new management information system, has the capability to provide better tracking and disclosure of these funds. Therefore, RHS is extending the time limit for the recovery of initial operating capital from 2 to 7 years. In selecting 7 years for the new limit, RHS received input from field staff and industry groups indicating that the prospects for recovery after 7 years were minimal, either because financial soundness could not be established or owners were willing to leave their contribution in the account.

This change allows more borrowers to fully recover the payments they make to initial operating capital accounts. It is uncertain how many borrowers would benefit from the change and how many dollars these borrowers would be allowed to recover from these accounts. Because of the limitation on recovery from only financially sound accounts, it is unlikely that there would be immediate, negative impacts on the performance of the MFH programs. However, it should be noted that by allowing borrowers to recover funds from initial operating capital accounts, these funds would not be available for ongoing capital needs. The potential withdrawal of initial operating capital is not considered to have significant impacts on rents and thus on costs to the Government and tenants.

Other Changes to the Rule

Conventional Rents for Comparable Units

RHS has incorporated the concept of ''conventional rents for comparable units'' (CRCU), which is one of the most important policies established by the interim final rule. The concept is applicable to loan origination, loan servicing, replacement reserve set asides, and preservation. In essence, rents are to be capped at conventional rents for comparable units in the area where the housing is located. Comparable units would be those equivalent to RHS-financed units in terms of quality and amenities. If no such units are located in the same community, units from a similar community could be used for comparison. Comparable units also means that the units the Agency finances would meet a standard of economical development—modest in size, facilities, and design, yet compatible with the community.

RHS will continue to require that rents be based on the project's operating costs. However, the interim final rule requires that RHS not approve project proposals, servicing actions, or prepayment incentives that involve rents above the CRCU, except in limited circumstances, where such rents are determined to be in the best interest of the Government and the tenants of the project. The Agency wants to emphasize that the comparison to CRCUs is not used during annual budget reviews and requests for rent changes.

By placing an upper limit on rents, RHS expects to protect the Government from investing in projects that may be

wasteful or fraudulent, and to ensure that projects are competitive so that vacancy and other market-driven problems can be avoided. In this way, the CRCU should improve the long-term viability of MFH projects, limit the costs of rental assistance, and reduce the risk of defaults.

The interim final rule maintains flexibility for serving areas where MFH projects provide the only decent, safe, and sanitary affordable rental housing in a local housing market, or where a significant amount of the substandard housing rents for less than the cost of operating a MFH project. In such cases, RHS may base the CRCU on rents outside the local community. It may also grant an exemption for exceptional circumstances.

The CRCU will create a definitive underwriting standard. It will apply to leveraging other low-interest loan funds or paying for additional owner contributions (up to 3 percent return on investment over required contribution), improving project design and amenities (within the definition of economical development), and adjusting reserves or other serving actions. In areas where rents are below the CRCU, rental assistance costs and loan levels may increase. However, it will also ensure ''marketable units'' if the Agency should lose rental assistance units.

Cost Reasonableness Basis for the Evaluation of Project Proposals

The interim final rule also includes changes related to evaluating the cost reasonableness of project proposals. Under current regulations, the Agency has applied a policy of cost containment when evaluating whether the costs of the proposed design for new projects are reasonable. While this policy has effectively held down construction costs for new projects, Agency field staff and borrowers report that lower-cost project design features are not always cost effective over the long term. They report that while certain design features reduce initial construction costs, they actually cost more over the life of the project because the components used require higher levels of maintenance and more frequent replacement.

Projects with these design features experience higher routine maintenance costs, higher expenditures of project reserves, and a greater need for subsequent financing for rehabilitation. The result is an upward pressure on project rents and increased use of rental assistance funding. To the extent a project cannot support the rent increases needed to cover these costs, the project faces an increased risk of financial failure or compliance violations due to physical deficiencies.

Previously, RHS had no process for conducting life-cycle analyses. The requirement for a life-cycle cost analysis is to be used for new projects. The requirement is intended to assure quality construction, as well as the long-term viability of complexes. Under the interim final rule, the Agency will change its policy for evaluating project proposals to consider the life-cycle costs of proposed project designs. Under this policy, the Agency may approve a proposed project design that is not the lowest cost if the life-cycle cost analysis that is prepared by the project architect reveals that the design achieves the lowest overall cost over the life of the project. Industry standards will be used for the analysis. To assure that new projects are affordable and appropriate to the local housing market, this rule restricts the Agency from approving project designs that would cause rents to exceed the market standard (except in exceptional circumstances where such costs are determined to be in the best interest of the Government and the tenants). Examples of two design features that may cost more initially but decrease operating expenses over the life of the project are brick exteriors and increased thermal standards. In the past, many projects were built using a popular exterior plywood siding. These buildings require replacement of the original siding. Similar buildings that utilized brick as an exterior finish or partial finish are not having similar expenses, thereby decreasing demands on the reserve accounts. Thermal standards in RHS-financed projects often exceed local codes. By building RHS projects with more energy efficiency, tenant and owner utility expenses are kept lower, thereby decreasing the need for rent increases or tenant utility allowance increases. By avoiding the additional rent and utility allowance increases, tenant rent overburden is avoided, as is the additional drain on scarce rental assistance resources.

Because this change will allow for more costly designs, the Agency expects the size of initial loans and initial rents to grow slightly. However, higher upfront costs would be offset by lower long-term costs. The Agency expects that new projects receiving funding under this policy will have lower maintenance and rehabilitation needs, thereby lowering project rents and use of Agency rental assistance over the life of the project. Lower maintenance expenses, resulting in rents essentially the same as projects built under cost containment guidelines, would offset the increased debt service due to higher construction costs. This change will also lower demand for subsequent loans from the Agency in a time when additional loan funds are increasingly scarce.

Management Certification

Under previous regulations, RHS needed to approve the management agreement between the borrower and the management entity for a project. This requirement for Agency approval was designed to ensure that the management agent was also accountable for meeting program requirements. However, the Agency has found that this policy resulted in a time-consuming approval process because these agreements varied considerably from borrower to borrower, and lacked the consistency necessary to implement a national program. Further, the USDA OIG has found that many management agreements and plans lack the specificity to accurately describe how project and management costs are prorated between expenses paid by the project fee and those paid by the management fee.

The interim final rule eliminates Agency approval of management agreements and instead requires borrowers to submit a management certification in an Agency-approved format. In submitting this document, borrowers certify that their agreement with the project management entity obligates that entity to comply with program requirements; establishes sanctions for failure to comply with these requirements, including termination of the agent; and specifies penalties for false certifications. This change eliminates the administrative burden on RHS for approving management agreements, while strengthening the Agency's ability to hold borrowers and their agents accountable for their management responsibilities. In addition, revisions to the management fee policy, discussed below, allow for a more definitive method to differentiate between project and management agent expenses.

Management Plan

Under previous regulations, borrowers were also required to obtain RHS's approval of the management plans for their projects. The purpose of this policy was to assure the Agency that the borrower and management entities would have adequate systems in place to comply with program requirements. The requirement to obtain Agency approval for updates only added to the burden for both the Agency staff and the borrowers. This policy also left

the Agency in an awkward position when borrowers with sound projects changed their operations but did not update their management plan. The USDA OIG has reported audit findings where borrowers and management agents have not been operating the properties in conformity with the executed management plan. While this is true, RHS has found that the agent and owner have not engaged in an improper practice; instead, the practice is just not documented correctly in the management plan. The OIG has agreed that if the practice had been correctly disclosed in the management plan, the practice would not have been listed as an audit finding. The OIG has worked with RHS during the stakeholder process to identify changes in policy and procedures and has addressed this particular area of confusion. The result of the change will establish clearer borrower and management agent accountability combined with procedures that discourage RHS micromanagement of borrower and management agent business practices. Additionally, fewer OIG findings will result, requiring less OIG and RHS staff time to resolve.

The interim final rule eliminates Agency approval of project management plans and instead requires that borrowers submit a management plan that addresses a specified list of operational areas. RHS staff will review the plan to see if the required areas have been covered in the plan but will not approve the plan. The plan will be used to monitor project performance, but discrepancies between project operations and the plan will not constitute a violation of program requirements, unless the discrepancies affect program performance. This change reduces the administrative burden on RHS staff and borrowers. It also provides borrowers with greater flexibility to make sound changes in project operations without creating a performance concern.

Management Fees

Previously, program regulations required that management fees for projects be reasonable and competitive. However, the USDA OIG staff found that the management fees approved for projects varied significantly, ranging from as low as $25 per unit per month to $55 per unit per month across States. This led the OIG to question whether the higher fees found in some instances were reasonable. As with management plans, the OIG expressed concern that the current regulations were neither clear nor consistent concerning what services were to be included in the management fee. In some States many of the maintenance services provided by management company staff were included in the management fees, and in other States the charges were not. In some States insurance and tax costs for project employees were included in management fees, while in other States the costs were billed directly to the project. Comments by Agency staff at stakeholder meetings revealed that the variations were often due to differences in Field Office interpretations about the services to be covered by the management fee. They noted that services not covered by the fee were paid for as a line item on the budget. When management fees plus other fees for services were accounted for, management compensation was consistent. Together with representatives of the property management industry and the OIG, RHS developed the bundle of management services that is a part of this regulatory change. By moving to a standardized grouping of services that is to be included in the management fee, RHS and the OIG believe that the change will greatly improve consistency among different areas of the country and RHS offices. As stated in the previous paragraph, as these services were all being provided previously but charged to the project on different lines of the operating budget. The grouping of these expenses in a different manner would neither increase nor decrease the overall cost to the project or the rents being charged.

The interim final rule and accompanying handbooks address the inconsistencies in fees by establishing a standard bundle of services covered by the management fee and a framework for setting standard adjustments for project characteristics that warrant slightly higher fees, such as for a new management agent taking over a troubled property. However, this rule should improve RHS's ability to document that the management fees for projects are reasonable. It should also ensure consistency among RHS Field Offices in interpreting the services included in fees. Additionally, the number of OIG findings should be reduced, requiring less OIG and RHS staff time to resolve.

Standards for Physical Conditions at Projects

Previous regulations established borrowers' responsibility to maintain their projects in decent, safe, and sanitary condition. However, the USDA OIG raised concerns about a lack of consistency in how this standard has been implemented.

The interim final rule establishes specific standards for physical conditions that clarify the conditions that constitute decent, safe, and sanitary housing. These standards do not represent a change in Agency policy. Rather, they make Agency expectations explicit and thus improve the Agency's ability to enforce physical standards, thereby improving the quality of living conditions for tenants and better preserving the security of Agency loans.

Recertifications of Tenant Eligibility

Recertifications are used to document tenants' income for the purpose of determining eligibility to live in a multi-family housing unit and qualify for rental assistance payments. Previous regulations required both an annual recertification and an interim recertification whenever tenants' income changes. Stakeholders indicated that the recertification process was time consuming for tenants, borrowers, and the Agency.

The interim final rule simplifies the process by eliminating the requirements for an interim recertification for tenants' monthly income changes of less than $100. RHS arrived at the $100 threshold by comparing the cost of recertifying tenants with the benefit either the Government or the tenants would receive as a result of increased or decreased rent. Based on consultation with industry groups and the OIG, RHS determined that the cost to recertify a tenant was about $150. Assuming that any change would apply for only 6 months of the year, the $150 figure was converted to a monthly figure of $25, which became the threshold. However, after receiving numerous comments that this threshold amount was too low, that the amount of increase in tenants' contribution toward rent would be minimal, and in consideration of the tenant income profile of RHS properties, the Agency decided to increase the threshold to $100 per month of income change rather than tenant contribution. The regulation also allows tenants to request an interim recertification any time between annual recertifications if their income changes by $50 or more per month. This provision was included to avoid adverse impacts on tenants with the lowest income for whom the $50 per month figure may constitute a significant share of their income.

While a detailed analysis of how the impact of the $100 and $50 thresholds might be distributed between the Government and tenants was not completed, recent OIG audits have indicated that the current recertification process produces approximately the same amount of rent increases as rent

decreases, thus resulting in little or no overall change in rental assistance payments.

Lease Protection

The interim final rule would require that leases for rental units that receive rental assistance include a clause that specifies that tenants' contribution to rent will not increase if rental assistance is terminated due to actions by the borrower/owner. RHS estimates that there have been two to four incidents per year in which borrowers/owners have attempted to make up for the loss of rental assistance payments due to a default on their part by raising tenants' rents. Such action usually occurs in a contentious situation, with the borrowers/owners already in default and uncooperative. Consequently, requiring leases to include a clause specifically prohibiting such action may not resolve all cases. However, it would provide tenants with a regulatory and lease citation that could be used in bringing court proceedings against abusive borrowers/owners. Further, it would provide RHS with an additional instance of noncompliance with regulations that could be used against owners in a liquidation action or in a criminal or civil court case. However, it is uncertain whether cases could be resolved more quickly at less cost to the Government.

While the interim final rule offers some additional protection to tenants and imposes some additional responsibility on borrower/owners, it is difficult to place a monetary value on these impacts. Each case is likely to be different, and the resolutions are uncertain. The low incidence, however, suggests that the impacts would not be significant in value.

Limited English Proficiency (LEP)

The Agency has issued guidance to clarify the responsibilities of recipients and subrecipients of Federal funds from the Agency to assist them in fulfilling their responsibilities to LEP persons under title VI of the Civil Rights Act, as amended, and implementing regulations. The Agency has incorporated language in subparts A and D of the interim final rule stating that borrowers and grantees must take steps to ensure the meaningful participation in Agency programs and activities by LEP persons free of charge.

Application Process for Rental Subsidies

Rental subsidies provide critical funds for housing very low-income tenants. Projects that receive RHS's rental assistance, including interest subsidy and rental assistance payments, depend on the continued availability of these subsidies to maintain in-place tenants in their units. Under previous regulations, borrowers were required to complete full rental assistance requests to renew expiring subsidies. Stakeholders noted that the Agency gathers sufficient information through the budget approval process to assess project needs for rental assistance.

The interim final rule states that expiring subsidies will be renewed at the existing number of units and to the extent that sufficient funds are available. To indicate that rental assistance units are needed, borrowers must fill in a single check box on the project budget form (which must be filed annually) instead of completing a separate form as currently required. These changes relieve borrowers of the burden of applying, and the Agency of the burden of reviewing the requests. Instead, the review can be accomplished as part of the budget approval process. The change has no effect on project or program budgets. It does not change the Agency's determination about rental subsidies; it simply streamlines the process.

Transferring Rental Assistance

The Agency has revised the interim final rule to state that the Agency will transfer rental assistance from one property to another after it has been unused for 6 months. Prior to transferring the RA, the Agency must conduct an analysis to determine whether any of the current tenants or applicants at the top of the waiting list need RA, so that the subsidy is not transferred prematurely. This provision should help to ensure that rental assistance stays in or is transferred to properties where it is needed the most.

Budget Approval

RHS requires its borrowers to submit an annual budget, which is used in setting rents. Approximately 92 percent of these budgets arrive for approval at the same time because most owners operate on a calendar-year basis and their schedules for developing budgets is about the same. Budget approval is a time-consuming process that taxes RHS staff resources in times of high volume and forces borrowers to operate for extended periods of time with unapproved budgets while the review process is underway. Previous regulations required that all budgets be reviewed in the same way, regardless of whether they represented no real change from the previous year or contained significant and potentially controversial changes.

The interim final rule establishes an expedited review for those budgets that are within a certain threshold requiring little or no increase in rents. The threshold is based on data to be obtained from the MFIS III ADP system on area-wide norms for projects within RHS's MFH portfolio, as well as commercially available multifamily income and expense surveys. Details on how the threshold will be computed will be contained in the program handbooks rather than in the interim final rule, which will facilitate making any necessary adjustments in the threshold to meet changing conditions.

The new process could improve program performance by allowing RHS to focus its review on those budgets that contain significant changes, while expediting approval of those budgets with little or no change. However, it is unlikely that the new process would have measurable budget impacts, such as reduced rental assistance costs or fewer defaults, because the decisions RHS makes on whether to approve a budget will most likely be the same under the new process as under the existing system. Those decisions will, however, be reached in a more efficient manner.

Summary of Tenant Comments

There was a requirement in the proposed rule stating that when a borrower requests a rent increase for a particular Agency-financed MFH project, the borrower must provide a summary of all written comments from the tenants to the Agency. The Agency determined that this was a cumbersome and unnecessary requirement as most tenants provide their comments on rent increase proposals directly to the Agency anyway. The Agency removed this requirement, resulting in a decrease in the borrower's burden.

Project Operating Accounts

The interim final rule states that rather than maintaining separate bank accounts for every property, a borrower or manager of Agency-financed MFH projects may have one operating account for all properties in their portfolio, as long as the borrower, manager, and bank track each property's funds separately. With today's enhanced reporting technology, banks can divide accounts into subaccounts, to ensure accurate reporting of all transactions for each property. In addition, this policy is economical, because it helps the borrower and/or manager save on bank fees and charges for separate accounts.

Priorities for Budgeted Expenses

The priorities for budgeting a property's operating expenses have been revised in the interim final rule. In the proposed rule, the first priority for budgeted expenditures was critical maintenance and operating expenses. Due to comments received by the Agency, the interim final rule now lists amounts owed to a prior lienholder as the first priority for budgeted expenditures. This new policy reflects the current reality that the Agency is not always the primary lienholder on Agency-financed projects. The policy also acknowledges the Agency's focus on participating with other funding sources.

Annual Financial Reporting

Under previous regulations, the Agency required that for all projects of 25 units or more the owners contracted with a Certified Public Accountant (CPA) to perform an audit in accordance with Government Auditing Standards (GAS). Because a large percentage of the Agency's portfolio consists of projects with between 16 and 24 units, annual financial statements have not been prepared for a substantial number of projects financed by the Agency. Moreover, certain components of GAS-audited financial statements did not address the Agency's need for certain information related to specific aspects of project performance, and these financial statements are prohibitively expensive for a substantial portion of the Agency's portfolio. Finally, the previous audit guide did not require the auditor to provide information that remains of specific importance to the Agency, such as information on identity-of-interest (IOI) transactions.

Under the interim final rule, owners of MFH projects with 16 or more units must base their annual financial reports on an engagement report completed according to ''agreed upon procedures'' established by the Agency, which will be included in detail in the new Multi-Family Housing Engagement Guidelines to be delivered by the Agency. Borrowers must include the engagement report with their annual financial reports submitted to the Agency. These borrowers will not be required to submit a GAS audit prepared by an independent CPA. The new Multi-Family Housing Engagement Guidelines will provide specific instructions on how the individual preparing the annual financial statements should handle compliance issues. The annual financial statements must be completed using agreed upon procedures that help meet certain performance standards. The engagement must be initiated by borrowers using an engagement letter, which will either:

- Reference the Multi-Family Housing Engagement Guidelines, which will specify the program compliance issues that the Agency wants the preparer to address and the guidelines for testing compliance; or
- State the list of compliance issues that the Agency wants the preparer to address.

Owners of small projects, which are defined as projects with fewer than 16 units, must submit annual financial statements that are prepared in a manner consistent with the Agency's Engagement Guide using a limited scope engagement based on Agency-approved procedures and must certify that the housing meets the performance standards established in the interim final rule. The annual financial statements may be prepared by a CPA or other individual with the training and experience to prepare the report. The information presented in the annual financial statements must be prepared in a manner consistent with the requirements of the Engagement Guide.

In response to USDA OIG concerns, the Agency is implementing these changes to the annual financial reporting system to ensure that a higher percentage of projects submit annual financial statements to the Agency, and that the preparers of these statements are made aware of the Agency's specific concerns so that project funds are spent appropriately.

Loans From Third Parties

In its continuing efforts to streamline and facilitate transfers, the Agency has included a new provision in the interim final rule that specifically allows for loans from a third-party source in conjunction with an ownership transfer or sale of a housing project. The loan may be in the form of a first mortgage or deed of trust, junior or parity lien, or soft second mortgage. This provision should make it easier for purchasers to put together more than one source of financing and allow for greater leveraging of Agency funds.

Transfers at New Rates and Terms

Previously, Agency regulations implied that project transfers typically occur at the same rates and terms as the original loan. In acknowledging the need to streamline and facilitate the transfer process, the Agency will allow transfers to occur at new rates and terms if the transfer would result in lower rents to the tenants than at the original rates and terms. Again, this will help preserve the Agency's affordable housing resources without increasing the drain on the Agency's budget, and without resulting in higher rents.

Equity Loan at the Time of Transfer

Previously, the regulation prohibited debt to be added to pay for equity to the seller. In an effort to facilitate transfers and provide incentives to sellers to assure the project remains as affordable rental housing, the new regulations will allow for equity loans from the Agency or from third parties at the time of transfer.

Special Servicing, Enforcement, Liquidation, and Other Actions

In response to stakeholder, USDA OIG, and Agency staff comments, the Agency made a number of changes to strengthen Agency servicing. None of the changes to the regulations on servicing constitute changes in policy; rather, they address a lack of clarity in existing rules and incorporate policies that previously existed only in Administrative Notices. As such, the changes are not anticipated to have either a negative or a positive budget impact.

For example, the interim final rule clarifies the definition of ''default'' by spelling out specific actions that owners may take or fail to take that would cause the Agency to determine that the loan is at risk. The rule also simplifies the submission requirements for transfers of project ownership. Other changes serve to simplify servicing actions in an effort to enhance the Agency's flexibility in addressing servicing issues. These changes allow for swifter and more consistent action to address troubled projects—for example, focusing action for the Agency and borrowers. This would help to avert more serious problems in the long term and allow Agency staff to concentrate their efforts on other portfolio management issues.

Additional Enforcement Tools

As a result of the Debt Collection Improvement Act and other statutes, the Agency has added some important enforcement provisions to the interim final rule. These include provisions allowing the Agency to have the U.S. Attorney bring an action in U.S. court to recover project assets or income, seek civil monetary penalties and other sanctions against borrowers for ''equity skimming,'' and seek legal remedies for money laundering and obstruction of Federal audits. These are important provisions that shift some of the burden of recovering lost resources from the Agency to the rest of the Federal Government and also give the Agency

more effective tools in enforcing its requirements.

Management and Disposition of Real Estate Owned Properties

The interim final rule consolidates current regulations regarding real estate owned (REO) property and clarifies the specific requirements that apply to MFH properties. Previous regulations addressed many different types of REO properties acquired by USDA, including MFH properties. Often, the guidance provided was generic or related to non-MFH properties. The interim final rule provides specific guidance to MFH properties, taking into consideration the physical condition of the property, occupancy status of the property by eligible program tenants, and determinations of whether the property is still needed under the program. This rule also adds flexibility to the Agency's requirements for selling the property; the change allows the sale to be conducted while taking into account local market conditions. It also provides Field Offices with several options in selling REO properties, giving them authority that previously rested with the National Office. With more options and flexibility, processing and sales times will be reduced.

Farm Labor Housing

The interim final rule consolidates separate program regulations for the Farm Labor Housing loan and grant program along with separate regulations for other MFH programs. It does, however, maintain separate subparts for off-farm labor housing and on-farm labor housing. This was necessary to preserve the distinction between off-farm labor housing, which consists of multi-unit housing operated by nonprofit corporations or public bodies that receive either loans or loans and grants under the sections 514 and 516 programs, and on-farm labor housing, which consists of single or small multi-family housing operated by farmers who receive only loans. Several statutory changes to the Farm Labor Housing loan and grant program have been made over the past 5 years. Previous regulations have been modified to incorporate these changes prior to drafting this proposed rule. Since the changes are currently in place, they are not addressed again in this analysis. No further program changes other than regulation consolidation are included.

Technical Assistance Grants to Developers of Off-Farm Labor Housing

The Agency received numerous comments on the proposed rule with regard to technical assistance grants to developers of off-farm labor housing. The Farm Labor Housing Technical Assistance Final Rule published on October 31, 2002, in the **Federal Register** (67 FR 66308), gives the Agency the authority to award technical assistance grants to eligible private and public nonprofit agencies. These grant recipients will, in turn, assist other organizations to obtain loans and grants for the construction of off-farm labor housing. This information was inadvertently not incorporated into the proposed rule. However, the requirements for technical assistance grants have been incorporated into the interim final rule.

Operating Assistance for Off-Farm Labor Housing

The Agency published a proposed rule entitled ''Operating Assistance for Off-Farm Migrant Farmworker Projects'' on November 2, 2000, in the **Federal Register** (65 FR 65790). The requirements for operating assistance were not included in the 7 CFR part 3560 proposed rule, but have been added to the interim final rule. Operating assistance may be used in lieu of tenant-specific rental assistance in off-farm labor housing projects financed under section 514 or section 516 that serve migrant farmworkers. Owners of eligible projects may choose tenant-specific rental assistance as described in § 3560.573 or operating assistance, or a combination of both; however, any tenant or unit assisted under this section may not receive rental assistance under § 3560.572. The objective of this program is to provide assistance toward the cost of operating the project so that rents may be set at rates that are affordable to very low- and low-income migrant farmworkers.

Priorities for Admitting Applicants to Off-Farm Labor Housing

The previous regulations contained an elaborate and complicated priority system for admitting applicants into off-farm labor housing projects. The Agency received numerous comments on the proposed rule stating that the priority system was cumbersome and confusing. The previous regulations had four priorities, two of which had two subpriorities. These priorities have been streamlined into three simple categories in the interim final rule. This change will result in waiting lists that are simpler to create and maintain and should promote greater adherence to the Agency's admission criteria.

Income Limits for Off-Farm Labor Housing

Off-farm labor housing applicants and tenants must demonstrate that they earn a certain portion of their annual household income from farm labor. The prior regulation, 7 CFR part 1944, subpart D, exhibit J, provided income thresholds for applicants of off-farm labor housing projects. Borrowers applied these percentages to the income threshold for their particular region of the country. The income thresholds established *de facto* income floors for farm labor housing projects. Exhibit J, however, had not been updated since 1986 and reflected average income figures for farmworkers from 1983. Therefore, the Agency conducted research on average farmworker earnings based on the 2000 U.S. Census and will include an updated version of exhibit J in the Asset Management Handbook. The interim final rule has been revised to state: ''Actual dollars earned from farm labor by domestic farm laborers other than migrant farmworkers must equal at least 65 percent of the annual income limits indicated for the standard Federal regions as published by the Agency for their particular region of the country. For migrant farmworkers living in seasonal housing, the actual dollars earned from farm labor by a domestic farm laborer must equal at least 50 percent of annual income limits indicated for the standard Federal regions, as published by the Agency.'' While imposing these new income limits may result in an increased number of applicants to be ineligible for occupancy in off-farm labor housing, the Agency anticipates that this increase will be extremely small, given the concomitant increase in average farmworker wages during the past 20 years.

Office of Rental Housing Preservation

Changes to the Housing Act of 1949 required the establishment of an Office of Rental Housing Preservation within RHS for handling matters related the preservation of affordable rental housing in the Agency's MFH portfolio. RHS established this office within its Multi-Family Housing Portfolio Management Division.

The Office of Rental Housing Preservation has already taken steps to enhance the Agency's consistency in reviewing prepayment requests and offering incentives by making a single entity responsible for coordinating all preservation actions. The interim final rule recognizes the establishment of this office and defines its responsibility to

coordinate, direct, and monitor the RHS's MFH preservation activities. This addition to the rule complies with the statute and clarifies the role of the National Office in the preservation process.

Unauthorized Assistance

When tenants receive unauthorized assistance through their own error, the Agency has a duty to try to recapture the assistance. Under previous regulations, much of this responsibility was put on project owners. The process was both time consuming and burdensome. Furthermore, project owners, as well as RHS, have only limited ability to collect unauthorized assistance, and in many cases the cost of pursuing unauthorized assistance outweighed the funds collected.

Recognizing these circumstances, the interim final rule relieves project owners of the responsibility of recovering unauthorized assistance due to tenant error once tenants have moved. It also provides for RHS to determine whether unauthorized assistance should be pursued. These changes give the Agency greater flexibility to apply resources cost effectively toward cases that most deserve to be pursued, and to relieve project owners of the burden of pursuing tenants who no longer live in their projects. This rule also brings RHS into compliance with the Debt Collection Improvement Act by allowing the use of collection agencies and offsets to collect unauthorized assistance from project owners and tenants.

Market Value, Subject to Restricted Rents

In the past, the process for determining the security value of Agency-financed MFH projects has been overly complicated and a source of confusion because of the various methods of valuation that the Agency used, some of which were not those typically used and understood by the appraisal industry. Therefore, the interim final rule now clarifies that appraisals must include the ''market value'' of the property, or the ''market value, subject to restricted rents.'' The term ''market value'' is defined in § 3560.752. ''Market value, subject to restricted rents'' means that the appraisal will take into consideration any rent limits, rent subsidies, expense abatements, or restrictive-use conditions that will affect the property as a result of an agreement with the Agency or any other funding source. ''Market value, subject to restricted rents'' refers only to the value of the subject real property, as restricted, and excludes the value of any favorable financing. When this value type is part of an appraisal assignment, all favorable financing in place at the time of the appraisal must also be valued, but separately from the real property. The specification and definition of value types will help to ensure that applicants, borrowers, and the Agency receive appraisals that are more accurate and complete.

Conformance With the Appraisal Industry

Subpart P of the interim final rule has been revised substantially so that the Agency's requirements for multi-family housing appraisals conform to appraisal industry standards. In addition to the specification and definition of value types described above, subpart P establishes new guidelines for appraisal scope, procurement, review, and release. These new requirements should facilitate the appraisal process, as certified general appraisers will be familiar with the terminology and procedures of the revised subpart.

Changes in Definitions

Disability

Agency regulations currently have separate definitions for the terms ''individual with disability'' and ''individual with handicap.'' The definition of the term ''individual with disability'' is, in large part, taken from section 501(b) of the Housing Act of 1949. The definition of the term ''individual with handicap'' is taken from the Fair Housing Act. Other civil rights laws, such as the Americans with Disabilities Act (ADA) and section 504 of the Rehabilitation Act of 1973, use the term ''disability'' rather than ''handicap''; however, they define it in the same manner as the Fair Housing Act defines handicap.

Rather than having two separate terms, the Agency will only use the term ''disability'' and it will be considered equivalent to the term ''handicap.'' If people meet either the Housing Act of 1949's definition of handicap or the Fair Housing Act's definition of handicap, they will be considered disabled.

Nonprofit Organization

The Agency has streamlined its definition of ''nonprofit'' and has made it less prescriptive so that more nonprofit organizations are eligible for participation in the Agency's multi-family direct loan programs. Most notably, the aspects of the definition that describe local and regional nonprofit organizations have been broadened. This will result in increased participation by a wider pool of nonprofit organizations in the construction, transfer, and preservation of Agency-financed multi-family projects. There are additional requirements for what constitutes a nonprofit organization for purposes of farm labor housing and preservation, and these are described in subparts A, L, M, and N.

Additional Definitions

As a result of comments received on the proposed rule from the public, the Agency has added several definitions to the interim final rule. The addition of these definitions should help to clarify the Agency's policies on a variety of issues. The new definitions and their significance are as follows:

- *Applicant:* Clarifies the distinction between the applicant and the borrower.
- *Appraisal:* Provides the industry definition that the Agency uses.
- *Capital needs assessment:* Explains how the Agency uses this term.
- *Disabled domestic farm laborer:* Explains this category of tenant, so that the farm labor housing priorities for admission are more easily understood.
- *Farm:* Clarifies what the Agency considers an eligible farm, which is particularly helpful in the discussion of farm labor housing.
- *Manufactured housing:* Clarifies what constitutes this type of housing for purposes of interpreting the regulation and handbooks.
- *Market rent:* Provides the industry definition of the term that the Agency uses.
- *Off-farm labor housing:* Distinguishes this type of farm labor housing from on-farm labor housing.
- *On-farm labor housing:* Distinguishes this type of farm labor housing from off-farm labor housing.

Participation With Other Funding or Financing Sources

The provisions of 7 CFR 3560.66 were revised to encourage participation from public and private sources. The Agency made a number of changes in the proposed rule to provide greater flexibility in the program to allow program financing to be more readily combined with other sources. However, the existing section 515 policy of restricting rental assistance to basic rents that do not exceed what they would have been had the Agency provided full financing is retained. The Agency recognizes that because it is delivering financing at 1 percent, this provision will be difficult for an applicant to meet under the most aggressive leveraging or other low-interest loan funds financing package.

However, the Agency is also responsible for ensuring the efficient, prudent use of rental assistance funding. Without this standard, RHS would face even greater growth in the demand for rental assistance funding over and above the already significant funding levels. For this reason, RHS made the decision to continue this policy.

30-Year Term and 50-Year Amortization Period

Though not a new issue or policy, this rule requires that new loans have a 30-year term with a 50-year amortization schedule. This rule will clarify that, at the end of 30 years, borrowers have the option to pay off the residual balloon with no restrictive-use on the property, and the Agency has the option to refinance (or not) for the facility's remaining economic life. In effect, loans will have a 30-year use restriction, versus the previous 50-year use restriction, with additional use restrictions only should the Agency refinance.

Conforming Household Income Calculation to Industry Standards

By changing the calculation of tenant household income and assets to be consistent with other funding sources in the MFH industry, RHS has made a significant contribution to reducing paperwork burden to the public. No longer will a separate calculation have to be made for a MFH loan when a separate calculation was already executed for LIHTCs or another affordable housing program. Tenants' income and assets will be calculated in accordance with 24 CFR 813.106 and 102, which are regulations published by HUD.

Discussion of Comments—Streamlining and Consolidation of the Sections 514, 515, 516, and 521 Multi-Family Housing (MFH) Programs—Proposed Rule

This proposed rule was published in the **Federal Register** on June 2, 2003 (68 FR 32872), with a 60-day comment period that ended August 1, 2003. Comments were received from 146 commenters yielding nearly 3,000 individual comments about the language in the proposed rule. Commenters included Rural Development personnel, housing advocacy groups, developers, builders, property managers, attorneys, housing organizations, and others with an interest in these housing programs.

Many of the comments focused on areas currently published in the CFR, which were not a part of the proposed rule. As discussed, part of the intent behind the reengineering and reinvention of these regulations was to remove much of the administrative guidance from the CFR and incorporate this guidance into the program handbooks, which would not be published in the CFR. As discussed above, the handbooks provide the Agency with flexibility in the Agency's administration of program procedures in response to changing circumstances without entering into a rule-making process.

The responses to many comments have indicated that the guidance requested by a commenter is administrative and contained in the applicable handbooks. RHS sincerely appreciates the time and effort of all commenters. Comments, by subpart, from the proposed rule are discussed below.

Subpart A—General Provisions and Definitions

Topic: Regarding civil rights (*e.g.*, limited English proficiency, fair housing compliance, reasonable accommodations, domestic violence), several commenters stated that the Agency did not fully address the requirements of section 504 of the Rehabilitation Act of 1973.

Response: The Agency appreciates these comments and has specific references to section 504 requirements in § 3560.2 and § 3560.11 of the interim final rule.

Topic: Other commenters were concerned with the sufficiency of the Agency's proposed language with respect to the civil rights responsibilities of borrowers and the protections the language in the proposed rule would offer the applicants to and residents of RHS housing.

Response: The Agency has ensured that the civil rights requirements of borrowers are clearly described in the interim rule and internal Agency procedures.

Topic: Several commenters addressed the protected classes included in the proposed rule. One commenter believed that age and marital status classes are added under the proposed language and disagreed with this amendment to the regulation. Another commenter believed that sexual orientation should be added. Yet another commenter thought that age and disability are important to take into account.

Response: The Agency appreciates these comments and has removed marital status from § 3560.2 because it is not a status specifically protected by civil rights statutes. Age was retained because it is protected by statute. However, the Agency wants to clarify that when age is established by statute as a program eligibility factor, then it needs to be considered when determining eligibility for occupancy, but only for that determination. Sexual orientation is not a status specifically protected by civil rights statutes, and therefore was not added.

Topic: Several commenters identified an occurrence of ''accommodation'' in the civil rights section, which is not preceded by ''reasonable.'' The commenters urged the Agency to revise this error.

Response: The Agency thanks the commenters and has revised the interim final rule at § 3560.2(a)(1).

Topic: One commenter suggested that a single point of contact at USDA be established to receive complaints.

Response: The Agency acknowledges the comment and has revised § 3560.2(c) in response to this suggestion.

Topic: One commenter urged the Agency to remove requirements that owners and agents collect ethnicity and racial information from applicants.

Response: The Agency thanks the commenter for highlighting this important issue. The Agency has modified § 3560.2 to include a disclosure statement about the use of race and ethnicity information that must appear on all applications for housing under sections 514, 515, and 516.

Topic: One commenter suggested revising proposed § 3560.2(a)(1) to read: ''To refuse to make reasonable accommodations * * *.''

Response: The Agency appreciates the commenters' suggestion and has revised the interim final rule accordingly.

Topic: Commenters also addressed CRCU. Several commenters expressed confusion about the implementation of CRCU.

Response: The Agency has added additional information on the circumstances under which CRCU applies. Specific references to the CRCU applicability can be found at §§ 3560.60(c), 3560.69(g), 3560.406(d), 3560.409(b)(3), and 3560.656(e)(1) in the final interim rule.

Topic: Several commenters were concerned that capping rents at CRCU will keep rents artificially low in some cases and not address cases in which the costs of operating assisted housing are higher than those for conventional housing.

Response: The Agency has addressed this concern by allowing exceptions to the CRCU cap to allow for certain market conditions—extraordinary circumstances when it is in the best interest of the Government as a means to preserve affordable housing

resources. See the references noted above for discussions concerning CRCU.

Topic: The Agency received many comments regarding the definition of CRCU. Several commenters believed that the definition in proposed § 3560.11 should refer to the market area, not to the geographic area.

Response: The Agency thanks the commenters for this suggestion, but has made no change to the interim final rule. There are regions in the country where the market is small and where Agency-financed multi-family properties comprise the market. By expanding the definition to include the geographic area, this increases the likelihood that there will be compatible rents by which to measure these Agency-financed properties.

Topic: One commenter suggested that CRCU should not be used in any county where the median income is lower than the statewide median income.

Response: The Agency thanks the commenter for this suggestion but has made no change to the interim final rule. CRCU is designed to work within ''market areas'' which may cross county lines and is not designed to work within the strictures of a county basis.

Topic: One commenter believed that the Annual Financial Report requirement places an additional burden on small projects that is further exacerbated by the CRCU restrictions.

Response: The Agency thanks the commenter for this suggestion but has made no change to the interim final rule. Based on the findings of the OIG, the Agency is adding this requirement for smaller projects to address the potential misuse of funds.

Topic: Concern was expressed with respect to authority measures, specifically the delegation of authority, as well as exception authority.

Response: The Agency understands that commenters are concerned that its requirements be implemented consistently and that the chain of command remain clear when authority is delegated. The interim final rule was designed to maximize consistency in implementing Agency requirements nationwide.

Topic: Commenters were concerned that the interim final rule imposes too many restrictions on granting exceptions. Several commenters stated that the proposed rule allows exceptions only when the action is in the best financial interest of the Government.

Response: The Agency appreciates these comments and has revised § 3560.8 to read ''The RHS Administrator may make an exception to any provision of this part or address any omissions provided that the exception (1) is consistent with the applicable statute, (2) does not adversely affect the interest of the Federal Government, and (3) does not adversely affect the accomplishment of the purposes of the Multi-Family Housing programs, or application of the requirement would result in undue hardship on the tenants.''

Topic: One commenter recommended that the USDA hire a national firm to evaluate preservation projects to ensure they are economically beneficial to the Government and, therefore, to tenants.

Response: The Agency acknowledges this suggestion but has made no change to the interim final rule. The Agency has an established process and internal procedures and staffing to evaluate the economic benefits of preservation transactions.

Topic: One commenter believed that Rural Development employees find it easier to disallow exceptions than to perform the necessary steps to execute an exception.

Response: The Agency respectfully disagrees with the commenter's interpretation. Exceptions are evaluated thoroughly on a case-by-case basis and only granted rarely.

Topic: One commenter believed that Agency regulations should acknowledge that other financing programs (*e.g.*, tax-exempt bonds, State financing programs, HOME Investment Partnership Funds) may dictate rent levels in addition to the rents dictated by LIHTCs.

Response: The Agency appreciates the comment. The Agency has acknowledged these other programs in its descriptions of financial leveraging, third-party financing, and subordination of Agency debt. Numerous commenters raised concerns about some of the definitions provided in § 3560.11, which are described below:

Administrative appeals

Topic: Several commenters stated that the rule does not contain enough information on when appeals are allowable, to whom appeals should be made, and what are the tenant grievance procedures.

Response: The Agency wishes to clarify that the requirements for appeals for all actions, unless otherwise noted in the interim final rule, are found at 7 CFR part 11. The tenant grievance process is described in detail in subpart D and in internal Agency procedures.

Topic: One commenter objected to the use of handbooks, notices, or other issuances being a program requirement. The commenter believed that practice subverts the public comment and appeals period otherwise required for regulatory changes.

Response: The Agency appreciates the commenter's interest in ensuring a free and open public discussion of public policy but disagrees with the assertion. The regulatory and burden issues are discussed in the interim final rule. Handbooks are useful for providing guidance and establishing internal Agency procedure.

Topic: One commenter addressed the issue of environmental reviews. First, with respect to ''practicable alternatives,'' the commenter suggested that the location of a site in relation to flooding, along with the additional cost for insurance and potential development costs, must be addressed in the appraisal. Second, the commenter addressed § 3560.4(e) and noted that lead-based paint requirements are no longer located in 7 CFR part 1924, subpart A; the correct reference is 24 CFR part 35, subparts A–D, J, and R, which are regulations published by HUD.

Response: The Agency thanks the commenter for the updated regulatory citations and has updated these references in the interim final rule. However, the Agency has made no change to § 3560.3 of the interim final rule. The suggestion was not adopted because of the existing environmental regulations at 7 CFR part 1940, subpart G.

Numerous commenters raised concerns about some of the definitions provided in § 3560.11, which are described below:

Applicant

Topic: One commenter suggested that proposed § 3560.55(b) refers to the ''applicant,'' but that ''applicant'' is not defined.

Response: The Agency thanks the commenter for the suggestion and has added a definition for ''applicant'' to the interim final rule.

Asset Management Fee

Topic: A commenter believed that the Agency should add a definition for ''asset management fee,'' asking it be defined as a fee allowed to nonprofit organizations or public bodies for the effective ownership of RHS-assisted multi-family housing properties.

Response: The Agency appreciates the comment but has made no change to the interim final rule. This issue is covered under § 3560.303(b)(1)(ii) and includes a list of expenses that would commonly be charged as an asset management fee.

Basic Rent

Topic: Several commenters agreed with the change in definition of ''basic rent'' but were concerned that CRCU

would impose a restriction on the amount of basic rent that borrowers can charge that could adversely affect some properties. Several commenters recommended additional components to be included in the calculation of basic rent.

Response: As stated previously, CRCU only applies in certain instances, and the Agency may make CRCU exceptions on a case-by-case basis. CRCU is a concept that the Agency uses to evaluate rent levels. It is not considered the established ''rent'' or basic rent.

Topic: A commenter suggested that in the definition of ''basic rent,'' the Agency should change the last word ''agreement'' to ''subsidy.''

Response: The Agency appreciates this suggestion; however, the interest credit agreement is the instrument by which any reduction is made.

Caretaker

Topic: One commenter believed that the definition of ''caretaker'' should be expanded to state that caretakers may also serve as a site manager, with either an onsite or offsite work location.

Response: The Agency appreciates the comment but has made no change to the interim final rule. Borrowers may use caretakers or site manager as they see fit, as long as staffing duties and responsibilities are clearly spelled out in the Management Plan.

Congregate Housing

Topic: One commenter thought that the definition for ''congregate housing'' should state that such a facility could not be a licensed healthcare facility.

Response: The Agency appreciates the comment and has adopted that change in the interim final rule.

Current Appraisal

Topic: A commenter believed that the definition for ''current appraisal'' be revised because an appraisal report could be 14 months old and still be a current appraisal report.

Response: The Agency thanks the commenter for the suggestion and has revised the interim final rule to state that the appraisal report date should be no more than 1 year old.

Default

Topic: Several commenters thought that the definition of ''default'' raised a concern that the Agency could consider a borrower to be in default for minor, insignificant items.

Response: The Agency appreciates these comments and has revised the definition to state that default is the failure ''by a borrower to meet significant monetary or non-monetary obligations.''

Disability

Topic: One commenter believed that the definition of ''disability'' is a helpful change, while another commenter believed that the definition is inappropriate.

Response: The Agency thanks the commenter for their concurrence on this issue and has clarified the definition in the interim final rule by providing the specific regulatory citations.

Topic: One commenter recommended changes to the definition of ''disability.'' The commenter believed that the Agency should either delete the list of examples of a disability, or at least make it clearer that the lists of examples are in no way intended to be exclusive.

Response: The Agency appreciates the comment but made no change to the interim final rule because the definition is statutory.

Topic: One commenter suggested that the term ''handicapped'' be replaced by ''disabled'' or ''accessible'' whenever appropriate. In limited instances, the use of ''handicapped'' is acceptable, but the term should be limited.

Response: The Agency thanks the commenter for the suggestion and has revised the text as appropriate in the interim final rule.

Domestic Farm Laborer

Topic: Five comments were received concerning the definition of domestic farm laborer and the proposed rule's elimination of the requirement that aliens be admitted for permanent residence. The majority were in support of the change. One of the commenters contended that Congress has expressed its intent for broader eligibility standards.

Response: The requirement that aliens be admitted for permanent residence has been reinserted in the definition. This is required by the authorizing statute, 42 U.S.C. 1484(f)(3)(A). The language concerning the eligibility of a family member was also rewritten to be more consistent with statutory language in 42 U.S.C. 1484(f)(3).

Elderly Person

Topic: Numerous commenters were concerned that the definition of an ''elderly person'' includes persons with a disability, and that these persons could be any age. They thought that allowing non-elderly persons to reside in properties designed for the elderly causes social and project management problems.

Response: The Agency appreciates these comments but has made no change to the definition because it is statutory.

Engagement

Topic: One commenter suggested that because the costs of CPA audits are based on the scope of work, the requirements for such engagements must be provided to owners in enough time for the owner to obtain cost estimates from the CPAs and to include the costs in proposed budgets.

Response: The Agency appreciates the comment but has made no change to the interim final rule. The Agency will provide guidance for borrowers in the MFH Engagement Guidelines to be issued separately.

Familial Status

Topic: Regarding the definition of ''familial status,'' the commenter recommended that RHS adopt the same definition used in the Fair Housing Act.

Response: The Agency thanks the commenter for raising this issue. The Agency is adopting the same definition of ''familial status'' as used under the Fair Housing Act.

Family Farm Corporation or Partnership

Topic: One commenter questioned the definition for ''family farm corporation or partnership.'' The commenter asked whether this definition is consistent with other rural development definitions of family farm, particularly the Rural Business-Cooperative Service Business and Industry Cooperative Stock Purchase Program.

Response: The Agency thanks the commenter for the suggestion but has made no change to the interim final rule because the definitions are consistent within Rural Development.

Farm Labor

Topic: The Agency received several comments concerning the definition of ''farm labor.'' Each commenter raised questions about the term ''unprocessed stage.''

Response: The Agency has used this term in the proposed rule instead of the term ''manufactured state'' in the previous regulation to make the term more consistent with statutory language.

Topic: One commenter asked the Agency to include the statutory phase ''without respect to the source of employment'' in the definition and to provide examples of what is considered to be farm labor in the handbooks.

Response: The Agency has added the statutory phase to the definition, and the Agency intends to include examples of farm labor in the program handbooks.

Farmer and Farm Owner

Topic: For the definitions of ''farmer'' and ''farm owner,'' one commenter found the added reference to 7 CFR

1941.4, which brings in the concept that a farmer must be a ''family-size farm,'' to be a very limiting and improper restriction. This commenter believed that farm laborers should be able to occupy farm labor housing regardless of whether the farm they work for is ''family size.''

Response: The Agency thanks the commenter and has deleted the reference to 7 CFR 1941.4 from the interim final rule.

General Overhead

Topic: Two commenters asked whether RHS imposes maximum limits for general overhead.

Response: There is a maximum limit on general overhead. This maximum limit is 4 percent of the construction cost. RHS establishes a maximum limit that is similar to the standards used by other government lenders. This upper limit can vary with the types of financing used for a project or due to changes in market conditions. The ceiling only serves as an upper limit to help ensure cost reasonableness and can vary across circumstances and over time.

Topic: The Agency received a comment stating that the proposed rule should require documentation to ensure that the resident assistant is truly needed for the well-being and care of the tenant.

Response: The Agency appreciates the comment but has made no change to its interim final rule. Section 3560.104(c)(4) of the interim final rule provides guidance for borrowers to permit resident assistants. This is a reasonable accommodation issue and should be treated like other reasonable accommodation issues.

Topic: One commenter asked why Plainview, Texas, and Altus, Oklahoma, are singled out for consideration in terms of 2000 U.S. Census data.

Response: These communities are authorized by statutory language in section 520 of the Housing Act.

General Requirements

Topic: The commenter thought that performance and payment bonds, cost certifications, and building permits are not considered ''general requirements'' by the industry and need to be left out of the definition.

Response: The professional architect on the Agency's staff disagrees with the commenter and feels the items mentioned are part of ''general requirements'' by the industry and no change is needed in the definition.

Household Furnishings

Topic: A commenter questioned the definition of ''household furnishings,'' believing household furnishings should not include tables, chairs, dressers, and beds.

Response: The Agency appreciates the comment but has made no change to the interim final rule. The commenter needs to consider that these items are necessary for tenants of Farm Labor Housing occupied primarily by migrant farmworkers.

Household Member

Topic: The commenter thought that the proposed rule and the handbooks should be reconciled and should clarify their definitions of ''household member.''

Response: The Agency appreciates the comment and will revise Agency guidance about program procedures to be consistent with the regulation. No change to the interim final rule was needed.

Identity-of-Interest

Topic: Numerous commenters stated that the definition of ''identity-of-interest'' is too broad.

Response: The definition of IOI has been moved from the existing regulations to 3560 without change and it is consistent with the one used by other Government lenders.

Topic: Some commenters stated that the trigger for an identity-of-interest to occur of 10 percent or more interest in the supplying entity was a reasonable threshold. Other commenters thought that the threshold was either too high or too low.

Response: The Agency appreciates these comments. However, the Agency has decided to retain the definition as presented in the proposed rule. The concept of identity-of-interest, as it relates to specific issues, is discussed in more detail in subpart C. Therefore, the Agency has determined that retaining a general description in § 3560.11 is appropriate.

Legal or Qualified Alien

Topic: One commenter requested that the Agency use the Single-Family Housing definition for ''legal or qualified alien,'' which the commenter finds clearer.

Response: The Agency appreciates the comment but has made no change to the interim final rule. The definition used in the proposed rule was the same as the definition that is used by the Single-Family Housing Program (*see* 7 CFR 3550.10) and is consistent with the Housing Act of 1949, section 501(h). The Agency has exercised its authority under sections 501(h) and 510(k) of the Housing Act of 1949 [42 U.S.C. 1471(h) and 1480 (k)] to restrict eligibility for occupancy in all section 515 projects to citizens and qualified aliens. In addition, eligibility for the migrant farm workers programs under sections 514 and 516 is specifically restricted to such individuals by section 514(f)(3)(A) of the Housing Act of 1949 [42 U.S.C. 1484(f)(3)(A)].

Life-Cycle Cost Analysis

Topic: Several commenters expressed approval of the Agency's decision to require life-cycle cost analyses under certain circumstances. Others, however, expressed concern about the definition's lack of specificity.

Response: The Agency appreciates these comments and has clarified the life cycle cost analysis in § 3560.11.

Topic: One commenter addressed the wording in the definition for ''life-cycle cost analysis.'' The commenter believed that the Agency should say Licensed Engineer or Architect rather than Design Professional.

Response: The Agency thanks the commenter for this suggestion but has made no change to the interim final rule. The Agency does not want to limit the borrower's option regarding preparation of the analysis.

Limited Partnership

Topic: Two commenters suggested that ''capitol'' be revised to ''capital'' in the definition for ''limited partnership.''

Response: The Agency thanks the commenters for the suggestion and has revised the interim final rule.

Management Fee

Topic: Regarding the definition of ''management fees,'' one commenter asserted that the proposed rule will use occupied units as the basis for all fees—an approach that is not in keeping with normal industry practices * * * and fails to recognize that vacant units are typically the ones that require the greatest amount of management attention and effort.

Response: The Agency acknowledges the commenters' concerns. However, the Agency believes the rule as written takes into account partial occupancy at § 3560.102(i)(2). If additional staff time is needed to perform leasing activities to address vacancies, these costs are payable directly from the project. For this reason, the Agency believes that a fee system based on occupied units will not adversely affect projects experiencing vacancies or higher turnover. Further, if a property is located in a difficult market, the Agency can authorize add-on fees as a means to

address issues associated with individual markets in an area. The Agency has made no changes to the rule, but will continue to consider options and refinements during the interim final rule.

Maximum Debt Limit

Topic: The commenter supported the inclusion of the reduction of funding available to the borrower from sources other than the Agency in the definition of the ''maximum debt limit.''

Response: The Agency appreciates the commenter's support.

Migrants or Migrant Agricultural Laborers

Topic: Several commenters stated that the definition for ''migrants'' and ''migrant agricultural laborers'' should be clarified to provide a definition of ''temporary residence.'' Others stated that the definition should exclude the requirement that to be migrant, the farmworker would have to travel out of state, and that in large states such as California, this requirement is not practicable.

Response: The Agency acknowledges these comments but notes that the definition states that farmworkers may still be considered ''migrant'' if they are ''day-haul agricultural workers whose travels are limited to work areas within one day of their residence.'' In addition, the term ''temporary residence'' is discussed more fully in § 3560.553 of the interim final rule.

Moderate-Income Households

Topic: Several commenters stated that the Agency's definition of ''moderate income'' is not used by any other affordable housing program and that the Agency should adopt HUD's definition.

Response: The Agency appreciates the commenters' concerns but has chosen to use the definition from the Single-Family Housing program for consistency within Agency programs.

Mortgages

Topic: One commenter suggested that a definition for ''deed of trust'' should be added. The term ''mortgage'' is defined, but because many of our multi-family housing loans are secured by a deed of trust rather than a mortgage, deed of trust should also be defined.

Response: The Agency appreciates the comment and has clarified its definition of ''mortgage'' to include deed of trust in the interim final rule.

Topic: One commenter recommended that the definition of ''mortgage'' be modified by adding the phrase ''that requires judicial foreclosure for enforcement'' to the end of the definition.

Response: The Agency appreciates the comment but has made no change to the definition because not all states require judicial foreclosure for enforcement.

Native American

Topic: Several comments addressed the definition of ''Native American.'' The commenters believed that the reference to the Indian Self-Determination & Education Assistance Act as the trigger for eligible status is confusing and results in a burdensome search to find this information.

Response: The Agency thanks the commenters for the suggestion. The Agency has revised the interim final rule to define the term ''Indian tribe'' and provides appropriate reference to the Indian Self-Determination & Education Assistance Act. In addition the definition of ''Native American'' is statutory under section 501(b)(6) of title V of the Housing Act of 1949 (42 U.S.C. 1471(b)(6)).

Net Recovery Value

Topic: A commenter wrote in support of the definition for ''net recovery value.''

Response: The Agency appreciates the commenter's concurrence.

Nonprofit Organization

Topic: Numerous commenters expressed concern that the definition of ''nonprofit organization'' is too prescriptive and will cause too many organizations to be considered ineligible for the priority purchaser category in preservation transfers. For instance, in large states such as California, nonprofit organizations that have the capacity to develop and operate affordable MFH properties are often not local in nature. Commenters were concerned that such restrictions would limit the participation of capable nonprofit organizations in the development and operation of sections 514, 515, and 516 properties.

Response: The Agency appreciates these comments and has simplified the definition of nonprofit organization to be less prescriptive and to allow for more widespread participation by nonprofit groups, but the definition remains consistent with the applicable statute. Similarly, the interim final rule provides a separate definition for ''nonprofit organization for section 515 program for prepayment or purchase'' that is substantially simplified to allow for greater participation in these activities.

Note Rent

Topic: Several commenters expressed concern that the definition of ''note,'' for note rent, should acknowledge that it stands for the term ''note rate rent.''

Response: The Agency has included the definition for ''note rent'' in § 3560.11 of the interim final rule, and the correct term for this rent is ''note rent.''

Permanent

Topic: A commenter questioned why the term ''permanent'' was eliminated. The commenter wondered whether the intent is that tenants who are here with temporary legal status papers be housed.

Response: The Agency thanks the commenter for the suggestion and notes that there was an error in the proposed rule. The text has been revised as appropriate in the interim final rule.

Plan I

Topic: One commenter stated that the definition for ''Plan I'' can be more specific by saying interest credit became effective in 1968.

Response: The Agency appreciates the comment but has made no change to the interim final rule because the Agency does not believe the additional specificity provides any more clarity to the definition.

Prepayment

Topic: One commenter recommended providing further clarification for the definition for ''prepayment'' by adding ''as authorized by the Agency in response to an offer from the borrower.''

Response: The Agency appreciates the comment but has not incorporated the suggested language in the interim final rule. The Agency does not believe that the suggested revision adds anything to the definition because full payment of the debt may occur in situations other than the Agency's response to an offer from the borrower.

Renovation

Topic: One commenter stated that ''renovation'' is a new term for the program that is barely used in the proposed regulation, so this definition should be deleted.

Response: The Agency thanks the commenter for the suggestion and has deleted the definition from the interim final rule.

Rent

Topic: Several commenters were pleased that the Agency acknowledges that there are many different rent levels in affordable housing finance. One commenter asked the Agency to address the issue of multi-tiered rents.

Response: The Agency thanks these commenters for their comments on this issue. The Agency did not address multi-tiered rents in the Definitions because such rents are not permitted in the interim final rule.

Topic: One commenter found the definition of ''rent'' to be redundant with the definition of ''basic rent.'' The commenter suggested that the definition of ''rent'' include vacancy and contingent factors, reserve transfers, and owner's return as defined expenses.

Response: The Agency appreciates the comment and has clarified the definition of each type of rent in the interim final rule in § 3560.11 by removing the language in § 3560. 202(c). The Agency did this because it believes the language from the Housing Project Budget Form provided clearer wording for a definition of this term.

Rental Assistance

Topic: One commenter suggested that the definition for ''rental assistance'' be revised to read: ''The portion of approved shelter cost paid by the Agency to compensate a borrower for the difference between the approved shelter cost (basic rent) and the tenant contribution when such contribution is less than the basic rent.''

Response: The Agency has accepted the comment and has revised the definition for ''rental assistance'' in § 3560.11 of the interim final rule.

Topic: One commenter suggested revisions to ''rental assistance units,'' specifically, expanding the definition of servicing units to include RA units provided to an operational project for any reason.

Response: The Agency thanks the commenter for the suggestion and has revised the interim final rule at § 3560.11.

Topic: The Agency received one comment that asks for explanatory guidance as to what a season is. For example, in Oregon seasonal farm labor housing is occupied typically up to 10 months. In other states or regions it may be only as long as 6 or 7 months.

Response: The Agency appreciates the comment but has decided not to add this term to the interim final rule. As stated by the commenter, seasons vary by region and therefore, the Agency is allowing the borrower to have the flexibility to deal with this issue. Section 3560.568 of the interim final rule requires the borrower, in their management plan, to establish specific opening and closing dates for off-farm labor housing operating on a seasonal basis.

Resident or Site Manager

Topic: Regarding the definition for ''resident or site manager,'' the commenter recommended replacing the portion of the definition that currently reads: ''who lives at or near the project site.'' The commenter believed that maintaining a local presence is a critical element in providing an acceptable level of customer service.

Response: The Agency appreciates the comment but has made no change to the interim final rule because a site manager is a manager who works at the property but is not required to live at or near the property. The Agency does not believe there is a connection between local presence and good customer service.

Rural Area

Topic: A few commenters expressed concern that basing the definition of ''rural area'' on decennial census population data is inappropriate because the data are now several years old. Another commenter suggested that the definition was too complicated.

Response: The Agency appreciates these comments but has made no change to the definition of rural area because it is statutory, from section 520 of title V of the Housing Act of 1949.

Topic: One commenter asked the Agency to add a provision that allows for the automatic revision of the definition of ''rural area'' as statutes change. This commenter was also concerned with the definitions of sections 515, 514, and 516 programs.

Response: The Agency appreciates the comment but has made no change to the interim final rule. The definition is statutory and will be changed when the statute is amended.

Tenant Contribution

Topic: One commenter suggests that in the definition for ''tenant contribution,'' the word ''rent'' be replaced with the words ''shelter cost.''

Response: The Agency thanks the commenter for the suggestion and has revised the interim final rule.

Topic: The commenter believed that the definition of ''tenant contribution'' implies that all tenants pay something for occupancy at a rental unit; however, some tenants do not pay anything.

Response: The Agency appreciates the comment and has reworded the definition of ''tenant contribution'' to use the same definition that was used previously. Under the statutory definition (42 U.S.C. 1471(a)(5)(A)) of income, some items are excluded from the calculation of income; therefore, the commenter is correct that some tenants do not pay any rent.

Tenants' Rights

Topic: One commenter suggested that the regulation should include an explicit statement that state or local laws that give tenants greater rights than this regulation are not preempted by the regulation or handbooks, as long as those laws do not interfere with the fundamental purposes of the RHS programs.

Response: The Agency appreciates the comment but has made no change to the interim final rule. Throughout subpart D of the interim final rule, the Agency states that borrower policies regarding occupancy and tenant rights must be consistent with state and local laws.

Topic: One commenter acknowledged that no per-unit square footages was proscribed. The commenter stated that this will help in dealing with multifunding sources; however, developing modest housing should still be a priority with the Agency.

Response: The Agency thanks the commenter for the support.

Topic: Regarding design requirements, one commenter agreed with the change in philosophy from cost containment to economical construction.

Response: The Agency thanks the commenter for the support.

Topic: The Agency received a comment regarding owner responsibility and requirements. The commenter believed that this provision is confusing and may be interpreted too broadly. Implicitly this rule provides that parties cannot delegate responsibility, which is not accurate.

Response: The Agency appreciates the comment but has made no change to the interim final rule. The borrower is contractually bound to meet the Agency's requirements by the promissory note, loan agreement/ resolution, and mortgage. The borrower is permitted to hire a management company to perform day-to-day oversight of the property, but the borrower is ultimately responsible for the property.

Topic: One commenter addressed § 3560.60(d)(2) and the definition of ''to the extent possible'' as it relates to accessibility upgrades when a single damaged unit is being extensively repaired. The commenter suggested that if accessibility requirements would add more than 5 percent to the repair costs, the accessibility requirement should not be required. Further, the Agency should note that borrowers could use reserve funds for additional accessibility requirements.

Response: The Agency appreciates the comment but has made no change to the

interim final rule. See the reference at § 3560.2(a)(2) that the Uniform Federal Accessibility Standards are required (49 CFR part 1190).

Total Development Costs

Topic: Numerous commenters were concerned that the components of total development costs do not include developer fees. One commenter suggested that household furnishings be removed from the total development cost.

Response: For Agency-financed projects with LIHTC financing, the developer will continue to earn developer fees. Developers of projects without LIHTC financing will not be permitted developer fees. The Agency believes that the borrower's permitted return as currently calculated should provide sufficient remuneration on a well-managed property. Furnishings, as noted in the Definition, are only part of the total development cost for section 514 and 516 (Farm Labor) Housing.

Subpart B—Direct Loan and Grant Origination

Topic: Numerous commenters expressed concern that the definition of and restrictions on nonprofit organizations are too restrictive. Several commenters said that the requirement for a nonprofit to have 25 members from the community to show community support for the project is excessive because finding 25 people in any community to actively serve is difficult. Some commenters stated that the requirements were unclear. For instance, several commenters asked for a definition of public sector, when used to describe restrictions on the number of board members from the public sector.

Response: As stated in the description of the comments received for subpart A, General Provisions and Definitions, the Agency has revised the definition of ''nonprofit organization'' to be simpler, less prescriptive, and less restrictive to maximize participation of nonprofit organizations in the sections 514, 515, and 516 programs.

Topic: Similar to the comments received on the definition of ''total development costs,'' numerous commenters stated that developer fees should be an allowable expenditure of loan funds. Several commenters noted their belief that developer fees should be capped.

Response: Again, the Agency's position is that for Agency-financed projects with LIHTC financing, developers will continue to receive developer fees. Developers of projects without LIHTC financing will not be permitted developer fees. (This is described in § 3560.63(d)(2) of the interim final rule.) The Agency believes that a borrower's permitted return as currently calculated should provide sufficient remuneration on a well-managed property.

Topic: The Agency received multiple comments on the requirements for initial operating capital and the initial equity contribution required of borrowers, as well as the time period during which the initial operating capital may be repaid to the owner. One commenter asked the Agency to revise the proposed language in § 3560.64(b) to state that any additional initial operating expenses paid by owners above this amount would be repaid, as a priority, from available cash flow. A second commenter asked the Agency to clarify in § 3560.64(c) why it would require the initial contribution of operating to be made prior to the start of construction. The commenter asked the Agency to revise these requirements so that the initial operating contribution could be provided at the end of the construction period, or at least after construction is 50 percent completed.

Response: As outlined in § 3560.304, the purpose of initial operating capital (IOC) is to provide a source of capital for start-up costs. IOC may only be used to pay for approved budget expenses. The applicant's ability to fund the IOC, if required, is part of the applicant eligibility requirements and therefore, cannot be contributed after loan approval, *e.g.*, at the end of construction or at 50 percent completion. The 2 percent IOC requirement is a minimum. If excess funds are contributed to the IOC, they may be withdrawn by borrower in accordance with § 3560.304(c).

Topic: Several commenters said that the amount of the initial operating capital—2 percent of total development costs—is unrealistically high.

Response: The Agency has determined that 2 percent of total development costs is reasonable in light of the amount required to operate an Agency-assisted property, especially during the initial rent-up period, during which the amount is used to help cover startup costs.

Topic: Some commenters said that the 2- to 7-year time period during which the initial operating capital may be repaid to the owner is too long, while others said it was too short.

Response: The Agency appreciates these comments but has decided that the 2- to 7-year repayment period is acceptable because it allows adequate flexibility to borrowers. Therefore, the Agency has made no change to the regulation.

Topic: Regarding the requirements for general partners in a limited partnership with LIHTCs, 12 commenters stated that the requirement for general partners to have a 5 percent financial interest in a limited partnership, as stated in § 3560.55(d)(2), is unworkable. They stated that in the majority of LIHTC deals, the general partners only have a financial interest of 1 percent or less.

Response: The Agency believes that the commenters are confusing the expression ''financial interest in the residuals or refinancing proceeds'' with ''financial ownership interest.'' The two expressions are distinct, whereby having a 5 percent interest in the former does not preclude having a 1 percent interest in the latter. Therefore, the Agency has made no change to this section.

Topic: Numerous commenters stated that the pre-application and initial application submission requirements were too onerous and asked the Agency to clarify its position since they could not clearly understand the proposal. For example, one commenter recommended two annual Notices of Funding Availability (NOFAs) rather than one to promote accelerated use of USDA funds and to allow for more units to be produced on a 6-month versus 12-month cycle. Some commenters were concerned that the Agency considered additional technical assistance as an ineligible use of funds.

Response: In developing the NOFA process with the three application stages, the Agency has endeavored to streamline the process by minimizing the application requirements during the pre-application phase when project approval is unknown to reduce the applicants' burden. Likewise, the Agency is requiring the minimum amount of information to be submitted during the initial application phase to reduce the applicants' burden. However, the Agency has a responsibility to collect enough information about proposed projects at each stage to allow for reasonable decisionmaking and effective underwriting. Therefore, the Agency has made no further changes to this section.

Topic: Some commenters said that requiring the Agency to conduct an environmental review during the pre-application phase, when it is still uncertain whether the project will receive funds, is unrealistic.

Response: The Agency believes that the commenters misunderstood § 3560.56. This paragraph states that environmental reviews are required during the initial phase of loan processing to aid in determining project eligibility and feasibility.

Topic: Several commenters asked the Agency to define ''State Consolidated Plan.''

Response: The Agency agrees with the commenters and has added this definition to § 3560.11 of the interim final rule.

Topic: Some commenters said that the Affirmative Fair Housing Marketing Plan should not be required for submission during the initial application stage but should be part of the final application submission.

Response: The Agency believes the commenters misunderstood the procedures in the handbook. The form used for this plan is given to the applicant during the initial application stage, but the applicant does not need to submit the plan until the final application stage. The Agency has clarified this point in § 3560.56(h) of the interim final rule.

Topic: Several commenters stated that the Agency should allow flexibility in requiring applicants to be in full compliance with any existing loan and grant programs, particularly in the case of property transfers and preservation, wherein the new owner entity should not be punished for taking on a property with physical, financial, or managerial issues, or under a preexisting workout plan of less than 6 months.

Response: The Agency realizes that achieving and maintaining compliance are challenges under these circumstances. The Agency recognizes these challenges, and program procedures allow RHS to accept a revised workout plan from the new owner that it deems acceptable under the standards in § 3560.453 of the interim final rule and in the Project Servicing Handbook. Also, an exception may be requested by the State Director and considered by the Agency on a case-by-case basis.

Topic: The Agency received several comments regarding its position on purchasing excess land, such as when a seller owns 5 acres and will only sell all of the acres, regardless of how much the applicant wants to develop. Commenters stated that there should be flexibility in the Agency's policy so that excess land can be purchased if the applicant cannot find a smaller parcel to purchase and develop.

Response: The Agency recognizes the need for flexibility on this issue and is willing to work with applicants in determining the suitability of sites for development. Funds may be used to purchase and improve the site on which multi-family housing will be located, provided that the amount of loan funds used to purchase the site does not exceed the appraised market value of the site immediately prior to purchase. The regulations at § 3560.54(a)(11) allow borrowers to purchase land for a site in excess of what is needed, except when the applicant cannot acquire an alternate site or cannot acquire the needed land as a separate parcel. The applicant agrees to sell the excess land as soon as practical and to apply the proceeds to the loan. Program site density requirements must be met in accordance with the site requirements established under § 3560.58.

Topic: Several commenters expressed concern about the difficulty in locating appropriate sites for development and the need for flexibility in the Agency's criteria. One commenter asked the Agency to clarify its language by changing ''will'' to ''should'' in § 3560.58(a)(4). Commenters also said that clarification is needed regarding what constitutes an established rural community/eligible site. Many acceptable sites are located outside city limits but have water, sewer systems, and fire protection. Several commenters said that the regulation requires sites to have reasonable access to water and sewage removal, but this statement appears to negate the use of onsite septic systems as outlined in the Loan Origination Handbook, which describes when alternatives to ''community'' systems may be used.

Response: The Agency appreciates these comments; however, RHS has not made the suggested change from ''will'' to ''should'' in § 3560.58(a)(4). The Agency wants to emphasize that it will not approve sites that are not an integral part of a residential community and do not have reasonable access, either by location or terrain, to essential services such as water, sewage removal, schools, shopping, employment opportunities, and medical facilities. Environmental studies and civil rights assessments must be conducted before a site is approved. The Agency wants to emphasize that it remains flexible pending the outcome of such site assessments and the review of final development costs and plans.

Topic: Several commenters felt that more consideration should be afforded for development within 100-year flood plains, provided adequate flood insurance is maintained, and for development near or adjacent to industrial sites and processing plants, provided there are no threats of health hazards.

Response: The Agency appreciates these comments. However, the Agency will not approve sites subject to 100-year floods when non-floodplain sites exist. Where there are no non-floodplain sites available, sites located within a 100-year floodplain are not eligible for Federal financial assistance unless flood insurance is available through the National Flood Insurance Program. Once all necessary information is collected, analyses are performed, and the appropriate reviews completed for these sites, the Agency will make its decision based on whether the proposed project furthers the program's objectives and the government's interests are adequately protected.

Topic: Numerous commenters expressed concern that the Agency does not consider standards imposed by other financing sources, such as tenant income restrictions and tiered rents. Some commenters appeared to be confused about tax credits as a funding source.

Response: The Agency appreciates these comments and is committed to working to reduce interprogram differences to the extent practicable, thereby making it easier to satisfy the requirements of other funding sources. Moreover, as noted in § 3560.66(a)(3) of the interim final rule, the Agency will allow the strictest interpretation of the policy to prevail in most instances when requirements conflict.

Topic: Several comments focused on the Agency's preference for loan applications with leveraging. Commenters stated that the Agency should not award points, or should award fewer points, to applicants with ''token'' financing that makes up a very small percentage of total development costs.

Response: The Agency understands the commenters' position and notes that how points are awarded is discussed in the Agency's annual NOFA. It is not changing how it scores and ranks applications at this time. Moreover, it already awards fewer points to applications wherein there is a lower percentage of leveraging in comparison to the total development costs.

Topic: The Agency received numerous comments on equity requirements for subsequent loans. One commenter stated that the Agency should change its language in proposed § 3560.55(d)(1) to read ''borrower,'' not ''equity.'' Several other commenters stated that requiring a borrower to make an equity contribution for a subsequent loan is a disincentive for applying for the loan. Others said that the equity contribution should come from the property's resources.

Response: The Agency appreciates these comments and has changed its language in § 3560.55(d)(1) of the interim final rule to read ''borrower,'' but it will not change its position. RHS does not consider it an onerous

requirement for applicants for subsequent loans to make an equity contribution of 3 or 5 percent, depending on whether the project is being financed with LIHTCs.

Topic: A substantial number of commenters focused on the required funding level of a property's reserve account and felt that the minimum deposit requirement was too high. These commenters were concerned that this requirement would be unduly costly and result in budget-based rents exceeding conventional rents for comparable units.

Response: The Agency appreciates these concerns. Since the proposed rule was published, RHS has undertaken a comprehensive property assessment of the properties in the section 515 portfolio. The preliminary results provided useful information for reconsidering the extent of capital reserves that may be necessary to meet the capital needs of projects and to explore policy options for addressing these needs to be reflected in any necessary budgetary and legislative changes. More time is needed to properly address these matters. Accordingly, RHS has decided to publish an interim final rule that does not include these provisions—specifically § 3560.103(c)(3) and § 3560.306(k)(1) of the proposed rule—until their impacts can be assessed and policy decisions can be made for a long-term strategy.

Topic: Several commenters believed that there were loopholes in the proposed rule that would have enabled a borrower to commit deliberate actions to force the Agency to accelerate the borrower's loan to circumvent the preservation/prepayment requirements.

Response: The Agency notes that similar comments were addressed in subpart N and recommends referring to this part of the interim final rule for more information. However, it does note that in the interim final rule, the Agency modified § 3560.456(a) to read as follows: ''Before accelerating a project loan, the Agency will consider the possibility that the borrower is forcing an acceleration to circumvent the prepayment process. If it is found that this is the borrower's motivation, the Agency will consider alternatives to acceleration, such as suing for specific performance under loan and management documents.''

Topic: The Agency received numerous comments on the restrictive-use provisions described in this subpart. Several of these comments focused on how the proposed rule was unclear about whether use restrictions remain in effect or terminate on properties whose borrowers make their balloon payment and pay off their Agency debt when the 30-year term expires. Some commenters expressed concern that if the use restrictions do not remain in effect for the entire 50-year loan amortization period, the supply of affordable housing will decrease. Other commenters said that the restrictive-use provisions should expire when the borrower pays off the Agency debt.

Response: As explained in the preamble to the proposed rule, use restrictions are tied to the 30-year term of the mortgage. This requirement was established in 7 CFR part 1944, subpart E and the proposed rule simply continued this policy. However, the Agency notes that its interim final rule would allow properties to remain in the program if the borrower sought and obtained additional financing from the Agency upon expiration of the term.

Topic: Several commenters expressed dissatisfaction with the Agency's policy for calculating returns on investment. Some commenters recommend that the full 8 percent return should be allowed on all equity funds up to 10 percent of the amount of the initial investment instead of just on the 3 or 5 percent initial contribution. These commenters also felt that consideration should be given for older projects.

Other commenters noted that the Agency should allow a return based on the current value of the original investment adjusted for inflation, if owners are expected to maintain a business commitment to MFH projects.

Response: The Agency has considered the commenters' reasons for suggesting higher returns but has retained the policy described in the proposed rule, which is consistent with the Agency's existing policy in 7 CFR part 1944, subpart E on this topic.

Topic: Additional commenters noted that the Agency does not account for inflation when estimating return on investment in § 3560.68. (One noted that the reference to § 3560.67 was wrong and should be § 3560.68.) They also felt that there needed to be provisions for the payment of general partner fees for MFH projects with LIHTCs consistent with the LIHTC industry standard.

Response: The Agency has corrected the cross reference in the interim final rule. As is the case with the payment of developer's fees on combined MFH/LIHTC-financed projects, general partner fees, while not an eligible use of Agency loan funds, may be included in the total development costs when such fee is paid from other financing sources, in accordance with § 3560.63(d)(2).

Topic: Several commenters noted that the definition of security value of the property is critical to the calculation of return on investment. If security value equals ''value-in-use,'' the return on investment will be greater than if the security value of the property equals the market value.

Response: The Agency acknowledges these comments and has made revisions to the language in § 3560.68 to address this concern. The Agency also has noted that clarifications were made in § 3560.752 of the interim final rule to reduce confusion about the types of value determinations.

Topic: The Agency received comments regarding its cost certification requirements, which state: ''Whenever the State Director determines it appropriate, and in all situations where there is an IOI as defined in 7 CFR 1924.4(i), the borrower, contractor and any subcontractor, material supplier, or equipment lessor having an identity of interest must each provide certification as to the actual cost of the work performed in connection with the construction contract.'' Several commenters stated that these requirements were not strict enough and suggested requiring further cost certifications. Another commenter recommended that the regulation should specify an audit by a CPA, who is independent from the borrower. Another commenter asked for clarification about some of the related procedures, and who pays for the audit.

Response: The Agency appreciates these comments and has included a clarification in § 3560.72(b) of the interim final rule that cost certifications must be prepared in accordance with 7 CFR part 1924, subpart A. The Agency believes this clarification provides the necessary protection. Further, the Agency, rather than the borrower, has the authority to contract with a CPA to perform the audit. RHS believes that the language in the rule is clear—the expenses related to the cost certification and the accompanying audit are paid by the borrower out of loan proceeds. If the Agency contracts for the audit, it pays for the cost, and the loan funds for this cost are returned. This process is described in Agency guidance about program procedures.

Topic: Several commenters supported the elimination of the designated places requirement. The commenters said that the designated places list frequently excludes areas where the need for affordable housing is the greatest. Commenters said that if a market study indicates a need for affordable housing in a given area, the Agency should consider the project for funding, even if the location is not on the designated places list.

Response: The Agency is committed to using its funds to benefit households with the greatest need for housing in areas where the supply of affordable housing is limited. Further, it believes this commitment is reflected in the designated places list, where designated places is a requirement in accordance with § 532(c) of title V of the Housing Act of 1949, as well as other Agency or Administration priorities.

Topic: The Agency received several comments on the regulation's references to accessibility standards. Several commenters suggested that the reference to the ADA be removed because the ADA is not applicable to residential properties. Some commenters expressed confusion about accessibility requirements.

Response: The Agency has noted these comments and has removed the references to the ADA, except where it is applicable. The interim final rule continues to reference 7 CFR part 1924, subpart A, which addresses accessibility requirements. Further, Agency staff can help provide clarification about accessibility requirements during the project planning stage.

Topic: Other commenters said that the accessibility requirements for on-farm labor housing should be less stringent.

Response: The Agency appreciates these comments. However, the Agency has made no change to § 3560.60(d), as its policy on accessible units needs to comply with the applicable civil rights statutes and regulations.

Topic: The Agency received several comments on § 3560.56(e), which states that the Agency will process the next initial loan application, in rank order, when an application is delayed for a period of time that will not permit funding of the project during the current funding cycle. The commenters stated that it is very difficult to complete projects within a particular funding cycle given all the development challenges and the need to obtain funds from other sources.

Response: The Agency believes that the commenters misunderstood this paragraph. The Agency must be able to obligate the funds for a particular project, not complete the construction process, during the current funding cycle. The Agency recognizes the challenges in preparing an application involving multiple funding sources but has retained the language as written because it must obligate the available program funds within the established period.

Topic: Several commenters focused on § 3560.60 (Design requirements), with comments ranging from the specific to the relatively general. For example, commenters stated that the Agency's requirements for (1) economical construction, operation, and maintenance and (2) life-cycle cost analyses are contradictory, as life-cycle cost analyses can lead to greater maintenance costs. By comparison, a commenter asked the Agency to work with other Agencies to ensure that current threshold requirements are improved to prevent air and water infiltration.

Response: While the Agency appreciates these comments, it has made no change to this section because it feels that conducting life-cycle cost analyses will help ensure a balance between economical construction and a property's long-term viability.

Topic: Several commenters also focused the on the life-cycle cost analysis requirement in § 3560.60 (Design requirements). Some commenters were concerned that requiring a life-cycle cost analysis would not be cost-effective for properties with minor capital needs. Others said that the term ''life-cycle cost analysis'' should be clarified so that borrowers are fully aware of their responsibilities for obtaining and implementing the results of the analysis.

Response: The Agency appreciates these comments, but the life-cycle cost analysis requirements in § 3560.60(c)(3)(iii) of the interim final rule are used in an effort to balance upfront construction costs and long-term operating costs. The Agency has made no change. The Agency provides further information on obtaining and using a life-cycle cost analysis in its guidance about program procedures.

Topic: A number of commenters stated that a property's rents should be based on its operating and development costs, which might be higher than conventional rents for comparable units. Several of these commenters stated that it is difficult to find comparable rents in certain communities. Other commenters said that it was difficult to comment on the implementation of conventional rents for comparable units without knowing what the impact will be.

Response: The Agency appreciates these comments, but RHS views conventional rents for comparable units as an important underwriting consideration in assessing project viability. As stated previously, the Agency may make an exception to the requirement that rents do not exceed conventional rents for comparable units if doing so is in the Government's best interest.

Topic: With regard to the Agency's requirement that its loans be at least 25 percent of a project's total development costs, some commenters thought that this 25 percent threshold is reasonable, but others said that the threshold should be increased because of the difficulty in servicing small loans.

Response: The Agency has considered the commenters' suggestions but has decided to retain the 25 percent threshold. The Agency believes this threshold is reasonable and has not been a problem for the majority of applicants.

Topic: Several commenters asked what security value should be used to determine maximum loan limits.

Response: The Agency has clarified these terms in the interim final rule so that the terms ''current value'' and ''value-in-use'' were replaced by ''market value'' in § 3560.63(e). Also, a description of market value is provided in § 3560.752 of the interim final rule.

Topic: The Agency received several comments regarding the cap of 2 percent of total development costs for section 515 projects and 4 percent for off-farm labor housing projects to cover development/loan packaging. Several commenters said that the 2 percent for section 515 projects and 4 percent for off-farm labor housing projects are not adequate to cover costs, especially in those cases where the developer does not serve as the general contractor. Other commenters contended that development costs for section 515 and off-farm labor projects are roughly equivalent.

Response: The Agency acknowledges the commenters' concerns but has determined that there is no compelling reason to increase the cap. Furthermore, in the Agency's experience, development of Farm Labor Housing projects is more difficult than development of section 515 properties. Therefore, the Agency has made no change in the cap for section 515 properties.

Topic: Regarding the eligible uses of loan and grant funds as described in § 3560.53, several commenters supported the Agency's more detailed description of allowable costs. Others said that the percentages for allowable builder's profit, general overhead, and general requirements are improved over prior allowances, while others thought that the percentages should be increased to compensate for increased costs. Several commenters said that the section should be more inclusive, while others thought some costs should be prohibited.

Response: The Agency appreciates these comments but has made no change to its position in the interim final rule. The comments were very general, and RHS believes the language in the proposed rule is reasonable.

Moreover, the allowable cost percentages were derived as a result of an Agency review of Agency, State, and industry cost information and best management practices. The provisions in the Agency's interim final rule are consistent with the results of this review.

Topic: Regarding the language in § 3560.53 on the use of funds to develop and install necessary systems, some commenters felt that certain elements of this requirement were too prescriptive and bureaucratic, ultimately leading to increased development costs. Other commenters said that the installation of necessary systems offsite should require permanent easements.

Response: The Agency has considered the commenters' concerns and revised § 3560.53(e)(1) in the interim final rule to read: ''The loan applicant will hold title to the facility or have a legal right to use the facility in the form of an easement or other instrument acceptable to the Agency for a period of at least 50 percent longer than the term of the loan or grant and the title or right is transferable to any subsequent owner of the housing.''

Topic: Other comments regarding § 3560.53 included praise for the clearer, improved statement of authorized purposes. Another commenter stated that the language in § 3560.53(b)(2) was too restrictive and could result in properties without the amenities to effectively compete with other affordable properties in their market area.

Response: The Agency thanks the commenters for positively recognizing the improved language. RHS acknowledges the concern about ensuring that properties are competitive. The Agency believes that other provisions throughout subpart B provide sufficient flexibility to enable applicants to develop properties with competitive features and amenities for the area, while at the same time ensuring affordability and reasonable development costs.

Subpart C—Borrower Management and Operations Responsibilities

Topic: The Agency received numerous comments on the property maintenance requirements. These comments covered three broad topics, as discussed below.

Topic: A number of commenters expressed approval of the Agency's effort to codify property standards. They indicated that the increased clarity will help ensure a consistently higher level of compliance with the standards and provide safer, healthier environments for tenants, especially children. However, other commenters argued that such specificity should not be included in the regulation, as it can create a lack of flexibility for property owners who must follow the rules over their own judgment about cost-effective maintenance. Some suggested putting the detailed property standards in the program handbooks. One person suggested referencing an industry code.

Response: The Agency appreciates these comments and understands the commenters' concerns. The Agency has considered the advantages and tradeoffs of including specific standards in the rule and has decided to keep the specific standards in the rule. By establishing the standards in the regulation, the Agency has a stronger regulatory basis for enforcing property maintenance standards.

Topic: Similarly, commenters were concerned that for many properties it would not be practical to achieve and maintain compliance with all items in the list of requirements. They indicated that any single deficiency should not be interpreted as an indication of a poorly maintained project and questioned whether a single or limited number of deficiencies would put them out of compliance. One commenter asked for a specific statement of what would constitute compliance. Commenters also added that ongoing compliance with a long list of requirements would be even more difficult given the limits on operating budgets and stressed the need for adequate resources to meet these property maintenance standards. They suggested that they be allowed to consider the severity of a problem to prioritize their maintenance needs and not be required to address all deficiencies at once.

Response: The Agency appreciates all these comments and has modified § 3560.103(a) to indicate that it will not penalize the borrower for not meeting all standards if there is clear evidence that the borrower is working toward meeting 100 percent of the standards. Further, properties in the process of addressing deficiencies will not be deemed out of compliance unless the number of deficiencies constitutes substantial noncompliance and calls into question the viability of the property and the effectiveness of the borrower's maintenance program. The Agency has added language to the interim final rule at § 3560.103(a)(4) indicating that upon discovery of conditions that do not meet the standards, it expects that the borrower will remedy the conditions in a reasonable period of time. The Agency has listed in the interim final rule at § 3560.103 (a)(3)(i) through (xvii) the standards by which compliance will be measured.

Topic: Commenters also had a number of suggestions, proposed language changes, and questions on how to interpret these standards. They had questions on issues ranging from rain diverters and gutters to van parking spots to the caulking of water closet floors and accessible laundry facilities. They suggested edits to the language on water leaks, cracks, moisture and mold, and common area accessibility. They also raised the issue of work order systems and the difficulty of implementing them in small properties.

Response: The Agency acknowledges these comments and has made appropriate edits for clarity in the interim final rule at § 3560.103(a)(3)(i) through (xvii). The work order system required is not intended to be any more elaborate than necessary for the size of the property.

Topic: Regarding the new approach to management plans, management agreements, and management certifications, many commenters applauded these changes for reducing the administrative burden on both the borrower and the Agency, though a number of commenters were also concerned that the changes might hinder the effectiveness of Agency oversight. Other commenters suggested further streamlining these requirements, and a number of comments asked to see the management certification form. Finally, several commenters noted that subpart C of the proposed rule contradicts itself by stating that management plans are not subject to Agency approval and then stating conversely that Agency approval is required (see § 3560.102(c)).

Response: The Agency acknowledges these comments. The Agency has remedied the conflict identified at § 3560.102(c) to clarify that Agency approval of management plans is no longer required. The Agency believes that the concerns about the changes hindering Agency oversight reflect commenters' confusion about the some of the specifics of the new policy. While the Agency is no longer approving either the management plan or the management agreement, the management certification is signed by both the management agent and the borrower, and is approved by RHS . The certification commits the management agent and the borrower to operate the property in compliance with program requirements and provides specific financial and other penalties for failure to comply, including termination of the management agreement. This certification is similar to the document

used successfully in HUD multi-family programs. The Agency believes that this document eliminates unnecessary Agency reviews, while still retaining clear authority for compliance oversight and enforcement.

Topic: Commenters made a number of suggestions on how and when to submit management plans and certifications. They asked if current management plans would need to be reviewed and updated for approval, and also, what types of changes in approved plans would require reapproval of the documents; they strongly suggested that only significant changes require reapproval within the 3-year timeframe. One commenter suggested that a borrower with multiple properties should be able to submit a ''master file'' with a plan for all the borrower's properties. Another asked if the management certification could be done as part of the budget document. Commenters also asked about using a management agreement acceptable to both the Agency and the State finance Agency to help eliminate paperwork.

Response: The Agency agrees with the commenters that only significant changes will require resubmission of documents. As noted in § 3560.102(c) of the interim final rule, the Agency will no longer approve management plans. Borrowers will need to prepare and submit updated management plans initially after publication of this rule. Subsequent updates are required when project operations substantially change with regard to the mandatory items in the plan, or if the borrower needs to submit a workout plan and the management plan needs to be updated to be consistent with the workout plan (*see* subpart J).

Topic: Numerous commenters questioned the requirement in § 3560.102(d) that the management plan be updated if the project is found to be out of compliance. The commenters questioned the need to update the management plan in cases where the problem is not due to items covered in the plan and noted that this poses an unnecessary burden.

Response: The Agency agrees with the commenters' concern but notes that the paragraph allows borrowers to submit a statement that the management plan is adequate to assure compliance if changes to the plan are not needed to address the violation. Further, the Agency believes that requiring the management plan to be updated to describe how compliance violations are to be addressed is reasonable when such changes would support compliance. Therefore, the Agency has made no changes to the management plan requirements.

Topic: Management fees and the policy for determining allowable fees to be paid out of project income received numerous comments. A number of commenters supported the new method. Some commenters suggested that a base fee using a National average, with add-ons for geographic factors, would help with consistency. However, others expressed strong opinions that the determination of reasonable fee standards could only be done effectively at the State level. Numerous commenters were disappointed that the Agency chose to institute a ''per unit, per month'' management fee rather than a fee based on a percentage of revenue or gross collections. They were also concerned that much of the clarity gained through the development of Administrative Notices on this topic did not appear in the rule. Many commenters were concerned that any method used to determine a range of base fees for a given area would be seriously flawed. Their concerns included the following:

- Management fees should be determined at the State level because only the state has specific market knowledge to set fees correctly.
- Management fees should be published periodically at specified times. Some commenters worried that the process of publication will delay the release of the fees. They asked that State lists be made available immediately.
- RHS should consider Consumer Price Index when establishing management fees.
- The management fee system should ensure that the appropriate fee ranges are allowed. Some suggested looking at successful State models for per-unit fees.

Commenters also had a number of questions and clarifications regarding the eligibility for fees of Public Housing Authorities, the fees for sections 514 and 516 projects, the bundle of services, and add-on fees and the relationship of these fees to fees in market rate properties.

Response: The Agency acknowledges the commenters' concerns and has revised § 3560.102(i) to address clarification issues raised by the commenters. Management fees will be paid based on a ''per occupied unit'' basis. The Agency feels that this is the fairest methodology at this time. The base fee will be valued on a specific ''bundle of services'' that has been added to this section. The ''bundle of services'' has previously been issued in Administrative Notices. Periodically, the Agency through the State Offices will publish the base fee. The States will determine the base fee using housing industry data for their state. The frequency for updating the fee ranges will be established in Agency program procedures.

Topic: The Agency received numerous comments with respect to management agents being allowed to earn a management fee for any unit occupied for at least one day during the month. Several commenters said that allowing for a management fee for a partial month is a welcomed improvement; however, there was disagreement about whether the Agency's information management capabilities would allow it to effectively track monthly occupancy rates, including units that are vacant on the first of the month but occupied later in the month. Some commenters suggested that management agents should only be eligible to receive a fee for a unit that was occupied on the first of a month; in contrast, other commenters argued that occupancy should not even be a factor in calculating management fees. They stressed this method is not the industry standard because vacant units often require more attention than occupied units. In addition, the tracking of occupied units places an additional burden on the management agent. One compromise approach offered was to allow management fees on the total units as long as the property stays 90 percent occupied, and per-unit fees if the property falls below the 90 percent threshold.

Response: The Agency acknowledges the commenters' concerns. However, the Agency believes the rule as written takes into account partial occupancy at § 3560.102(i)(2). If additional staff time is needed to perform leasing activities to address vacancies, these costs are payable directly from the project. For this reason, the Agency believes that a fee system based on occupied units will not adversely affect projects experiencing vacancies or higher turnover. Further, if a property is located in a difficult market, the Agency can authorize add-on fees as a means to address issues associated with individual markets in an area. The Agency has made no changes to the rule but will continue to consider options and refinements during the comment period of the interim final rule.

Topic: The bundle of services concept established in § 3560.102(i) received many comments and questions. Several commenters asked for more detail on the included list of services. Some expressed concern that this arrangement will add new costs and complexity to the compensation of management

agents, while others strongly endorsed the concept stating that it will help bring clarity and consistency to the process. Commenters stressed that, given the diversity of business practices among agents, the defined bundle of services must be complete, necessary, and consistent among projects, counties, and states. Some commenters asked that a list of charges for each state (for the bundle of services) should be made available for comment before the interim final rule is published.

Response: The Agency appreciates these comments and has endeavored to establish a clear, appropriate, and practical delineation of project-related costs and services to be covered out of the management fee, and those costs and services to be paid directly from project income. RHS has developed this definition of the bundle of services for the management fee based on extensive input from stakeholders prior to the rulemaking. The bundle of services can be found at § 3560.102(i)(3) of the interim final rule.

Topic: Commenters raised several points about the benefits and potential costs of the prohibition on IOI relationships in the program. Several commenters recommended that IOI relationships between any parties connected to a particular Agency-financed project be prohibited, while other commenters stated that such a prohibition would increase the cost of goods and services for many projects. In addition, several commenters suggested that § 3560.102(g)(2) be revised to state that failure to disclose IOI relationships will subject the borrower, management agent, and any other firms or employees found to have an IOI relationship to suspension and debarment. Still others asked for more guidance on what constitutes an IOI relationship and how to document it.

Response: While the Agency acknowledges the commenters' concerns, requirements regarding the disclosure of IOI relationships and documentation that the use of such providers and suppliers is in the best interest of the project are essential program controls to ensure program integrity and reduce the risk of abuse. Further, the Agency's ability to suspend or debar borrowers who fail to disclose IOI relationships is important to enforcing this requirement; however, the Agency reserves the right to use this provision within its discretion. For these reasons, the Agency has made no change to § 3560.102(g) in the interim final rule.

Topic: The prohibition of IOI insurance carriers drew many comments. Commenters explained that with rising insurance premiums, they have fewer and fewer choices for insurance providers. They noted that it is especially difficult to find insurance in rural and tribal areas; many have found that their only cost-effective option has been with carriers that would be considered to have an IOI relationship with the borrower. Commenters emphasized that member-owned risk pools have been a successful strategy for holding down insurance costs, but these, too, are adversely affected by the prohibition on IOIs. Commenters urged the Agency to remove the IOI prohibition with respect to insurance.

Response: The Agency has considered these comments and has deleted the requirement under § 3560.105(e) that prohibited borrowers from using IOI insurance carriers. The Agency expects that this change will improve borrowers' ability to obtain Agency-required coverage at a lower cost.

Topic: Regarding the Agency's general insurance requirements, several commenters stated that the Agency should not have to deem insurance carriers as ''reputable and financially sound.'' Other commenters recommended that the minimum property insurance coverage should be the replacement value, not the depreciated replacement value. They offered that the alternative of existing debt is acceptable. Commenters also proposed adding language to the regulation on tenant responsibility for ''contents'' insurance, the use of project revenue for nonprofit organizations' director's liability insurance, and the deposit of checks. Commenters also requested certain changes to language in the rule for clarity regarding insurance minimums and limited insurance. Finally, one commenter expressed satisfaction with the addition of the guidance on policies for several buildings.

Response: The Agency appreciates the comments and suggestions, and has made several of the suggested editorial changes to the rule for clarity at § 3560.105(b),(c), and (d). The Agency acknowledges the concerns raised, and while the Agency has decided not to make substantive modifications to its insurance requirements in the interim final rule, the Agency will continue to accept comments and consider them in subsequent policy discussions prior to publishing the final rule.

Topic: Commenters also asked RHS to allow greater flexibility with respect to insurance requirements to allow the Agency and borrowers to appropriately respond to changing market conditions. Several commenters expressed strong concern about rising insurance premiums and identified possible cost-effective alternatives to current insurance policies. They stressed the need for exception authority and suggested that one approach—at the state level grant exceptions to the deductible requirement, while allowing borrowers to put aside funds to self-insure for the difference.

Response: The Agency recognizes the cost issues associated with insurance and changes in the insurance industry. Since September 11, 2001, the Agency has been processing deductible exceptions and meeting with industry groups in order to develop a response to higher costs. Therefore, the Agency has increased the maximum allowable deductible to $10,000 (for property insurance). The Agency has retained the flexibility for increased deductible amounts.

Topic: Regarding requirements for insurance deductibles, several commenters stated that the required deductibles were too low and could result in dramatic premium increases. Other commenters said that the deductible limits (of 0.5 percent or $5,000) were set many years ago and should be adjusted to reflect current industry standards. Finally, several commenters asked for clarification with regard to the language in § 3560.105(f) about how insurance deductible ''amounts must be accounted for in the reserve account.''

Response: The Agency recognizes the commenters' concerns. It has adjusted the deductible amounts to reflect current industry practice and they appear at § 3560.105(f)(8) in the interim final rule.

Topic: The Agency received several comments on the requirements for hazard insurance coverage. These commenters asked the Agency to clarify its definition of hazard insurance. For instance, some commenters were uncertain if terrorism or earthquake coverage is required. Several commenters stated that earthquake insurance should not be required as it is prohibitively expensive.

Response: The Agency appreciates these comments and has revised the interim final rule to clarify the insurance types required at § 3560.105(f)(1) and (2).

Topic: Regarding requirements for liability and fidelity coverage, some commenters said that while the proposed rule provides for minimum liability coverage of $1,000,000 per occurrence, no deductible is provided in the proposed rule. Similarly, commenters expressed concern that the proposed rule did not provide minimum

coverage amounts and deductibles for fidelity coverage. Commenters also asked that language regarding the breadth of liability coverage be changed to specify the coverage of buildings; grounds; and common, commercial, and other public space. They suggested that language on options for liability coverage, such as errors and omissions and environmental damage, be moved to the Asset Management Handbook. For fidelity coverage, commenters indicated that the provision for reflecting the portion covering the employee in the management plan was not practical.

Response: The Agency acknowledges the commenters' concerns. The deductible amounts for fidelity coverage have been included in the interim final rule at § 3560.105(h)(2)(i). The Agency has retained the language from the proposed rule regarding coverage of areas beyond the buildings in the interim final rule and has replaced the language regarding the fidelity premium to state that the premium could be prorated among the housing projects covered. The Agency has not removed the language on suggested coverage as it reflects current industry standards and, as a minimum amount, is not likely to require regular updating.

Topic: Several commenters objected to the Agency's requirement that the Agency must be named as co-payee on all loss drafts. These commenters felt that this is a viable requirement only when the Agency is in first lien position. Several commenters said that if the Agency is in the junior lien position, the Agency can be named as an additional insured.

Response: The Agency has considered these comments and made appropriate revisions at § 3560.105(b)(4) of the interim final rule.

Topic: Regarding the affirmative marketing and accessibility requirements discussed in § 3560.104, one commenter expressed appreciation for the level of specificity provided in the rule, while another stated that further guidance was still needed. Several commenters proposed edits to the language to strengthen and clarify requirements regarding community contacts, the frequency of advertising and the publication of advertisements, the costs associated with fair housing training for staff, and requirements regarding limited English proficiency. Another commenter asked for additional detail regarding accessibility and reasonable accommodations. Finally, several commenters asked for clarification regarding the requirements for updates to the Affirmative Fair Housing Marketing Plan, suggesting that updates be made only for significant changes.

Response: The Agency appreciates the comments and has made the change to clarify organizations for the disabled at § 3560.104(b)(4)(ii)(B) of the interim final rule. The Agency has not made changes to the language on reasonable accommodations and financial burden because it is based on fair housing and accessibility statutes and their implementing regulations. Additional clarification about procedures and determinations regarding reasonable accommodations and Affirmative Fair Housing Marketing Plans are included in internal Agency procedures. Limited English proficiency requirements are addressed in subpart A.

Topic: The Agency received a number of additional comments regarding the fair housing and accessibility requirements in subpart C. Commenters noted the importance of these requirements. Several commenters stated that reasonable accommodations should be made at the project's expense, not at the borrower's expense as stated in the proposed rule. Other commenters asked for clarification as to who makes the decision about whether a request for an accommodation causes undue financial or administrative burden, and one asked for a definition of undue burden. Multiple commenters requested a change in the language about persons with disabilities and companion animals to help clarify which tenants can request this accommodation. Other commenters said that the discussion of accessible laundry facilities does not allow for alternate arrangements, as allowed by section 504. Other commenters stated that in the interim final rule, any discussion of common area accessibility must refer to the Uniform Federal Accessibility Standards (UFAS). Still other commenters said that the proposed rule's language defining responsibility for paying for reasonable accommodations is unclear.

Response: The Agency appreciates the comments and has changed the language at § 3560.104(c)(4) of the interim final rule to place the financial burden on the property, instead of on the borrower, and further clarifies this responsibility.

Topic: The discussion of required signage drew many comments. Some suggested language changes to clarify the requirements. Others questioned the need for such extensive guidance on these topics. Still others questioned about the applicability of the requirement and whether existing signs had to be changed to meet the requirements or local requirements.

Response: The Agency acknowledges that the ten requirements listed under § 3560.104(d) are very specific but does not consider these requirements to be onerous. Further, the Agency believes that this detail is appropriate to help ensure compliance with applicable Federal fair housing and accessibility requirements. Therefore, the Agency has retained these requirements in the interim final rule.

Topic: Several commenters disagreed with the language in certain paragraphs in subpart C that referred to the ADA. The commenters correctly noted that these paragraphs should refer to section 504 of the Rehabilitation Act of 1973 because most areas in residential properties are not regulated under the ADA.

Response: The Agency thanks the commenters for highlighting this issue and has removed the identified references to the ADA from the interim final rule.

Topic: Regarding policies related to payment of property taxes, some commenters stated that the Agency should not require the borrower to certify that the property's taxes were paid because some states have services that notify USDA of property tax delinquencies. Several other commenters suggested that instead of requiring the Agency to pay property taxes when the borrower fails to do so, the Agency should determine whether it is in the best interest of the Government to pay the delinquent taxes.

Response: The Agency appreciates these comments and removed the requirement at § 3560.105(i) for borrowers to certify the payment of property taxes from the interim final rule. However, this certification will remain as a requirement for the annual financial statements. The Agency has considered the suggestion regarding property taxes but believes that it is not prudent as a general policy to relax the requirement for keeping the property tax payment current. More guidance on the annual financial statements will be provided by the MFH Engagement Guidelines to be issued separately.

Topic: The Agency received a number of comments on the qualifications for acceptable management agents. Some commenters approved of the requirements, while others suggested that it may be difficult to find management entities with the required 2 years of experience in many rural areas. Other commenters questioned whether this requirement is unnecessary for small properties. One commenter suggested broadening the requirement to allow experience managing LIHTC properties to satisfy the experience

requirement. One commenter suggested requiring the prospective management agent to disclose all past RRH properties managed as evidence of past performance.

Response: The Agency understands the commenters' concerns but has retained the experience requirement. RHS believes that successful experience with some type of federally assisted affordable housing is important for effective project management because the program rules require specialized knowledge beyond conventional property management. The Agency notes that experience managing LIHTC projects would be acceptable experience.

Topic: There were also comments on the 45-day approval timeframe for management agents. Some commenters agreed with it or suggested lengthening it to 90 days to allow the Agency more time for review. Others stated that the approval timeframe, with 30-day interim authorizations, for new agents is too long for a project without a management agent and suggested that the Agency should simply accept the agent and provide approval after the change has taken effect.

Response: The Agency understands the commenters' concerns about getting new management agents in place quickly but also needs to allow adequate time for Agency review of a prospective agent's experience and acceptability. In balancing these two considerations, the Agency has decided to retain the proposed timeframes in the interim final rule.

Topic: The Agency received several comments on the requirement for resident participation in property management. The commenters were concerned that the wording implies that residents have a role in decisions regarding property operation beyond input and suggestions. They stated that while resident input is helpful, borrowers' financial responsibilities also give them full responsibility for operations.

Response: The Agency emphasizes that the borrower has ultimate responsibility and, therefore, decisionmaking authority in the property. The intent of the tenant participation requirement is only to provide an opportunity for tenant input into the management process, not a role in making decisions.

Topic: One commenter suggested adding a requirement to the rule requiring language in the management agreement that clearly establishes a management agent's responsibility and liability for any equity skimming it causes or allows to happen.

Response: The Agency does not have a direct relationship with the borrower's management agent and cannot hold such agents directly responsible for these activities. The Agency relationship is with the borrower and, as such holds the borrower responsible for all activities at Agency-financed properties.

Subpart D—Multi-Family Housing Occupancy

Topic: The Agency received a substantial number of comments on lease and occupancy terminations. Several commenters said that the regulation should acknowledge that some tenants are displaced through no fault of their own and describe the tenants' rights in these situations.

Response: The Agency thanks the commenters for this suggestion and has modified the interim final rule. Specifically, the Agency has modified § 3560.159(c) to state that tenants whose leases are terminated through no fault of their own are entitled to benefits under the Uniform Relocation Act.

Topic: Several commenters said that once a termination notice is given to the tenant to vacate, the tenant's recourse should be through the court system. To allow a tenant to provide a corrective action plan will only increase the termination time of problem tenants. Other commenters said that the proposed regulation still excludes evictions from the grievance process but also eliminates the written warning requirement and the right to meet with the borrower to discuss the alleged lease violation and possibly the termination notice itself.

Response: The Agency has modified § 3560.159(a) to state that the borrower must give the tenant written notice of the violation and give the tenant the opportunity to correct the violation prior to terminating a lease.

Topic: The Agency received several comments that recommend revised language regarding the termination of occupancy in § 3560.159(a)(1). One commenter suggests that § 3560.159(a)(1)(i) be revised to read: ''Violations of lease provisions or occupancy rules which are substantial and/or repeated.'' The commenter also suggested revisions to § 3560.159(a)(1)(ii), specifically, removing ''beyond the grace period.''

Response: The Agency thanks the commenter for the suggestions and has changed the above referenced sentences as recommended at § 3560.159(a)(1)(i) and (ii) in the interim final rule.

Topic: Several commenters wanted the current regulation to better specify residents' rights and borrowers' obligations. Specifically, the commenters identified the following:

- The proposed regulation eliminates the requirement that the borrower notify the tenant of the right to review the borrower's file and copy information from it.
- RHS streamlining efforts have gone too far in the eviction or termination section of the proposed rule. RHS should revise the termination section by adding back the language about tenants' rights and obligations from the current regulation and stating these rights in a precise and clear manner that residents can understand.
- RHS should make it clear to its borrowers that the rejection or eviction of otherwise eligible applicants or tenants may cause borrowers to violate the Fair Housing Act, title VI of the Civil Rights Act of 1964, and other civil rights laws.

Response: The Agency acknowledges the commenters' concerns. The issue regarding the tenant's right to review the borrower's file is described in the interim final rule at § 3560.160(g)(4). The Agency has amended 7 CFR 3560.159 to include additional tenant protections with respect to termination. The civil rights laws to which borrowers, tenants, and the Agency are bound are described in 7 CFR 3560.2.

Topic: Multiple commenters praised the Agency for drafting the proposed rule to give new latitude to USDA to issue Letters of Priority Entitlement when required repair or rehabilitation causes displacement. The commenters believed that this added authority is helpful.

Response: The Agency appreciates the commenters' support.

Topic: One commenter advised the Agency to include ''major loss or destruction by fire'' as another example of conditions that could lead to termination, even if temporary until the housing can be restored for occupancy.

Response: The Agency acknowledges the commenter's concern. The situation described is referenced in 7 CFR 3560.159(c), which states that a tenant's occupancy may be terminated in the event of a building rehabilitation or a natural disaster. This paragraph further explains the tenant's rights under these circumstances.

Topic: Commenters stated that material lease violations should not be attributed to innocent members of the household, particularly in cases of domestic violence.

Response: The Agency notes the commenters' concerns. However, termination of tenancy terminates the lease of the unit and not specific household members.

Topic: Comments were received regarding the Agency's prohibitions against noncitizens. Several commenters contended that if enacted, the regulation would have a negative impact on many existing tenants who are not eligible noncitizens. This, in turn, will have a negative impact on the projects themselves. One commenter asked whether noncitizens could live in section 515 properties.

Response: While the Agency acknowledges the commenters' concerns, restricting occupancy in sections 514, 515, and 516 properties to U.S. citizens and legal immigrants is a statutory requirement.

Topic: The Agency received one comment recommending that RHS expand its proposed definition of legal or qualified alien to include three classes of immigrants that Congress recently determined should be eligible for public benefits, including ''public and assisted housing'' under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

Response: While the Agency appreciates the commenter's suggestion, it has made no change because the definition of a legal alien is statutory per 42 U.S.C. 1436(a). The Agency has exercised its authority under sections 501(h) and 510(k) of the Housing Act of 1949 [42 U.S.C. 1471(h) and 1480(k)] to restrict eligibility for occupancy in all section 515 projects to citizens and qualified aliens. In addition, eligibility for the migrant farm worker programs under sections 514 and 516 is specifically restricted to such individuals by section 514(f)(3)(A) of the Housing Act of 1949 [42 U.S.C. 1484(f)(3)(A)].

Topic: Several comments were received regarding the proposed rule's citizen requirement for the head of household. First, the commenter indicated that RHS's proposal to require the head of household be a citizen or a permanent resident violates section 501(h) of the Housing Act of 1949. In addition, the commenter asserted that HUD has not conditioned eligibility to reside in its housing upon an adult member being a citizen or a person legally admitted for permanent residency. Finally, the commenter urged RHS to clarify language in § 3560.152 to indicate that only one member of a household need be a citizen or legal or qualified alien.

Response: The Agency acknowledges the commenters' concerns, but it has made no change because the requirement for occupants of sections 514, 515, and 516 housing to be citizens or legal immigrants is statutory.

Topic: With regard to § 3560.152(a)(1) and § 3560.154(a)(7), a comment was received suggesting that USDA incorporate appendix 2 to the HUD Handbook 4350.3. Further, the commenter urged USDA to coordinate with the Department of Homeland Security in much the same manner as HUD.

Response: The Agency thanks the commenter for this suggestion. Appendix 2 to the HUD Handbook 4350.3 is incorporated into internal Agency procedures.

Topic: Several comments were received regarding the acceptance of income-ineligible tenants into section 515 properties. Several commenters noted that if enacted, the Agency would require the borrower to publish local notices when waivers are granted to allow a project to rent to ineligible tenants. They thought that § 3560.152(d) was an unnecessary, excessive, and costly requirement to impose on what are presumably vacancy-troubled projects.

Response: The Agency notes the commenters' concerns and has removed this requirement from the interim final rule. In the proposed rule, it was located at § 3560.152(d)(3).

Topic: Regarding § 3560.152(d)(4), commenters believed that borrowers should not be required to submit monthly reports to the Agency regarding marketing efforts to locate eligible tenants. Instead, records should be kept onsite for review during Agency inspections.

Response: The Agency thanks the commenters for raising this issue and has modified the interim final rule so that the monthly report submission is not required. In the proposed rule, this was located at § 3560.152(d)(4).

Topic: Regarding § 3560.152(e), commenters generally argued that the move-in date should be the effective date for tenant certification, which is the first of the month.

Response: The Agency provides rental assistance, if available, to eligible tenants as of the first day of the tenant's first full month of occupancy. Therefore, the recertification date is the first day of the month for which the tenant is eligible to receive the subsidy. The Agency has made no change to the interim final rule.

Topic: One commenter asked what ''prevailing market rent rate'' means as referenced in § 3560.152(d)(8).

Response: The Agency appreciates the commenter's question. The Agency has removed this reference from § 3560.152(d) of the interim final rule.

Topic: Several commenters addressed ineligible tenant waivers with regard to the lease term, as well as the Farm Labor Housing rent. First, with regard to lease terms, commenters acknowledged that the proposed rule calls for one-year leases to ineligible tenants followed by a month-to-month lease thereafter. The commenters recommended that the lease to ineligible tenants should simply be month-to-month. In terms of Farm Labor Housing rent, the commenters believed that income-ineligible tenants should be expected to pay the greater of the one percent note rent or prevailing market rent, not the lease rate of one percent in the proposed rule. The Agency received one comment suggesting that over income residents should be required to move after the expiration of the current calendar year or 90 days, whichever is later.

Response: The Agency acknowledges the commenters' concerns. The Agency allows a 1 year lease for ineligible tenants because not allowing an ineligible tenant to remain in the unit for at least 1 year could result in an undue financial burden to that tenant, and in many localities, contravenes State or local law. The Agency believes, however, that once the year elapses, it is fair to require the ineligible tenant to move within 30 days if this is stated in the lease and does not contravene State or local law. The Agency has removed the reference to prevailing market rate rent.

Topic: Regarding § 3560.152(d)(7), one commenter suggested that this paragraph be deleted. Other commenters indicated that requiring a 25 percent surcharge for a Plan I projects, which operate at market rents, would require the borrower to charge rents higher than the market and consequently hurt project occupancy.

Response: The Agency appreciates the commenters' concerns but has made no change to § 3560.152(d)(7) because the requirement is not a change from existing policy, which merely requires that ineligible tenants pay a higher rent than eligible tenants.

Topic: One commenter addressed § 3560.152(e)(1)(iv) and asked for clarification regarding the ineligibility consequences faced by tenants who fail to comply with tenant certification.

Response: The Agency appreciates the commenter's concern. The interim final rule states that tenants who fail to recertify are no longer eligible for occupancy and subject to termination of tenancy in Agency MFH programs covered by the interim final rule. The interim final rule (at § 3560.152(d)) also explains how ineligible tenants may

continue to be housed and the regulations concerning their occupancy.

Topic: Multiple comments were received asking that any change in tenant eligibility should grandfather in existing tenants.

Response: The Agency notes the commenter's concern; however, any changes in tenant eligibility requirements will not grandfather in existing tenants. Existing tenants should not be affected by changes in eligibility requirements, until their upcoming recertifications. Further, the Agency's internal procedures provide guidance for existing tenants.

Topic: One commenter said that allowing borrowers to ''temporarily rent apartments to all persons without regard to age or income restrictions'' appears to violate the exemption from the prohibitions against discrimination because of familial status that was granted to RHS.

Response: The Agency does not agree with this commenter's assessment. Ineligible tenants are permitted for temporary periods to protect the financial interest of the Government. No change was made to the interim final rule.

Topic: Several comments were received on tenant grievance procedures. These commenters said that the Notice of Adverse Action is specifically listed as a category of action a tenant or prospective tenant may grieve. The commenters went on to say that new language defines a Notice of Adverse Action as a proposed action that may have adverse consequence for tenants or prospective tenants, whereas in the prior regulation it was not clearly defined, and that notice delivery requirements were excluded from the proposed rule.

Response: The Agency appreciates the commenters' recommendations and has included delivery requirements at § 3560.160(e) of the interim final rule.

Topic: Several commenters asked the Agency to include a provision that when the tenant and the borrower disagree as to whether something is grievable, the dispute should be viewed as a threshold question to be decided before the Hearings Officer or panel.

Response: The Agency has made no change to the interim final rule. The actions that are grievable are identified at § 3560.160(d) of the interim final rule.

Topic: One commenter suggested that the proposed regulation indicate that the tenant has a right to grieve the borrower's action or inaction when it involves the borrower's failure to comply with lease terms or rules.

Response: The Agency acknowledges the commenter's concern. Section 3560.160(b)(2) lists the circumstances under which a borrower's action or inaction is not grievable. Borrower's failure to comply with lease provisions or rules would fall under § 3560.160(b)(1) of the interim final rule.

Topic: The Agency received a few comments regarding compliance with § 3560.103 and a tenant's right to grieve. One commenter believes the standards contained in the proposed rule are too broad. For example, the commenter cited § 3560.103, which indicates that failure to maintain the premises in such a manner that provides decent, safe, sanitary, and affordable housing is grounds for a grievance. The commenter interpreted this to mean that residents would have a right to a grievance hearing if they thought the landscaping was not attractive. Another commenter believed that these standards should be posted or handed out to tenants at the time a lease agreement is executed.

Response: The Agency acknowledges the commenters' concerns. The Agency cannot prevent nuisance or frivolous grievance filings but has attempted to outline realistic standards of property maintenance that are expected of borrowers. Additionally, the Agency does not believe it is necessary to require borrowers to provide these standards to tenants as part of the lease. The standards are contained in § 3560.103 of the interim final rule.

Topic: One commenter addressed the issue of grievances based on discrimination against protected classes (§ 3560.160(a)(2)). According to the commenter, this paragraph includes marital status and sexual preference as protected classes, which is unlike any other Federal law. The commenter believes there is no apparent need to have greater fair housing provisions than in other Government programs.

Response: The Agency thanks the commenter for raising this issue. The Agency has revised the language in this section to include only the protected classes as specified under Federal law. Marital status and sexual preference have been removed from § 3560.160(a)(2) in the interim final rule.

Topic: Several comments addressed grievances that may involve discrimination. One commenter suggested that language should be added to § 3560.160(a)(2) to clarify that discrimination complaints should be filed with the Regional Fair Housing and Equal Opportunity Office of HUD. Another commenter suggested that discrimination grievances could be handled under § 3560.160, if the grievant so desires.

Response: The Agency thanks the commenters' for these suggestions and has modified the language in § 3560.160(a)(2) to state that any tenants or potential tenants who feel that they are being discriminated against may present a complaint to the U.S. Department of Agriculture's Office of Civil Rights.

Topic: One commenter suggested that the process outlined in § 3560.160 may be abused and used merely for delay. The commenter recommended allowing an exception where the owner determines that a resident poses a risk to health and safety to other residents and property staff.

Response: While the Agency recognizes the commenter's concerns, the Agency has a responsibility to ensure that all tenants have equal protection under civil rights and fair housing laws. Tenants have the right to participate in a grievance process when they feel that they have been treated unfairly by a borrower or agent of the borrower in an Agency-assisted MFH property. Section 3560.160(b)(2) makes it clear that tenants who engage in unlawful behavior that threatens the health and safety of other tenants may not take advantage of the grievance process once the termination action has been initiated. The Agency has made no change to the interim final rule.

Topic: One comment addressing § 3560.160(h)(2)(iii) recommended that the right of a tenant to confront and cross-examine witnesses during the hearing be specifically included in § 3560.160(h)(2)(iii) because both the current and the proposed regulations include such a right for the borrower.

Response: The Agency thanks the commenter for this suggestion and has made the change to § 3560.160(h)(2)(iii).

Topic: The Agency received a comment regarding § 3560.160(g)(4) expressing concern that this section limits a tenant's inspection of the documents, records, and policies a borrower intends to use at a hearing to a ''reasonable time before the hearing.'' The commenter believed that the regulation must include a timeframe in which the borrower is required to disclose their evidence before the hearing so that the tenant has adequate time to prepare for the hearing.

Response: The Agency acknowledges the commenter's concern, but believes that, ''reasonable time before the hearing'' is clear. In this instance, a reasonable time is that which allows the tenant adequate time to use the information to the benefit of his or her case against the borrower. The Agency has made no change to § 3560.160(g)(4) of the interim final rule.

Topic: Several comments were received regarding fair and impartial

hearing procedures. Specifically, the commenters recommended that the regulation:

- Require Hearing Officers to be ''impartial and disinterested.''
- Include the prohibition against the Agency's appointing a Hearing Officer who was earlier considered by either party to ensure the integrity of the process.
- Include the language of the current regulation, which prohibits a Hearing Officer from being paid, unless done so by the Agency.

Response: The Agency acknowledges the commenters' concerns and has incorporated the suggestions into § 3560.160(g)(2) of the interim final rule.

Topic: The Agency received several comments urging time limits for certain actions. Specifically, the commenters recommended that the new regulation:

- Impose a time limit on a borrower to submit the summary of the informal meeting to the tenant. This would be similar to the proposed regulation, which imposes a 10-day time limit on the tenant to request a hearing after receipt of the summary (§ 3560.160(g)(1)).
- Include a specific timeframe in which the borrower is required to submit a summary of the meeting to both the tenant and the Agency.
- Impose a requirement on the borrower to prove receipt of the Response to a Notice of Adverse Action.
- Change the 10-day Response time for grievances regarding lease modifications.

Response: The Agency acknowledges the commenters' concerns. Section 3560.160(f) of the interim final rule has been revised to provide for a 10-calendar day time frame for the borrower to provide a summary of the informal meeting. The Agency has also imposed a requirement on the borrower to prove receipt of the Response to a Notice of Adverse Action. The Agency did not change the 10-day Response time for lease modifications. No justification was provided by the commenter for the change.

Topic: One comment addressed § 3560.160(f)(3) and noted that language contained in the current regulation required the borrower to include certain information in the summary submitted to the tenant, but this language was left out of the proposed rule. The commenter recommended that this language be retained in the new regulation.

Response: The Agency acknowledges the commenter's concerns and has incorporated this requirement at § 3560.160(f)(3) of the interim final rule.

Topic: The Agency received multiple comments on how borrower/tenant communications, such as Notices of Adverse Action, waiting list decisions, and eligibility decisions should occur. One commenter urged that communications be sent via certified mail. Another commenter suggested that communications be sent by regular mail to the last known address. Other commenters urged that phone contact be made.

Response: The Agency acknowledges the commenters' concerns. Section 3560.160 of the interim final rule provides direction for borrower/tenant communications in those areas where tenant rights are concerned. The Agency would prefer that borrowers establish the most efficient communication system for their property.

Topic: Several commenters urged that any notice from the resident to the owner or management must be in writing.

Response: The Agency appreciates the commenters' concerns. The Agency has added language in § 3560.160(f) of the interim final rule that tenants or prospective tenants must file grievances in writing.

Topic: One comment recommended that the rule state that any tenant or prospective tenant seeking occupancy in a housing project may complain to the Secretary of Agriculture.

Response: The Agency thanks the commenter for this suggestion and has modified the interim final rule's language in § 3560.160(a) to state that any tenants or potential tenants may present a complaint to the U.S. Department of Agriculture's Office of Civil Rights, which Agency is the receiver of all complaints.

Topic: One commenter suggested that § 3560.160 should be deleted. According to the commenter, residents already have leases and lease rights, landlord/resident law, the legal right to form associations, and access to the regulatory Agency, so the additional processes outlined in § 3560.160 are duplicative and burdensome.

Response: While the Agency recognizes the commenter's concerns, it has a responsibility to ensure that all tenants have equal protection under civil rights and fair housing laws. Tenants have the right to participate in a grievance process when they feel that they have been treated unfairly by a borrower or agent of the borrower in an Agency-assisted multi-family housing property.

Topic: The Agency received a comment regarding § 3560.160(f)(2) stating that the 5-calendar-day timeframe for the meeting requirement by the borrower is rather short. The commenter believed that this time limit should be extended to 10 days.

Response: The Agency thanks the commenter for this suggestion and has incorporated it into § 3560.160(f)(2) of the interim final rule.

Topic: One commenter cited § 3560.160(i)(2), which indicates that the notice must state that the decision is not effective for 10 days to allow time for an Agency review as specified in paragraph (i)(3) of this section. The commenter recommended that this section clarify that the 10 days are calendar days. Second, the commenter believed that the reference to (i)(3) appears to be wrong and should be (i)(4).

Response: The Agency thanks the commenter for this suggestion and has changed the interim final rule to clarify that the 10 days are 10 calendar days. The Agency has made the other editorial changes as well.

Topic: The Agency received a comment regarding § 3560.160(g)(5) recommending that 15 calendar days are used, rather than 15 days. Also, in terms of escrow deposits, the commenter suggested a new section be added that requires that the grievant notify the borrower of his intention to escrow funds and the name of where the funds are being held.

Response: The Agency acknowledges the commenters' concern and has added ''calendar'' to clarify the time period. The Agency believes § 3560.160(g)(6)(iv) of the interim final rule provides the guidance for the tenant providing proof of escrow deposit information.

Topic: A commenter addressed the failure of either party to appear at a scheduled hearing (§ 3560.160(h)(5)). The commenter believed that postponement of the hearing should not be an option when either party has failed to appear at a scheduled hearing.

Response: The Agency appreciates the commenter's concern but has made no change to this provision so that both the borrower and the tenant have ample opportunity to defend their respective positions.

Topic: The Agency received multiple comments regarding the importance of resolving disputes without litigation. The commenters believed that the regulation leaves tenants without adequate protection and leaves borrowers without a clear process to resolve lease compliance issues without litigation. One commenter suggested that without a dispute resolution process, borrowers and tenants will be forced into litigation and resident evictions will increase.

Response: The Agency acknowledges the commenters' concerns. However, the Agency believes that adequate protections are afforded to the tenant in the interim final rule, including a grievance process, and that borrowers have appeal rights in certain situations. The Agency believes that its policy and accompanying procedural guidance provide ample protection for borrowers and tenants.

Topic: One commenter recommended involving tenants and advocates in the rulemaking process.

Response: The Agency recognizes that the position of tenants and advocates is very important to the proper implementation of the regulation. Tenants' representatives were included in stakeholder meetings prior to the development of the rule and their input was considered by the Agency as it developed the proposed rule.

Topic: Several commenters stated that the proposed requirement that adverse decisions be issued in English as well as other languages when the area contains a concentration of non-English speakers is overly burdensome.

Response: The Agency acknowledges the commenters' concerns but has made no change to the language in the interim final rule because requirements concerning limited English proficiency of applicants and tenants are civil rights issues and are covered under § 3560.2(b).

Topic: Several commenters stated that applicants with incomplete applications should not be entered on the waiting list.

Response: The Agency appreciates these comments and has modified § 3560.154(f)(4) of the interim final rule to state that tenant selection will be made from the applicants on the waiting list with completed applications.

Topic: Several commenters addressed requirements about specifying both a time and a location when applications can be taken, as well as office hours in key documents. Specifically, multiple commenters believed that the requirement to list the office times on the management plan and Affirmative Fair Housing Marketing Plan should be removed because it is burdensome to the borrower and managing agent to update these documents often as office hours change. Other commenters expressed concern about having to maintain regular office hours in small projects to take applications, especially since many are submitted by mail; maintaining office hours in small projects can be costly.

Response: The Agency acknowledges the commenters' concerns and has revised § 3560.154(c) of the interim final rule to eliminate the requirement to maintain a place for accepting applications to provide more flexibility to smaller projects. However, borrowers still need to announce when and where applications will be taken (in rental advertisements) and document this information in the management plan and the Affirmative Fair Housing Marketing Plan because this information needs to be formally documented to establish compliance with key fair housing requirements. This is required in § 3560.154(c) of the interim final rule.

Topic: One commenter addressed § 3560.154(g)(2)(ii), believing that the definition of ''displaced'' is not clear. The commenter suggested creating a definition of displaced in § 3560.11.

Response: The Agency acknowledges the commenter's concern but has not added a definition of ''displaced'' because the definition is contained in the Uniform Relocation Act, which is applicable to all Agency MFH properties.

Topic: The Agency received several comments regarding the automation of forms and waiting lists. The commenters believed that the continuation of this practice should be permitted. Another commenter advocated a waiting list cap.

Response: The Agency appreciates the commenters' concerns and has undertaken substantial automation initiatives recently. The commenter did not provide a justification for establishing a waiting list cap, therefore no change was made to the regulation.

Topic: One commenter suggested revising § 3560.152(e)(1)(iii) to read: ''Tenants must report to borrowers all changes in their household status that may affect the tenant's eligibility.''

Response: The Agency thanks the commenter for this suggestion and has made the suggested change to § 3560.152(e)(1)(iii) of the interim final rule.

Topic: One commenter recommended that in § 3560.152(e)(2) the Agency should require borrowers to use wage-matching techniques to confirm tenants' income. The commenter believed that this practice should be done at initial certification and at each annual recertification.

Response: The Agency notes the commenter's suggestion. Wage matching is an internal Agency procedure and not available to borrowers.

Topic: One commenter addressing the 10-day standard in § 3560.152(e)(2)(iii) recommended that in certain circumstances this standard should be waived.

Response: The Agency acknowledges the commenter's suggestion, but no change has been made because § 3560.8 of the interim final rule describes the requirements for administrator exceptions.

Topic: Several comments were received on the Agency's policy of collecting race and ethnicity data on applications for occupancy. Several commenters said that the proposed rule requires applicants to provide this information on the application form and if they elect not to do so, the owner is required to note applicants' race/ethnicity and sex on basis of visual observation or surname. In addition, several commenters noted that applicants' race and/or ethnicity should not appear on the waiting list. Further, some commenters urged that if race and/or ethnicity appear on the waiting list, then gender should be included as well. One commenter said that listing the race categories in alphabetical order is problematic. This text is based on 7 CFR part 1900, subpart A, and the **Federal Register** Notice entitled ''Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity'' published October 30, 1997.

Response: The Agency thanks the commenters for highlighting this important issue and has modified § 3560.154(a)(9) of the interim final rule to include a disclosure statement about the use of race and ethnicity information that must appear on all applications for housing under sections 514, 515, and 516. Applicants are not required to provide this information. The Agency requires the waiting list to include race and ethnicity information for statistical purposes only.

Topic: One commenter addressed § 3560.154(f) and recommended that computer-generated waiting lists should only be allowed if the program does not allow names to be deleted or inserted. The commenter believes that otherwise computer-generated waiting lists are open to manipulation and civil rights data are not accumulated.

Response: The Agency appreciates the commenter's concern but it notes that in § 3560.154(i) of the interim final rule and irrespective of the form (*i.e.*, electronic or nonelectronic), the Agency requires borrowers to document their purging procedures in the project's management plan. To further address the commenter's concern, the Agency added language to this same paragraph establishing minimum standards regarding these procedures that will allow Agency review of borrower management of the waiting list to check for such concerns.

Topic: One commenter disagreed with the requirement that applicants must

certify that the unit will be their permanent residence as stated in § 3560.154(a)(7). The commenter argues that this rule will not work for migrant families and urges the Agency to revise the language.

Response: The Agency wishes to clarify its position. Section 3560.154(a)(7) states that the applicant must certify that the unit will be the household's primary residence, not its permanent residence.

Topic: One commenter suggested a revision to § 3560.154(a)(2) regarding ''the number of household members and their ages.'' The commenter suggested that this be changed to ''number of household members and their dates of birth.''

Response: The Agency appreciates the commenter's suggestion and has incorporated this change into § 3560.154(a)(2).

Topic: One commenter addressed § 3560.154(a)(10) and did not believe that individuals have a ''taxpayer identification number.''

Response: The Agency appreciates the comment and has changed this item to refer to the individual's social security number.

Topic: Several commenters voiced their approval of § 3560.152(a)(3), which makes a household eligible if it qualifies for and is receiving housing benefits through another program, such as section 8 or the Low-Income Housing Tax Credit (LIHTC) program.

Response: The Agency thanks the commenters for their support of this provision.

Topic: Regarding § 3560.154(g), commenters expressed concern that there is no mention of the right of borrowers to give priority to LIHTC-eligible tenants if the project is operated under the LIHTC program, or any mention of the right to leave a unit vacant if no LIHTC-eligible applicant is available.

Response: The Agency recognizes the commenters' concerns and has included language regarding selection of applicants in LIHTC projects at § 3560.154(d) of the interim final rule.

Topic: Comments were received that addressed the Agency's requirements to establish occupancy policies related to unit sizes. Numerous commenters stated that the proposed rule was not clear about the borrower's responsibilities toward residents who are over-or underhoused. Some commenters asked whether these families would be required to move from the project. Others suggested that basing eligibility on unit size could potentially be construed as a violation of applicable civil rights laws. Another commenter recommended that any decision on unit size should be given in writing and should contain specific references to the grievance process.

Response: The Agency appreciates these comments and has deleted the requirement for borrowers to establish a minimum threshold of one person per bedroom for each rental unit from § 3560.155 (e). Families who are over-or underhoused will be required to move into the first appropriate size unit available at the property, not to vacate the property altogether.

Topic: One commenter questioned the proposed regulation regarding occupancy policies in § 3560.155 because it deletes references to ''fair housing concepts'' such as reasonable accommodation. The commenter recommended that these concepts remain in the regulation.

Response: The Agency thanks the commenter for raising this issue and has added references to reasonable accommodation to § 3560.155(e)(3) of the interim final rule.

Topic: The Agency received multiple comments on § 3560.156(c)(1)(iii) and § 3560.156(c)(15)(xiii) expressing concern about increasing the extended tenant absences from two weeks to four weeks. One commenter recommended that the definition of extended tenant absences remain at two weeks and not be increased to four weeks.

Response: The Agency thanks the commenters for highlighting this issue. The reference to the time period for extended absences has been deleted from the interim final rule. The Agency believes this is an occupancy rule that is best determined by each property. It is not a regulatory definition. The borrower has the right to decide what constitutes an extended absence as long as the definition is consistently applied to all tenants.

Topic: Several comments specifically focused on § 3560.156(c)(15)(xx) of the proposed rule. One commenter suggested that the Agency delete examples of good cause and note that good cause varies based on local practices. In addition, two commenters addressed the lease requirements contained in § 3560.156(c)(15)(xx). The commenters recommended that the Agency specify a distance that represents a good cause move to another location, such as 100 miles.

Response: The Agency acknowledges the commenters' concerns and has deleted the examples of good cause from the interim final rule.

Topic: The Agency received several comments regarding § 3560.156(c)(15)(iii) of the proposed rule, which requires the owner to accept a tenant's net contribution. One commenter urged greater flexibility in how borrowers are allowed to apply these funds to amounts owed by the tenant. Other commenters recommended that this section be revised so that the owner must first apply funds to back rent and any damages, then current rent. A commenter believed that this would limit property abuse.

Response: The Agency acknowledges the commenters' concerns and has revised the interim final regulation at § 3560.152(c)(8) to clarify that the tenant contribution should first be used for rental charges.

Topic: One commenter addressing § 3560.156(c)(15)(iii) of the proposed rule argued that the proposed regulation and handbook sections pertaining to leases and occupancy rules do not adequately cover security deposits. The commenter thought that the new regulation should place limits on security deposits, allow residents to contribute to the deposit over a period of time, require the owner to place the deposits in segregated escrow accounts, and require that leases contain information consistent with provisions of State law regarding the use, collection, and disposition of security deposits.

Response: The Agency appreciates the commenter's concern, but this information is contained in § 3560.204 of the interim final rule.

Topic: Multiple comments were received regarding displaced tenants in cases where a unit is uninhabitable in § 3560.156(c)(15)(xviii) of the proposed rule. One commenter urged that RHS modify the regulation to make clear that tenants who are displaced from units when they become uninhabitable have a first right to return to the unit after it is rehabilitated unless the owner has terminated the residency for good cause. The second commenter acknowledged that both the current and proposed regulations require that the lease contain a provision about disposition of a lease when a unit becomes uninhabitable. Further, commenters suggested that the proposed regulation clarify that termination of the tenancy and the subsidy are two different issues, and that both require written notice and a hearing.

Response: The Agency appreciates the commenters' concerns. While the Agency has made no change to this section in the interim final rule, it has modified § 3560.159(c) to state that any tenant displaced due to a unit being uninhabitable is eligible for benefits under the Uniform Relocation Act. Section 3560.159 refers to termination

of tenancy only; termination of subsidy is discussed at § 3560.259(c) of the interim final rule.

Topic: The Agency received one comment about § 3560.156(c)(15)(ix) of the proposed rule suggesting that the Agency clarify the proposed rule to indicate that the tenant may not be evicted for failure to pay charges other than rent or utilities. Instead, the commenter suggested that the borrower should be limited to other legal action to collect those charges.

Response: The Agency acknowledges the commenter's concern. However, the Agency believes it is appropriate for termination of occupancy based on material noncompliance with lease requirements and has retained this language at § 3560.159(a)(1)(ii) of the interim final rule.

Topic: Several comments addressing the 30-day move out requirement in § 3560.156 (c)(1)(i) of the proposed rule recommended that this paragraph allow tenants to move out either within 30 days or at the end of the term of the lease, whichever is greater, which would agree with language in § 3560.158(b).

Response: The Agency acknowledges the issue raised by the commenters and has revised the interim final rule so that the requirement is consistent with the language in § 3560.158(b).

Topic: The Agency received a comment about § 3560.156(c)(1)(iv) of the proposed rule, acknowledging the requirement that tenants make restitution when unauthorized assistance is received but expressing concern that the proposed rule does not differentiate between the unauthorized assistance being the fault of the tenant or the borrower.

Response: The Agency appreciates the commenter's concern. The Agency has moved references to unauthorized assistance due from the borrower or from the tenant to subpart O of the interim final rule.

Topic: One commenter addressing § 3560.156(c)(15) of the proposed rule recommended that the lease include a statement that tenants agree that they will be held financially responsible if they receive any excessive Government subsidies because of their failure to report their accurate income, income changes, true members of the household and their incomes, or any other improper actions.

Response: The Agency acknowledges the commenter's concern. The certification form that tenants are required to sign includes the penalties for fraudulent reporting of income. This issue is further addressed in subpart O of the interim final rule.

Topic: One commenter suggested month-to-month leases rather than year-long leases.

Response: The Agency has made no change to this provision because it has always required a minimum one-year initial lease term for all its MFH projects, as is the case with other Federal housing programs.

Topic: Several comments addressed Agency concurrence with lease agreements. One commenter suggested the use of standard lease agreements by State to reduce the attorney certification process that is required under the proposed regulation. Other commenters questioned the process of approval of lease modifications. One commenter believed that the Agency's role should be expanded from just a ''concurrence'' role. One commenter urged that the Office of General Counsel or other qualified Agency staff be involved in lease reviews.

Response: The Agency has amended § 3560.156(a) of the interim final rule to state that the Agency must approve all leases. The borrower's attorney is responsible for ensuring that the lease complies with all applicable State and local laws. This should not be unduly burdensome, as most standard leases are in compliance with these laws.

Topic: One commenter expressed opposition to the provision in the proposed regulation that allows borrowers with projects receiving section 8 project-based assistance to use the HUD model lease, because tenant rights and regulations are significantly different between the two programs.

Response: The Agency appreciates this comment and has revised the language in § 3560.156(e) to clarify that the HUD lease provisions will prevail unless they conflict with the requirements of § 3560.156. The revision also specifies that in the event of an overlap or conflict between the requirements, the provisions most favorable to the tenant will apply.

Topic: One commenter expressed concerned about the way that the requirements in § 3560.156(d)(5) have been revised. The commenter believed that the new wording could lead to borrowers having to notify a tenant of their intent to bring suit as opposed to notifying them that a suit has been filed.

Response: The Agency thanks the commenter for raising this issue. The Agency has revised this section to specify lease clauses stating that the borrower may institute a lawsuit without providing advance notification to the tenant are prohibited.

Topic: Commenters stated that the Agency's requirement to provide leases, Notices of Adverse Action, and other important documents in English as well as other languages when the area contains a concentration of non-English speakers is burdensome from both an administrative and financial standpoint.

Response: The Agency acknowledges the commenters' concerns, but has made no changes to the applicable sections of subpart D. The requirements concerning limited English proficiency of applicants and tenants are civil rights issues and are covered under § 3560.2(b) of the interim final rule.

Topic: One commenter acknowledged that the proposed regulation includes language not found in the current rule that ''borrowers must execute their Agency approved lease with each tenant household * * *'' The commenter believed that borrowers should be required to offer the same lease to all households in a project or a locality.

Response: The Agency acknowledges the comment. Each household is required in § 3560.156 of the interim final rule to have an executed lease on file and borrowers are required to offer an Agency approved lease to tenants.

Topic: Multiple comments addressed that the proposed regulation adds the requirement that leases contain the street address of the management agent to which tenants may direct complaints. Commenters thought that this meant a management agent with authority to address the complaint.

Response: The Agency acknowledges the above comment but considers the sentence as written to be sufficiently clear. Therefore, the Agency has made no change to this language.

Topic: One commenter did not understand § 3560.156(c)(4) of the proposed rule. The commenter supported the new requirement that leases for rental units that receive rental assistance include a clause that specifies that the tenant's contribution to rent will not increase if rental assistance is terminated due to actions by the borrower. The commenter did not understand the use of the term ''other than Federal assistance.''

Response: The Agency appreciates the commenter's support for the addition of this clause. The term ''other than Federal assistance'' has been deleted from 3560.156(c)(3) of the interim final rule. (The reference to § 3560.156(c)(4) of the proposed rule was changed and is now § 3560.156(c)(3) of the interim final rule.)

Topic: One commenter asserted that leases must state that the housing project is subject to title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and the ADA. While the current regulation (7

CFR part 1930, subpart C), in addition to identifying the Federal antidiscrimination laws that apply to the housing project, describes the appropriate complaint procedure under those laws, the commenter believed that the complaint information is omitted from the proposed regulation and should be included.

Response: The Agency appreciates the commenter's suggestion. The information on applicable civil rights related laws is included in § 3560.156(c)(6). The complaint procedure is described in § 3560.160.

Topic: One commenter believed that both the proposed regulation and handbooks should explicitly prohibit lease clauses that would limit occupancy by persons with disabilities.

Response: The Agency acknowledges the commenter's concern; however, it is against all applicable Federal civil rights laws to prohibit occupancy by persons with disabilities. The Agency feels that this information does not need to be restated in § 3560.156(d).

Topic: One commenter suggested that the Agency provide something similar to the Form RD 1910–11, Applicant Certification Federal Collection Policies for Consumer or Commercial Debts, to tenants at the time that they apply for assistance, because such a form describes actions that may occur to protect the interests of the government.

Response: The Agency has not imposed this additional requirement, as the certifications on the forms that tenants complete when they apply for assistance provide the government with authority to collect unauthorized rental assistance.

Topic: Several comments were received regarding the Agency's policies on calculating applicant/tenant income and assets. The majority of commenters on this subpart supported the Agency and stated that by using the HUD definitions of annual income, adjusted income, and net assets found in 24 CFR part 5, the Agency will reduce burden on owners and managers who might otherwise be required to use different criteria for calculating income and assets for various Federal programs. Other commenters asked for a comparison between the current practice and the proposed practice to illustrate how the change would affect individuals.

Response: The Agency appreciates the commenters' support. The Agency will consider providing some comparison examples for internal Agency procedures.

Topic: A commenter suggested that chapter 5 of the HUD Handbook 4350.3, sections 1 and 2, provide considerable guidance on determining annual income, adjusted income, and net assets. The commenter thought that RHS should include similar provisions in its handbooks or, at the very least, refer borrowers and tenants to this HUD Handbook when questions arise concerning these matters.

Response: The Agency appreciates the commenter's suggestion. Because the information from this HUD Handbook is procedural, the Agency will be using similar information on determining annual income, adjusted income, and net assets in Agency internal guidance about program procedures.

Topic: Comments were also received on the Agency's policy toward criminal activity and drug use. Several commenters asked that § 3560.154(j) reference 24 CFR part 5.

Response: The Agency has modified this section to include this reference.

Topic: Other commenters stated that the Agency's policy to not allow the lessee or other adult members occupying the unit who commit a drug violation to enter the premises unless the individual agrees not to commit a drug violation in the future, participates in a counseling or recovery program, or has completed such a program is too lax. These commenters recommended that the Agency employ HUD's one-strike policy.

Response: The Agency thanks the commenters for their recommendations; however, the Agency disagrees with the commenter's view that the above-stated policy established in § 3560.156(c) of the interim final rule is too lax. It provides the borrower with the authority to take specific actions to limit the access of such persons and ultimately terminate tenancy if further drug-related violations are committed.

Topic: One commenter suggested that § 3560.159(a)(1) should include evidence of minor infractions such as drug paraphernalia.

Response: The Agency appreciates the commenter's suggestion. The Agency believes the borrower can include this in occupancy rules or lease provisions without Agency direction.

Topic: With regard to § 3560.159(a)(1) and (a)(2), one commenter believed that the regulation should include an innocent tenant defense for material noncompliance cases.

Response: The Agency appreciates the commenter's concern. However, the lease termination is based on the terms of the lease, and any member of the household who signs the lease becomes subject to the terms of the lease.

Topic: Several commenters stated that the Agency's requirements for occupancy rules described in § 3560.157 should include guidance on how to determine who will remain in the unit and/or receive the rental assistance in the event of a family breakup, particularly in the event of domestic abuse.

Response: The Agency appreciates this comment. Households that add or lose any member are required to recertify their income in order to establish eligibility and/or rental assistance levels. This can be found in the interim final regulation at § 3560.158(d).

Topic: With regard to § 3560.154(d) and (h), a commenter indicated that the proposed regulation requires the borrower to base decisions related to the approval or rejection of the application on selection criteria contained in the Agency-approved management plan. The commenter believed, however, that the regulation gives insufficient guidance on the development of those selection criteria. The commenter recommended that language be included in this section providing that the borrower give ''due consideration to mitigating factors'' that might have led to a history of poor credit, and/or employment or housing problems.

Response: The Agency appreciates the commenter's concerns. The interim final rule at § 3560.102 (b) requires that the borrower describe his applicant eligibility and selection criteria in the property's management plan, which is reviewed by the Agency.

Topic: Several comments focused on the threshold for interim recertifications. These commenters stated that the proposed rule requires a tenant income recertification ''whenever a change in household status results in a net tenant contribution change that is greater than $25 per month.'' These commenters felt that tenants cannot be expected to understand how a change in their household income will result in a $25 change in their rent.

Response: The Agency reviewed this threshold and has modified § 3560.152(e) to state that an interim recertification is required when a household's monthly income changes by $100 or more per month. In an effort to achieve a more realistic threshold, the Agency evaluated HUD's requirement for recertification and took into further consideration the generally lower incomes of tenants in Agency-financed properties. The overwhelming majority of tenants have annual incomes under $10,000 (or about $800 a month) and turnover at Agency-financed properties does not result in a substantive change in the tenant income profile. The Agency determined that a $100 per month change (half of HUD's $200

amount) is substantial enough to trigger a recertification but not common enough to create an undue burden on either the tenant or borrower in terms of documentation and follow-up. The Agency further established that a tenant may request a recertification when household income changes by at least $50 per month.

Topic: One commenter recommended that recertification take place every 2 years rather than every year.

Response: The Agency has made no change because the requirement to recertify tenant incomes annually is statutory (*see* 42 U.S.C. 1490a section 521(a)(2)(B)).

Topic: Several commenters addressed § 3560.156(c)(1)(ii) of the proposed rule. One commenter recommended that the proposed rule require residents to obtain advance approval of any increase in household members. Another commenter suggests that, in general, the Agency should consider eliminating recertification when the only change in a household is the addition of a minor child (without any increase in income).

Response: The Agency acknowledges the commenters' concerns but has made no change. The Agency does not have the authority to require tenants to obtain preapproval of increases in household members, only to require reporting of these changes. The Agency does not mandate that an interim recertification be completed when a minor child is added to the household unless the household's income will increase as a result.

Topic: With regard to tenant certification and verification, a commenter cited that the proposed regulation, unlike the rule that it replaces, fails to set forth any timeframe or deadline for a borrower to process an updated or interim tenant certification.

Response: The Agency appreciates the commenter's concern. The timeframe requirement can be found at § 3560.152(e)(2)(iii) of the interim final rule.

Topic: Several comments were received regarding policies on the occupancy of accessible units. Several commenters said that § 3560.158(d)(3)(ii) should be modified to say that if an applicant with a need for a unit with accessibility features applies for housing at a project and the unit is occupied by an ineligible family, the family should only be required to move when another suitable unit is available in the project. Some commenters said that the 30-day notification to move needs to be clarified, specifically, those moving can only be given the notification when another nonaccessible unit becomes available, since it is not the intent to displace a tenant totally. The commenter believed that it would be difficult to rent such units if tenants could be forced to move from the complex on 30 days notice at any time.

Response: The Agency thanks the commenters for these recommendations and has modified this section to address the commenters' concerns. Tenants in units with accessibility features will not be required to vacate these units until another appropriate size unit without accessibility features becomes available in the project. The Agency does not intend to displace in-place tenants, but to move them to accommodate the needs of persons with disabilities.

Topic: One commenter asked whether a tenant would be considered overhoused if they were disabled and needed an extra room for apparatus related to their disability.

Response: A tenant who is disabled will not be considered overhoused if the tenant needs an additional room for an apparatus related to the tenant's disability or a live-in aide.

Topic: The Agency heard from several commenters on its policies for allowing surviving family members to remain in units for which they are ineligible after the eligible household member dies. Several commenters recommended that § 3560.158(d) allow a surviving member in this instance to remain in the unit, even if an eligible applicant or tenant is available to occupy that unit, unless another suitable unit becomes available in the project.

Response: The Agency has modified § 3560.158(d) of the interim final rule, which deals with surviving family members and establishes timeframes in which surviving members must move to a suitably sized unit when one becomes available.

Topic: Several commenters stated that mixed housing projects should not be allowed because designating certain units for occupancy by families and others for occupancy by elderly households constitutes segregation and is in violation of title VIII of the Civil Rights Act of 1968.

Response: The Agency thanks the commenters for their recommendation. The interim final rule at § 3560.151 has been revised to clarify that mixed projects are no longer eligible for Agency financing under the multi-family housing program.

Topic: The Agency received several comments regarding pets and service animals. The most frequent comment was that the definition of reasonable pet rules must be clarified. One commenter noted that the proposed regulation should contain a further discussion of factors to consider in the development of pet rules and a list of prohibited clauses, and that borrowers of operational projects consult with tenants when revising pet rules and document how that consultation process was conducted.

Response: The Agency appreciates the commenters' concerns. Internal Agency procedures will provide further guidance on the development of pet rules.

Topic: Several comments addressed the issue of guests. One commenter suggested that the trespass provision of § 3560.156(c)(12) of the proposed rule may violate State laws and Constitutional rights to association. Other commenters suggested that the proposed rule should specify exactly when a guest will be considered a member of the household so that these criteria are applied equally, fairly, and consistently at all RRH projects.

Response: The Agency acknowledges the commenters' concerns, but has made no change because the lease requirements established in § 3560.156(c)(12) of the proposed rule are statutory. Further, § 3560.157(b)(10) establishes the borrower's responsibility to establish the terms under which a person staying in the unit is no longer considered a guest and becomes a member of the household as part of the property's occupancy rules. The Agency has not provided further detail because the appropriate definition will vary depending on local circumstances and in some cases local law. The Agency believes that this policy is most appropriately set by the borrower and then applied consistently within a property. The interim final rule provides guidance on situations in which there is a conflict between Federal and State or local laws. Specifically, if any lease provision is in violation of State or local law, the lease may be modified to the extent needed to comply with the law.

Topic: Multiple commenters addressed § 3560.156(c)(6) and the requirement that leases will state that the housing will be subject to the ADA. However, the commenters pointed out that if there is no public space, this law would not be applicable.

Response: The Agency thanks the commenters for raising this issue and has removed the reference to the ADA from § 3560.156(c)(6) of the interim final rule.

Topic: One commenter expressed concern about the requirement in § 3560.156(c)(4) of the proposed rule that leases must specify that no change in the resident contribution will occur due to loan prepayment. The

commenter believed this has the effect of extending use restrictions for undefined periods, which is inappropriate and inconsistent where the Agency has determined that prepayment is acceptable or where it has been judged the owner's contract right.

Response: Tenant contributions as a result of prepayment are covered under subpart N—Housing Preservation in the interim final rule. Reference to subpart N is made at § 3560.154(c) of the interim final rule.

Topic: Several comments were received on including office hours in the occupancy rules and leases. Commenters believe the office hours should be removed from the occupancy rules; including this in the occupancy rules would require unnecessary changes.

Response: The Agency has made no change because § 3560.157(b)(7) states that the office hours must be posted at the property and included in the project's occupancy policies. While the occupancy policies are to be attached to each tenant's lease, the Agency believes that it is not too cumbersome to provide a blanket amendment to each tenant's lease in which the new office hours are listed.

Topic: One commenter addressed § 3560.157(c), which requires that 30 days notice be given to residents upon a change in the occupancy rules, despite the fact that the preceding paragraph requires the ongoing and permanent posting of the current occupancy rules. The commenter believed that this paragraph serves no useful purpose since the occupancy provisions that exist at the time of signing the lease are the only rules that apply to any given tenant.

Response: The Agency wishes to clarify this matter. The occupancy rules are an attachment to the lease, not the lease itself. The borrower may not change the lease, but may change the occupancy rules, upon written notification to all tenants.

Topic: One commenter noted that the current regulation provides examples of unreasonable restrictions on the use of community rooms by tenants and tenant organizations, but the proposed regulations omit these examples. The commenter thought that they should be included.

Response: In § 3560.157(b)(6), the interim final rule states that the occupancy rules must address housing services and facilities available to tenants and members. The Agency will incorporate this information into its internal Agency procedures. Some examples of unreasonable restrictions may include occupancy rules requiring management representatives to be present in order to use community rooms, barring tenant or cooperative organizational meetings from using the rooms, or requiring management representatives to be present at any resident organizational meeting held in community rooms.

Topic: One commenter suggested that the Agency remove the words ''beyond agreed to grace period'' from § 3560.159(a)(1)(ii).

Response: The Agency has made this change to § 3560.159(a)(1)(ii) of the interim final rule.

Subpart E—Rents

Topic: The Agency received numerous comments addressed to this subpart about the CRCU limitation. While these comments are discussed here, the Agency notes that CRCU is covered in a number of subparts throughout the rule, including subparts A, B, G, I, and N. Some supported the concept, while many expressed significant reservations. Those that did not support the concept argued either that market forces already achieve the objective sought by the Agency, or that the concept places the properties in jeopardy by limiting the resources available to them. In particular, they noted the potential danger to troubled housing, new construction, and Farm Labor Housing. They asked that the concept be piloted before being used broadly. Others asked that the Agency specifically cite its exception authority.

Commenters cited the critical importance of clearly defining terms such as ''conventional,'' ''comparable,'' and ''reasonable costs.'' Many commenters noted the difficulty of establishing comparable rents in rural areas. They noted that comparable units must be similar in terms of size and age, within the same market (not geographic) area. Several commenters stressed that the cost of developing new units may not be reflected in local market rate units. Commenters also noted that section 515 projects have operational costs that make them difficult to compare to conventional units such as tenant grievance procedures and reserve requirements. Commenters also fear that the CRCU may serve as a disincentive for new owners to take on troubled properties and may make it difficult to work with other funding sources. They asked that there be sufficient flexibility in the definition to facilitate transfers, rehabilitation, and new units and to work with other leveraging sources. Finally, one commenter stated that the CRCU limitation should not apply to public housing authorities.

Response: The Agency recognizes and acknowledges the commenters' concerns. CRCU applies to loan applications, servicing actions, and preservation actions, not to annual budget reviews and requests for rent changes. As noted in the preamble to the proposed rule, the Agency has incorporated this policy into the multi-family regulations to improve the long-term viability of the multi-family properties in the program, limit future costs of rental assistance, and reduce the risk of defaults. The Agency emphasizes that the interim final rule provides RHS with explicit authority to grant exceptions that allow rents that exceed CRCU under certain circumstances, such as when allowing these rents would preserve a valuable affordable housing resource. This flexibility addresses a number of the commenters' concerns. Section 3560.205(f)(4) was deleted in the interim final rule in order to address any confusion.

Topic: Numerous comments were received on the Agency's policies on rent payment grace periods and late fees. Commenters stated that rent should be due by the fifth day of the month and that late fees should be increased. They stated that the grace periods and fees in the proposed rule are not industry standard and do not provide sufficient incentive to tenants to pay on time. They also noted that they are not consistent with HUD rules and asked for guidance about what to do in projects with HUD funding.

Response: While the Agency understands that conventional properties have a stricter definition of late rent payments and charge higher late fees, it has made no change to § 3560.209. Many tenants of sections 514, 515, and 516 properties receive their income from Government agencies by mail. Allowing a 10-day grace period helps to ensure that tenants are not penalized when their checks are not received on time and mirrors the borrower's grace period for submitting mortgage payments to the Agency. Likewise, increasing late fees would be prohibitive to many tenants living in Agency-financed properties. For properties with multiple sources of financing, the strictest rules always apply.

Topic: Some commenters addressed the use and refunding of security deposits. Several of these commenters remarked that the proposed rule allows for payment plans for security deposits but offers no parameters for these plans. Other commenters said that ''routine turnover expenses'' and other items that may not be covered by a tenant's security deposit should be more clearly

defined or that the Agency defer to State laws on this issue. They also asked for language to clarify the policy on pets versus companion animals.

Response: The Agency acknowledges these concerns and notes that the parameters for security deposit payment plans are described in internal Agency procedures. The Agency has revised § 3560.204(d)(1) in the interim final rule to substitute ''routine turnover expenses'' with ''expenses due for addressing normal wear and tear.'' ''Normal wear and tear'' is a term that is commonly used and understood by the property management industry. The Agency has also revised the interim final rule to distinguish between pets and companion animals.

Topic: Several comments were received on the budget-based rent approach described in the proposed regulation. Several commenters said that there should be standard rent increase allowances, such as occupancy cost adjustment factor (OCAF) or cost-of-living increases that are reviewed every three years but are automatic during the interim years. They also noted that project rents must work with rent standards established by other funding sources (typically the 30 percent of Area Median Income (AMI)). Several other commenters were concerned that the budget-based rent approach would be undermined by CRCU, which would impose an arbitrary cap. Still others asked for clarification on the four definitions provided in § 3650.202(c), specifically the mention of LIHTC rents. Finally, commenters asked how rents would be tested once established.

Response: Regarding the budget-based rent approach, see the Agency's response in the description of comments received on subpart G (Financial Management). The Agency has clarified in the preamble to the interim final rule that the comparison to CRCU will not be applied during reviews of project budgets, only to new projects, projects requesting servicing actions, and preservation activities. The Agency has listed CRCU as a standard in the rule in the circumstances when the Agency will use it as a standard. The Agency wants to clarify that CRCU is not listed as a standard in § 3650.303 of the interim final rule because it will not be used during Agency reviews of annual project budgets. With regard to the comments on the four definitions provided in § 3650.202(c), the rents listed in § 3650.202(c) are now defined in subpart A of the interim final rule. The Agency also deleted § 3560.205(f)(4) in the interim final rule.

Topic: Several commenters said that the annual review of utility allowances is too time-consuming and should not be required.

Response: Because utility costs can change notably from year to year, the Agency, and its interim final rule, requires annual review of utility allowances as a necessary part of the budgeting process. Just like the annual tenant income recertification, this annual review helps to ensure that the amount that tenants pay for shelter cost is not greater than specified by the program, and helps ensure that rental assistance usage reflects the utility costs that tenants actually face.

Topic: Several commenters requested that rather than having all rent changes for all projects go into effect at the beginning of the project's fiscal year, these should be permitted at any other time. They noted that by allowing new rents to take effect over several months, borrowers could submit rent changes and tenant certifications simultaneously, saving time for the Agency, the borrower, and the tenant.

Response: The Agency appreciates these comments, but no change has been made because the rent changes are requested as part of the annual budget that must be submitted for the fiscal year. However, it should be noted that § 3560.205(c) of the interim final rule states that the Agency will accept borrower requests for rent changes anytime during the year if the property is financially distressed due to circumstances beyond the borrower's control.

Topic: Several commenters asked that the Agency allow projects to keep section 8 overage as project revenue to address necessary project repairs. They noted that the Agency is willing to offer interest credit of 1 percent rents regardless of tenant subsidy and therefore should be willing to consider letting the project keep the section 8 overage. Commenters also asked that overage paid by the tenant be kept by the project.

Response: In such instances of overage, the borrower's interest credit will be reduced. Further, if a borrower is collecting significant overage from tenants, project rents should be reevaluated.

Topic: One commenter asked that the proposed rule be revised to address the circumstance of a security officer occupying a unit for the good of the property.

Response: The Agency's interim final rule does not address this issue as it is currently dealt with on a case-by-case basis.

Topic: One commenter asked that the paragraph on funds contributed to reduce rents clarify that this does not mean borrower contributions or rehabilitation loans.

Response: The Agency appreciates the comment and notes that the language in the proposed rule was not intended to mean borrower contributions or rehabilitation loans. The Agency added a sentence to § 3560.202(e) of the interim final rule to clarify that funds from borrower contributions or rehabilitation loans will not be counted towards reducing rents.

Topic: One commenter welcomed the move toward conversion to Plan II, as this will reduce the cost of operating section 515 projects.

Response: The Agency appreciates the commenter for this support.

Topic: Several commenters remarked that the Agency's approach to reviewing HUD section 8 subsidized budgets is only appropriate when HUD is providing less than 100 percent of the tenant subsidy. They suggested that when HUD is providing 100 percent of the tenant subsidy, the Agency should allow the project to charge the rents HUD is willing to subsidize.

Response: The Agency acknowledges the comment but no change has been made to the interim final rule because the Agency seeks to ensure that properties in the program do not receive excessive subsidy. HUD has issued guidance regarding reviewing HUD section 8/515 subsidized budgets. The information is included in chapter 14, ''RHS section 515/8,'' of HUD document, ''Section 8 Renewal Policy—Guidance for the Renewal of Project-Based Section 8 Contracts.'' This document is available on the HUD Web site at: *http://www.hud.gov/offices/hsg/mfh/exp/guide/s8renew.pdf.*

Topic: Commenters had issues with the provisions for rent payment during eviction proceedings. They noted that rent cannot be accepted when eviction proceedings are underway. Further, they questioned why rental assistance and interest credits are suspended, as this can be detrimental to the property. One commenter added that while tenants under eviction proceedings are charged the note rent, they do not always pay it and that borrowers should only be responsible for the note rent if they actually receive it. Finally, one commenter stressed the need to protect tenants by ensuring that a failure to recertify was truly a willful act on the part of the tenant and that the tenant received adequate notice about recertification.

Response: The Agency acknowledges these comments and has revised its

language in § 3560.208(a) of the interim final rule to require borrowers to put any rent received during eviction proceedings into escrow and has removed language suspending rental assistance and interest credits. The Agency believes that the current language adequately protects tenants as it requires sufficient notice.

Topic: Comments varied regarding the extension of time to submit the recertification. One commenter said the extension would be helpful because obtaining signatures from agricultural workers and immigrants on extended family trips can be difficult. Another commenter agreed that the additional 10 days for certifications and recertifications would be helpful. However, one commenter disagreed with the extension.

Response: The Agency appreciates these comments. The majority of the comments agreed with the proposed rule, therefore, no changes were made for the interim final rule.

Topic: One commenter suggested that utility allowances be calculated only once every three years, with adjustments to the rate only once a year.

Response: The Agency appreciates the comment but did not make this change. In § 3560.202(d) of the interim final rule, the Agency notes that borrowers must review utility allowances annually, adjust for accuracy, and submit any utility allowance changes to the Agency for approval. Even if there are no changes, the borrower must notify the Agency that no changes were made. This annual review is necessary because utility allowances are integral to a project's budget and budgets must be submitted annually in accordance with statute 42 U.S.C. 1490(a)(2)(B).

Subpart F—Rental Subsidies

Topic: Several commenters addressed the Agency's requirement to submit information to the Agency electronically. Some commenters expressed concern about submitting certification and recertification information, stating that this requirement is unfair to ''mom and pop'' ownership entities that will resist submitting the information electronically. Others stated that older properties in the portfolio should be exempt from this requirement. Conversely, several commenters urged that the Agency encourage or require the use of Industry Interface, for example, when borrowers submit their monthly requests for rental assistance payments, as under § 3560.256, and for the purpose of assigning rental assistance, as under § 3560.257.

Response: The Agency is requiring electronic submission in order to expedite the gathering of requisite data. Section 3560.102(i) establishes the submission requirements for properties with eight or more units. The Agency has been upgrading their automation processes to provide better flexibility for borrowers to submit data electronically to the Agency. The upgraded system, Management Interactive Network Connection (MINC), allows for borrowers to use software purchased from vendors or input data directly into the MINC Web site. For more information, access the MINC Web site at *https://usdaminc.sc.egov.usda.gov*.

Topic: One commenter asked if a tenant that receives a subsidy under a HUD program is prevented from giving up the subsidy to qualify for rental assistance under RHS.

Response: The Agency notes that a tenant receiving a HUD subsidy is only required to give up the subsidy when a rental assistance unit is available.

Topic: Several comments were received in which the commenter stated that the priorities for assigning rental assistance shown in § 3560.253(b) should be changed or removed.

Response: The Agency acknowledges that these priorities were confusing and has deleted this paragraph in its interim final rule.

Topic: Several commenters addressed eligibility issues under § 3560.254. One commenter addressed the requirements for eligible units, stating that the current requirements to meet § 3560.103 were impossible to achieve and that alternative language could include ''Borrowers may not request rental assistance for rental units that are not habitable.'' Another commenter suggested that the Agency add language to this section that would terminate rental assistance for borrowers found in noncompliance with Agency requirements, ''as a means for expediting repairs and corrective actions.''

Response: The Agency has addressed this topic in the revisions to subpart C. The Agency has modified the requirements in § 3560.103 to recognize borrower progress in correcting physical deficiencies. If a borrower is correcting physical deficiencies within a reasonable period of time, the borrower will not be found out of compliance.

Topic: One commenter wrote that ''the change to require interim tenant recertifications only when the change in rent would be $25 or more is an improvement.''

Response: The Agency appreciates the commenter's support for the change and has made a change in this policy in the interim final rule to follow the structure used by HUD for recertifications. In the interim final rule, interim recertifications are required only when a household's monthly income increases by $100 or more per month.

Topic: Other comments addressing § 3560.254 discussed household eligibility. One commenter suggested that compliance with occupancy rules be clarified so that households that are under-or overhoused due to a lack of appropriately sized units do not lose their eligibility; they should retain their rental assistance but be required to move when an appropriately-sized unit becomes available. Another commenter suggested that the requirement for having a signed, unexpired tenant certification form on file be clarified so that households retain their eligibility if the lack of such a form is not the household's fault.

Response: The Agency notes that subpart D clarifies that under- and over-housed tenants will retain their rental assistance and be required to move when a unit becomes available. For situations in which a tenant does not have a signed, unexpired certification form on file, the Agency has not modified this rule, but recognizes that individual circumstances should be considered and that no tenant should be unfairly penalized.

Topic: Several commenters expressed dismay at the Agency's citizenship requirements. Commenters said that the Agency should not be in the business of immigration status. More specifically, one commenter questioned whether RHS had an adequate basis to consider an entire household to be eligible based on the citizenship or immigration status of its head of household, and therefore be eligible for assistance only if the head of household is eligible. The commenters believed that one solution would be to follow HUD's approach of prorating assistance to the household based on the eligibility of each individual. If the Agency retains this requirement, another commenter stated that many otherwise eligible farmworker families would no longer be eligible for occupancy in Agency-assisted housing.

Response: The Agency acknowledges the commenters' concerns, but no change has been made because the requirement for occupants of sections 514, 515, and 516 housing to be citizens or qualified aliens is statutory.

Topic: Another commenter was confused by the head of household citizenship requirement because it implied that non-rental assistance units could be rented to noncitizens/illegal aliens. This person stated that the implication would contradict the

requirement ''in § 3560.152 that all household [sic], regardless of rental assistance status, qualify under the citizen/alien definition in § 3560.11.''

Response: The Agency notes that the head of household citizenship requirement does not imply that non-rental assistance units could be rented to noncitizens/illegal aliens. The requirement that all households, regardless of rental assistance status, must qualify under the citizen/alien definition is statutory.

Topic: One commenter suggested that the Agency coordinate with the Department of Homeland Security (DHS) as HUD has, incorporating appendix 2 to the HUD Handbook 4350.3, which is a copy of the User Manual created by U.S Citizenship and Immigration Service (USCIS) in 2000 for the Systematic Alien Verification Entitlements (SAVE) Program. References to USCIS should also be replaced with references to DHS.

Response: The Agency recognizes that the correct reference is DHS. However, the Agency does not feel this comment lends itself to being incorporated in this rule. Nevertheless, the commenter's suggestion is incorporated into the Agency's guidance about program procedures.

Topic: Several commenters expressed their approval of the new requirement that allows borrowers to request rental assistance by checking a box on the budget form.

Response: The Agency thanks the commenters for their support.

Topic: One commenter questioned the Agency's automatic renewal of rental assistance agreements at the existing unit number because the policy does not account for changes in the number of units or the amount of rental assistance being received.

Response: The Agency recognizes that changes occur. When borrowers need rental assistance for more units, they can apply for additional units. When borrowers require rental assistance for fewer units, the Agency will transfer the rental assistance to properties with greater need. Consequently, the Agency does not feel a change to this rule is necessary.

Topic: Two commenters disagreed with the Agency's requirement that the borrower notify tenants of a subsidy loss when the Agency does not have funding available to renew the borrower's rental assistance contract.

Response: The Agency has decided to retain the requirement that the borrower notify the tenant because the borrower is in a landlord-tenant relationship with the tenant, and the loss of rental assistance may affect the terms of the lease.

Topic: Several commenters said that the borrower should have the option of paying utility allowances to the utility companies in individually metered projects. Another suggested that the Agency allow the issuance of a joint check made payable to the tenant and the utility company to prevent fraud and abuse and to allow the payment to be applied directly to the tenant's utility bill.

Response: While the Agency acknowledges the commenters' concerns, it does not have the capacity at present to pay some utility allowances directly to the utility companies. Implementing this suggestion would cause an undue administrative burden to the Agency. Currently, management companies may issue a joint check payable to the tenant and the utility company.

Topic: One commenter suggested that the Agency clarify § 3560.256 to prevent borrowers from holding households financially responsible when the Agency adjusts rental assistance payments.

Response: The Agency notes that this issue is clarified in the public comments and Agency responses addressing subpart O.

Topic: The Agency received several comments urging RHS to prorate rental assistance based on the tenant's move-in date.

Response: The Agency acknowledges that for units where a tenant moves in during the middle of the month and the tenant is eligible for rental assistance, either the property or the tenant covers the difference. However, the Agency has made no change to the interim final rule because it does not currently have the information system capability to allow rental assistance to be prorated.

Topic: Other commenters questioned the idea that residents must be in good standing to receive rental assistance. The commenters' believed that tenants should be able to be somewhat delinquent and able to pay back rent through a payment plan; if tenants could afford to pay their rents without hardship, they would not be eligible for rental assistance in the first place.

Response: The Agency appreciates the comment; however, no changes have been made to this subpart. The Agency allows borrowers to establish policies on rent charges under § 3560.157(b)(2) and encourages borrowers to structure these policies to permit workout or payment plans for tenants who encounter payment difficulties due to circumstances beyond their control. Tenants who are following a payment plan that is consistent with such a policy and acceptable to the borrower would be in adequate standing to receive rental assistance. However, the Agency wants to emphasize that such policies do not relieve tenants of their responsibility for timely rental payments.

Topic: Several commenters addressed the requirements for assigning rental assistance in § 3560.257. Commenters indicated that requirements generally needed to be more flexible and that, in particular, documenting the percentages occupied by low-income households was burdensome.

Response: The Agency appreciates the commenters' desire to have more flexibility, but its first responsibility is to the tenants. By assigning priorities and targets, the Agency has tried to use its available rental assistance to best serve the tenants with the greatest need. Information about the percentage of low-income households is necessary to help the Agency manage its rental assistance resources most effectively. Consequently, neither of these suggestions are being adopted in this rule.

Topic: Two commenters agreed that identifying the term of rental assistance agreements or having no term was problematic. One person nevertheless suggested that the term could be ''when the funds obligated for the units are expended or 5 years, whichever comes first.''

Response: The Agency appreciates the comment; however, the term of the agreements have traditionally been established in the appropriation language each fiscal year, and can change. Therefore, the Agency has not specified the term of the agreements in the interim final rule.

Topic: One commenter stated his support of the ''change to allow a lease clause stating that a tenant's rent will not increase when rental assistance is terminated by actions of the borrower/owner.''

Response: The Agency thanks the commenter for supporting this provision; this lease clause is addressed in subpart D.

Topic: Several commenters addressed § 3560.259 on the transfer of rental assistance, with most concerns addressing the effect of the transfer on the property. For example, two commenters recommended that unused rental assistance remains equal to 5 percent of the total units to avoid financial problems that occur if the property ends up with less than 95 percent occupancy the following year. Other commenters addressed the conditions under which rental

assistance might be lost and thought clarification in the regulation is needed for conditions such as transfer of rental assistance due to unit damage during a disaster, the inability to get an ineligible tenant evicted, turnover in separate units over 4 months, or units for which tenant-based section 8 has been accepted and no rental assistance would be used.

Response: The Agency appreciates the comments addressing the various conditions that could effect and be affected by the transfer of rental assistance. The Agency believes that most issues should be resolved by the 6-month timeframe that occurs before the Agency assesses whether to transfer rental assistance. For all situations, particularly those brought about by disasters or by eviction, the Agency has exception authority under § 3560.8 of the interim final rule. For clarification, the timeframe for transferring rental assistance refers to one unit, not to multiple units several months in a row.

Topic: Other comments on the transfer of rental assistance focused on the borrower's role in transferring rental assistance. Regarding the borrower, commenters urged that the regulation expressly allows borrowers to transfer rental assistance from one project to another or to accommodate the transfer of rental assistance among projects under a common general partner.

Response: The Agency acknowledges the commenters' suggestion; however, RHS must consider the needs of the larger portfolio and tenant population in making decisions about the allocation or transfer of rental assistance. For this reason, the Agency has made no change, and it remains the Agency's decision regarding where to transfer rental assistance.

Topic: Other comments on the transfer of rental assistance focused on the effect on the household. One commenter recommended that households in a project who did not receive rental assistance be notified of the transfer of the rental assistance prior to its approval. Another commenter pointed out that households that were over-income are allowed to pay the ''overage,'' and suggested ''leases be allowed to ''non-renew'' at the annual recertification date for any ''overage tenant'' whose continued occupancy prevents reassignment of rental assistance.''

Response: The Agency notes that the regulation already protects the interests of non-rental assistance tenants in the property and has made no changes to the interim final rule. Prior to transferring rental assistance, the Agency conducts a review to determine if the property has other eligible households that qualify for rental assistance. Also, borrowers who lose rental assistance through transfers can apply for new rental assistance units when their property reflects a need. The Agency considered the comment regarding ''overage.'' Tenants paying overage are eligible to reside in Agency financed housing properties and should not be forced out of their units when they are still income eligible. The Agency's housing is available to very low-, low- and moderate-income tenants in rural areas.

Topic: The Agency received numerous comments on § 3560.259 regarding the Agency's timeframe for transferring rental assistance. Several commenters contended that requiring the transfer of unused rental assistance after 4 months is not sufficient for several reasons, including the seasonal nature of farm work and the recreational industry and the time it takes to repair units after disasters. Several commenters stated that the Agency should continue to transfer unused rental assistance after 12 months. However, one commenter agreed that rental assistance should be transferred if it is unused for 4 months or more to ensure that the assistance goes to those with the greatest need.

Response: The Agency appreciates these comments and acknowledges that four months does not give the Agency sufficient time to analyze assistance needs of current tenants. Therefore, the Agency has increased the time period to six months in the interim final rule.

Topic: Several comments were received in connection with the Agency's requirement that non-RHS subsidy contracts cannot be for less than five years. Some commenters said that non-Agency rental assistance should be allowed for any period of time because ''some rental assistance is better than none,'' as one commenter noted. Other commenters said that this requirement is inconsistent with those of other funding sources.

Response: The Agency acknowledges the commenters' concerns and has revised § 3560.260(d)(2) in the interim final rule to allow for subsidy agreements with non-Agency sources ''similar to existing or current Agency rental assistance funding levels.'' This should make it easier for projects with Agency financing to obtain rental assistance from other sources.

Topic: Two commenters provided the following comment: ''Projects with HUD certificates (project based) have often received a minimal or no mortgage rate interest credit reduction from the Agency, which often realizes a basic rent equal to HUD established rent. This regulation should allow for use of the HUD established rental rate.''

Response: The Agency notes that § 3560.207 of the interim final rule addresses this issue.

Topic: Two commenters addressed the topic of minimum rents. One commenter expressed disappointment that the regulation did not address zero'income tenants and require a minimum rent level. One commenter wrote that zero rents should be prevented (especially in labor housing) and suggested that there be a minimal payment of $50 or $100, with exception granted by the Agency.

Response: The Agency has considered the suggestion but has decided to retain the language from the proposed rule at this time until it has time to further evaluate this issue.

Topic: One commenter suggested that the regulation allow rental assistance to go to higher rent units in LIHTC and tax-exempt bond projects.

Response: The Agency has decided not to adopt the comment; because rental assistance is not assigned to a particular unit or rental rate, it is prioritized by the tenant's need. The Agency details its priorities in § 3560.257(a) of the interim final rule.

Topic: Two commenters suggested that the Agency allow borrowers flexibility in how they make use of rental assistance to maximize its benefits, particularly when the tenant household income rises and its relative use of rental assistance declines to a nominal amount. In this situation, one commenter stated: ''The rental assistance unit is tied up and cannot be reassigned to a more needy very low-income tenant/applicant. This predicament could be alleviated by creating latitude for borrowers to intervene and assume responsibility of the cost of rental assistance to tenants or for the project to offer marketing incentives to near-moderate income tenant (*e.g.*, those using rental assistance at a rate of <$10 per month).''

Response: The Agency believes this comment is permitted under this rule. However, the Agency will need to draft implementing procedures.

Topic: One commenter asked for clarification regarding § 3560.257 because that commenter did not understand the issue.

Response: In § 3560.257 of the interim final rule, the Agency gives priority to the tenants who most need rental assistance. The issue is further discussed in the Agency's internal guidance about program implementation.

Topic: One commenter stated that the changes in the calculation for electronic submission of certifications/recertifications were unclear.

Response: The Agency believes that the commenter misunderstood the changes; the timeline was changed, but the calculation was not changed. The timeline changes are addressed earlier in this subpart.

Subpart G—Financial Management

Topic: Numerous comments were received on § 3560.308 regarding the requirements for submitting annual financial statements. Several commenters stated that lowering the threshold for requiring a Government Auditing Standards (GAS) audit for projects from 25 units to 16 units would be cost-prohibitive, particularly by raising the costs for projects least prepared to absorb the additional costs. Several commenters attempted to estimate the increase in cost, including the cost to tenants or to taxpayers of subsidizing this increased expense. Additionally, because the number of projects requiring an audit will go up, a commenter stated that this requirement will create an additional burden on Area Offices to review these audits. Other commenters disagreed, stating that the submission requirements for small properties currently do not contain sufficient information to adequately analyze the financial status of the project, and that the additional requirements in the proposed rule are appropriate. Several commenters suggested an agreed upon procedures report for smaller properties that is consistent with generally accepted accounting principles (GAAP) under 42 U.S.C. 1485(z)(1) be required as an alternative to a standard audit. Another commenter suggested using a ''verification of review'' to achieve the same goals as the audit at lower costs. Another suggested requiring audits every second or third year or forgoing audits on projects that have a good track record of financial integrity as a way of reducing the burden. Another commenter said that audits are only as good as the accountant providing them; since the owner is the one providing the information and paying for the audit, it is doubtful that requiring audits on smaller complexes will bring to light additional fraudulent activities. The commenter went on to say that MFH specialists do not have accounting degrees and are not equipped to quickly recognize fraudulent activities, and that an audit of the project should provide all pertinent information that RHS is interested in that affects Agency-financed projects.

Response: As discussed in the preamble to the proposed rule, the Agency implemented the change to address concerns raised by the USDA OIG. The Agency has modified § 3560.308 of the interim final rule in response to the commenters' concerns, while staying consistent with the actions agreed upon with OIG. OIG requires that annual financial reports are prepared in a way that allows the Agency to get a realistic picture of the property's financial status and operations. By requiring an Agency approved engagement, the Agency should be able to address OIG concerns and obtain the information necessary to get an accurate picture of the property's health. In addition, the Agency has substantially modified § 3560.308 in the interim final rule to allow properties with 16 or more units to obtain an Agency approved engagement report. This section also states that properties with fewer than 16 units may obtain a limited-scope engagement. These engagements may be conducted by a CPA or other accounting professional and will cost considerably less than GAS audits, thereby minimizing the financial impact on the properties. The Agency has not adopted the suggestion for procedures reports or verification of reviews because the Agency needs the information that would be provided in an acceptable engagement letter so that it can meet OIG needs. The Agency's new policy shifts away from standard GAS audits to year-end reports that provide a more detailed picture of each property being managed. To address the issue of additional burden on Area Offices, RHS intends to automate most of the review process, enabling Area Office staff to concentrate on problem cases. One of the major considerations of the Agency in developing this new policy was the financial impact on properties. The limited scope engagement required in § 3560.308 provides the Agency with adequate financial information while not imposing a full audit requirement on smaller properties. The Agency has the option to obtain full audits on randomly-selected properties every two or three years. The Agency notes the concerns about the accountants being selected by the borrowers, but feels that the current rule strikes the best balance between risk, cost, and reliability.

Topic: Two commenters suggested raising the number of units triggering the audit threshold from 25 to 33 or 36, rather than lowering it to16. Another commenter suggested that the cost to projects that had not been subject to the auditing process would be high, especially to prepare the first audit, as this auditor would want to review data from the beginning of the project, which will increase operating expenses for the most difficult properties to manage. These properties will have to impose rent increases to accommodate the additional expense. Another commenter said that one reason stated for this new requirement is to further monitor IOI transactions, and that the new proposed management certification should provide the Agency with a certain amount of comfort that it is putting borrowers on notice that IOI relationships will be closely monitored. Another commenter said that the list of borrower accounting responsibilities should include a requirement to maintain documentation of the financial benefits where IOI work is used. The dollar amount of fraud at smaller properties would be less than the added expense of trying to catch it. Another commenter said that the proposed rule basically allows projects with less than 16 units to self-certify that their financial reports are accurate; the proposed rule is unclear in that it says the borrower must certify that the ''* * * housing meets the performance standards * * *'' The commenter went on to say that the rule should be more specific, saying that the borrower must certify that the financial statement report is accurate and that project funds have only been used for authorized purposes and for expenses that are actual, necessary, and reasonable. A commenter said that Agency personnel are currently awaiting the publication of an Agency guide about preparing annual financial statements being developed with the assistance of OIG.

Response: The Agency acknowledges the commenters' concerns. The policy set forth in the proposed rule and the interim final rule—the 16-unit threshold—responds to OIG's concern that the Agency is not receiving a complete and accurate picture of the financial and operational status of the properties in the Agency's portfolio. While the Agency's goal is to receive more targeted information, it recognizes that GAS audits performed by independent CPAs are costly, which is why the Agency has opted to allow annual reports that are tailored to Agency specifications for larger projects and limited scope engagements for smaller projects. The Agency has researched the costs of obtaining these types of financial reports, which are substantially lower than the cost of a GAS audit. The Agency does not think that the cost of such audits will pose an undue financial burden, such as

increased rents, on the properties in its portfolio. With respect to identity-of-interest relationships and their impact on the financial activity at properties, the new management certification will reveal such relationships but the new financial statement requirements outlined in § 3560.308 will provide more financial information regarding these relationships. The new regulation also outlines the performance standards each engagement and limited engagement is required to cover. Agency review of this information will verify the owner's certification. The Agency did not adopt the suggestion regarding maintaining documentation because that documentation must already be retained for audits provided under this rule.

Topic: Two commenters said that the Agency should not require an Agency engagement letter, as this would create additional burden on Agency staff and could cause delays in completing the audit if the Agency does not approve the engagement letter in a timely manner. The commenters went on to say that it would be beneficial for the Agency to provide suggested wording in accordance with AICPA. Another commenter said that if the Agency's intention is to distribute the exact verbiage entailed in an engagement letter, it may be beneficial for the Agency to ensure the wording is in accordance with GAS and AICPA standards. The commenter noted that if the prescribed letter was not written in accordance with the above mentioned standards, accounting firms would still need to issue a separate engagement letter to discuss their procedures to be performed in accordance with GAS and AICPA standards. The commenter went on to say that such firms are required to issue an engagement letter detailing the procedures to remain licensed in their profession by peer review standards.

Response: The Agency thanks the commenters for raising this issue; however, the commenters seem to have misinterpreted § 3560.308(b). The Agency does not feel that audits in accordance with GAS are sufficient because they would not sufficiently cover IOI compliance issues and do not provide a sufficient sampling for this program. This section states that the borrower must use an Agency approved engagement letter, not that the Agency must approve the engagement. The engagement letter must be approved by the Agency. The Agency will consult with the OIG which regularly consults with AICPA on engagement and audit compliance standards. Therefore the engagement letter should be in alignment with AICPA requirements.

Topic: One commenter suggested that § 3560.308(a)(1) should be limited to requiring that engagement letters be compliant with GAS. Another stated that the regulation should specifically state that the audit should be in accordance with GAS. Another commenter said that for projects with less than 16 units where a compilation is required, the MFH Balance Sheet should be submitted. For project with 16 or more units, in lieu of the MFH Balance Sheet, a balance sheet in accordance with GAS should be accepted. Another commenter pointed to chapter 1, section 1.01 of the GAO Government Auditing Standards 2003 Revision issued by the Comptroller General of the United States which states that audits and engagements compiled according to GAS are considered reliable. This commenter also highlighted chapter 1, section 1.02, regarding auditors who use GAS can support Government accountability. Another commenter stated that the idea of not getting audits on all projects creates more opportunity for problems; while this might save a project some money, most owners must have audits prepared for their partners anyway.

Response: The Agency acknowledges the commenters' concerns. The Agency does not feel that audits in accordance with GAS are sufficient because they would not sufficiently cover IOI compliance issues and do not provide a sufficient sampling for this program. The Agency has established the engagement standards. A balance sheet is not sufficient to meet OIG requirements. The regulation does not prevent borrowers from obtaining GAS audits, but rather seeks to ensure that the Agency receives detailed financial information tailored to its needs to assist in the Agency's portfolio analysis.

Topic: One commenter said that in the past, it has been difficult to reconcile an accrual-based audit to a cash-based Form RD 1930–7, ''Multiple Family Housing Project Budget,'' and that while the proposed rule indicates that an engagement letter will control the annual report process for projects with 16 or more units, one of the proposed program handbooks indicates that this is still an audit. The commenter noted that as such, the same situation may result—the Form RD 1930–7 is prepared on a cash basis, while the annual reports are prepared on an accrual basis. The commenter recommended that the bookkeeping system and reporting be consistent.

Response: The Agency thanks the commenter for introducing these issues and has modified § 3560.302(b)(1) of the interim final rule to say that the borrow must conduct accounting, bookkeeping, and budget preparation in a manner consistent with the engagement.

Topic: One commenter said that § 3560.302 could be confusing to the independent accounting community because it states ''borrowers must maintain records in a manner suitable for an audit or an engagement.'' The commenter said that an engagement can be several things: An audit, an audit performed to agreed upon procedures, a review, or a compilation, all of which are typically performed by CPAs. The commenter continued, saying that review and compilation engagements do not include procedures/tests to verify the accuracy of the amounts disclosed in financial statements, whereas audits are designed to do just that.

Response: The Agency thanks the commenter for this observation and has made changes to § 3560.302(a) to refer to maintaining ''records in a manner suitable for an engagement,'' rather than to an audit or engagement.

Topic: One commenter contacted the AICPA and spoke with the Director of Professional Standards and Services, Ian A. MacKay, on July 11, 2003, more than halfway through the comment period on the proposed rule. The commenter found that the Director was not even aware of any changes being proposed by the Agency that would affect the accounting profession and auditing and urged that any planned changes to audit guidance must include and involve CPAs. The commenter believed that the Agency needs to engage and work with industry partners who are the experts in accounting before issuing the final rule. Another commenter echoed the idea that CPAs should be involved in writing the Agency policy and guidance on this topic.

Response: The Agency would like to reassure the commenters that CPAs and the HUD were consulted during the development of these policies.

Topic: Another commenter questioned whether the intent of § 3560.308(b) was for projects owned by the same owner and managed by the same manager to not be required to have separate audits for each property. The commenter stated a preference for having annual financial statements on all properties. One commenter suggested that in § 3560.308(b), the term ''managing'' general partner be defined as the partner responsible for operation under the partnership agreement. One commenter recommended removing § 3560.308(c) because if only a sample of housing projects were audited in a specific time period, audits conducted in later years would lack the necessary data inputs.

Response: The Agency appreciates the commenters' suggestions and has deleted in the interim final rule what was § 3560.308(b) in the proposed rule. All properties will be required to prepare annual financial statements, not just a sample number of properties.

Topic: One commenter stated that § 3560.308(d)(7) was too subjective.

Response: The Agency appreciates the commenter's concern. However, the Agency believes the standards are sufficiently objective to meet the needs of the Agency and borrowers.

Topic: Several commenters questioned the 2-year limit in § 3560.308(f), indicating that (1) most audit requests for proposals are for more than two years, and (2) required audit costs should always be an authorized project expense. Another commenter requested clarification on the procedures required by § 3560.308 after the initial 2-year period. Another commenter said that the proposed rule states that the Agency will approve a ''full audit expense'' for two years after the effective date of this regulation and questioned whether this is an attempt to get borrowers going with these audits and not worrying about the additional costs that they would incur doing these ''full audits.''

Response: The Agency thanks the commenters for highlighting this issue and has deleted § 3560.308(f) from the interim final rule. Annual financial statements are an allowable financial expense through the term of the property's Agency loan.

Topic: Regarding the proposed language for § 3560.305, several commenters stated that borrowers should be able to take their returns without prior authorization from the Agency. Other commenters said that § 3560.305 appears to allow an owner be paid a return that was earned several years prior but still not paid, provided sufficient funds are available to pay it. Some commenters thought that it was prudent to allow the borrower to accrue unpaid returns on investments, while others thought that the period for capturing the return should be limited. One commenter said that the proposed rule should limit how many years the borrower can go back and be paid earned but unpaid return on investment, which would possibly prevent large withdrawals on project accounts where borrowers have not collected their return on investment because of negative cash flow or their own discretion. One commenter said that if the audit confirms sufficient cash flow, which would allow for a return on investment, then the return on investment should be taken the next year. The commenter went on to say that the Agency should allow for this return to not be taken ''immediately after,'' but rather any time during the next year.

Response: The Agency notes these concerns and has modified § 3560.305(b) of the interim final rule to state that a borrower may only take a return that is accrued but unpaid for the previous year only. The interim final rule does not require the borrower to receive Agency approval before taking a return unless the project had a negative cash flow. The Agency believes that the period of time to recapture earned returns should be limited and believes this policy is in the best interest of the property. The borrower is permitted in § 3560.305 to take his return after the fiscal year. The Agency has removed the word ''immediately'' from the section discussed by the commenter.

Topic: Other commenters said that an owner's return should be treated like any other property operating expense and that the Agency should encourage owners to stay in the program instead of discouraging their involvement by establishing regulations and administrative processes that result in denying payment of an owner's return. Another commenter said that the timing for payment of accrued but unpaid return on investment is unclear and that owners should be allowed to accrue such returns indefinitely or until sale or other disposition of the owner's interest, since returns are paid from surplus cash, and do not affect the underlying real estate. One commenter said that rent increases should be allowed for a return on investment, which is part of the budget, and that the Agency's denying such a request constitutes a clear violation of the loan agreements. The commenter felt that if RHS cannot guarantee a return, it at least must permit the owner to seek that return.

Response: The Agency acknowledges the commenters' concerns; however, the return to owner is to be paid only when the project has surplus cash while being properly operated and maintained. If the property has adequate occupancy and is operating properly, then the net operating cash available at the end of the year would enable the borrower's return to be paid. The Agency does not believe the policies concerning returns on investment discourage participation in the program. However, a policy that permits unlimited accrual of such return could financially harm the property and the Agency's security. The return on investment is a budgeted line item and, combined with other operating costs, could be the basis for a rent increase. However, a rent increase based solely on guaranteeing the return on investment is not permitted. Therefore the Agency has not adopted these suggestions.

Topic: One commenter said that consideration should be given to returns on investment for older projects and allow a return based on the current value of the original investment, which would help preserve existing projects because the return allowed is insignificant when compared to the property's current value.

Response: The Agency acknowledges the commenter's concern but has not modified the regulation at this time. However, the Agency will consider methods to implement such a change.

Topic: One commenter said that it appears from the language in the proposed rule that an owner may be paid for a return on investment that was earned several years prior but still not yet paid, provided sufficient funds are now available to pay it. The commenter asked if a project experiences a negative cash flow for the year and lacks sufficient surplus cash to pay the return, is it assumed that a return was not earned for that year and therefore could not be paid in subsequent years. If not, the commenter wanted to know if there is ever a situation where the return on investment is not earned.

Response: The Agency thanks the commenter for these suggestions. The borrower may carry accrued, unpaid distributions on the project balance sheet but only will be eligible to receive a distribution from the prior year. This can be found at § 3560.305(b) of the interim final rule.

Topic: Several commenters said that if the Agency approves a negative cash flow budget, then the return on investment should be paid because it is outside the borrower's control. They thought that payment of return should depend on whether there are sufficient funds to address the project's capital or operational needs. If reserves are funded as required, the commenter felt that the return on investment should be allowed and paid.

Response: The Agency acknowledges the commenters' concern. The Agency will only approve a negative cash flow budget at the beginning of the project's fiscal year if the property has sufficient cash on hand from the previous fiscal year. Under these circumstances, the borrower could be eligible to receive a return, but only with the Agency's prior approval. This can be found at § 3560.305(a)(2) of the interim final rule. The Agency does not believe the return is outside of the borrower's control because the borrower controls the budget. Further, the Agency has not adopted the suggestion to pay a return

if there are sufficient funds to address the project's capital or operational needs because the Agency needs to evaluate the performance of the property.

Topic: One commenter asked under what conditions, or with what justification, would the Agency authorize borrowers to be paid their return on investment, while at the same time their project is experiencing a negative cash flow. The commenter asked if these criteria are published to ensure their consistent use. Several commenters suggested that the borrower be prohibited from taking a return on investment from the project's reserve account.

Response: The Agency wishes to clarify this issue. The Agency may authorize that a return be paid to an owner when the property has a negative cash flow under very limited circumstances, as described in § 3560.305(a)(2) of the interim final rule—when surplus cash exists in the reserve account and the property has sufficient funds to address its capital needs. The Agency policy remains the same and the borrower is permitted, with Agency approval, to withdraw ROI from surplus cash in the reserve account. The Agency did not adopt the suggestion that the borrower be prohibited from taking a return on investment from the reserve account because taking this return has no adverse effect on the project.

Topic: One commenter said that the reference in § 3560.305(a)(2)(i) to § 3560.306(d)(2) should read § 3560.306(d)(1).

Response: The Agency thanks the commenter and has revised the reference in the interim final rule.

Topic: Regarding budget reviews and approvals, a substantial number of commenters decried the Agency's decision to have the budget submission date for borrowers requesting rent increases be 105 days before the end of the project's fiscal year. Commenters explained that this timeframe would require borrowers to prepare budget information so early in the project's fiscal year that they would have inadequate data—such as projected property taxes—to estimate the upcoming year's cost. Another commenter expressed approval of the proposed timeline. Another commenter said that the Agency should allow for rent increases on days other than the first day of the fiscal year because many management companies recertify all residents on a specific annual day. If that day is February 1, having a rent increase January 1 will require managing agents to implement a rent increase January 1 and then revise the rent on February 1, doubling the workload. In addition, the commenter said that this will require Agency staff to update their records twice, increasing their workload. The commenter believed that allowing rent increases on days other than the first day of the fiscal year will decrease workloads and allow rent increase reviews to occur over a period of months. However, several Agency commenters said that the timeframe proposed for reviewing budgets with and without rent increases was a welcome addition.

Response: The Agency appreciates these comments and has revised § 3560.303(d) of the interim final rule to reflect the previous deadline for budget submissions of 90 days before the end of the project's fiscal year for a project for which a rent increase is being requested and of 60 days before the end of the project's fiscal year for a project for which a rent increase is not being requested. The Agency's streamlined budget processing also makes it possible for budgets to be reviewed on a more timely basis. The Agency wishes to note that there is nothing in the regulation that prohibits a borrower from submitting a rent increase request that will go into effect on a date other than on the first of the year. Further, § 3560.205 of the interim final rule allows requests for rent or utility allowance changes any time during the year if necessary to preserve the financial integrity of the housing complex and the circumstances are due to factors beyond the borrower's control.

Topic: Another commenter said that the Agency's new expedited review will free up Agency resources, which are stressed when all budgets come in at the same time, and will eliminate owners' having to operate their projects without approved budgets because of long waits for Agency approval. However, another commenter stated that the Agency has too many budgets to review at one time.

Response: The Agency thanks the commenter for this concurrence. The Agency is working to improve its management information systems to help expedite budget reviews, thereby enabling it to complete this task on time.

Topic: One commenter said that the proposed rule does not specify any thresholds and refers to budgets with ''no rent increase.''

Response: The Agency wishes to clarify this issue. ''No rent increase'' means that the borrower did not request a rent increase with the submitted budget package. Thresholds are addressed in § 3560.303(d) of the interim final rule, which describes budgets and rent increases for which Agency approval is required.

Topic: One commenter said that the proposal to use thresholds when reviewing annual budgets seems good; however, there needs to be a way for the public to comment on the thresholds used.

Response: The Agency appreciates the comment; however, the thresholds are an internal program standard used to determine the level of Agency review. The thresholds are not part of the criteria used to determine whether the budget can be approved. Because the thresholds are part of internal program procedures, there is no obligation to allow public comment. The Agency does want to note that the public can easily find out the thresholds being used by obtaining the relevant Agency guidance about program procedures, which is readily available via the Internet or Agency Offices. Further, the Agency wants to emphasize that the criteria that borrowers must meet are provided in § 3560.303(a) of the interim final rule.

Topic: Several commenters said that the proposed rule should include the information contained in the current 7 CFR part 1930, subpart C, exhibit C whereby a budget is considered approved if the Agency approval official does not act on the request within 30 days. The commenters believed that this should include any budget, regardless if a rent change is requested.

Response: The Agency acknowledges the commenters' concern. Language was added to § 3560.303(d)(3)(ii) of the interim final rule to address budgets and automatic rent change procedures.

Topic: The Agency also received comments on the disposition of interest earned on the project's reserve account. Several commenters stated that letting the borrower retain 25 percent of the interest earned on reserve accounts helps offset taxes paid on phantom income. A few commenters felt that borrowers were not entitled to this benefit. Another commenter said that the criteria for Agency approval under § 3560.306(i) should be (1) A statement from a CPA in an audit or compilation regarding the amount of interest on reserves, and (2) a request to release 25 percent of that interest amount. The commenter said that this should not be calculated as return to owner; instead, this will mostly compensate owners for the tax burden from interest income as a return to owner. Someone commented that borrowers or management companies do not put the reserve account on higher yielding interest rate accounts because they do not get to keep the interest; there is no business

incentive. Further, to obtain higher interest yields, this commenter said that long-term commitments are required, and borrowers and agents may be afraid to have funds locked at a time when they may need the money for an emergency. Another commenter said that the proposed rule needs to limit the withdrawal of 25 percent of interest earned on reserve accounts to borrowers that deposit project funds in high interest-bearing accounts; at best, this is a break-even deal for the borrower, which is not a good incentive. Another commenter said that the annual return should equal 35 percent of the interest earned on reserve accounts, because 25 percent is not sufficient to compensate borrowers. Still, another said that the borrower should receive 100 percent of the interest earned on this account. One of the commenters concurs with the basic principle of the rule change to allow borrower's to keep up to 25 percent of the interest earned on reserve accounts, provided that the use of reserve fund interest to pay borrowers a return on investment (§ 3560.306(i)(2)(ii)) is conditioned on the deposits to the maintenance reserve account being on schedule. However, the commenter is opposed to any concession to limited profit owners that might result in underfunding the maintenance reserve.

Response: The Agency appreciates the commenters' concerns. The Agency will not consider the 25 percent of interest income as part of the return to owner. The Agency believes the 25 percent figure, as opposed to 35 percent or 100 percent, is a reasonable amount. The Agency will monitor this new policy and determine if any change is necessary. The Agency has attempted to provide borrowers with investment options so they are less limited by the size of the reserve account that may be invested. This policy allows borrowers to receive an amount to offset the effect of phantom income taxes. Borrowers are entitled to this amount if interest is earned on the reserve account. It is not dependent upon compliance with the reserve account funding schedule. Borrowers are encouraged to maximize their interest return as long as they remain in alignment with this rule.

Topic: One commenter said that § 3560.306(d)(2) of the proposed rule states that the borrower may need to deposit surplus general operating account funds into the reserve account ''if the reserve account is not fully funded,'' but could not find a definition for ''fully funded.'' Another commenter stated that borrowers should make required deposits until the reserve is fully funded.

Response: The Agency appreciates the commenters' questions and has revised § 3560.306(d)(2) of the interim final rule to state that the borrower will be required to deposit surplus general operating funds into the reserve account. This does not change the borrower's required contribution to the reserve account. This is because scheduled contributions are required until the account is fully funded as stated in the loan agreement.

Topic: With respect to § 3560.306(h)(3), one commenter said that the paragraph should read that borrowers may make an annual withdrawal from the reserve account equal to no more than 25 percent of the interest earned on a reserve account during the prior year, rather than on amounts earned. The commenter believed that this paragraph should state that interest income earned does not include any increased equity in the value of any reserve securities. Another commenter praised the new rule because it requires borrowers to record the price actually paid for securities when reserves are involved. The commenter said that this will help the Agency determine whether accounts have lost money and will also help determine that 25 percent of earnings to be released to the owner for taxes.

Response: The Agency acknowledges the first commenter's concern and has revised § 3560.306(h)(3) to read that borrowers may withdraw 25 percent of the interest earned on a reserve account during the prior year. The Agency believes this clarifies its position sufficiently. The Agency appreciates the second commenter's support of its position.

Topic: One commenter said that borrowers should not be able to take 25 percent of the earned interest out of the reserve account because interest earned is not phantom income; the interest is income earned on an asset, thus increasing the asset. The commenter continued that the value of the asset is higher because the interest is left with the property, and that there is already a problem with the reserve accounts not being adequate to cover needed capital improvements. Another commenter said that 25 percent of the interest earned only be given to the owner if the actual annual deposit to the account exceeds this amount.

Response: The Agency appreciates the commenters' position but does not agree that the disposition of the interest earned on the reserve account should be limited per the commenters' suggestions. The Agency understands that paying taxes on phantom income is a disincentive for staying in the program and that allowing borrowers to receive a portion of the interest income earned on the reserve accounts helps to mitigate this disincentive. The Agency expects that 100 percent of the interest earned on the account will be deposited to the account. Twenty-five percent of that amount is available for withdrawal. The Agency will monitor this new policy and determine if any change is necessary.

Topic: Regarding allowable project expenses, several commenters stated that costs incurred in connection with alleged civil rights abuses by the borrower should be allowable project expenses if the borrower is not guilty. Other commenters said that the language in § 3560.303(b)(2)(v) is overly restrictive because if a judge overturned a management agent's eviction action, it would be for a violation of some portion of landlord—tenant law. The commenter said that regardless of how minor or insignificant the violation is, this would prevent the owner from billing the legitimate legal fees to the project; if owners end up paying for such legal fees, they will be less likely to pursue such actions, which might have a detrimental effect on other tenants.

Response: While the Agency takes civil rights abuses very seriously, it acknowledges that the borrower should not be required to pay for costs associated with frivolous lawsuits. Section 3560.303(b)(2)(v) has been revised to remove the term evictions and now states only that borrowers must pay for fines, penalties, and legal fees when they are found guilty of civil rights or other violations.

Topic: One commenter said that the proposed rule states that authorized purposes for project funds are described in the rule, but felt that § 3560.303(b) is not specific enough.

Response: The Agency acknowledges the commenter's concern. Allowable and unallowable project expenses are discussed in greater detail at § 3560.303(b) of the interim final rule.

Topic: Several comments were received on project payment for tenant services. One commenter said that the proposed rule should spell out the limits on how much project funds can be budgeted for tenant services. Another commenter suggested adding a section to the rule that allows a project controlled by a nonprofit corporation or public body to utilize operating revenues to pay for tenant services that enhance the tenant's quality of life. An additional commenter said that the value of tenant services in creating a healthy community is recognized by the MFH industry and that the Agency

encourages these services but does not allow them to be paid for from operating costs. A commenter said that HUD's project reengineering program allows tenant services to be paid for by project operating funds and that nonprofit organizations should be allowed to expense tenant services that enhance the tenant's quality of life (*e.g.*, computer rooms, afterschool programs, etc.).

Response: The Agency has considered the comments but has decided to retain the language from the proposed rule at this time until it has time to further evaluate this issue.

Topic: One commenter noted that § 3560.302(c)(5)(iii) should state that uses of funds for nonprogram purposes does constitute a non-monetary default, not that it ''may'' constitute a non-monetary default.

Response: The Agency thanks the commenter for highlighting this issue and has made this change in the interim final rule.

Topic: The Agency received several comments on asset management fees. One commenter said that the proposed rule does not provide a definition for asset management fee. The commenter suggested that to facilitate the acquisition of Rural Development housing by nonprofit organizations, a reasonable and customary asset management fee be established; additionally, payment of asset management fees is inconsistent throughout the country. Another commenter asked the Agency to clarify that nonprofit organizations can obtain asset management fees consistent with current practice. However, one commenter strongly disagreed with allowing an asset management fee for nonprofit organizations. Another commenter said that the Agency should allow asset management fees as an allowable project expense as required by third-party entities, in conjunction with grants, loans, or equity.

Response: The Agency acknowledges the commenters' concerns. The Agency is not adopting a definition of ''asset management fees'' nor setting a ''reasonable and customary management fee'' because it feels this concept is sufficiently delineated in the provisions of this rule. The Agency allows nonprofit organizations to use housing project funds as asset management expenses directly attributable to ownership responsibilities. Section 3560.303(b)(1)(ii) of the interim final rule delineates the purposes of the asset management fee, which are reasonable and customary costs incurred by nonprofit organizations. While the Agency acknowledges commenter's disagreement, it also recognizes that small nonprofit organizations often cannot afford to cover the time to perform property oversight functions or errors and omission insurance, and this oversight and coverage is important to ensuring the viability of the property.

Topic: Several commenters stated that supervised bank accounts are too cumbersome. Some of these commenters also stated that certain banks would no longer accept responsibility for dual signature accounts. Several individuals thought that the Agency micromanages reserve accounts because the borrower must submit a request for withdrawal of reserves to the local USDA office for review and approval with supporting documentation for eligible replacement items or residual receipts. Another commenter said that HUD and other affordable housing funders allow borrowers to operate their reserve accounts as legitimate needs dictate. Another commenter recommended that borrowers should be given more control over management of the reserve accounts, with USDA reviewing and verifying the accounts on a semiannual or annual basis.

Response: The Agency acknowledges the commenters' concerns. The Agency has determined that these requirements are necessary to enable RHS to meet its fiduciary responsibility to ensure that these funds are used for the purposes for which they were intended. The Agency does recognize, however, that technological and other changes may require different techniques to ensure the Agency's security. The Agency will review possible acceptable alternatives for the dual signature requirement. The Agency does not believe that (1) it micromanages reserve or operating accounts, (2) the requirements it imposes are unreasonable or cumbersome, and (3) that it can give borrowers more control over the management of the reserve accounts

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Topic: One commenter noted that the postapproval requirement contained in § 3560.306(h)(5) should be discretionary with the Agency, but ''extraordinary circumstances'' should be revised to accommodate emergencies where prior approval is not practical and where there are delays in Servicing Office approvals.

Response: The Agency has revised the regulation at § 3560.306(g) to respond to emergency situations and will include further direction in internal Agency procedures. The Agency wants to emphasize that it has a fiduciary responsibility to ensure that these funds are used for the purpose for which they were intended.

Topic: Several comments were received on pre- and postapprovals of project reserve funds. One commenter said that to require preapproval of all expenditures from reserve accounts in unnecessarily burdensome; current practices at both HUD and many State housing agencies allow for postreporting in many instances—for instance, below a certain threshold dollar amount. The commenter recommended that the Agency modify this requirement to allow for postreporting of expenditures when the dollar amount is budgeted or when the amount is less than $10,000. Conversely, another commenter said that a bad precedent will be set if the Agency begins to post-approve withdrawals from the reserve account based on the funds' being used for authorized purposes and having been approved by the Agency anyway, even if the proposed rule says that these will be approved only under ''extraordinary circumstances.''

Response: The Agency has revised § 3560.306(g) of the interim final rule to state that borrowers must inform the Agency of planned withdrawals when the project's budget is prepared. The Agency has not adopted a threshold requirement because the Agency feels it needs to evaluate program use and categorization of reserve accounts and due to the extensive problems the Agency has had with reserve accounts. In addition, the Agency has deleted from the interim final rule the statement in § 3560.306(g)(5) that it may postapprove the use of reserve funds only under extraordinary circumstances.

Topic: Numerous comments were received on § 3560.306 regarding the required deposits to the project's reserve accounts. The comments were similar to those described in the comments to subpart B.

Response: For the Agency's response, please refer to the discussion in the comments to subpart B.

Topic: Several commenters said that the proposed rule states that the required deposit amount will be an amount needed to maintain the property. They said that the methods of determining the amount need to be described in the program handbooks, or everyone will deposit the current 10 percent of the loan amount. The Office of Rural and Farmworker Housing agrees that maintenance reserve requirements should be revised (§§ 3560.65 and 3560.306). They said that history seems to indicate that the current one percent per year required contribution is insufficient; for the Agency to continue using one percent as a base would seem to invite the problems of the past, as some say this

amount is too high and some say it is too low. One commenter believed that the correct approach would be flexible and tied to the new requirement for including life-cycle cost analysis in the design and specifications of the proposed project (§ 3560.60(c)) and suggested that there should be two bases for funding the reserve accounts:

- One percent per year for 15 years for projects using materials with longer lives, such as brick siding and long-life heating equipment. During year 15, future maintenance needs would be calculated and the reserve conditions changed up or down as appropriate. In some cases, excess reserves should be returned to the owner as appropriate.
- One-and-a-half percent per year for 10 years for projects using average designs and specifications, with reevaluation performed during or after year 10.

Response: RHS has decided to publish an interim final rule that does not include § 3560.103(c)(3) and § 3560.306(k)(1) of the proposed rule, until their impacts can be assessed and policy decisions can be made for a long-term strategy. For the interim final rule, the Agency incorporated the relevant language from the existing regulation (7 CFR part 1930, subpart C).

Topic: Several commenters said that while increasing maintenance reserves will increase rents and therefore rental assistance costs in the short term, these increases should be balanced by smaller increases in the long run. They thought that the potential for deferred maintenance is more critical than the need for additional rental assistance with respect to the program's long-term success and its ability to serve the lowest-income rural residents.

Response: The Agency is in the process of evaluating the capital needs of the properties in the portfolio. However, over half of the residents in Agency-financed properties receive rental assistance; more than 93 percent of our residents are very low income and earn less than $10,000 a year. Rental assistance will continue to be a very important component in the long-term success of the RHS MFH programs.

Topic: One commenter said that the proposed rule reads as if future reserve requirements would be imposed on existing projects, which may require an agreed upon change to the loan agreement by the owners. Regardless, this commenter thought that this is only possible if the Agency increased rental assistance and allows liberal rent increases. While the commenter wanted to see well-capitalized properties, additional reserves simply cannot be expected without more income being provided to the projects.

Response: The Agency refers the commenter to the response for the two preceding topics.

Topic: One commenter asked the Agency to allow borrowers the flexibility to deposit funds irregularly over the course of the year, as long as they achieve the required annual deposit.

Response: The Agency agrees with the commenter's suggestion and has revised § 3560.306(c) of the interim final rule to address this comment and it is based on the language in the loan agreement as to the timing of deposits into the reserve account.

Topic: The Agency received a number of comments on the requirements for disposition of surplus operating funds and excess reserve account funds. Several commenters stated that excess reserve funds should be transferred to the property's operating account. Other commenters contended that borrowers should be allowed maximum flexibility in using surplus funds for the benefit of the project and that the borrower should be able to use excess reserves to make repairs and capital improvements and cover unexpected costs or unanticipated cost increases—in other words, for any project purpose when needed or to pay the return on investment. They thought that this language makes use of the excess reserves more restrictive than the use of reserves. Several commenters said that when a determination of surplus funds is made, it should take into account the upcoming year's budget of the project. One commenter said with regard to § 3560.306(d)(2) that rather than saying that if the housing project's general operating account has surplus funds at the end of the project's fiscal year, the Agency may require the borrower to use the funds to address the project's capital needs, with the word ''may'' being replaced with the word ''will.''

Response: The Agency appreciates these comments and has made several modifications to § 3560.306(d) in the interim final rule. These modifications should add flexibility to the requirements for transferring excess operating funds to the reserve account and determining whether the borrower is entitled to take a return on investment. The Agency has also revised § 3560.306(d)(2) in the interim final rule to read that the Agency will require the use of surplus operating funds to address the project's capital needs. Excess funds should be deposited to the reserve account because so doing: (1) Maintains Agency control and oversight; and (2) ensures these funds are readily available for capital expenses and emergency needs. Use of surplus reserves is outlined in § 3560.306(k), all for the benefit of the project. Internal Agency procedures require evaluation of the upcoming project budget with reviewing surplus reserves.

Topic: A commenter asked if the priorities for using excess reserve funds shown in § 3560.306(l) are in order of importance.

Response: The Agency wishes to clarify this issue and has modified § 3560.306(k) of the interim final rule to read: ''Amounts in the reserve account which exceed the total required by the loan or grant agreement must be used, at the direction of the Agency, for any of the following.''

Topic: Several commenters stated that under § 3560.306(d)(1), the Agency seeks to keep excess funds to a maximum of 10 percent of the budget, which causes many properties to operate more thinly than is recommended and puts a property at financial risk to the normal vagaries of operations. They thought that prudent industry servicing should permit several months of funds to accumulate.

Response: The Agency thanks the commenters for their suggestions and has revised the interim final rule to state that the general operating account will be considered to contain surplus funds when the balance at the end of the project's fiscal year exceeds 20 percent of the budget. This can be found at § 3560.306(d)(1) of the interim final rule.

Topic: With regard to the requirements of initial operating capital, the Agency received a substantial number of comments. Comments received were similar to those described in the comments to subpart B. Several commenters said that the rule allows the developer to take the initial operating capital in more than one withdrawal within the 2- to 13-year period after a property is built, which decreases the developer's incentive to have a successful project as soon as possible. To these commenters, it appeared that there may be conflicting information as the summary indicates 2 to 7 years, while § 3560.304(c)(2) allows the developer 2 to 13 years to take the initial operating capital. Some commenters approved of this timeframe; some thought it was too short, and some thought it was too long.

Response: There was an error in the proposed rule and it should have stated that the developer may take the initial operating capital in more than one withdrawal in years 2 through 7, with

Agency approval. This can be found at § 3560.304 of the interim final rule.

Topic: Some commenters expressed skepticism regarding the benefits of this proposed rule change. One commenter questioned if there is an element of the borrower's desire to max out profit. The commenter went on to say that in today's market, owners are receiving an eight percent rate of return on their investment in their property, while the best any bank will do is a two or three percent.

Response: The Agency acknowledges the commenters' concerns but believes that the proposed rule change is more equitable to borrowers. Therefore, the Agency has not revised its regulatory language in the interim final rule.

Topic: Several comments were received on the Agency's requirements for project bank accounts. Most of these comments contended that the regulation should be permissive enough to allow for establishing accounts required by other funding sources, over and above the four that RHS requires. Another commenter said that § 3560.302(c)(5)(v) should be reworded to clarify whether commingling of accounts is acceptable between projects owned by the same borrower, or project owned by different borrowers but operated by the same entity. Another commenter said that the proposed rule states in § 3560.302(d)(1) and (d)(2) that the borrower may combine two or more housing project accounts, and in (d)(3) it says that they cannot if they are managed by the same management company. One commenter asked whether nonprofit organizations could have all program funds through one account as long as they are tracked separately for each program; if this is the case, the commenter wanted to see separate operating and maintenance accounts for the housing program, along with separate reserve accounts for each project.

Response: The Agency acknowledges the commenters' concerns. Section 3560.302(c)(3) in the interim final rule identifies permitted accounts, including account required by third-party lenders. The Agency has also revised § 3560.302(c)(5)(v) in the interim final rule to state that borrowers, including nonprofits, may operate one account for multiple projects as long the funds for each project are accounted for separately. Management companies may not commingle funds for multiple properties. This can be found at § 3560.302(d)(3).

Topic: Several commenters believed that the collateral requirements for project accounts are too restrictive. One commenter said that the Agency's proposal to use the cash in reserve accounts as security for the Agency's loan does not address the issue of multiple lenders on projects. The individual thought that this requirement should be amended to address the mechanism to be used when multiple lenders, including the Agency, require this type of security. Some additional commenters expressed concern that the proposed rule does not address circumstances when borrowers have not adequately collateralized accounts that exceed the Federal Deposit Insurance Corporation (FDIC) insurance limit of $100,000. Other commenters noted that the proposed rule continues and expands 7 CFR 1902.4(a)(5) to require collateral pledges for not just reserve accounts, but for all project accounts. They stated that this is a cumbersome, time-consuming, and an unnecessary requirement. They favored simply continuing 7 CFR 1902.4(a)(5), which allows more flexibility because a collateral pledge only applies to reserve accounts, and even then a collateral pledge is not required if the financial institution has its accounts insured against theft and dishonesty. The commenter believed that the requirement for collateral pledges should be removed.

Response: The Agency notes the commenters' concerns. The Agency feels that security issues involving multiple lenders should be handled on a case by case basis. Regarding the comment concerning inadequate collateralization, the Agency makes an independent assessment of collateralization. If the Agency were to determine that the accounts were inadequately collateralized, then it would treat this as a non-monetary default. The Agency does not believe the collateral requirements are too restrictive. An alternative to collateral pledges are multiple accounts under $100,000. Regarding the comment that collateral pledges now apply to all project accounts: that has always been the case. No change was made in this rule and the Agency continues to believe it is necessary to have these accounts pledged to support the loan. The identified collateral requirements establish a minimum threshold for protecting the Government's financial interest.

Topic: The Agency received several comments on this subpart related to life-cycle cost analyses. Comments received were similar to those described in the comments to subpart B.

Response: For the Agency's response, please refer to this discussion in the comments for subpart B.

Topic: One commenter expressed concern that little is stated in the proposed rule concerning vacancies when preparing project budgets. Another commenter said, however, that the vacancy rate should be capped at 10 percent for properties with 15 or fewer units. Vacancies for properties with more than 15 units should have a maximum vacancy rate of 15 percent. Another commenter said that vacancies should be realistic given the project's history, but history is not defined.

Response: The Agency thanks the commenters for their observations. The methods for budgeting vacancy rates vary depending on each project's occupancy history and cannot be capped or based on number of units in the property. The Agency will provide additional details in its program procedures.

Topic: One commenter said that, as an alternative to management fees, the regulation should allow an administrative fee, possibly as a state's option. For example, in Mississippi, the management company is paid an all encompassing administrative fee that is intended to cover salary, paperwork, postage, etc., with the exception of training and auditing. The commenter noted that other states also use this system, and in all cases the reduction in micromanagement results in a much smoother cooperation between management companies and Agency personnel.

Response: The Agency thanks the commenter for this observation. The Agency understands the utility of having the property pay for a specific bundle of services for management and/or administrative services. The Agency describes this bundle of services in § 3560.102 (i)(3) of the interim final rule. However, the Agency cannot adopt this comment because it wants a nationwide, consistent fee structure through the management fee process rather than individual ''state options'' of administrative fees.

Topic: One commenter said that there must be ways for management companies to do a better job at being more frugal with their project budgets. Another commenter said that audits are reviewed on a first-come, first-served basis; there are so many to review in a short period of time in addition to other work demands. The commenter felt that there are opportunities for management companies to improve on their financial management during the year to avoid issues and questions during auditing times, as well as for auditors to provide clearer explanations on sources of expenditures or findings.

Response: The Agency thanks the commenters for sharing these concerns. The Agency designed the interim final

rule to provide guidelines to ensure that borrowers manage their properties as effectively and efficiently as possible.

Topic: One commenter said that if a borrower chooses to advance funds to properties to meet short-term needs, then the Agency should accommodate repayment. The commenter believed that the limited return limits the ability to repay advances even if funds are later available, and that RHS should allow owners a priority repayment to encourage advances to protect operations.

Response: The Agency appreciates the comment. The Agency has modified the regulation and allows repayment of such advances to projects to meet short-term needs, but prior Agency approval is required. This can be found at § 3560.307 of the interim final rule.

Topic: With regard to the borrower's financial management of Agency-financed multi-family housing, one commenter said that adequate documentation must be defined so it is objective, not subjective. This individual believed that adequate documentation should mean supporting documentation such as invoices, general ledger receipts, or other readily available information to support the books and records.

Response: The Agency thanks the commenter for this observation. Section 3560.302 of the interim final rule sets forth the Agency's basic requirements for project accounting, bookkeeping, budgeting, and financial management systems. ''Adequate'' or ''supporting'' documentation is any documentation required to substantiate the books, records and accounting systems.

Topic: One commenter noted that the requirement to notify tenants of rent increases should be compatible with State and local laws, and that there is no need for longer notification periods. Another commenter mirrored this concern and said that a 105-day notification period is too long, especially as rent increases would not be approved unless they were necessary and justified. The commenter believed that the current requirement for 60 days should be continued subject to State law.

Response: The Agency appreciates the commenters' concerns. As stated previously, the Agency has revised the budget submission timeline so that the process in the interim final rule is similar to that of the existing budget submission/tenant notification timeline. By revising some target dates, the Agency gives the tenant 90-day notification of the impending rent increase. Generally, State laws require a shorter timeframe for notification to tenants, so the 90-day period should provide adequate notice.

Topic: Several commenters said that, in principle, they agree with the Agency's requirement to tie reserve for replacement deposit amounts to capital needs assessments, but that this policy could be used by borrowers to inflate project rents.

Response: RHS has decided to publish an interim final rule that does not include § 3560.103(c)(3) and § 3560.306(k)(1) of the proposed rule, until their impacts can be assessed and policy decisions can be made for a long-term strategy. For the interim final rule, the Agency incorporated the relevant language from the existing regulation (7 CFR part 1930, subpart C).

Topic: Several commenters noted that the Agency is not always in the senior debt position and that any senior debt needs to be reflected as a priority over Agency debt; since the Agency is allowing conventional loans to be in the senior debt position, this needs to be reflected throughout the regulations as necessary. Another commenter said that this is critical if the Agency wishes to continue leveraging other sources of debt, which is necessary given low program funding levels.

Response: The Agency appreciates the commenters' concerns and has revised in the interim final rule § 3560.303. This paragraph states that the first priority of planned and actual budget expenditures is the senior position lienholder, if any.

Topic: One commenter said that the proposed rule should explain the appeal rights available to the borrower if the borrower's proposed budget is rejected.

Response: While the Agency acknowledges the commenter's concern, the borrower's appeal rights are covered in § 3560.9 of the interim final rule and in greater detail in 7 CFR part 11.

Topic: Several commenters noted that some of the regulatory citations were incorrect:

- In § 3560.306(f), the section references should be § 3560.65 and § 3560.302(c)(5). Section 3560.305(f) should be changed to § 3560.306(f).
- Section 3560.306(m) references §§ 3560.102(c), (d), and (i). The correct references appear to refer to §§ 3560.102(g), (j), and (k).
- Section 3560.306(f) regarding funds invested in securities should refer to § 3560.306(g) instead of § 3560.305(f).

Response: The Agency thanks the commenters for their suggestions and has made these changes to the interim final rule.

Topic: One commenter said that § 3560.306 of the proposed rule needed ''grammatic cleanup'' and has ''many long, run-together thoughts.''

Response: The Agency acknowledges the commenter's concern and has substantially revised § 3560.306 in the interim final rule to be much clearer and more concise.

Topic: There were several comments about the Agency's proposed guidelines for investing reserve for replacement funds. Two commenters said that the proposed rule establishes very narrow guidelines for investing reserve funds—State- and Federal-backed securities and AAA-rated tax-exempt bonds. They thought that this latitude should be expanded to include investment funds commonly used by State and local Governmental organizations. For instance in California, housing authorities and public bodies routinely place funds in the Local Agency Investment Fund (LAIF). The commenters felt that such prudent State-sponsored investment funds should be allowable investments. In West Virginia, the monitoring and maintenance of investments necessitate significant staff time; significant losses have occurred in West Virginia when CDs have been pledged as security for nonproject loans.

Response: The Agency appreciates the commenters' concerns and has revised § 3560.306(f) in the interim final rule to allow for more flexibility in the investment of reserve funds but still requires reserves to be held at a Federally insured domestic institution. This policy ensures that the Agency maintains its fiduciary responsibilities.

Subpart H—Agency Monitoring

Topic: One commenter asked that the Agency revise the regulatory language in § 3560.352(c)(3) and in § 3560.352(b)(4) to remove ''the Fair Housing Amendments Act of 1988'' because this language is redundant with language earlier in the paragraph.

Response: The Agency appreciates the comment and has revised the regulatory language in both § 3560.352(c)(3) and § 3560.352(b)(4) to incorporate this suggestion.

Topic: Several comments were received regarding the Agency's monitoring techniques and borrower responsibilities. Commenters suggested including information related to inspections, supervisory visits, triannual supervisory visits, and compliance reviews in the final rule. One commenter expressed concern that the proposed rule did not describe how often onsite monitoring reviews would be performed nor the specific review procedures. However, another commenter expressed appreciation that the Agency did specify the frequency of monitoring activities in the proposed

rule because it gives the Agency the flexibility to ''focus on the most important tasks and problem cases.''

Response: The Agency purposefully did not include the specific procedures in the interim final rule's regulatory language, as was suggested by the commenters, in order to retain regulatory flexibility. However, the Agency describes its monitoring activities (*e.g.*, timing of monitoring activities, items examined during monitoring activities) in its internal Agency procedures, which have been updated in conjunction with the issuance of the interim final rule.

Topic: Several commenters were concerned about the policy of scheduling onsite monitoring reviews without giving the borrower prior notice and whether the Agency has the right to enter private property without providing notice to property owners. The commenters requested some assurance for borrowers that tenant-landlord law will be followed. One commenter noted that onsite visits without notice could subject owners to greater insurance liability claims, and requested that borrowers ''receive protection, financial and otherwise, from the Agency for any claims from tenants regarding a violation of their privacy rights based on the actions of Agency staff.'' Another commenter suggested that staff seeking access for an Agency review should have some standard of notice as any unit inspection must comply with local tenant-landlord law to not disrupt either property operations or residents' homes.

Response: The Agency recognizes the commenters' concerns. The proposed rule specifies: ''Generally, the Agency will provide the borrower prior notice of an onsite monitoring review * * *.'' In the interim final rule, the Agency has retained the authority to conduct onsite reviews without prior notice because RHS needs the flexibility to conduct these reviews in cases where it is not feasible to reach the borrower or give the borrower prior notice. The Agency has no interest in causing the borrower or the tenants any discomfort about the inspection process. We respect the tenant's rights to privacy and the landlord's responsibility to manage the property without interference from the Agency. However, there may be isolated instances in which the Agency needs to inspect the property or a unit as part of an emergency to protect the health and safety of the resident population and therefore the Agency reserves this right.

Subpart I—Servicing

Topic: One commenter indicated that the proposed rule gives almost no attention to the problems associated with a significantly reduced Agency budget. The commenter also stated that the proposed rule does not adequately take into account the extent of leveraging of funds that currently occurs in the program and that has increased substantially in recent years. The commenter believed that the Agency's policies tend to reflect the same perspective as when the Agency provided 100 percent of the funding. The commenter recommended that the regulation's servicing requirements be relaxed or waived when other funding sources are participating in a project.

Response: The Agency acknowledges the commenter's concern. However, the Agency wants to emphasize that it has made a number of changes in both its requirements and procedures for flexibility when multiple funding sources are involved in a project. There has been language added to § 3560.406 of the interim final rule that acknowledges the use of third-party loans and the ability to subordinate Agency loans. A change in internal Agency procedures is allowing the Agency to use appraisal reports and capital need assessments (CNA) from other funding sources provided the appraisal and ''CNA'' meet the guidelines as established by the Agency. The combination of these actions will reduce the duplication of work needed to finance these deals and expedite the current time frames.

Topic: Several comments were received on § 3560.405 and its requirement for borrowers to certify annually that there has been no change to the ownership entity. Commenters said that reporting organizational changes to the Agency would be unduly burdensome. Others were opposed to having proposed organizational changes approved by the Agency.

Response: The Agency does not require annual reporting but does require annual certification by the borrower. Only changes in the organizational structure need to be reported. Further, Agency approval is only required prior to a change in the controlling interest of the ownership entity. This responsibility is already a requirement under existing regulations, and these requirements provide the Agency with information that is fundamental to RHS in maintaining borrower accountability and ensuring compliance. For this reason, the Agency has made no change to this requirement in the interim final rule.

Topic: Regarding § 3560.405(a)(2), the commenters requested clarification to the definition of ''substantial influence.'' To illustrate potential points of confusion, a commenter asked whether a limited partner with limited control rights that buys a 99 percent ownership interest or an instance of upper-tier syndicated ownership, such as the general partner of the 99 percent limited partner of the ownership entity, would be seen to exercise substantial influence. In both instances, the commenter believed that such entities may not exert substantial influence and asked that the Agency clarify this term. Another commenter asked whether the paragraph indicated that a management company had a controlling interest.

Response: The Agency has removed this paragraph. The guidance of the phrase ''controlling interest'' in § 3560.405(a) should be sufficient to describe a general partner in a limited partnership entity, rather than non-controlling limited partners or management agents.

Topic: One commenter addressed the Agency's limited recourse when a borrower makes a change in ownership or transfer of ownership interest without Agency consent as outlined in § 3560.406(b). The commenter advised that when a borrower makes a change in organizational structure or transfers a title without Agency consent, the Agency should have the power to subject the project to restrictive-use provisions; moreover, if the new ownership entity or transferee will not execute a restrictive-use agreement, then the Agency should take steps to judicially impose such restrictions on the project.

Response: Failure to obtain Agency approval for a change in ownership or transfer of ownership interest is considered a default and handled in accordance with subpart J of the regulation. Subpart J of the regulation covers Special Servicing, Enforcement, Liquidation and Other Actions. A noncompliance issue of this nature could constitute the initiation of the liquidation process, or lesser penalties such as subjecting the borrower to civil money penalties provided in the new regulations. The imposition of a restrictive-use agreement does not deter someone from conducting this type of activity without prior approval. An action of this nature must be handled in accordance with the section of the interim final rule that imposes actions against owners who undertake actions without prior Agency approval.

Topic: The Agency received a comment recommending a change to the proposed rule allowing an exception to the processing limitations contained in § 3560.406(b)(2) for partners that were not present during a default or recent

substitution of partners approved by Rural Development.

Response: The Agency acknowledges the commenter's concern but the reference citation provided refers to ''Ownership transfers or sales with an assumption of debt at an amount less than the borrower's debt amount will only be approved by the Agency when all persons in the borrower entity who are transferring their ownership interest or are involved in the selling of the property are not part of the transferee organization''. The citation does not reference the presence of members during a default or recent substitution of partners.

Topic: Numerous comments were received asking the Agency to streamline its property transfer process. These comments included suggestions that there should be expedited processing of those transfers where purchasers seek to preserve affordable housing or rescue troubled properties. Several commenters said that to expedite the transfer process, environmental reviews should not be required when existing security property is being transferred.

Response: The Agency agrees with the intent behind many of the comments. The Agency is implementing procedural steps to streamline the transfer process. While the Agency acknowledges the commenters' concern about requiring an environmental review for all properties being sold, it has made no change because such a review is an established requirement of 7 CFR part 1940, subpart G.

Topic: Comments received by the Agency advocate for a firm time limit for processing transfers. One comment suggested a minimum of 60 days for processing. Others suggested that within 90 days of the submission of a transfer application, the appropriate State Office must process and approve or reject the application, and if the office rejects the application, then it must provide specific reasons and suggestions for approval. The commenter felt that if such action is not taken, then the Agency should allow applicants to pursue their application with the National Office.

Response: The Agency appreciates these comments but has not incorporated arbitrary processing timeframes in this interim final rule. While the Agency is committed to processing transfers as expeditiously as possible, the coordination of resources and action of all participants in the transactions makes the imposition of deadlines in all cases difficult and unreasonable.

Topic: With respect to the transfer of ''at risk'' properties, several commenters stated that the policy for the transfer and assumption of at risk MFH projects should be clearly defined in the proposed rule.

Response: The Agency appreciates these comments and notes that § 3560.406(b)(1) states: ''Priority consideration will be given to ownership transfers or sales needed to remove a hardship to the borrower that was caused by circumstances beyond the borrower's control.'' Currently, this is the extent to which the Agency will go toward establishing a definition for at risk properties.

Topic: The Agency received comments that suggest at the closing of escrow accounts, the balance in each of the operating, tax and insurance, and reserve accounts should be released to the transferor, provided the transferee fully replaces the funds in each account.

Response: The Agency notes this concern and has revised the regulatory language to allow for the release of the reserve to the transferor. The release of these funds is contingent on the new owner funding the reserve account in an amount sufficient to cover the project's immediate needs.

Topic: Comments were received on the Agency's requirement for restrictive-use provisions for transferred properties. Several commenters said that purchasers should not be bound by these restrictions because doing so penalizes buyers and sellers seeking to stay in the program without further accommodation, by increasing the use restrictions. One commenter said that the Agency should track the format of HUD Notice 00–8 (available from HUD) for preserving section 236 properties. Another commenter noted that the proposed rule does not institute any new requirements with regard to restrictive-use provisions. The commenter went on to state that subordination is a serious servicing action and should carry with it a requirement for a new, extended restrictive-use agreement.

Response: While the Agency acknowledges the commenters' concerns, the Agency has made changes in the process throughout § 3560.406 to allow for equity at the time of transfer based on the period of time the borrower is willing to agree to restrictive-use provisions. Also at the time of transfer, it is the Agency's goal to have a Capital Needs Assessment completed and all necessary work completed through rehabilitation. It is the aim of the Agency to extend the useful life of the property through rehabilitation at least through the restrictive-use period. The transfer process is being utilized to preserve the existing portfolio for years to come and provide the needed housing for those who otherwise could not afford it. The Agency has made no changes to § 3560.406(g) of the interim final rule. The Agency will continue to monitor this requirement to assess whether it serves to discourage transfers, which help preserve the supply of affordable housing.

Topic: Summarizing the views of several commenters, one commenter suggested that § 3560.406 ''should provide a form use restriction agreement that can be amended for form for local legal and recording requirements.'' Commenters also suggested that when purchasers agree to both use such a form and extend existing use restrictions, then the purchaser should be able to obtain other Federal, state or local financing to pay for purchase and rehabilitation. They thought that RHS should agree to subordinate and, if requested, reamortize its existing section 515 loan. The commenters suggested that the Agency refer to HUD Notice 00–8 (available from HUD) for more information on such a transfer structure.

Response: In § 3560.406 of the interim final rule, the Agency encourages the use of third-party financers in order to preserve affordable housing. This includes clarifying process requirements such as determining capital needs and simplifying servicing actions such as subordination or reamortization requests. The Agency streamlined the transfer process utilizing a new processing checklist to be used by Agency personnel for transfers which should expedite these type transactions.

Topic: The Agency received a comment suggesting that changes in or transfers of MFH ownership should only be approved by the Agency in cases where further availability of housing would be in the best interest of the resident and the Federal Government.

Response: The Agency appreciates this comment and has outlined a process to determine if the transfer would be in the best interest of the government in § 3560.406. This process takes into account current market conditions, need for the existing housing, existing condition of the property, and cost to rehabilitate the property in order to preserve the property for years to come. The Agency believes that the requirements regarding ownership transfer and sales adequately protect the Government's interest and the availability of affordable housing.

Topic: The Agency received comments on appraisals and security

issues. Several commenters questioned the use of the ''as-improved value'' for security property to be transferred. Several comments recommended using ''as-is market value.'' One commenter stated: ''There should not be a $100,000 limit as long as the approval official documents that security is adequate,'' a concern echoed by several other commenters. One commenter urged that the word ''market'' be deleted from § 3560.406(d)(3)(i) because it creates confusion. According to the commenter, the value of the housing project should be a ''prospective value-in-use,'' not a ''market value.'' Other comments concerned the rights of purchasers to obtain an appraisal.

Response: The Agency acknowledges these concerns regarding the use of appraisal terminology and throughout § 3560.406, it has made revisions as necessary and appropriate. The requirements for determining the value of security property have been clarified and may be found in subpart P of this part. To determine what is in the best interest of the Government, the Agency determined that the appraisal process is necessary when the value of the property exceeds $100,000.

Topic: Reflecting several commenters' concerns, one commenter said: ''The subordination of interest or a junior lien will not cause the debt from all sources to exceed the value of the security property; however, total debt should be allowed to exceed the value of the property on a temporary basis during rehabilitation, provided the transferee can demonstrate that permanent financing will not exceed the value of the property.''

Response: The Agency acknowledges this concern but has made no change because it believes that permitting total debt to exceed the value of the property fails to adequately protect the government's interest. This issue is addressed adequately in § 3560.409.

Topic: A commenter stated that CRCU should apply to initial loans, as well as to transfers.

Response: The Agency has made no change because initial loans are subject to CRCU as described in subpart B of this part.

Topic: The Agency received a comment regarding the proposed rule's remedy against an unauthorized junior lien, for which the Agency must declare a default and pursue liquidation of the borrower's loan. The commenter expressed concern with this approach, citing the Agency's obligation to preserve its housing stock. The commenter asked the Agency to explore other options outside of the acceleration and foreclosure process (*e.g.*, enforce the contract, impose fines on the borrower, seek a receivership, and impose continued use restrictions) and amend the regulation accordingly.

Response: The Agency is not required to pursue liquidation. The regulation provides for a cure period and opportunities for the borrower to resolve the issue. The Agency does not believe the regulation needs further amendment.

Topic: The Agency received comments expressing concern that the proposed rule does not allow project accounts to be encumbered by others. The commenters stated that this restriction is unrealistic and unnecessary, especially given the need to leverage other lenders' funds. According to one commenter: ''Other lenders will want to encumber project accounts, and this should be allowed provided the Government's position is not unduly impaired,'' a statement that reflects other commenters' concerns.

Response: The Agency appreciates these comments but has decided to retain the language in the interim final rule. The Agency has decided not to change the rule because it already allows for liens under conditions that are advantageous to the project and to the Government and has determined that it is not appropriate to reduce its standards.

Topic: One commenter expressed that § 3560.406(e)(2) ''should be modified to allow a non-Agency prior lien to also be transferred to the transferee if previously accepted by the Agency for the transferor.''

Response: The Agency disagrees with the commenter. A non-Agency prior lien would reduce the equity and therefore, should be paid off before any equity is paid to the borrower.

Topic: One commenter indicated that § 3560.409 entitled ''Subordination or junior liens against security property—other liens'' appears to be unnecessary and duplicative of what is already in § 3560.408.

Response: The Agency appreciates this comment but disagrees that § 3560. 409 is duplicative of § 3560.408. Section 3560.408 deals with the lease of security property and does not explain the procedures of § 3560.409, which deals with the subordination and junior liens against security property. In light of this, it is necessary to keep both sections as stated in the interim final rule.

Topic: Several commenters addressed the issue of final balloon payments that are routinely set up under section 515 loans. Under the current regulation, as loans approach the 30-year balloon payment, they may be reamortized as a servicing action, without the need to extend any new funds. The commenters are concerned that the proposed rule discontinues this practice.

Response: The Agency wants to clarify that this practice is allowable and is addressed in § 3560.74. No change was needed.

Topic: One commenter requested that RHS or a third party provide training and assistance to existing owners and local groups to explain the responsibilities that come along with property ownership.

Response: The Agency agrees with the comment but training is outside of the scope of the regulation. The Agency is issuing administrative guidance on processing transfers more effectively. A training request should be forwarded to the Agency. This type of training can be provided on all levels. If such a request is received, the Agency will make every effort to accommodate the needs of its customers. It must also be noted though that with the Agency's current budget constraints, it would be advisable to also seek alternative solutions for obtaining this type training, such as housing organizations, non-profit training centers, etc.

Topic: A commenter asked whether all transfers would be for new rates.

Response: The Agency believes that § 3560.406(i) clearly states how the interest rate is determined in conjunction with an ownership transfer or sale. In most cases transfers will be based on new rates and terms in order to accommodate the preservation activity taking place with the transfer. In other instances loans will be transferred on new rates and terms if it is advantageous to the government. There may be some instances where transfers take place utilizing same rates and terms but only on rare occasion.

Topic: One commenter addressed the language used in § 3560.406. The commenter suggested changing all occurrences of ''the transfer should be in the financial interest of the government'' to ''the transfer should not result in a negative impact to either the government or the tenants.''

Response: The Agency appreciates the intent of this comment. However, the Agency has made no change to the language in the interim final rule to ensure that a transfer affirmatively achieves the goals of the program. This provision is based on the statute section 515(h) of title V of the Housing Act of 1949.

Topic: A commenter stated that local and State Rural Development offices do not have an adequate list of local nonprofit organizations. The commenter believed that Rural Development offices must be given assistance in developing

and maintaining up-to-date lists of active local nonprofit organizations and public bodies.

Response: The Agency appreciates this comment. The Agency works with local and State offices to ensure that they have the necessary materials and information they need. The implementation of the Prepayment Information Exchange (PIX) as mentioned in this document's discussion of subpart N will greatly improve the Agency's ability to maintain a complete listing of non-profit organizations interested in Agency rental programs.

Topic: One comment raised as an issue the practice that banks do not accept stocks as a form of collateral.

Response: The Agency notes that this comment is outside the scope of this regulation. The Agency has no control over what financial institutions accept as collateral and therefore has no authority to change and regulate the daily procedures of these institutions.

Topic: The Agency received a comment urging that a borrower and RHS give notice to residents that the borrower has applied to RHS to transfer the development to another entity. Further, the commenter believed that residents should be given an opportunity to comment on the transfer. The commenter thought that residents should be asked to report to the Agency any needed repairs and/or improvements in operations; if residents make legitimate suggestions, the Agency should include corrections of those issues as conditions for completing the transfer.

Response: The Agency appreciates the comment. However, the Agency does not believe the tenants need to be involved in a borrower's business transaction (transfer) that otherwise does not affect the availability or affordability of the rental housing. The Agency believes that the regulation as written requires identification of repairs and improvements needed prior to transfer approval.

Topic: One commenter identified an issue with the authority to transfer or sell developments under special rates, terms, and conditions as discussed in § 3560.406(l). According to the commenter, the authority fails to consider the Agency's statutory prepayment obligations. The commenter thought that the proposed rule would effectively authorize a borrower to sell a development outside the program restrictions whenever it is considered in the Government's best interest, that the section must be revised to also condition the sale upon the prepayment restrictions set out in subpart N.

Response: The Agency appreciates this comment but has determined that no change is required to the proposed regulation because § 3560.406(l) does not establish any criteria that would exempt new owners from being required to accept restrictions. Any project that would leave the program would be required to pay off the loan and leave the program in accordance with subpart N.

Topic: A commenter suggested that the Agency should allow for a reduction of the interest rate for the note at either the transfer of general partners' interest or the sale. According to the comment, many properties have interest rates approaching 18 percent. If the note could be reduced to a lower rate, then note rent could be lower, which could increase the possibility of attracting moderate-income applicants.

Response: In § 3560.406(i), the interim final rule allows for loan restructuring during such transactions to set the interest rate at the current level or at closing level, whichever is lower. This should address the commenter's concerns.

Topic: One commenter stated that current regulation and the proposed rule make it almost impossible for national nonprofit organizations to acquire properties. As such, the commenter thought that the definition of ''nonprofit organization'' in § 3560.11 must be revised and simplified to require only that entities be not-for-profit under section 501(c) of the Internal Revenue Code.

Response: The Agency acknowledges the commenter's concerns and has revised and simplified the definition of ''nonprofit organization'' in § 3560.11.

Topic: One commenter urged RHS to recognize the lack of market value in some properties that nonetheless serve an important resident and market need. The commenter asserted that RHS should revise its regulation to allow for recasting a portion of the existing loan as a soft note payable from cash flow. According to the commenter, this would most likely be needed where a portion of the section 515 loan could not be supported by existing income or where a portion of the existing section 515 loan, through subordination or otherwise, would be undersecured.

Response: The Agency acknowledges the commenter's position. The Agency is currently reviewing its ability to recast a portion of the loan as a note not requiring fixed installment payments (soft note).

Topic: A commenter expressed confusion regarding the type of third-party financing that is permitted given the language in § 3560.406(f). Specifically, the commenter believed that the proposed rule limits the borrower's financing options.

Response: The Agency has rewritten § 3560.406(f) to more clearly state the borrower's options. These options state that equity funding to the borrower may be provided in cash or through a loan either by the Agency or through a 3rd party lender. This will enable the borrower to receive their equity from a 3rd party lender in the event the Agency is unable to provide the funding.

Topic: The Agency received a comment regarding the use of project funds for the purchase of computer equipment relating to industry interface and tenant certifications. The commenter believed that states are not modifying their security agreements to include this equipment. Further, the commenter indicated that costs have skyrocketed based on requests to use project funds for these purchases. The commenter believed that the proposed rule should address this issue.

Response: The Agency appreciates this comment, which requires a change in the security agreement to include the equipment at the property site. The Agency has modified the security agreement.

Topic: Two comments were received that encourage the Agency to revise the proposed rule to allow for the donation or below-market sale of portions of a MFH security property. They argued that the requirement of § 3560.407(b)(3)(i) that ''the value of the security will not be reduced'' is not adequately permissive to allow such transfers.

Response: The Agency appreciates this comment and has considered whether to adopt this recommendation. However, the Agency has made no change to the interim final rule because it has determined that while such a donation or below-market sale may benefit the owner, the project may not benefit from such action.

Topic: Several comments addressed § 3560.408(b), asking why borrowers are prohibited from leasing their property to public housing authorities and suggesting that there may be times when it is in the Government's interest to allow this practice.

Response: The Agency acknowledges the comments. However, the commenters did not provide any examples when it would be advantageous and therefore the Agency has declined to make the change in the regulation.

Topic: One comment was made regarding the requirement that lessees pay all prorated expenses associated with what is being leased. The

commenter believed that this may be difficult to determine and, instead, such lessees should only demonstrate that they are in the financial best interest of the project and tenants, and that the project itself will not be adversely affected financially.

Response: The Agency appreciates this comment but has made no change to the interim final rule. The rule is written to protect any expenses to the project that were not previously taken care of prior to the lessor leasing the property to the lessee. There is no way to know if some unforeseen expenses will adversely affect the property or not; therefore, by having rules in place to cover the cost ensures the financial stability of the property.

Topic: The Agency received a comment specifying that the new loans obtained by nonprofit purchasers seeking to acquire and preserve section 515 properties generally cover the following: (1) Cost of improvements or repairs, (2) a payment to seller, (3) purchaser's due diligence and transaction costs, (4) a debt service reserve for the new lender, and (5) lender's fee and cost of counsel. The commenter believed that nonprofit purchasers should not be expected to come out of pocket with monies to accomplish a preservation transaction.

Response: The Agency appreciates this comment but made no changes to the interim final rule. It is the Agency's position that these costs are part of the cost of doing business that every entity must be responsible for addressing.

Topic: A commenter stated that under existing regulations, phased properties could be consolidated as long as the entities were the same, regardless of when they were closed. A commenter asked whether this practice would still be allowed.

Response: The Agency acknowledges the commenter's position and there was no change in the new regulations. Consolidations are permitted as long as they are feasible and in the best interest of the government.

Topic: Several comments were received regarding loan consolidations. Commenters urged the Agency to add a paragraph to the regulation allowing loans for projects made to multiple borrowers to be consolidated when transferred to a new single borrower.

Response: The Agency wants to clarify that the proposed rule allows this type of loan consolidation and § 3560.410 of the interim final rule continues this policy. No change was needed. It should be noted that for a consolidation to occur the same borrower must own all projects that are to be consolidated. This common ownership can occur after a transfer as described by the commenter.

Subpart J—Special Servicing, Enforcement, Liquidation, and Other Actions

Topic: The Agency received several comments expressing concern about a loophole related to acceleration that was not closed by the language in the proposed rule. Commenters noted that this loophole could allow borrowers to save their property during acceleration after the restrictive-use provisions have been removed and thereby circumvent the established prepayment process. Commenters stated that the loss of use restrictions after acceleration results in a loss of affordable housing, and some claimed that it is an approach used by owners to avoid being subjected to such provisions. Commenters requested that the Agency add language to the regulation allowing RHS to retain restrictive-use provisions on a property during and after acceleration and foreclosure.

Response: The Agency acknowledges these comments and has made revisions to the interim final rule to address owners that force acceleration in an effort to evade the prepayment process. The Agency has added language to § 3560.456 in the interim final rule that allows it to take alternative actions, such as suing for specific performance, when the Agency determines that the owner's motivation is to circumvent the prepayment process.

Topic: Several commenters requested that RHS adopt additional remedies and actions as part of special servicing actions. The objective of these remedies, proposed by commenters, is designed to preserve the supply of affordable housing. Suggested additional actions included being able to impose fines, appointing a receiver, recasting a portion of the RHS loan as a soft note payable from cash flow, and adding restrictive-use provisions in conjunction with special servicing actions, including loan restructuring.

Response: The Agency acknowledges the concerns raised by the commenters. RHS has authority to use a number of enforcement actions beyond those established in the current instruction. These additional actions have been incorporated into the interim final rule in § 3560.460 through § 3560.463 and have expanded the enforcement tools available to the Agency. RHS has also added the authority to require that expiring loan or assistance agreements not be extended unless the owner executes an agreement to comply with additional conditions prescribed by the Agency, or executes a loan or assistance agreement in the form prescribed by the Agency. The Agency is currently reviewing its ability to recast a portion of the loan as a note not requiring fixed installment payments (soft note).

Topic: A commenter recommended that the Agency acknowledge that past servicing actions may have an impact on the cash flow for a project, which can affect a borrower's ability to address deteriorated physical conditions. The concern expressed is that some projects' cash flow may be insufficient to quickly correct deficiencies, particularly physical deficiencies. The commenter asked that the Agency explicitly recognize in the rule that some projects may need additional time to correct deficiencies due to the extent of funds available to the project.

Response: The Agency acknowledges that there are situations and circumstances that will require additional time to correct deficiencies. In such cases, the Agency requires the borrower to submit a workout agreement that identifies the time periods required to address these deficiencies.

Topic: A commenter requested that the regulation cross-reference 7 CFR part 1900, subpart D and the administrative appeals rules.

Response: The Agency notes that a cross reference to 7 CFR part 11 and 7 CFR part 1900, subpart D appears in §§ 3560.9 and 3560.10 of subpart A, and this reference continues in the interim final rule.

Topic: A commenter suggested that workout agreements should supersede management plans and requested that the Agency be required to notify an owner before canceling a workout agreement so that the owner has an opportunity to respond to Agency concerns.

Response: The Agency views the two documents—workout agreement and management plan—as serving distinct, but related, functions. RHS disagrees that the workout agreement should supersede the management plan. Rather, the two need to be consistent. The Agency has retained the language from the proposed rule in § 3560.453 (e)(i) of the interim final rule, which establishes that updating the management plan to be consistent with the content of the workout agreement is a condition of Agency approval of the workout agreement. Further, RHS has added language to § 3560.453(e)(2) of the interim final rule indicating that the Agency will provide notice to the borrower upon cancellation of the workout agreement for a property.

Topic: With regard to the occupancy waiver in § 3560.454(b), a commenter

raised the concern that the language as written could create an impasse at properties where the vacancy issue is the need for rental assistance and none is currently available. The commenter suggested that the requirement for housing applicants on the waiting list before any over-income applicant be revised so that it better matches with the availability of rental assistance.

Response: The Agency recognizes that in circumstances when RA is not available, higher income tenants need to be considered for occupancy and § 3560.454(b) of the interim final rule allows for this type of situation.

Topic: Multiple commenters requested that the Agency allow a borrower to reamortize its loan if the borrower is current with all payments. One commenter suggested that an appraisal should not be required as part of a reamortization regardless of debt, with proper cash flow.

Response: The Agency wants to clarify that a reamortization is allowable in these circumstances as is shown in § 3560.455(b)(3) of the interim final rule. The circumstances when appraisals are required are covered in § 3560.455(b)(3) of the interim final rule. As long as there is other adequate evidence that the Agency's security interest is protected as required by § 3560.455(b)(1)(ii), an appraisal would not be necessary. Finally, § 3560.454(b) of the interim final rule does allow for reamortizations in situations other than just delinquency.

Topic: A commenter requested further clarification from the Agency on the meaning of ''suspending'' rental assistance.

Response: Information regarding suspension of rental assistance can be found at § 3560.456(b)(2) of the interim final rule. The Agency notes that, generally, rental assistance is suspended when interest credit has been cancelled due to a default. The rental assistance can be restored once the default has been resolved.

Topic: A few commenters addressed the write-down provisions in § 3560.455. One commenter recommended that the Agency change the requirement from one write-down per property to one write-down per owner. Another commenter stated that the sections dealing with write-downs and reamortizations were excellent and would help maintain viable projects in very rural areas.

Response: The Agency agrees with the comment that requiring no previous write-down of indebtedness associated with a housing project as a condition to receive a write-down is too restrictive. The Agency has removed this condition from the interim final rule. The Agency has not further restricted these requirements to one write-down per owner because the Agency does not believe the servicing remedy is necessarily related to the owner but rather to the performance of the property.

Topic: A commenter requested that the Agency allow for a write-down of debt without a change to the current ownership, if there are no issues with the ownership members.

Response: The Agency wants to clarify that the interim final rule does allow loan write-downs for the current ownership as specified in § 3560.455(c).

Topic: A commenter requested that § 3560.456 be revised to specifically include the ability to make a reasonable bid at a foreclosure sale. The commenter recommended that the regulation allow a discounted bid, as allowed by Single Family Housing, to include holding time, sale cost, and other factors.

Response: The Agency appreciates the commenter's suggestion and has incorporated the language from 7 CFR 3550 (at 3560.456(c)), which gives the Agency additional flexibility to accept a discounted bid.

Topic: In reference to § 3560.452, a commenter requested that the proposed rule explicitly allow RHS to extend the time period for correction or resolution of a default.

Response: The Agency notes that the proposed rule does allow for workout agreements to extend beyond 2 years. This provision under § 3560.453(e) allows the Agency to extend the period.

Topic: A few commenters requested that the Agency include a provision under § 3560.454 that would allow an applicant or resident who does not want to provide income and asset documentation, but is willing to pay market rent, be allowed to live in the property on an ineligible basis. Such residents would need to vacate the unit if needed by an eligible applicant.

Response: The Agency understands the commenters' concern but has made no change to § 3560.454. Under the applicable statute, RHS must have documentation of a tenant's eligibility for occupancy. Section 3560.454(b) and § 3560.158(c) allow for ineligible applicants to reside in a property with Agency approval if the specific unit type has no waiting list, or if accepting an over-income tenant is necessary to maintain the financial viability of a property. An Agency waiver is required in these circumstances, and only properties that have received a waiver may admit tenants that do not meet or will not document income eligibility requirements.

Topic: A few respondents commented on the authority of State and Field Offices to approve workout agreements and other special servicing actions. One commenter appreciated the Agency position of not requiring State Office approval of workout agreements longer than 2 years. Other commenters requested that the Agency provide the authority below the State Office for approval of Affirmative Fair Housing Marketing Plans, workout agreements, servicing market rents, and change of project designation.

Response: Approval levels are internal Agency procedure and not set forth in Agency regulations.

Topic: A few commenters noted that subpart J in the proposed rule did not include specific language on enforcement.

Response: The Agency has added four sections to the interim final rule to more specifically address enforcement: § 3560.460 (Double damages), § 3560.461 (Enforcement provisions), § 3560.462 (Money laundering), and § 3560.463 (Obstruction of Federal audits).

Topic: A commenter noted the actions that an owner may take or fail to take that would cause the Agency to determine that the loan is at risk. The commenter noted that the Agency may remove the management agent if the Agency determines that a compliance violation or loan default was caused, in full or in part, by the management agent. The commenter stated that it agreed with the Agency's strengthened ability to remove a management agent that causes compliance violations or loan defaults.

Response: The Agency appreciates the commenter's support.

Topic: A commenter inquired whether equity skimming is considered a non-monetary default under § 3560.462.

Response: The Agency appreciates this comment and agrees that equity skimming is a form of non-monetary default but has made no changes to § 3560.462. Additional procedural information on handling suspected cases of equity skimming are addressed in the Agency's internal procedures.

Topic: A commenter requested that the Agency provide clear definitions for when a payment is considered past due and how the Agency calculates 10-, 20-, and 30-days past due.

Response: The language in the definitions section of subpart A for ''Default,'' and in §§ 3560.401(c) and 3560.451(c) has been revised to provide that a past due obligation is one which remains unpaid or unperformed for more than 30 days after the due date.

The references to 10 and 20 days in the proposed rule were clear and were not changed.

Topic: A commenter noted that § 3560.452(e) included an incorrect cross-reference to enforcement and liquidation sections.

Response: The Agency appreciates this comment and has corrected the cross-reference in the interim final rule.

Topic: A commenter noted that the discussion in § 3560.453 concerning workout agreement budgets does not reflect the fact that the Agency may not be the senior debt. The commenter recommended that the Agency add language reflecting Agency procedures when it is in a junior lien position.

Response: The Agency appreciates this comment and has added language to § 3560.453(d) in the interim final rule recognizing the prior lienholder's position, if any, in the order of cash disbursements under a workout agreement budget.

Topic: In reference to § 3560.454(e) regarding the termination of the management agreement, a commenter stated that the Agency must give the management agent and owner due process and allow them a joint opportunity to contest the termination.

Response: The Agency agrees with the commenter that the management agent and owner have the right to contest a termination but has made no changes to this section in the interim final rule because these rights are provided under the Agency's appeals procedures.

Topic: A commenter noted that procedures for the Debt Collection Improvement Act of 1996 were developed for the Agency, but that MFH was excluded because its own handbook was under development. The commenter recommended that the rule refer to 7 CFR part 3 covering debt collection for the Department or include language directly in the regulation.

Response: The Agency appreciates the comment and has added language regarding debt collection procedures to § 3560.460 in the interim final rule.

Topic: A few commenters noted typographical errors in §§ 3560.455 and 3560.456.

Response: The Agency appreciates these comments and has corrected these errors in the interim final rule.

Topic: A few commenters noted that § 3560.456(a)(2) regarding payment subsidy conflicts with guidance provided in the draft Project Servicing Handbook which was made available online when the proposed rule was published.

Response: The Agency appreciates this comment. The regulation is correct as written and changes have been made to the Agency's internal procedures to ensure that it reflects the regulation.

Topic: With regard to § 3560.456(a)(2), a commenter asked whether the Agency needs to wait until the appeals process is complete, rather than immediately following acceleration, to suspend interest credit and rental assistance.

Response: The Agency has removed the phrase ''immediately following the issuance of an acceleration notice'' from the regulation to clarify that interest credit and rental assistance will be suspended upon acceleration.

Topic: With regard to § 3560.456(c), a commenter asked whether the Agency has the ability to foreclose on a mortgage without going through the U.S. Attorney's office, which can slow down the process.

Response: The Agency appreciates this comment but has made no changes because representation of the Agency by the Department of Justice is a Federal requirement and litigation is necessary to initiate a judicial foreclosure action in those states requiring judicial foreclosure.

Topic: A commenter stated that the Agency's procedures in dealing with deceased owners were unclear, in particular when there is no heir who wants to operate the property as affordable housing.

Response: The Agency appreciates this comment but the property is still subject to the restrictions and the Agency will work with the heirs, as necessary, to facilitate the transfer of the property to an eligible borrower.

Subpart K—Management and Disposition of Real Estate Owned (REO) Properties

Topic: A few commenters requested that preference be given to eligible nonprofit organizations for the disposition of REO property.

Response: Section 3560.504(c)(1) of the interim final rule has been revised to explain that the Agency will publicly solicit requests for sealed bids and publicize auctions. The successful bidder will be the applicant with the highest bid. It is the Agency's policy to get the best price for the property and not limit the potential pool of applicants.

Topic: A commenter requested that the Agency include language similar to the language from the current regulation in 7 CFR 1965.223(c), which provides for the continuation of restrictive-use provisions on projects sold out of inventory.

Response: The Agency appreciates this comment and believes its interim final rule adequately addresses this issue. When inventory properties are sold as ''program'', then § 3560.505(d) of the interim final rule requires the loan closing follow the requirements of subpart B (see § 3560.62(a)(2) of the interim final rule) for executing a restrictive-use contract acceptable to the Agency.

Topic: A commenter requested that the Agency change the requirement for nonprofit organizations from having experience in the Agency's MFH programs to having experience in providing affordable housing.

Response: The Agency appreciates this comment but has determined that all applicants need experience in operating MFH to be eligible to own and manage this type of housing. The Agency notes that § 3560.102(e) of the interim final rule adequately covers acceptable management agent criteria and, therefore, determined that no change to the regulation is needed.

Topic: A commenter recommended that the Agency revise its policy stated in § 3560.504(c)(1) that the Agency will make an award to the first offer drawn as part of a sealed bid process for REO property. The commenter suggested that it would be in the Agency's interest to open all bids and accept the highest eligible bid.

Response: The Agency agrees with this comment and has revised § 3560.504(c)(1) of the interim final rule to clarify that RHS will accept the highest eligible bid or, if no acceptable bids are received, the Agency may negotiate a sale without further public notice.

Subpart L—Off-Farm Labor Housing

Topic: Several comments were received on § 3560.576 (formerly § 3560.575(b)(2) of the proposed rule) and the requirement that a substantial portion of income for Farm Labor Housing households come from farm labor employment. Commenters expressed concern that the standard for domestic and migrant farm laborers will increase so greatly that it will make many existing tenants ineligible, limit new occupancy, hurt the people that the program was intended to serve, and place existing properties at risk. Other commenters expressed concern because they were not able to see specifically how the income standard would change and there was no definition. One commenter also noted that exhibit J of RD Instruction 1944–D (available in any Rural Development office) has not been published annually by the Agency.

Response: Section 514 of the Housing Act of 1949 defines ''domestic farm labor,'' in part, as ''* * * any person (and the family of such person) who receives a substantial portion of his or

her income from primary production of agriculture or aquaculture commodities * * *.'' Previously, exhibit J of RD Instruction 1944–D (available in any Rural Development office) provided ''Federal Regional Income Limits for Hired Farmworkers.'' Domestic farm labors, other than migrant farmworkers, were required to earn actual dollars from farm labor for at least 65 percent of the annual income limits found in exhibit J. Migrant farmworkers were required to have at least 50 percent of the annual income limits. Exhibit J was distributed as a Procedural Notice on July 2, 1986, and has not been updated since that time. The proposed rule indicated that the Agency would be replacing exhibit J and updating the limits. However, the Agency has not changed its basic policy here in the interim final rule.

The Agency believes that commenters misunderstood the Agency's intent and the policy presented in the proposed rule. The examples provided suggest that the commenters interpreted the proposed rule as requiring the use of the income limits published by the Agency for eligibility in RRH as the basis for calculating 65 percent or 50 percent of income from farm labor. The Agency is not using the RRH income limits as the basis for the income standard for percentage of income from farm labor.

The Agency has retained the basic method used in § 3560.576(b)(2)(i)(A) of the interim final rule to determine whether a substantial portion of a household's income comes from farm labor employment. However, the Agency has raised the income limits that were previously published in exhibit J by 50 percent to reflect increases in farm worker incomes since 1986 (when the income limits were last published). When revising the income limits, the Agency used data from the Bureau of Labor Statistics. The new limits are found in internal Agency guidance and will be updated periodically, not annually, to reflect changes in the workforce. The changes will be announced in the **Federal Register** prior to the time that they take effect. The Agency has revised language from the proposed rule in an effort to clarify its policy on this topic.

Topic: One commenter questioned the statutory basis by which the Agency uses income to determine eligibility and stated that the proposed rule should comply with the statute. Further, the commenter added that if ''Congress had intended to place income limits on tenants, it would have explicitly said so in the Act.'' Another commenter recommended that moderate-income farmworker families be able to live in section 514/516 projects with continued use of the priority system (preferred no change to the existing system).

Response: The Agency has made no change to the current policy. Section 3560.576 of the interim final rule continues the current eligibility policy requirement that farmworkers must not have income which exceeds the moderate income limit (previously published at 7 CFR 1944.153) but will also continue to allow farmworkers with above moderate incomes to occupy units if there are no eligible applicants on the waiting list.

Topic: Several commenters were concerned with tenant priorities for off-farm labor housing. These commenters felt that the priorities were too confusing and cumbersome.

Response: The Agency agreed with these comments and has simplified the priorities in the interim final rule at § 3560.577(a).

Topic: One commenter said that priority for occupancy in off-farm labor housing should be based on annual household income, rather than on the percentage derived from farm labor.

Response: The Agency agrees with this comment and has eliminated this requirement from the interim final rule but still has to meet the definition of Domestic Farm Laborer which includes receiving a substantial portion of their income from the primary production of agricultural or aquacultural commodities or the handling of such commodities in the unprocessed stage.

Topic: A number of commenters felt that the requirements for a nonprofit organization should be simplified and that too much emphasis was placed on local representation. One commenter asked the Agency to use a standard definition of a nonprofit organization—one similar and/or used for other programs such as the LIHTC program. The commenter also thought it would be appropriate to include public agencies, such as public housing authorities and redevelopment Agencies.

Several others requested clarification on what ''reflect the demographics of the community'' means as opposed to ''representation on the board from the area where the housing is located'' because the proposed language in §§ 3560.55(a) and (b) does not speak to reflecting community demographics and § 3560.55(c) only lists additional eligibility requirements for nonprofit organizations. The commenters thought that the three sections do not address the instruction in § 3560.555(a)(1) that requires board representation from the housing area instead of a board that reflects the community's demographics. One commenter also stated that paragraph (9) in the definition of non-profit organization (§ 3560.11) requires ''capacity'' as an underwriting issue and should not be in the definition; the Agency should clarify its intent prior to finalizing the proposed rule.

Response: As stated in the description of comments for subpart A, the Agency agrees and has revised the definition of a nonprofit organization. The Agency has also added, language to § 3560.555 to specify that to be eligible for an off-farm labor housing loan or grant, a nonprofit organization must be a ''broad-based'' nonprofit organization. RHS has added this language so that the regulation is consistent with sections 514 and 516 of the Housing Act of 1949. The Agency has brought forward a sentence from the current regulation to describe what is meant by a ''broad-based'' nonprofit organization.

Topic: Several commenters questioned why limited partnerships were ineligible for Farm Labor Housing grants.

Response: The Agency notes that there is no authority under section 516 of the Housing Act of 1949 to provide grants to limited partnerships. For this reason, limited partnerships remain ineligible for Farm Labor Housing grants.

Topic: Several comments were received concerning § 3560.559, some of which concerned the requirement that off-farm labor housing incorporate exterior washing facilities (showers) as necessary to protect the resident and the property from excess dirt and chemical exposure. A few commenters thought that exterior washing facilities should be encouraged but not required.

Response: The Agency agrees with these comments and has revised its position in the interim final rule.

Topic: Another commenter thought that the Agency should use different terminology so that ''washing facilities'' is not confused with ''laundry facilities.''

Response: The Agency agrees with this comment and has changed ''exterior washing'' facilities to ''outdoor showers, boot washing station, and/or hose bibb'' in the interim final rule.

Topic: A commenter contended that exterior washing facilities were not needed and thought that the idea sounded discriminatory.

Response: The Agency does not agree with the commenter and believes that there are instances when outdoor showers can improve the quality of life of farmworkers by giving them the opportunity to wash off excess dirt and chemicals before entering their homes.

Topic: Several comments were received concerning construction

financing requirements for off-farm labor housing. These commenters want the Agency to allow grant funds to be used before loan funds to reduce interest costs.

Response: The Agency has made no change to the requirement because it contends that a borrower's own resources, including loans, need to be utilized prior to the disbursement of grant funds. The Agency notes, however, that this section of the regulation has been rewritten to state that equity contributions being made by the borrower or grantee must be contributed and disbursed prior to the disbursement of loan or grant funds.

Topic: One commenter also asked that the Agency include fees for oversight in its provisions for an asset management fee for owners of Farm Labor Housing projects that are not self-managed in subpart L. An additional comment wanted the Agency to allow an operating line item for the provision of services because the provision of services is used as criteria for funding projects by both Rural Development and some states.

Response: In the proposed rule, the Agency inadvertently left out the key language from the earlier Operating Subsidy Proposed Rule. The Agency has inserted the missing language into the interim final rule. The Agency believes that this additional language addresses the commenter's concerns. In accordance with § 3560.303(b), cooperatives and nonprofit organizations may use housing project funds, with prior Agency approval, for asset management expenses directly attributable to ownership responsibilities. The Agency has decided not to include a separate operating line item for the provision of services. However, if a Farm Labor Housing complex has a Tenant Services Plan and incurs administrative expenses while carrying out that Plan, those expenses can be budgeted for on the budget's ''Other Administrative Expenses'' line provided the expenses are directly attributable to housing project operations and are necessary to carry out successful operations.

Topic: A number of commenters expressed their concern with the distinction between off-farm and on-farm labor housing. One commenter noted that the Agency does not define the terms and suggested that they are used inconsistently.

Response: Definitions for the terms ''On-farm labor housing'' and ''Off-farm labor housing'' have been added to the definition section of the interim final rule in § 3560.11.

Topic: The Agency was asked by two commenters to provide more detail to § 3560.556. The first commenter asked that the Agency specifically use ''may'' instead of ''will'' in the final regulatory text and consider offering over-the-counter funds from time to time without being tied to a formal NOFA process. The second commenter asked to make § 3560.556 similar to § 3560.56 and to provide more detail. The commenter suggested that the minimum acceptable level of detail would be that a proposal or initial application should be submitted in accordance with the NOFA and those with the highest rankings will submit a final application.

Response: The NOFA that is annually published by the Agency contains much of the same detailed information that is found in § 3560.56. In this manner, the Agency will have more flexibility in modifying the application and processing procedures, without having to implement a change to the regulations. It may be necessary to have this flexibility to respond to changes in funding levels or shifts in program priorities. The Agency also retained the words ''will be published'' because the Agency will continue with a competitive application process, rather than making funds available ''over-the-counter'' from time to time, as suggested by the commenter.

Topic: One commenter asked the Agency to provide more flexibility in its occupancy limits for seasonal housing. The 6-month limit may be too restrictive, such as in the Northwest where seasonal work can last for 10 months per year. They offered that different units should be on a rolling seasonal schedule so that all do not close on one date, but perhaps on different dates throughout the off-months. The commenter also asked to have more flexible opening and closing dates for off-farm units.

Response: The Agency believes that the commenter misunderstood § 3560.60 as it does not establish an 8-month occupancy limit for seasonal housing. Section 3560.559 establishes a design requirement for off-farm labor housing that is housing occupied less than 8 months per year. The Agency has made one additional change from the proposed rule to allow seasonal housing to be constructed for full-year occupancy to provide additional flexibility with regard to this issue according to § 3560.559(a).

Topic: Two commenters were concerned with § 3560.562 and its use of the terms ''security value'' and ''value-in-use,'' both of which one commenter asked the Agency to clarify in its final rule. Specifically, the commenter thought that value-in-use should actually refer only to the value of the subject real estate, as restricted. The commenter felt that the problem with basing the term security value on the term value-in-use is that the value-in-use of a subject property, as restricted including the value of the interest credit subsidy, does represent security value, but the value-in-use of a subject property, as restricted including the value of the interest credit subsidy and the value of the section 516 grant, does not represent security value.

This commenter believed that there is a catch-22 for securing section 516 grants because their value must be added to the value-in-use of the subject property to secure the grant but value cannot be added because it does not represent security value. The commenter suggested revising §§ 3560.562(a) and (c) so that section 516 grants do not have to be secured by the value-in-use of the Farm Labor Housing project but instead, are based strictly on total development cost, not on security value.

The second commenter also had issues with the proposed regulatory language in that both the loan and grant must be securitized by the value of an appraisal or the total development cost, if it is less; yet, there are few comparable properties upon which to base ''comps'' in rural areas, so appraisals often come in below the total development costs. Since these rural area projects are often only feasible as a result of grants (RHS and others) the commenter requested that the Agency either not require an appraisal to cover the grant or allow exceptions to the appraisal requirements.

Response: The Agency acknowledges the commenters' concern and has revised §§ 3560.562(a) and (c) to clarify that the maximum amount of the grant is not limited by the security value of the property. The grant is limited to the lesser of: (1) 90 percent of the total development cost or (2) that portion of the total development cost which exceeds the sum of any amount provided by the applicant from their own resources plus the amount of any loans approved for the applicant, considering the capacity of the applicant to amortize the loan.

Topic: Multiple commenters asked whether it is practical (as stated at § 3560.565(b)(2) of the proposed rule) to lock the Agency into providing 100 percent of rental assistance if there are more affordable, alternate sources available.

Response: The Agency appreciates the comment and has revised the language

in § 3560.565(b) of the interim final rule to delete the 100 percent requirement.

Topic: A commenter wondered why the Agency allows the 50-year grant term to exceed the 33-year loan amortization period.

Response: The Agency has revised § 3560.566(c) of the interim final rule by removing the reference to a 50-year grant term. This was done so that the regulation is consistent with the grant agreement. The grant agreement requires that the housing be used for authorized purposes for as long as it is needed.

Topic: Several commenters focused on Agency requirements for loan and grant closings. One commenter suggested that all loan applicants should be executing loan agreements, and all such loan and grant agreements, regardless of applicant, should include the provisions listed in § 3560.571(b)(1) through (3). Three others asked the Agency to ensure that the documentation requirements for loan and grant closings are the same.

One of these commenters asked about the restrictive-use period, which the proposed rule states is specified in subpart N. They were uncertain if this referred to § 3560.662(a) with its 20-year restrictive-use period. They asked whether the Agency would disallow prepayment (commensurate with the section 515 program) and instead require a 33-year restrictive-use period (commensurate with the section 514 loan term).

Response: The Agency has deleted § 3560.571(b)(1) through (3) and has also revised § 3560.571 in the interim final rule to clarify the restrictive-use provisions for off-farm labor housing. Additional details are provided in § 3560.72(a)(2) and subpart N. The Agency agreed with the commenters and revised this section. The items that were listed in § 3560.571(b)(1) through (3) have been deleted from this section and have been placed in the Agency-approved loan and/or grant resolution, loan agreement, and grant agreement forms.

Topic: Two commenters stated that the Agency should include provisions governing the alternative option to use section 521 rental assistance as an operating subsidy in off-farm migrant labor projects. They added that the option was ''enacted into law a number of years ago and there is no legitimate reason for omitting it here.''

Another commenter was disappointed that provisions for an operating subsidy on seasonal units was not incorporated into the Agency's proposed rule.

Response: The Agency has adopted the language from the earlier Operating Subsidy Proposed Rule for the interim final rule.

Topic: Two commenters expressed their support for the Agency's effort to provide increased latitude in verifying Farm Labor Housing tenant income and farm employment.

Response: The Agency appreciates the commenters' support for this provision.

Topic: The Agency heard from a commenter asking that provisions for section 514/516 technical assistance grants be included in the final rule.

Response: The Agency has adopted the commenter's suggestion in the interim final rule at § 3560.553(b) and (c).

Topic: A commenter stated that § 3560.575(a) be modified to clarify that for Farm Labor Housing properties operated under the LIHTC program, the borrower may restrict occupancy to only those farm laborers who also qualify under the LIHTC program.

Response: The Agency has made no change because the tenants, by definition, must comply with the LIHTC program requirements.

Topic: Multiple commenters requested a reduced servicing requirement for grant-only projects, one for § 3560.577 and one for § 3560.578 (which is now § 3560.578 and § 3560.579 in the interim final rule).

Response: The Agency will not reduce servicing requirements for grant-only projects because RHS believes these activities are necessary to ensure the continued viability and compliance of such projects.

Topic: A commenter stated that § 3560.574 should be moved to subpart M since it deals with on-farm labor housing only.

Response: The Agency believes that the commenter may have misunderstood the intent of § 3560.574 since it does not deal with on-farm labor housing, so it has made no change.

Topic: One commenter saw no reason to distinguish between domestic and migrant farmworkers in the Agency's programs. They anticipate that the 50 percent requirement included for migrant farmworkers would be less onerous to both residents and borrowers.

Response: The Agency has made no change because this distinction is necessary, since migrant farmworkers are the ones in greatest need and are the program's primary focus.

Topic: Multiple commenters were interested in ensuring that surviving households be able to remain in housing but did not expect or think it reasonable for this to be a priority to gain tenancy.

Response: The Agency appreciates the comment and has deleted the provision from § 3560.576(d)(1), which addresses a surviving household of a deceased farm laborer. The rights of surviving households to remain in their units are already addressed in § 3560.158.

Topic: Multiple commenters stated that developers are recognizing the need for senior Off-Farm Labor Housing projects and asked that the Agency expressly state that elderly Farm Labor Housing applications may be targeted for admission.

Response: The Agency has revised § 3560.576(b) and (c) to make retired farm laborers a priority for such housing, with ''retired farm laborer'' being defined in subpart A to be workers at or in excess of 55 years old. Although the Agency does not finance Farm Labor Housing projects that are restricted to the elderly, Farm Labor Housing should be marketed to *all* eligible persons, including, but not limited to, persons who meet the definition of a retired domestic farm laborer.

Topic: A commenter asked about the policy in § 3560.575(d) in which the Agency allows section 514/516 properties to be rented to non-farmworkers. The commenter notes this section does not provide a process for seeking approval or setting time limits and asks that a formal waiver process be included in the final rule.

Multiple commenters stated that the Agency should broaden its Farm Labor Housing statute definition to meet Congressional intent. One commenter suggested that the Agency mirror that of HUD (reference 42 U.S.C. 1436a(a)) and thereby address Congressional intent; specifically, the Agency should adopt the ''legal or qualified alien'' definition for all Farm Labor Housing, just as it has for other multi-family housing.

Response: The Agency appreciates the first commenter's suggestion and has revised § 3560.575(d) in the Interim Final Rule to account for the suggested change. The Agency has made no change to the definitions because its requirements for citizenship are statutory.

Topic: A commenter asked that § 3560.575(d) be revised to address when areas cease to have farmworkers, which would include identifying the exception process to allow the development to permanently rent to non-farm laborers.

Response: The Agency has revised its proposal to identify a process by which non-farm laborer tenants are able to occupy units. In the interim final rule, § 3560.576(e), the Agency has reserved however, the authority for such units to revert to farm laborer tenants if the need again arises.

Subpart M—On-Farm Labor Housing

Topic: Commenters stated that as long as the Agency's loan is adequately secured, then the Agency should not prescribe what comprises adequate security.

Response: The Agency understands this point and has revised § 3560.610(b) to read: ''When feasible, the on-farm labor housing will be located on a tract of land that is surveyed such that, for security purposes, it is considered separate and distinct from the farm. The security for the loan must include a lien on the tract of land where the on-farm labor housing is located and the security must have adequate value to protect the Federal Government's interest. The Agency will seek a first or parity lien position on Agency-financed property in all instances, however, the Agency may accept a junior lien position if the Federal Government's interests are adequately secured.'' This language is both less prescriptive and less restrictive and should address the commenters' concerns.

Topic: Regarding the on-farm labor housing program, several commenters said that rather than providing flexibility, the proposed regulation would add many restrictions that would disqualify agricultural housing providers. One commenter pointed out that the proposed regulation fails to recognize or provide a transition for owners with section 514 loans who agreed not to charge rent to their farmworkers.

Response: The Agency appreciates the commenters' concerns. However, the proposed regulations do not add any restrictions that are not currently in place. With respect to a transition for farmworkers who agreed not to charge rent, the regulations do not require that farmworkers pay rent; the regulations require that if rent is charged, it must first be approved by the Agency.

Topic: Several comments were received regarding the regulations on on-farm farm labor housing. Commenters were concerned that the regulation creates barriers to housing access for farmworkers and similarly disqualifies agricultural housing providers. One commenter noted that requiring proof of the tenant's eligibility prior to move in would make seasonal housing especially difficult to secure; in most cases, tenants do not usually have to certify their eligibility until after they move in. Another commenter noted that the proposed regulation would disqualify agricultural housing providers, such as a farmer with two or more employees, and such restrictions are unhelpful.

Response: The Agency does not know what was meant by the term ''agricultural housing provider.'' However, the regulation does not make farmers with two or more employees ineligible. Requiring proof of tenant eligibility prior to move in simply conforms the on-farm regulations with other MFH provided by the Agency.

Topic: Commenters stated that the program should use language to facilitate growth of the Farm Labor Housing program and increased connections between affordable housing nonprofit organizations and farm owners. One commenter suggested that the program should be brought in line with other owned and operated rental properties by allowing a professional property manager firm to manage the property so that the farmers can concentrate on farming. Another commenter said that the proposed rule should allow limited partnerships to participate in the ownership of on-farm housing, similar to that done with LIHTC projects.

Response: The Agency acknowledges the commenters' concerns. While nonprofit organizations are allowed to work with farmers to develop on-farm labor housing by statute, this is not a specific objective of the program. While farmers are encouraged to manage their on-farm labor housing properties effectively, these are not conventional properties and should not be managed as such. However, there is nothing in the interim final rule to preclude professional management of on-farm labor housing projects. At the same time, the Agency does not anticipate the need for professional management except, perhaps, on rare occasions when there are a significant number of on-farm housing units at one farm. There is no statutory authority to allow on-farm labor housing loans to be made to limited partnerships.

Topic: One comment noted that in addition to the program objectives in § 3560.602, farmers should be allowed to receive grants as an incentive for providing affordable housing.

Response: Under section 516 of the Housing Act of 1949, only the following entities are eligible for farm labor housing grants: States or political subdivisions thereof, Indian tribes, broad-based public or private nonprofit organizations incorporated within the state, and nonprofit organizations of farmworkers incorporated within the state.

Topic: One commenter noted that the proposed rule should give leasing and renting priority to employees of the farmer but should also allow nonemployee agricultural workers an opportunity to rent or lease a unit if the units are vacant for an extended amount of time. Another commenter noted that farm borrowers should be allowed, on a case-by-case basis, to provide housing for immediate relatives if the Agency can document that these family members are farmworkers in the best interest of both parties and essential for farm operation.

Response: The Agency acknowledges the commenters' concerns. The interim final rule gives the Agency the authority to provide exceptions to on-farm labor housing borrowers to enable them to rent to ineligibles on a temporary basis. The borrower must, however, demonstrate that efforts have been made to fill the units with eligible applicants.

Topic: Several comments were received concerning the limitations of the definitions of ''farmer'' and ''farm owner'' found in § 3560.11. Many commenters were concerned that such definitions might significantly restrict the pool of eligible farmer applicants. The commenter thought that this section should be amended to remove references to ''family size farm'' requirements and the reference to 7 CFR 1941.4. The commenter believed that the regulation ''de-motivates'' farmers who are legitimately interested in housing their workforce but cannot participate because they are not included in this definition. One commenter noted that the program should be available to all farmers on an equal basis because the one being helped is the farmworker, not the farmer; further, the section about ineligible farmers should be eliminated.

Response: The Agency acknowledges the commenters' concerns. The Agency has revised definitions of ''farm'' and ''farm owner'' in the interim final rule to be consistent with the current regulation and statute. In addition, a definition for ''farm'' is now included in the interim final rule. The revised definitions are less restrictive than those included in the proposed rule.

Topic: One commenter expressed concern that the proposed rule would increase the amount of work farmers have to do, especially when having to provide information from lenders indicating that they are unqualified to obtain credit from a commercial source.

Response: The Agency acknowledges the commenter's concern. The requirement that borrowers must provide documentation that they have sought credit elsewhere and have been refused is not a new one. The goal of the section 514 program is to provide financing to those who cannot obtain credit elsewhere. The ''test for credit'' requirement is a statutory requirement.

Section 3560.605(a)(3) of the interim final rule has been revised so that it is consistent with the statute and the prior regulation.

Topic: Several commenters expressed concern over the strong language about demonstrating that the farmer could not develop the housing without the USDA assistance. They felt that the requirement is counterproductive and should be removed; tying financing to borrowers' financial resources misses the mission of the Farm Labor Housing program.

Response: The Agency wishes to clarify the policy described by the commenters. Section 3560.605(a)(3) states that the applicant must be unable to provide the housing using the applicant's own resources. This is true for all the Agency's direct MFH loans. The Agency's mission is to provide financing for MFH in rural areas and/or for farmworkers by providing financing to those who cannot obtain it from another source. The requirement is a statutory requirement.

Topic: Several comments were received regarding the accessibility of the labor housing. One commenter noted that the farmer should only be required to add accessibility features on a reasonable accommodation basis rather than a mandatory feature; mandatory accessibility design feature requirements increase costs and may act as a disincentive for farmers to provide affordable housing for workers.

Response: The Agency acknowledges the commenters' concerns and has added § 3560.605(d) to state: ''On-farm labor housing that consists of buildings with less than three units, need not meet the requirement that five percent of the units be constructed as fully accessible units, as described in § 3560.60(d).''

Topic: Several comments addressed site and construction requirements. One commenter said that all housing should be built to permanent unit requirements because of the low-construction quality and lack of maintenance of seasonal units. The commenter went on to suggest building an integrated community of permanent and seasonal worker units, which would be easier to maintain and manage.

Response: The Agency acknowledges the commenters' concerns and has modified § 3560.608(c)(2) to state: ''Seasonal housing may be constructed in accordance with exhibit I of 7 CFR part 1924, subpart A. If constructed in accordance with exhibit I, the housing must be suitable to allow for conversion to full-year occupancy if the need for migrant farmworkers in the area declines.''

Topic: There were several comments made concerning reserve accounts. One comment suggested that the reserve account requirement apply only when on-farm housing operations include 13 or more units, rather than the proposed number of five or more units. Another commenter noted that imposing standards on only five or more units sounds good but is an unnecessary burden and could discourage some farmers from applying.

Response: The Agency thanks the commenters for raising this issue and has modified § 3560.614 to state that the reserve account requirement applies when on-farm housing operations include 12 or more units.

Topic: Several comments were received regarding participation with other funding sources. One commenter noted that § 3560.615 cross-references § 3560.66, discussing the availability of rental assistance, but should make clear that on-farm labor housing projects may not receive rental assistance. Another commenter said that encouraging the use of other funding sources is incongruent with the rest of the proposed rule—the goal is to obtain nondebt financing for projects, not more debt financing. The commenter said that the regulation is written as if USDA were providing 100 percent of the financing, which is not always the case; this does nothing to help USDA partner with funding sources, an essential element.

Response: The Agency acknowledges the commenters' concerns. The reference to § 3560.66 in § 3560.615 refers to situations in which the borrower obtains other funding sources. With regard to additional funding sources, the Agency's intent is to encourage on-farm labor housing borrowers to obtain other funding sources, either debt or non-debt. There is no restriction against nonprofit organizations assisting farmers to obtain funds from other sources. Section 3560.254 has been revised to clarify that on-farm labor housing is not eligible for rental assistance.

Topic: One comment noted that the term of the loan should be 50 years instead of 33 years to allow for lower monthly debt service payments and lower monthly rent payments by the tenant.

Response: The Agency appreciates the commenter's concern but has made no change because the 33-year limit is statutory.

Topic: One commenter suggested that funds for on-farm labor housing should only be provided as permanent financing after the development work is complete.

Response: The Agency notes that on-farm labor housing borrowers are subject to the same financing requirements as off-farm labor housing and section 515 borrowers, as described in § 3560.71.

Topic: The Agency received several comments concerning housing management and occupancy restrictions. One commenter noted that on-farm labor housing borrowers generally have a single-family unit, where imposing a management plan requirement is burdensome for both Rural Development staff and the borrower.

Response: The Agency acknowledges these concerns. The requirements for management plans for on-farm labor housing projects are minimal.

Topic: Several comments were received concerning tenant eligibility. One commenter stated that any change in tenant eligibility should take previously existing tenants into consideration or grandfather them in. Another commenter noted that a definition of eligibility for Farm Labor Housing projects based on ''annual income limits published by the Agency'' will have very negative consequences for existing tenants; given that farmworkers are often some of the lowest paid workers, many of these tenants could be displaced if the proposed rule is adopted as currently written.

Response: The Agency acknowledges the commenters' concerns. However, the Agency wants to clarify that it has not changed the eligibility requirements for tenants of on-farm labor housing, and the annual income limits only apply to tenants of off-farm labor housing projects with a nonrestrictive farm labor clause, as stated in § 3560.575(b)(2)(iv).

Topic: One commenter noted that the proposed rule requires an Affirmative Fair Housing Marketing Plan even though on-farm labor housing is by definition restricted to employees only. The commenter thought that the regulatory language should explain clearly what is expected given these circumstances.

Response: Borrower's with on-farm labor housing loans for less than 5 units are not required to submit an Affirmative Fair Housing Marketing Plan. The Agency acknowledges that the Affirmative Fair Housing Marketing Plan might be an abbreviated version since the borrower is required to restrict occupancy to farm employees. However, the Agency intention is to ensure that there are no violations of fair housing and civil rights laws in providing on-farm labor housing.

Topic: Regarding establishing and modifying rental charges, one commenter noted that the Agency should only require sufficient financial information to show that the housing operation is operating in a nonprofit manner for the rental rate imposed. The commenter felt that the owners should be allowed the flexibility to provide budget information for the unit that is acceptable to the State Director.

Response: The Agency wishes to clarify the issue raised by the commenter. The interim final rule states that the borrower is to document the need for a rent increase and obtain approval from the Agency in accordance with subpart E. Subpart E does not specify what the borrower must submit to the Agency; only that ''borrowers must fully document that changes to rents and utility allowances are necessary to cover housing or utility costs.''

Topic: One commenter thought that the regulations pertaining to the on-farm program should continue to ensure that existing borrowers not charge rent to their laborers.

Response: The Agency appreciates the comment. The Agency's policy is that the on-farm borrower can choose to charge rent or not. The interim final rule provides the option in § 3560.628 by stating ''If it becomes necessary to establish or modify a shelter cost, the borrower must obtain Agency approval as specified in subpart E of this part.''

Topic: One comment was received regarding security deposits. The commenter noted that this should only be addressed as required lease language and make no reference to multi-family regulations as stated as § 3560.204.

Response: The Agency wishes to clarify this issue. On-farm labor housing borrowers are not required to charge security deposits. If they choose to do so, however, the terms set forth in § 3560.204 must be followed to protect both the tenant and borrower and ensure that the borrower is in compliance with applicable State and local laws.

Subpart N—Housing Preservation

Topic: The Agency received numerous comments on the sale to nonprofit organizations or to public agencies and the priority for local nonprofits. Some commenters indicated that this requirement is too restrictive and will slow down the preservation process as it limits the entities that can participate. Some suggested broadening the definition of nonprofits to facilitate the participation of National and regional nonprofit organizations (which are limited by the board composition requirements under the current definition), as well as nonprofit general partners who otherwise agree to the use restrictions (which would allow for the use of LIHTCs and tax-exempt bonds). Others suggested eliminating the preference all together to allow for limited nonprofit and for-profit entities that agree to use restrictions. Other commenters, however, stated that the priority of nonprofit buyers is critical to the preservation of affordable housing and should be made more explicit in the regulation. It was also suggested that nonprofits be offered all available incentives to assist them in acquiring and preserving properties.

Response: The Agency has not removed the sale to the nonprofit organization and public body process from the interim final rule because the requirement is statutory. However, the Agency has simplified the definition, as stated above under subpart A. The rule will retain the preference to local nonprofits, as that is required by statute as well. The Agency has also taken several administrative and procedural steps to facilitate nonprofit purchases by providing them better access to loans and advances.

Topic: The Agency received numerous comments about restrictive-use provisions. Comments fell into four major categories:

- A lack of clarity about how the provisions are determined,
- Opposition to restrictive-use provisions,
- A call for greater use and enforcement of restrictive-use provisions, and
- The impact of the restrictive-use provisions on future transfers.

Topic: There were general complaints about lack of clarity about the Agency's regulatory authority to require restrictive-use provisions and the process by which they are determined. Commenters raised questions about specific dates cited in the rule, the application of the requirements to limited partnerships, language on affected households, and the exception for properties receiving another USDA loan. They also argued that there are no standards laid out in the rule for determining the applicable-use restrictions and objected to language stating that the provisions will be ''as determined by the Agency.''

Response: The Agency acknowledges the commenters' concern and while the requirements are statutory, the Agency has revised § 3560.658 and § 3560.662 to clarify its requirements and provide the terms of the restriction. The statute (42 U.S.C. 1472(c)) specifies which loans are subject to restrictive-use provisions and provides the terms of the restriction. The Agency cannot change this. The Agency incorporated the specific language for restrictions into forms, guided by the detailed descriptions at § 3560.662.

Topic: There were also significant objections to the restrictive-use provisions in general. Commenters indicated that these provisions place an undue burden on borrowers who have already fulfilled the obligations of their agreements. Commenters also indicated that, in some cases, the restrictive-use provisions are not needed (*e.g.*, in areas where other housing opportunities exist or in properties where other loans place restrictive-use provisions on the property). They also questioned the 10- and 20-year extensions to use restrictions.

Response: The Agency has not removed the requirement for restrictive-use provisions because it is statutory. However, the rule does allow alternative options for properties that are not needed in the program or have other restrictions in place. The Agency added the 10-year use restriction to provide owners with additional options when agreeing to sell to a nonprofit organization or public body, rather than imposing additional requirements.

Topic: Several commenters stressed the need for effective enforcement of the restrictive-use provisions. They indicated that tenant involvement is important to enforcement efforts but that Agency action will be important as well. They suggested that language about Agency enforcement of provisions be included in the applicable legal documents. Commenters also expressed concern that some properties have not had restrictive-use provisions applied because of their section 8 status. They indicated that a property might lose its section 8 assistance and no longer be subject to affordability requirements.

Response: The Agency will use the resources it has available to enforce its restrictive-use provisions; however, the involvement of tenants and other interested parties will be critical to maximizing the Agency's enforcement resources. The restrictive-use provisions required by § 3560.662 will have to be included in Agency approved legal documents. Current regulations require that the availability of section 8 will not be considered when determining if restrictions are required. The Agency contemplates no change in that administrative process.

Topic: Several commenters stated that the proposed rule places another restriction on the property if bought by a nonprofit/public body—not only must it be operated as affordable housing for

the remaining useful life of the housing, but it cannot be transferred to new owners without Agency concurrence. The commenters asked why the Agency must approve subsequent transfers if restrictive-use provisions bind the purchasers.

Response: The Agency acknowledges the commenters' concerns but has made no change to § 3560.659 as this requirement is required by 42 U.S.C. 1472(c)(5)(E).

Topic: The list of requirements for prepayment requests drew many comments and question on this list of items, the burden of complying, and how to comply.

Topic: The Agency received numerous comments on the list of items required for a preservation application and suggested edits and changes. Several commenters said that requirement to provide 3 years of operating budgets should be eliminated because if the purchaser provides the Agency with a market study, the Agency should be assured that the market rents are sufficient to cover the property's operating costs. Several commenters, however, suggested that the requirement for a market study be eliminated because of the cost factor involved, unless the cost can be funded through incentives. Commenters also suggested that the requirement to provide a balance sheet be eliminated, as the Agency should already have a copy, and that the request for the waiting list should be eliminated because it is irrelevant in determining prepayment eligibility. One commenter also suggested that the Agency distinguish between ''complete information'' and ''responsive information'' as a way to pare down the materials to be submitted.

Response: The Agency appreciates these comments and has significantly reduced the number of submissions, eliminating the requirements for the balance sheet, waiting list, operating budgets, and market study. The remaining required submissions include only evidence of the borrower's ability to prepay and documentation of the borrower's willingness to comply with applicable State and Federal laws on prepayment, including Fair Housing rules and tenant protection through the lease. With this greatly reduced reporting burden the Agency sees no need for a further delineation between ''complete'' and ''responsive'' submissions.

Topic: The requirements for prepayment requests also elicited numerous comments and questions about the burden associated with the application packet. Some stated that the amount of information required posed a burden on the borrowers and that the Agency should take on more responsibilities as outlined in the Emergency Low Income Housing Preservation Act (ELIPHA). One commenter indicated that compliance with State laws is important and agreed that the burden should be on the borrower to demonstrate compliance.

Response: The Agency has made a serious effort to balance the burden of compliance with the Agency's responsibility to assess the prepayment requests. The changes discussed above reduce the borrower's burden considerably without jeopardizing the Agency's ability to assess the request.

Topic: Finally, commenters raised a number of questions about the contents of prepayment requests, specifically, how to demonstrate ability to prepay, lease language on prepayment, and the Fair Housing certification.

Response: The Interim Final Rule outlines the required submissions while leaving the detail on how to submit them in the handbook. The Agency recognizes the complexity of these issues and provides additional detail on how the Agency will make these review determinations in Agency guidance about program procedures.

Topic: The Agency received many comments on the prepayment notice requirements, regarding the new frequency of the notices, the tenant/Agency meetings, the way notice is provided, and responsibilities regarding new tenants.

Topic: Commenters offered different points of view on the new prepayment notice and meeting requirements. Some argued that the new notices and the Agency meeting are overly burdensome and tend to cause confusion among tenants rather than provide useful information. However, others stressed the critical importance of informing tenants through the notices and meetings, and argued for further requirements to strengthen the notice requirements, such as requiring borrowers to provide tenant names and addresses as part of their prepayment application, allowing greater response time for tenants, and including the sample notices, currently found in internal Agency guidance. Commenters also had suggestions for the delivery of the notices related to the language, the use of regular versus certified mail, and the Agency's responsibility for delivering the notices.

Response: The Agency appreciates all the comments. The notices as outlined in the proposed rule are not new and represent, in the Agency's estimation, the best compromise between burden for the borrowers and for the Agency and the tenants' need for information. For example, the Agency automated information system called MFIS currently contains information on tenant names and addresses, and their income status, so borrower provision of these data is redundant and was eliminated. The rule establishes minimum requirements for keeping tenants adequately informed of the prepayment process at all stages including response times. All notices must be approved by the Agency and the Agency will consider adopting a pre-approved sample notice. The Agency feels that a further level of detail is unnecessary in its regulations. The Agency will issue subsequent guidance on approved notice procedures including content and delivery and how the notification process fits into the prepayment process. The Agency's regulations do not require it to provide the notices.

Topic: One commenter raised an issue regarding the notification of new tenants after a borrower has applied to prepay a loan. The commenter indicated that some borrowers might use this provision to warn potential tenants about the potential changes in the property to discourage low-income tenants from taking the units, thereby reducing their prepayment obligations. The commenter asserted that provisions should be put in the rule to limit this behavior.

Response: The Agency acknowledges this comment. However, based on the Agency's experience as it has worked with borrowers during the prepayment process, RHS has found that this type of action is not common practice. Further, the significant loss of rental revenue that would occur if borrowers took this type of action in an effort to obtain possible relief from prepayment obligations to tenants is a strong disincentive against this practice. For this reason, the Agency decided to make no change to the interim final rule.

Topic: The Agency received many comments on the timeframes established for receiving incentives and closing deals with nonprofit organizations or public agencies. On the 15-month timeframe for receiving incentives, several commenters stated that the new process is not significantly improved and urged additional streamlining to reduce the 15-month wait time. Others stressed the importance of securing adequate funding in the Agency budget to meet the 15-month deadline. Still others opposed the 15-month cap, stating that it violates the Agency's responsibilities under ELIPHA to preserve housing and

will allow borrowers to opt out. On the 24-month timeframe, several commenters welcomed the limit but requested that an exception be made in cases where the purchaser has not received adequate cooperation from the Agency or the borrower. Some argued for a 48-month timeframe to address the intense competition for resources, while others stated that 24-months is commercially unreasonable. Some commented on wait list procedures and proposed putting borrowers on the list sooner to speed up the process.

Response: The Agency acknowledges the commenters' concerns and has revised § 3560.660(a) to incorporate the suggestion for an exception to the 24-month deadline. The Agency has significantly reduced the waiting period for incentives since the proposed rule was published and expects that performance to continue. Otherwise, the timeframes and wait list procedures remain in effect, as the most feasible compromises among the various interests. Additional details on these timeframes and procedures are covered in Agency guidance about program procedures. The Agency appreciates the commenter' suggestions about the borrower's desire to opt out but hopes to have sufficient resources available so that the waiting list timeframes remain relatively short, although overall program funding is not under the control of the Agency. We also note that borrow cooperation is a critical component to help meet timeframes. For wait list integrity, the borrower must accept an incentive offer before they can establish a position on the waiting list.

Topic: Several comments were received regarding the third party financing in preservation transactions. Several commenters said that the proposed rule does not enumerate the authorities that permit use of third party financing and instead refers back to subpart I. The commenters further state that § 3560.406(f) prohibits the use of project funds to pay for such financing, which effectively eliminates all third-party financing options.

Response: The Agency thanks the commenters for highlighting this issue and has modified § 3560.406(f) so that it does not eliminate participation of third party financing during the transfer process. Also, § 3560.657 clarifies that third party loans are acceptable as part of the prepayment process. The Agency has been and intends to continue using third party financing as an option when prepayment is requested.

Topic: Commenters also discussed third-party loans as possible incentives. They asked that provisions be added to the rule to specifically allow borrowers to obtain an outside equity loan as a possible incentive. Commenters also asked the Agency to revise the regulation to more clearly recognize the range of financing mechanisms it has recently implemented through Administrative Notices that allow third parties to bring private and public financing into the section 515 program.

Response: The Agency finds that the interim final rule allows third party financing in § 3560.659(g). Third-party equity loans are permissible as long as they are approved by the Agency in accordance with subpart I.

Topic: The Agency also heard from commenters focused on appraisal issues under subpart N. Several of these commenters stated that the requirement for two appraisals, especially for a sale to a nonprofit organization, is excessive. They stated that if the borrower and the Agency can agree to a sales price after one appraisal is conducted, then a second one should not be required. Similarly, commenters suggested that if the difference between the two appraisals is less than 10 percent they should split the difference, rather than seek a third appraisal. Commenters also suggested that to help streamline the process, the Agency should allow for the owner to provide an appraisal, subject to review and approval by the Agency. Finally, there were some comments indicating that the appraisal requirements are not clear.

Response: While the Agency appreciates these suggestions, it has made no change because the requirement for two or three appraisals is statutory. In response to several commenters who stated that the appraisal requirements are confusing, the Agency recommends reviewing subpart P of this part for detailed information on appraisal requirements.

Topic: The Agency received several comments on identity-of-interest relationships in preservation transactions. These commenters said that prohibiting any identity-of-interest between seller and buyers, particularly nonprofit buyers, punishes persons who seek to convert ownership from for-profit to nonprofit status. The commenters suggested that the Agency adopt the IRS antichurning rule standards that any person or entity that has an interest in the seller must have a less than 10 percent owner interest in the buyer.

Response: While the Agency acknowledges the commenters' concerns, it believes that there are sufficient numbers of nonprofit organizations that do not have an identity-of-interest relationship with borrowers of section 515 properties. The prohibition on IOI relationships is statutory.

Topic: The Agency received several comments on the determination of minority impact. Some commenters asked for additional information on how the determination is made and clearer definitions of such terms as ''market area,'' ''adverse impact,'' and ''housing opportunities for minorities.'' Several commenters indicated that this determination is of such importance that the standards for conducting this analysis should be included in the interim final rule instead of in the handbooks. Commenters also expressed concern that these determinations sometimes fail to correctly identify adverse impacts. Specifically, they stated that the Agency sometimes made incorrect assumptions about the need for the housing based on availability of section 8 housing, the lack of minorities in the property, or the size of the units. They suggested additional tools for the analysis, including the local section 8 wait list and a stronger definition of the term ''market area.'' Finally, some commenters ventured that the standard creates a new barrier to prepayment and is virtually impossible to meet.

Response: The requirement regarding minority impact is statutory. While some commenters feel review criteria were too loose and others express concern that they will be too tight, the Agency strives to review relevant criteria in an objective manner. The Agency added language in § 3560.658(b) that describes the information that will be reviewed when the Agency makes this determination. The Agency agrees that ''market area'' needed a better definition and has added one to subpart A. Further the Agency agreed that ''adverse impact'' needed further clarification and has clarified that the adverse impact should be disproportionate. The Agency also felt that some clarification was needed for ''housing opportunities for minorities.'' Therefore the Agency has clarified that an evaluation must be made of housing opportunities for minority tenants, applicants, and the market area in general. As to the suggestion of using local section 8 waiting lists in making these determinations, the Agency feels that this level of detail is unnecessary in its regulations. Additional details on how the Agency will review relevant information is available in Agency guidance about program procedures.

Topic: Several comments were received regarding the borrower's right to prepay. These commenters said that the Agency has no right to prohibit prepayment because the provisions of ELIPHA are no longer valid, and they

stressed the Agency's obligation to comply with the terms of their loan agreements. In addition, several commenters said that given the Agency chooses not to acknowledge the borrower's right to prepay, it should further streamline the prepayment process to assist in the preservation of affordable housing.

Response: The Agency's right to establish conditions for prepayment is statutory. The Agency has simplified the provisions throughout subpart N of the interim final rule to reduce the burden of preparing a prepayment application and retain only the requirements necessary to meet the statutorily required process.

Topic: The Agency received several comments stating that the rule does little to clarify or streamline the process and stressing the need for alternatives to the prepayment process. Commenters emphasized the importance of an efficient process to keep properties in the program and to facilitate the borrower's ability to bring new financing (such as tax credits) into the property. Some suggested revising specific timeframes for review and response. Others suggested creating separate tracks and alternative mechanisms for dealing with properties that meet certain conditions. For example, they suggested that the Agency create an expedited process for properties that are prepaying but remain subject to use restrictions because of another loan, for properties where the borrower preemptively rejects incentives, and for obsolete and high-vacancy properties. Several commenters stated there should be two tracks for preservation deals, one for prepayment without restrictions and another for prepayment with restrictions, and that the timelines for each should be 180 and 90 days, respectively. Others stated that the transfer process should be streamlined to facilitate transfers to nonprofit organizations and loan assumptions where the same rates and terms remain in place, which could alleviate some of the strain on the prepayment process by taking some properties out of that process. Finally, they suggested that the roles of the Preservation Office and the State Offices be clarified to avoid operational issues.

Response: The Agency has made many changes to reduce burden and simplify the process, in administrative practices, and both in the proposed rule and in the interim final rule, as the statute allows. The Agency has also streamlined the procedures for transfers and now allows for equity loans at the time of transfer in subpart I and encourages borrowers to take this route in lieu of prepayment. In essence, these actions have now created two tracks for borrowers to follow to exit the program while preserving the affordable rental housing project. Otherwise the Agency has not adopted a separate track program nor a special process for nonprofits because the prepayment statute (42 U.S.C. 1472(c)) provides for a linear single track process. One of those tracks is within subpart I while the other is found in subpart N. Actions taken administratively have already reduced processing timeframes for most prepayments below the 180- and 90-day timeframes mentioned by the commenter. For example, offering general incentives has been a method the Agency has administratively implemented that greatly reduces processing time when a borrower indicates they have no desire to receive a specific incentive offer. Our discussion of the improvements made to the transfer process are detailed in our comments on subpart I including bringing new financing into the property.

Topic: Several commenters stated that the processing of prepayment requests takes more time than it should, and that the interim final rule should include an application processing timeline. They questioned the validity of the 180-day threshold for submitting a proposal given the process can take longer than that and also questioned the 180-day rule for restricted loans as these loans already stipulate timeframes in the loan documents. They also suggested adding a 30-day deadline for Agency review of the application.

Response: The Agency appreciates these comments and, as described in the Agency response to other public comments on subpart N, RHS has taken many steps to reduce burden, streamline the process and minimize delays. The 30-day tenant and nonprofit and public body notice and the 180-day advertisement period for sales to a nonprofit and public body are statutory (42 U.S.C. 1472(c)). Additional information on internal Agency processing timelines is included in Agency guidance about program procedures. The Agency has retained the 180-day period before an anticipated prepayment as a reasonable attempt to allow borrowers sufficient time to meet their plans for a payment date in light of the procedural steps and possible contingencies they may face. Of course the 180-day period is a minimum notice period and the borrower can provide earlier notice if they feel that it is required. The interim final rule significantly reduced the number of required components of a complete application subject to review. This fact, by itself should greatly reduce the amount of time required by the Agency to review a prepayment application. However, the Agency has not adopted the suggestion for a 30-day review period because it considers this to be a matter of internal Agency procedure.

Topic: The Agency received numerous comments on the public notice requirements. While some commenters indicated that the lower burden on the Agency would be helpful to the overall process, others complained that the requirements shift the notice responsibility from the Agency to the borrower and that this is burdensome to the borrower. They stated that the notice to other Agencies should be an Agency responsibility. They also stated that there is no mechanism for maintaining the contact lists and that existing lists are incomplete, outdated, and include insufficient contact information. They suggested that the owner be permitted to select a nonprofit organization to sell to, without going through the notice requirements, subject to Agency approval of the buyer. They also suggested that public notice be made the Agency's responsibility instead of the borrower's.

Response: The Agency agrees with these comments and has adopted them into subpart N. Specifically, the Agency has developed a Web-based system, called the Prepayment Information Exchange (PIX), for providing electronic notices required during the prepayment process. PIX will also include a listing or nonprofit and public bodies that wish to be notified of prepayment requests or sales offers. The Agency also made changes to subpart N of the interim final rule that will permit the Agency to determine that no local nonprofits are available, to allow faster access to regional and national nonprofits.

Topic: The discussion of incentives generated significant numbers of comments. These comments fell into three major areas: (1) The availability of incentives, (2) the structure of incentives, and (3) the process for calculating incentives.

Topic: On the availability of incentives, commenters stressed the importance of providing promised incentives in a timely manner if the incentives are to be attractive to borrowers. They emphasized the need for sufficient budget and adherence to the timeframes in the processing timeline.

Response: The Agency recognizes the need for timely provision of incentives and has tried to reduce burden and streamline the process precisely for this

reason. The Agency also worked to open avenues to third party resources to provide funding for equity when a prepayment request has been filed. Agency guidance about program procedures outlines the Agency's procedures for adhering to established timeframes. The Agency is unable to control its budget.

Topic: Commenters also had a number of questions and comments about how incentives are structured: first, there was approval of the increased clarity on what the Agency can offer as incentives; however, this increased clarity inevitably raises new questions. One commenter asked if the Agency intends to retain both the specific and the general incentive offers. Several commenters asked why equity loans are capped at 90 percent. Some commenters asked that the Agency exercise flexibility with regard to exception rents where this is the most economically feasible approach to keeping a borrower in the program. And commenters had questions about the 50-year amortization period for 1 percent loans. Others proposed edits for clarity around such concepts as equity and investment.

Response: The Agency has developed detailed procedures for developing offers, which will be described in Agency guidance about program procedures. The general and specific incentive offer will be retained. The 90 percent limitation on equity loan incentives is statutory. The Agency has reserved the authority to exceed market rents and will follow procedural guidance on establishing the most valid amortization period. The Agency has developed these procedures with careful consideration to provide a fair incentive that assures adequate resources to borrowers so they can operate the properties in conformance with applicable property standards while meeting the Agency's statutory responsibility to retain affordable housing units. The Office of Rural Housing Preservation will work to coordinate preservation efforts so that processes are followed consistently and compatible guidance is developed as new issues emerge. The Agency adopted all edits which it felt added clarity to its prepayment process.

Topic: Commenters raised a number of questions about how the incentives are calculated. Some asked that if the Agency provides an increase in annual return on the investment, the increase should be included in the project's operating expense budget to ensure that the borrower actually receives the money. Others asked about the applicability of the 30-year Treasury rate and what to do in the absence of such a rate. Some asked how to factor deferred maintenance into the determination of incentives. Others had questions about the statement that once established, incentive offers can not be renegotiated, though they can be changed. Still others had questions about the determination for equity loans that other incentives are not adequate.

Response: When the Agency develops an incentive, it commits to rents sufficient to fund the incentive. The 30-year Treasury rate has been changed to the 15-year Treasury rate. Further procedural guidance has been developed to clarify what the Agency interprets as deferred maintenance. Incentives are not renegotiated to preserve the integrity of the original commitment. These and other topics related to process rather than policy are described in Agency guidance about program procedures. The statute requires the Agency to determine that other incentives are not adequate to encourage an owner to accept additional restrictions prior to offering an equity loan. The Agency makes this determination based on its knowledge of the market and the borrowers' interests.

Topic: Commenters questioned when LOPEs would be used, given the prohibition on prepayment in properties where there is an adverse impact on tenants. Commenters also stated that LOPEs are not sufficient to guarantee housing in tight markets. Further, they asked why there was a time limit placed on tenants seeking LOPEs.

Response: The Agency expects that the LOPEs will be used in properties where prepayment is approved. The Agency recognizes that the LOPEs do not address all housing problems faced by tenants.

Topic: A number of commenters raised questions about the applicability of prepayment rules. One commenter observed that this subpart should specify that it does not apply to borrowers who make their last payment in accordance with their promissory note and amortization schedule. Another stated that the rule should allow for prepayment only in cases of payment in full as the current procedure does. And one commenter stated that all distressed properties should be eligible for prepayment incentive assistance, not simply those between 1979 and 1989.

Response: The Agency has made no changes to the eligibility for prepayment, or the incentives, as the statute establishes both. The statute does not distinguish between distressed or fully operational properties. Paying off a mortgage in accordance with the last scheduled payment at the end of the loan's full amortization schedule does not constitute prepayment.

Topic: A few commenters suggested that the Office of Rental Housing Preservation (ORHP) adopt a broader strategy for preserving housing that addresses the long-term upkeep and rehabilitation of properties and the need to do this for funding and for new owners to achieve these goals. One commenter suggested a ''recovery program'' under which the ORHP would review and restructure financing on aging properties, working with for-profit and nonprofit developers who focus on troubled properties. Through this recovery effort, the ORHP would expedite transfers, prepayments, and loan workouts and would provide a subsidy clearinghouse for owners willing to take on troubled properties.

Response: The Agency appreciates these comments and is examining new ways to facilitate these actions including examining the issues surrounding the ''recovery program'' concept. Any procedural changes made are covered in Agency guidance about program procedures. Any changes in policy identified by the Agency will be addressed in subsequent rulemaking as needed and appropriate.

Topic: There were several comments on appeal rights. Some commenters questioned whether borrowers had the right to appeal the prepayment decisions. Others asked the tenants' rights to an appeal and suggested that notices provided to tenants should advise them of this right.

Response: The Agency notes that subpart A states that Agency decisions that may negatively affect an applicant or borrower may be appealed pursuant to 7 CFR part 11. Tenants have a right to file grievances in cases where owners do not fulfill their responsibilities under the program, as outlined in subpart D, however, they cannot file grievances in cases of displacement or other adverse actions as a result of loan prepayment.

Topic: One commenter asked if in § 3560.655 whether the Agency meant ''expired restricted loan'' or ''expired restrictive-use provisions.''

Response: The Agency did not find the reference, however, at § 3560.652, the Agency explicitly refers to ''expired restrictive-use provisions.''

Topic: Commenters suggested several minor editorial changes for clarity in the section on borrower rejection of the incentives and asked for more detail on the definition of the market area.

Response: The Agency has made several editorial changes to this section for clarity. Market area is now defined in subpart A of the interim final rule.

Topic: A commenter asked if the language in § 3560.659(e) inappropriately excludes new moderate-income residents from moving into a property that is in the process of accepting restrictions.

Response: Any moderate-income exclusion is prescribed by statute (42 U.S.C. 1472(c)(5)(B)). The moderate-income exclusion would only take effect if a nonprofit or public body buys the project and leaves the program.

Topic: Commenters had many questions about the process for selling to nonprofit organizations and public agencies. These comments focused on the advances, the selection of buyers, the sales process, and bona fide offers.

Topic: Commenters welcomed the provision for advances to nonprofit organizations but suggested that more money is needed to make these sales occur and asked for more information about how the advances will occur. They also suggested that in addition to the funds, technical assistance would be helpful to nonprofits.

Response: The Agency appreciates these comments and is striving to maximize the resources available to properties. The procedural guidance on how advances are requested and approved is covered in Agency guidance about program procedures. The Agency believes this guidance will be adequate and no significant change is anticipated from previous guidance provided in previous Agency instructions.

Topic: Several commenters had questions about the selection of the nonprofit buyer. Some asked for more information on how to contact nonprofit organizations. The language in § 3650.659(d) confused several commenters. They asked if the Agency is limiting nonprofit organizations to acquire, at most, one prepaid section 515 property. Other commenters asked for guidance on how to select among qualified nonprofits and asked that the rule specify that it is permissible to accept the highest acceptable offer.

Response: The Agency notes that § 3650.659(d) addresses identity-of-interest issues and does not limit the number of properties a nonprofit organization can acquire. The prohibition on the IOI between purchasing nonprofit or public body entities and entities that have prepaid a loan is statutory. The rule does address the selection between similar offers at § 3560.659(f).

Topic: Commenters also had questions on the sales process in general. They suggested edits to several parts of § 3560.659 for clarity. Commenters asked for more clarity on the information to be provided to potential nonprofit buyers and offered some additional suggestions. Two commenters also asked that the rule specify some limits on the disclosure of information provided by the borrower to a prospective buyer.

Response: Section 3650.659 of the interim final rule describes the types of information to be made available so that potential purchasers understand the project's physical and operational status. The Agency guidance about program procedures provides specific examples and added clarity of what borrowers must release to potential nonprofit buyers to provide sufficient information to allow for an informed offer to purchase.

Topic: Commenters asked for a more extensive definition of a ''bona fide'' offer, for example, clarifying how committed an offerer's financing must be.

Response: No further guidance will be provided on whether an offer is bona fide in this rule. The Agency feels that sufficient guidance is already provided in the rule and also independently reviews this issue (for example see § 3560.659(e)(3)). However the Agency does want to note that in order to be a bona fide offer, the offer must be consistent with the appraised value established in accordance with § 3560.659(a). The Agency will subsequently provide additional guidance on the factors it will use to evaluate whether an offer is bona fide. Section 3650.659(k) of the interim final rule also establishes a 24-month timeframe for the completion of the transaction. Since this is a business transaction, the credibility of any sales transaction will not be established in a regulation but by the terms of the sales contract.

Topic: Commenters noted that all agreements currently reference 7 CFR part 1930, subpart C and will therefore need to be updated.

Response: The Agency appreciates these comments and has updated the references in the agreements.

Subpart O—Unauthorized Assistance

Topic: One commenter expressed concern that the focus of this subpart was solely on unauthorized assistance, and that the Agency also specifically should address cases where tenants receive ''too little assistance'' because they inadvertently over report their income or do not know the exclusions or deductions to which they are entitled.

Response: The Agency appreciates the concern and will consider this suggestion as it updates its internal Agency procedures.

Topic: Another commenter noted that the proposed rule does not explicitly establish the policy that repayment plans need to be feasible given an tenant's capacity to pay.

Response: The Agency believes that § 3560.705(c) provides adequate guidance regarding this issue. No set structure is given intentionally, so flexibility is available depending on the tenant's situation. It should be noted, that the Agency is committed to collecting unauthorized assistance that was received by either the borrower or tenant.

Topic: Multiple commenters indicated that they did not see an explicit statement in the rule establishing that when tenants receive unauthorized assistance due to borrower error, the borrower may not seek to recover this unauthorized assistance from the tenant.

Response: The Agency acknowledges the comment, and notes that this was the Agency's intent in the proposed rule. RHS has revised the language in § 3560.708(d) to clarify this policy.

Topic: Several commenters addressed the topic of using project funds to pay for unauthorized assistance. Several commenters agreed with the language in the proposed rule prohibiting the use of project funds to pay for unauthorized assistance due to borrower error. Other commenters strongly disagreed, noting that because the program rules are complex, honest and/or inadvertent mistakes can occur. These commenters noted that in the cases of honest mistakes, the additional funds go to the project or the tenant, not to the manager or borrower. They requested that the Agency prohibit the use of project funds to repay unauthorized assistance only in cases of borrower fraud.

Response: The Agency agrees with the commenters that the prohibition on using project funds to repay unauthorized assistance should only apply to cases of borrower fraud. The Agency has made this change in § 3560.705(g).

Topic: Several commenters addressed the language in the proposed rule relieving borrowers of responsibility for seeking repayment of unauthorized assistance to tenants in cases when the tenant has moved out of the property. Numerous commenters agreed with this change, noting that borrowers have very little practical authority to compel tenants to repay such funds once they no longer live at the property. They also noted that the process of trying to pursue former tenants can often be difficult and time-consuming for staff,

and collection agencies may not always be a viable option. Other commenters strongly disagreed with the policy as presented in the proposed rule. They indicated that borrowers often have the best information about such persons and often have provided the information to a collection agency. These commenters expressed concern that relieving borrowers of this responsibility will only increase the burden on Rural Development staff who are not in as strong a position to collect these funds.

Response: The Agency acknowledges the concerns raised by commenters but has decided to retain the policy as described in the proposed rule because this policy gives RHS greater flexibility to apply resources cost-effectively toward the cases that most deserve to be pursued and reduces the burden on borrowers and projects. No changes to the regulation were made in response to these comments.

Topic: Multiple commenters expressed concern that some of the language in the subpart appeared to hold borrowers responsible for the acts of residents. The commenters agreed that borrowers have a responsibility to take action to identify and collect unauthorized assistance received by tenants but took the position that borrowers are not responsible for another party's fraud or misrepresentations of income.

Response: Borrowers must use due diligence in verifying tenant income. The Agency, however, acknowledges the concerns expressed by the commenters and has simplified and clarified the language in § 3560.708.

Topic: Multiple commenters expressed support for the use of offsets as an effective tool for collecting unauthorized assistance, and one commenter described how it and the Treasury's Cross-Servicing Program had worked well.

Response: The Agency appreciates these comments.

Topic: One commenter questioned the reference to 7 CFR 3550.210 regarding the use of offsets and asked whether a more appropriate reference would be to 7 CFR part 3.

Response: The Agency understands the question but has made no change because the reference to the Single Family Housing regulation is specific to housing programs.

Topic: Multiple commenters asked questions about procedures related to unauthorized assistance and enforcement referrals. Another commenter perceived inconsistencies between the proposed rule and the program handbooks.

Response: The Agency will describe how it intends to address unauthorized assistance and enforcement referrals when it updates its internal Agency procedures in conjunction with the issuance of the interim final rule.

Topic: One commenter suggested asking tenants to sign a document similar to an Applicant Certification related to Federal Collection Policies for Consumer or Commercial Debt at the time that they apply for occupancy as a possible way to further protect the government's interests.

Response: This form is not necessary to be completed by the tenant. The Tenant Certification form has been amended to provide adequate language to protect the government's interests.

Subpart P—Appraisals

Topic: Several commenters asked the Agency to clarify the circumstances when the different types of appraisals identified in the regulation should be performed. In particular, multiple commenters asked that the regulation indicate that a ''value-in-use'' appraisal is needed when a project is receiving another type of housing assistance. Another commenter wanted clarification that an ''as-improved'' appraisal is needed when a project is being rehabilitated. Further, some commenters asked for clarification about the methods to be used in conducting the appraisals.

Response: The Agency has clarified the language in this subpart. In making the revisions, the Agency has used terminology that reflects current use within the appraisal industry in an effort to reduce the potential for confusion when a borrower or Rural Development requests an appraisal. Information about methods to be used when conducting appraisals will be provided in the program handbooks.

Topic: Multiple commenters expressed concern about the language in the proposed rule restricting the release of appraisals to borrowers.

Response: The Agency acknowledges the concern raised by the commenters and has revised § 3560.752(c) of the proposed rule (now § 3560.752(d) of the interim final rule) to allow the release of appraisals to borrowers or applicants upon their request.

Topic: One commenter expressed concern that the terms ''security value'' and ''value-in-use'' were not adequately defined.

Response: The Agency provides further clarification of the definition of ''security value'' in the handbooks. RHS has deleted the term ''value-in-use'' from the regulation and has included the term ''market value, subject to restricted rents'', along with a definition, in this subpart. The latter term will be more readily understood by appraisers and users of appraisals.

Topic: One commenter expressed concern that the language in this subpart contradicts the definition of current appraisal in subpart A.

Response: The Agency has made the language consistent with the subpart A definition.

Topic: One commenter expressed concern about using appraisals that are more than 12 months old if there is mutual agreement between the Agency and the borrower or applicant because this allowance could be abused.

Response: An exception to the use of a current appraisal if the Agency and the applicant or borrower mutually agree to the use of an appraisal that is not current is considered by the Agency a prudent policy that allows for flexibility in individual cases that warrant it. It is unlikely that this policy could be abused if the Agency and the applicant, or borrower, both agree to it. Therefore, no change has been made based on this comment.

Topic: One commenter stated that § 3560.753 implied that appraisers had to be members of a professional organization to do appraisals, which conflicts with State licensing laws.

Response: The Agency did not intend that membership in a professional organization is a qualification requirement for appraisers to write appraisals for the Agency. The Agency revised paragraph (b) of this section to clarify that MFH appraisals prepared for the Agency will be written by Agency appraisers or independent fee appraisers who are State-certified general appraisers, certified or licensed in the state where the property is located.

Topic: One commenter requested that the proposed rule include a statement on due diligence and that due diligence be conducted in accordance with American Society for Testing and Materials standards.

Response: Agency appraisal procedures concerning environmental issues that might impact value simply clarify established regulatory requirements and are being provided in the updated internal Agency procedures being prepared in conjunction with the issuance of the interim final rule.

Topic: One commenter questioned whether the phrase ''consummation of a sale as of a specified date'' in § 3560.752 is inconsistent with the sale to a nonprofit organization under subpart N.

Response: The Agency has made no change based on this comment because the phrase ''consummation of a sale as

of a specified date'' is part of the most commonly used definition of ''market value'' used in the appraisal industry. The phrase is an essential part of the definition and is not inconsistent with sale procedures under subpart N.

Topic: One commenter expressed concern that subpart P uses terms and language that are inconsistent with the Uniform Standards of Professional Appraisal Practice (USPAP) and appraisal literature in general.

Response: The Agency has made minor wording changes throughout the subpart as suggested to be consistent with USPAP.

Topic: One commenter suggested that the Agency's handbook language regarding appraisals could be a guide for the regulation.

Response: The Agency agrees with the commenter. Updated Agency internal procedures being issued in conjunction with the interim final rule will clarify procedures for satisfying the requirements established by this subpart.

Discussion of Comments—Proposed Rule Regarding Operating Assistance for Off-Farm Migrant Farmworker Projects

The proposed rule was published in the **Federal Register** on November 2, 2000 (65 FR 65790), with a 60-day comment period that ended January 2, 2001. Four comments were received about the language in the proposed rule.

The public comments about the proposed rule are discussed below. The regulatory provisions of operating assistance for Off-Farm Labor Housing projects are now addressed in 7 CFR part 3560, subpart L. RHS sincerely appreciates the time and effort of all commenters.

Topic: Several commenters noted that Pub. L. 106–569 had been enacted since the publication of the proposed rule, and suggested that the rule be revised to include the provisions from this statute allowing the use of section 521 funds as an operating subsidy in Off-Farm Labor Housing projects that house both migrant and year-round farmworkers.

Response: The Agency agreed with the commenters and incorporated the provisions of Pub. L. 106–569 allowing the use of section 521 as an operating subsidy in Off-Farm Labor Housing projects that house both migrant and year-round farmworkers in § 3560.575(a) of the interim final rule.

Topic: Multiple commenters expressed concern that in some cases MTFS data will not exist and suggested that the regulations allow alternative methods for establishing prevailing migrant farmworker incomes and the amount of income from farmwork.

Response: The Agency agreed with the commenters. Neither the proposed rule nor the final rule mandated the use of MTFS data. Owners may utilize other reliable data to establish the average adjusted monthly household income of migrant farmworker households in the area.

Topic: One commenter stated that 30 percent of a migrant worker's income is more than a worker can afford for rent because most migrant workers also have to bear the cost of housing at their home base as well. This commenter suggested that 20 percent is a more reasonable portion of a migrant farmworker's income to be used for housing.

Response: The Agency acknowledges the commenter's concern and considered the suggestion. However, the Agency retained 30 percent as the standard for the amount of income occupants of such housing are able to pay toward shelter costs in § 3560.574 (c)(1) of the interim final rule. The Agency retained this standard because it enables the program to serve more farmworkers with the available funds, while keeping the amount that tenants must pay for shelter reasonable by the standard used in many other affordable housing programs, such as the section 515 program. Further, the Agency retained this standard to keep it consistent with the standard used in the Agency's section 515 rental housing program.

Topic: One commenter suggested that operating assistance be paid in a single annual payment, instead of the proposed equal monthly payments. The commenter observed that during the peak operating season cash demands are higher and that monthly payments could cause cash flow problems for properties during the peak season.

Response: The Agency acknowledges the commenter's concern and considered the suggestion. However, the Agency retained the monthly payment provision in § 3560.574(c)(3) of the interim final rule. The Agency acknowledges that cash flow may vary during the year, however, it believes that these fluctuations should not be a problem for borrowers operating such projects. Existing projects should be fiscally sound and have adequate operating reserves to cover any short-term operating deficiencies. Further, new projects are required to have a two percent operating reserve to offset any short-term cash deficiencies.

Topic: One commenter noted that since operating assistance payments are estimated, there should be a mechanism for adjusting the actual assistance payments if estimates are incorrect.

Response: The Agency agrees with the commenter's remark. The Agency notes that the provision for annual adjustments was contained in the proposed rule at § 1944.182(b)(3) and is included in the interim final rule. In § 3560.574(a) of the interim final rule, the Agency established that the amount of operating assistance payments is determined each year based on the project's budget, and may not exceed 90 percent of the annual operating costs attributable to the migrant units. The Agency notes that if the payments for the previous year resulted in a shortfall or a surplus, these circumstances can be addressed in the budget for the coming year, and consequently in the operating assistance payment amounts for the coming year.

Regulatory Crosswalk

The following is a crosswalk that shows where the content of the 14 regulations that have been consolidated can be found in 7 CFR part 3560.

Topic	Previous location	Location in:	
		7 CFR part 3560	Handbooks
General Provisions and Definitions:	**Numerous Instructions:**	**Subpart A:**	**All Three Handbooks:**
Civil rights	7 CFR part 1901, subpart E	§ 3560.2	Loan Origination Chapters 1 & 3, Asset Management Chapter 1, Project Servicing Chapter 1.
State, local, or tribal laws	7 CFR 1930.105(b)(6); 7 CFR 1944.53(c)(1); 7 CFR 1944.164(e)(2)(ii); 7 CFR 1944.169(c)(3); 7 CFR 1944.224(d).	§ 3560.5	Loan Origination Chapter 1, Asset Management Chapter 1, Project Servicing Chapter 1.

Topic	Previous location	Location in:	
		7 CFR part 3560	Handbooks
Borrower responsibility and requirements.	7 CFR 1944.211(b); 7 CFR 1930.101; 7 CFR part 1930, subpart C, Exhibit B, Para. III.	§ 3560.6	Loan Origination Chapters 3–13, Asset Management Chapters 3–9, Project Servicing Chapters 4–15.
Administrator's exception authority.	7 CFR 1930.144	§ 3560.8	Loan Origination Chapter 1, Asset Management Chapter 1, Project Servicing Chapter 1.
Definitions	All regulations listed under ''Implementation Proposal''.	§ 3560.11	Loan Origination, Asset Management, Project Servicing, Throughout all three.
Direct Loan and Grant Origination:	**7 CFR Part 1944, Subpart E:**	**Subpart B:**	**Loan Origination:**
Eligible use of funds	7 CFR 1944.212	§ 3560.53	Loan Origination, Chapter 4.
Processing Section 515 housing proposals.	7 CFR 1944.231	§ 3560.56	Loan Origination, Chapter 4.
Initial operating capital contribution.	7 CFR 1944.211(a)(6)	§ 3560.64	Loan Origination, Chapter 4.
Reserve account	7 CFR part 1944, subpart E, Exhibit A–9, Para. 10.b.	§ 3560.65	Loan Origination, Chapter 4.
Participation with other funding or financing sources.	7 CFR 1944.233	§ 3560.66	Loan Origination, Chapter 4.
Rates and terms for section 515 loans.	7 CFR 1944.214	§ 3560.67	Loan Origination, Chapter 5.
Permitted return on investment (ROI).	7 CFR 1944.215(n)	§ 3560.68	Loan Origination, Chapter 5.
Supplemental requirements for congregate housing and group homes.	7 CFR 1944.224	§ 3560.69	Loan Origination, Chapter 11.
Subsequent loans	7 CFR 1944.237	§ 3560.73	Loan Origination, Chapter 10.
Borrower Management and Operations Responsibilities:	**7 CFR Part 1930, Subpart C, Exhibit B:**	**Subpart C:**	**Asset Management:**
Housing project management	7 CFR part 1930, subpart C, Exhibit B, Para. V.	§ 3560.102	Asset Management, Chapter 3.
Maintaining housing projects	7 CFR part 1930, subpart C, Exhibit B, Para. X.	§ 3560.103	Asset Management, Chapter 5.
Fair housing	7 CFR 1930.103 and 104, 7 CFR Part 1930, Subpart C, Exhibit B, Para. VI.	§ 3560.104	Chapter 1 in all 3 Handbooks Asset Management Chapter 6.
Insurance and taxes	7 CFR part 1930 subpart C, Exhibit B, Para. XV.	§ 3560.105	Asset Management Chapter 3.
Multi-Family Housing Occupancy:	**7 CFR Part 1930, Subpart C, Exhibit B:**	**Subpart D:**	**Asset Management:**
Tenant eligibility	7 CFR part 1930, subpart C, Exhibit B, Para. VI.	§ 3560.152	Asset Management Chapter 6.
Calculation of household income and assets.	7 CFR part 1930, subpart C, Exhibit B, Para. VII.	§ 3560.153	Asset Management Chapter 6.
Tenant selection	7 CFR part 1930, subpart C, Exhibit B, Para. VI.	§ 3560.154	Asset Management Chapter 6.
Assignment of rental units and occupancy policies.	7 CFR part 1930, subpart C, Exhibit B, Para. VI.	§ 3560.155	Asset Management Chapter 6.
Lease requirements	7 CFR part 1930, subpart C, Exhibit B, Para. VIII.	§ 3560.156	Asset Management Chapter 6
Occupancy rules	7 CFR part 1930, subpart C, Exhibit B, Para. VIII.	§ 3560.157	Asset Management Chapter 6.
Changes in tenant eligibility	7 CFR part 1930, subpart C, Exhibit B, Para. VI.	§ 3560.158	Asset Management Chapter 6.
Termination of occupancy	7 CFR part 1930, subpart C, Exhibit B, Para. XIV.	§ 3560.159	Asset Management Chapter 6.
Tenant grievances	7 CFR part 1944, subpart L	§ 3560.160	Asset Management Chapter 6.
Rents:	**7 CFR Part 1930, Subparts B and C:**	**Subpart E:**	**Asset Management:**
Establishing rents and utility allowances.	7 CFR part 1930, subpart C, Exhibit C.	§ 3560.202	Asset Management Chapter 7.
Tenant contributions	7 CFR part 1930, subpart C, Exhibit B, Para. II.	§ 3560.203	Asset Management Chapter 7.
Security deposits and membership fees.	7 CFR part 1930, subpart C, Exhibit B, Para. VIII H.	§ 3560.204	Asset Management Chapter 7.
Rent and utility allowance changes	7 CFR part 1930, subpart C, Exhibit C.	§ 3560.205	Asset Management Chapter 7.
Rents during eviction or failure to recertify.	7 CFR part 1930, subpart C, Exhibit B, Para. XIV.A.	§ 3560.208	Asset Management Chapter 7.

Topic	Previous location	Location in:	
		7 CFR part 3560	Handbooks
Special note rents (SNRs)	7 CFR part 1930, subpart C, Exhibit C, Para. IX.	§ 3560.210	Asset Management Chapter 7.
Rental Subsidies:	**7 CFR Part 1930, Subpart C, Exhibit E :**	**Subpart F:**	**Asset Management:**
Authorized rental subsidies	7 CFR part 1930, subpart C, Exhibit E, Para. II.	§ 3560.252	Asset Management Chapter 8.
Eligibility for rental assistance	7 CFR part 1930, subpart C, Exhibit E, Para. II. A.	§ 3560.254	Asset Management Chapter 8.
Rental assistance payments	7 CFR part 1930, subpart C, Exhibit E, Para. X.	§ 3560.256	Asset Management Chapter 8.
Assigning rental assistance	7 CFR part 1930, subpart C, Exhibit E, Para. XI.	§ 3560.257	Asset Management Chapter 8.
Rental subsidies from non-Agency sources.	7 CFR part 1930, subpart C, Exhibit B, Paras. IV. C, D, and E.	§ 3560.260	Asset Management Chapter 8
Financial Management:	**7 CFR Part 1930, Subpart C, Exhibit B:**	**Subpart G:**	**Asset Management:**
Accounting, bookkeeping, budgeting, and financial management systems.	7 CFR 1930.122, 7 CFR part 1930, subpart C, Exhibit B, Para. XIII.	§ 3560.302	Asset Management Chapter 4.
Housing project budgets	7 CFR part 1930, subpart C, Exhibit B, Para. XII.A.	§ 3560.303	Asset Management Chapter 4.
Initial operating capital	7 CFR part 1930, subpart C, Exhibit B, Para. XIII.B.2.a.(1).	§ 3560.304	Asset Management Chapter 4.
Return on investment	7 CFR part 1930, subpart C, Exhibit B, Para. XII.A.8.	§ 3560.305	Asset Management Chapter 4.
Reserve account	7 CFR part 1930, subpart C, Exhibit B, Para. XIII.B.2.c.	§ 3560.306	Asset Management Chapter 4.
Annual financial reports	7 CFR 1930.122(b)(4); 7 CFR part 1930, subpart C, Exhibit A–1.	§ 3560.308	Asset Management Chapter 4.
Agency Monitoring:	**7 CFR Part 1930, Subpart C:**	**Subpart H:**	**Asset Management:**
Agency monitoring scope, purpose, and borrower responsibilities.	7 CFR 1930.109, 110, 113, 117	§ 3560.352	Asset Management Chapter 9.
Scheduling of on-site monitoring reviews.	7 CFR 1930.119(d)	§ 3560.353	Asset Management Chapter 9
Borrower response to monitoring review notifications.	7 CFR 1930.119(f)	§ 3560.354	Asset Management Chapter 9.
Servicing:	**7 CFR Part 1951, Subpart A and 7 CFR Part 1965, Subpart B:**	**Subpart I:**	**Project Servicing:**
Account servicing	7 CFR part 1951, subpart A	§ 3560.403	Project Servicing Chapter 4.
Final loan payments	7 CFR part 1951, subpart D	§ 3560.404	Project Servicing Chapter 4.
Borrower organizational structure or ownership interest changes.	7 CFR 1965.63	§ 3560.405	Project Servicing Chapter 5.
Multi-family housing ownership transfers or sales.	7 CFR 1965.65	§ 3560.406	Project Servicing Chapter 7
Subordinations or junior liens against security property.	7 CFR 1965.83	§ 3560.409	Project Servicing Chapter 8.
Consolidations	7 CFR 1965.68	§ 3560.410	Project Servicing Chapter 11.
Special Servicing, Enforcement, Liquidation, and Other Actions:	**Numerous Instructions:**	**Subpart J:**	**Project Servicing:**
Monetary and non-monetary defaults.	7 CFR 1955.15(d)(2)	§ 3560.452	Project Servicing Chapter 10
Workout agreements	7 CFR part 1965, subpart B, Exhibit B.	§ 3560.453	Project Servicing Chapter 10.
Special servicing actions related to housing operations.	7 CFR part 1930, subpart C, Exhibit C, Para. IX.	§ 3560.454	Project Servicing Chapter 10
Special servicing actions related to loan accounts.	7 CFR 1965.85	§ 3560.455	Project Servicing Chapter 10.
Liquidation	7 CFR part 1955, subpart A	§ 3560.456	Project Servicing Chapter 12
Negotiated debt settlement	7 CFR 1956.57(c)	§ 3560.457	Project Servicing Chapter 12.
Management and Disposition of Real Estate Owned (REO) Properties:	**7 CFR Part 1955, Subparts B and C:**	**Subpart K:**	**Project Servicing:**
Conversion of single family type REO property to multi-family housing use.	7 CFR 1955.114(c)	§ 3560.506	Project Servicing Chapter 14.

Topic	Previous location	Location in:	
		7 CFR part 3560	Handbooks
Off-Farm Labor Housing:	**7 CFR Part 1944, Subpart D:**	**Subpart L:**	**Loan Origination:**
Eligibility requirements for off-farm labor housing loans and grants.	7 CFR 1944.157	§ 3560.555	Loan Origination Chapter 13.
Design and construction requirements.	7 CFR part 1944, subpart D, Exhibit A–3.	§ 3560.559	Loan Origination Chapters 3 & 13.
Loan and grant limits	7 CFR 1944.164	§ 3560.562	Loan Origination Chapters 5 & 13.
Participation with other funding or financing sources.	7 CFR 1944.163	§ 3560.565	Loan Origination Chapters 6 & 12.
Loan and grant rates and terms	7 CFR 1944.159	§ 3560.566	Loan Origination Chapters 5 & 13.
Supplemental requirements for seasonal off-farm labor housing.	7 CFR 1944.163(e)	§ 3560.568	Loan Origination Chapter 13.
Rental assistance	7 CFR 1944.182	§ 3560.573	Loan Origination Chapters 4 & 13, Asset Management Chapter 8.
Occupancy restrictions	7 CFR 1944.154	§ 3560.576	Loan Origination Chapter 13, Asset Management Chapter 6.
Tenant priorities for labor housing.	7 CFR 1944.154	§ 3560.577	Loan Origination Chapter 13, Asset Management Chapter 6.
On-Farm Labor Housing:	**7 CFR Part 1944, Subpart D:**	**Subpart M:**	**Loan Servicing:**
Eligibility requirements	7 CFR 1944.157	§ 3560.605	Loan Origination Chapter 13.
Site and construction requirements.	7 CFR part 1944, subpart D, Exhibit A–3.	§ 3560.608	Loan Origination Chapters 3 & 13.
Loan limits	7 CFR 1944.164	§ 3560.612	Loan Origination Chapters 5 & 13.
Reserve accounts	7 CFR part 1944, subpart E, Exhibit A–9, Para. 10.b.	§ 3560.614	Loan Origination Chapters 4 & 13.
Participation with other funding sources.	7 CFR 1944.163	§ 3560.615	Loan Origination Chapters 6 & 13.
Rates and terms	7 CFR 1944.159	§ 3560.616	Loan Origination Chapters 5 & 13.
Supplemental requirements for on-farm labor housing.	7 CFR 1944.163(e)	§ 3560.618	Loan Origination Chapter 13.
Housing management and operations.	7 CFR part 1944, subpart D, Exhibit B.	§ 3560.623	Loan Origination Chapters 13, Asset Management Chapter 3.
Occupancy restrictions	7 CFR 1944.154	§ 3560.624	Loan Origination Chapters 13, Asset Management Chapter 6.
Housing Preservation:	**7 CFR Part 1965, Subpart E:**	**Subpart N:**	**Project Servicing:**
Prepayment and restrictive-use categories.	7 CFR 1965.208 and 209	§ 3560.652	Project Servicing Chapter 15.
Prepayment requests	7 CFR 1965.205	§ 3560.653	Project Servicing Chapter 15.
Tenant notification requirements	7 CFR 1965.206(b)(5) and (b)(6); 7 CFR 1965.215(e)(3) and (f)(2).	§ 3560.654	Project Servicing Chapter 15.
Agency requested extension	7 CFR 1965.215(f)(2)	§ 3560.655	Project Servicing Chapter 15.
Incentive offers	7 CFR 1965.213	§ 3560.656	Project Servicing Chapter 15.
Processing and closing incentive offers.	7 CFR 1965.214	§ 3560.657	Project Servicing Chapter 15.
Borrower rejection of incentive offer.	7 CFR 1965.214(b)	§ 3560.658	Project Servicing Chapter 15.
Sale or transfer to nonprofit organizations and public bodies.	7 CFR 1965.217	§ 3560.659	Project Servicing Chapter 15.
Acceptance of prepayments	7 CFR 1965.215	§ 3560.660	Project Servicing Chapter 15.
Unauthorized Assistance:	**7 CFR Part 1951, Subpart N:**	**Subpart O:**	**Project Servicing:**
Identification of unauthorized assistance.	7 CFR 1951.656	§ 3560.703	Project Servicing Chapter 9.
Unauthorized assistance determination notice.	7 CFR 1951.657	§ 3560.704	Project Servicing Chapter 9.
Recapture of unauthorized assistance.	7 CFR 1951.658	§ 3560.705	Project Servicing Chapter 9.
Program participation and corrective actions.	7 CFR 1951.658(b)	§ 3560.707	Project Servicing Chapter 9.
Unauthorized assistance received by tenants.	7 CFR 1951.661(a)(3)	§ 3560.708	Project Servicing Chapter 9.
Demand letter	7 CFR 1951.658(c)	§ 3560.709	Project Servicing Chapter 9.
Appraisals:	**7 CFR Part 1922, Subpart B:**	**Subpart P:**	**Project Servicing:**
Appraisal use, request, review, and release.	7 CFR 1922.52	§ 3560.752	Loan Origination Chapter 7, Project Servicing Chapter 8.
Agency appraisal standards and requirements.	7 CFR part 1922, subpart B, Exhibit A.	§ 3560.753	Loan Origination Chapter 7, Project Servicing Chapter 7.

List of Subjects

7 CFR Part 1806

Buildings, Community development, Disaster assistance, Flood plains, Housing, Insurance, Loan programs—Agriculture, Loan programs—Housing and community development, Real property insurance, Rural areas.

7 CFR Part 1822

Loan programs—Housing and community development, Low and moderate income housing, Mortgages, Nonprofit organizations, Rural housing.

7 CFR Part 1902

Accounting, Banking, Grant programs—Housing and community development, Loan programs—Agriculture, Loan programs—Housing and community development.

7 CFR Part 1925

Real property taxes, Taxes.

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, Reporting and recordkeeping requirements.

7 CFR Part 1940

Administrative practice and procedure, Agriculture, Allocations, Grant programs—Housing and community development, Loan programs—Agriculture, Rural areas

7 CFR Part 1942

Community development, Community facilities, Loan programs—Housingand community development, Loan security, Rural areas, Waste treatment and disposal—Domestic, Water supply—Domestic.

7 CFR Part 1944

Administrative practice and procedure, Aged, Farm labor housing, Grant programs—Housing and community development, Handicapped, Home improvement, Loan programs—Housing and community development, Low and moderate income housing—Rental, Migrant labor, Mobile homes, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Reporting requirements, Rural housing, Subsidies.

7 CFR Part 1951

Accounting, Accounting servicing, Credit, Debt restructuring, Grant programs—Housing and community development, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing, Mortgages, Rent subsidies, Reporting requirements, Rural areas.

7 CFR Part 1955

Foreclosure, Government acquired property, Government property management.

7 CFR Part 1956

Accounting, Loan programs—Agriculture, Rural areas.

7 CFR Part 1965

Administrative practice and procedure.

7 CFR Part 3560

Accounting, Administrative practice and procedure, Aged, Conflict of interests, Government property management, Grant programs—Housing and community development, Insurance, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing, Migrant labor, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 3565

Banks, Civil rights, Credit, Guaranteed loans, Low and moderate income housing, Mortgages.

■ Therefore, Chapters XVIII and XXXV, title 7, Code of Federal Regulations are amended as follows:

Chapter XVIII—[Amended]

PART 1806—INSURANCE

■ 1. The authority citation for part 1806 continues to read as follows:

Authority: 75 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—Real Property Insurance

§ 1806.4 [Amended]

■ 2. Section 1806.4 is amended in the introductory text of paragraph (a)(2) by removing the sentence after the paragraph heading.

Subpart B—National Flood Insurance

■ 3. Section 1806.21 is amended in paragraph (a) by adding a sentence at the end of the paragraph to read as follows:

§ 1806.21 General.

(a) * * * This subpart does not apply to the Rural Rental Housing, Rural Cooperative Housing, or Farm Labor Housing programs of the Rural Housing Service.

* * * * *

PART 1822—RURAL HOUSING LOANS AND GRANTS

■ 4. The authority citation for part 1822 is revised to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1480.

Subpart G—Rural Housing Site Loan Policies, Procedures, and Authorizations

§ 1822.271 [Amended]

■ 5. Section 1822.271 is amended:

■ a. In the table in paragraph (e) by removing the entire entry for ''Form FmHA or its successor agency under Public Law 103–354 1944–50'' and by revising the form number ''1944–51'' to read ''3560–51'' in the last entry of the table.

■ b. In paragraph (g), in the second sentence of the introductory text, by removing the words ''and submit to the FmHA or its successor agency under Public Law 103–354 Finance Office through field office terminals that information contained in Form FmHA or its successor agency under Public Law 103–354 1944–50, 'Multiple Family Housing Borrower/Project Characteristics.' ''

■ c. By revising paragraph (d)(1) to read as follows:

§ 1822.271 Processing applications.

* * * * *

(d) * * *

(1) *Request for obligation of funds and fund analysis.* Form RD 3560–51, ''Multiple Family Housing Obligation Fund Analysis'' will be completed in accordance with the Forms Manual Insert (FMI).

* * * * *

■ 6. Section 1822.272 is revised to read as follows:

§ 1822.272 Approval or disapproval of a loan.

The provisions of 7 CFR part 3560, subpart B will be followed.

■ 7. Section 1822.273 is revised to read as follows:

§ 1822.273 Actions subsequent to loan approval.

After the loan is approved, actions to be taken will be in accordance with 7 CFR part 3560, subpart B.

§ 1822.274 [Amended]

■ 8. Section 1822.274 is amended by revising the words ''Form FmHA or its successor agency under Public Law 103–354 1944–52'' to read ''Form RD 3560–52'' in both the introductory text of paragraph (c) and in paragraph (c)(2), and by revising the words ''Form FmHA or its successor agency under Public Law

103–354 1944–51'' to read ''Form RD 3560–51'' in paragraph (c)(1).

§ 1822.277 [Amended]

■ 9. Section 1822.277 is amended by revising the words ''§ 1944.239 of part 1944, subpart E of this chapter'' to read ''7 CFR 3560.2.''

§ 1822.278 [Amended]

■ 10. Section 1822.278 is amended in paragraph (f) by revising the words ''Form FmHA or its successor agency under Public Law 103–354 1944–52'' to read ''Form RD 3560–52.''

■ 11. Section 1822.279 is revised to read as follows:

§ 1822.279 Loan supervision and servicing.

Loan supervision and loan servicing will be provided according to 7 CFR part 3560.

PART 1902—SUPERVISED BANK ACCOUNTS

■ 12. The authority citation for part 1902 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 7 U.S.C. 6991, et seq.; 42 U.S.C. 1480; Reorganization Plan No. 2 of 1953 (5 U.S.C. App.).

Subpart A—Disbursement of Loan, Grant, and Other Funds

§ 1902.1 [Amended]

■ 13. Section 1902.1 is amended in paragraph (a) by revising the words ''Form FmHA or its successor agency under Public Law 103–354 1944–51'' to read ''Form RD 3560–51'' in both places.

§ 1902.2 [Amended]

■ 14. Section 1902.2 is amended in paragraph (d) by revising the words ''Form FmHA or its successor agency under Public Law 103–354 1944–51'' to read ''Form RD 3560–51'' and in paragraph (e) by revising the words ''Form FmHA or its successor agency under Public Law 103–354 1944–53'' to read ''Form RD 3560–53.''

§ 1902.4 [Amended]

■ 15. Section 1902.4 is amended:

■ a. In paragraph (a)(4) by revising the words ''subpart C of part 1930 of this chapter'' to read ''7 CFR part 3560, subpart G.''

■ b. In paragraph (a)(5) by revising the words ''subpart C of part 1930 of this chapter'' to read ''7 CFR part 3560, subpart G.''

■ c. In paragraph (a)(6) by revising the words ''subpart C of part 1930 of this chapter'' to read ''7 CFR part 3560, subpart G.''

PART 1925—TAXES

■ 16. The authority citation for part 1925 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—Real Estate Tax Servicing

■ 17. Section 1925.3 is amended by revising the last sentence in paragraph (c) to read as follows:

§ 1925.3 Servicing taxes.

* * * * *

(c) * * * The Multi-Family Housing Information System (MFIS) will be used in posting servicing actions on delinquent taxes.

PART 1930—GENERAL

■ 18. The authority citation for part 1930 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

■ 19. Subpart C (§§ 1930.1930.101 through 1930.150 and all exhibits) is removed and reserved.

PART 1940—GENERAL

■ 20. The authority citation for part 1940 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

■ 21. Exhibit B to subpart L of part 1940 is amended by revising paragraphs IV., VII.A., and VII.F. to read as follows:

Exhibit B to Subpart L of Part 1940—Section 515 Nonprofit Set Aside (NPSA)

* * * * *

IV. *Nondiscrimination.* Rural Development reemphasizes the nondiscrimination in use and occupancy and location requirements of 7 CFR 3560.104.

* * * * *

VII. * * *

A. Preapplications/applications for assistance from eligible nonprofit entities under this subpart must continue to meet all loan making requirements of 7 CFR part 3560, subpart B.

* * * * *

F. Provisions for providing preference to loan requests from nonprofit organizations is contained in 7 CFR 3560.56. Limited partnerships, with a nonprofit general partner, do not qualify for nonprofit preference.

* * * * *

PART 1942—ASSOCIATIONS

■ 22. The authority citation for part 1942 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart A—Community Facility Loans

§ 1942.17 [Amended]

■ 23. Section 1942.17 is amended by removing paragraph (q)(1)(iii) and redesignating paragraph (q)(1)(iv) as (q)(1)(iii).

PART 1944—HOUSING

■ 24. The authority citation for part 1944 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1480.

Subpart B—Housing Application Packaging Grants

■ 25. Exhibit B to subpart B of part 1944 is amended by revising paragraph II.(B)(4) to read as follows:

Exhibit B to Subpart B of Part 1944—Housing Application Packaging Grant (HAPG) Fee Processing

* * * * *

II. * * *

(B) * * *

(4) The 55 percent balance paid when the loan is approved. Funds for this 55 percent will be drawn from loan funds in accordance with 7 CFR 3560.53 (o).

* * * * *

■ 26. Exhibit C to subpart B of part 1944 is revised to read as follows:

Exhibit C to Subpart B of Part 1944—Requirements for Housing Application Packages

A package will consist of the following requirements for the respective program.

A. Section 502—Complete application packages will be submitted in accordance with the requirements of 7 CFR part 3550. The package must also include the following:

Form RD 410–9—''Statement Required by the Privacy Act''

Form RD 1910–11—''Applicant Certification Federal Collection Policies for Consumer or Commercial Debts''

Form RD 1944–3—''Budget and/or Financial Statement''

B. Section 504—Complete application packages will be submitted in accordance with 7 CFR part 3550. The package must include the forms listed in paragraph A. of this exhibit and the following:

The appropriate Agency application form for Rural Housing assistance (non-farm tract) (available in any Rural Development office).

The appropriate Agency form to request verification of employment (available in any Rural Development office).

The appropriate Agency Rural Housing Loan application package (available in any Rural Development office).

Evidence of ownership in accordance with 7 CFR part 3550.

Cost estimates or bid prices for removal of health or safety hazards in accordance with 7 CFR part 3550.

C. Section 514/516—Complete application packages will be submitted in accordance with the Notice of Funding Availability that will be published in the **Federal Register** each Fiscal Year.

D. Section 515—Complete application packages will be submitted in accordance with the Notice of Funding Availability that will be published in the **Federal Register** each Fiscal Year.

E. Section 524—Complete application packages will be submitted in accordance with § 1822.271(a) of subpart G of part 1822 of this chapter (paragraph XI.A. of RD Instruction 444.8). After Rural Development's review and as instructed, the application should be completed in accordance with § 1822.271(c) of subpart G of part 1822 of this chapter (paragraph XI.C. of RD Instruction 444.8).

F. Section 533—Complete application packages will be submitted in accordance with the requirements of subpart N of part 1944 of this chapter.

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations

■ 27. Subpart D (§§ 1944.151 through 1944.200 and all exhibits) is removed and reserved.

Subpart E—Rural Rental and Rural Cooperative Housing Loan Policies, Procedures, and Authorizations

■ 28. Subpart E (§§ 1944.201 through 1944.250 and all exhibits) is removed and reserved.

Subpart I—Self-Help Technical Assistance Grants

Exhibit F to Subpart I of Part 1944 [Amended]

■ 29. Exhibit F to subpart I of part 1944 is amended in paragraph VII by revising the words ''Form FmHA or its successor agency under Public Law 103–354 1944–51'' to read ''Form RD 3560–51.''

Subpart L—Farmers Home Administration or Its Successor Agency Under Public Law 103–354 Tenant Grievance and Appeals Procedure

30. Subpart L (§§ 1944.551 through 1944.600 and all exhibits) is removed and reserved.

Subpart N—Housing Preservation Grants

■ 31. Section 1944.656 is amended by revising the definition of ''Overcrowding'' to read as follows:

§ 1944.656 Definitions.

* * * * *

Overcrowding. Guidance is provided at 7 CFR 3560.155(e). These guidelines should result in an ideal range of persons per housing unit.

* * * * *

PART 1951—SERVICING AND COLLECTIONS

■ 32. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 Note; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

Subpart A—Account Servicing Policies

§ 1951.1 [Amended]

■ 33. Section 1951.1 is amended by revising the words ''subpart K of part 1951 of this chapter'' to read ''7 CFR part 3560, subpart I.''

Subpart D—Final Payment on Loans

■ 34. Section 1951.151 is amended by revising the last sentence to read as follows:

§ 1951.151 Purpose.

* * * This subpart does not apply to direct single family housing customers or to the Rural Rental Housing, Rural Cooperative Housing, or Farm Labor Housing programs of the RHS.

Subpart E—Servicing the Community and Direct Business Programs Loans and Grants

§ 1951.220 [Amended]

■ 35. Section 1951.220 is amended:

■ a. In the last sentence of paragraph (f) by revising the words ''noted on Form FmHA or its successor agency under Public Law 103–354 1905–10 'Management System Card—Association' '' to read ''tracked in the Multi-Family Housing Information System (MFIS).''

■ b. In the last sentence of paragraph (g) by revising the words ''on Form FmHA or its successor agency under Public Law 103–354 1905–10'' to read ''in MFIS.''

§ 1951.223 [Amended]

■ 36. Section 1951.223 is amended in paragraph (b)(4) by revising the words ''Form FmHA or its successor agency under Public Law 103–354 1951–33'' to read ''Form RD 3560–15'' and in paragraph (c)(3) by revising the words ''Form FmHA or its successor agency under Public Law 103–354 1951–33'' to read ''Form RD 3560–15.''

Subpart F—Analyzing Credit Needs and Graduation of Borrowers

■ 37. Section 1951.266 is revised to read as follows:

§ 1951.266 Special requirements for MFH borrowers.

All requirements of 7 CFR part 3560, subpart K must be met prior to graduation and acceptance of the full payment from an MFH borrower.

Subpart K—Predetermined Amortization Schedule System (PASS) Account Servicing

■ 38. Subpart K (§§ 1951.501 through 1951.550) is removed and reserved.

Subpart N—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Multiple Family Housing

■ 39. Subpart N (§§ 1951.651 through 1951.700) is removed and reserved.

PART 1955—PROPERTY MANAGEMENT

■ 40. The authority citation for part 1955 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

■ 41. Section 1955.1 is amended by adding a sentence at the end to read as follows:

§ 1955.1 Purpose.

* * * This subpart does not apply to the Rural Rental Housing, Rural Cooperative Housing, or Farm Labor Housing programs of RHS.

■ 42. Section 1955.10 is amended by revising paragraph (d)(9) and in paragraph (h)(6) by removing the fifth sentence and by revising the last two sentences to read as follows:

§ 1955.10 Voluntary conveyance of real property by the borrower to the Government.

* * * * *

(d) * * *

(9) For MFH loans, assignment of Housing Assistance Payments (HAP) Contracts will be obtained. Rental Assistance will be retained until the State Director is advised by OGC that

the Agency has title to the property. After a voluntary conveyance, the Agency may transfer Rental Assistance in accordance with 7 CFR part 3560, subpart F.

* * * * *

(h) * * *

(6) * * * If the project is to be removed from the Rural Development program, a minimum of 180 days' notice to the tenants is required. Letters of Priority Entitlement must be made available to any tenants that will be displaced.

* * * * *

■ 43. Section 1955.15 is amended in paragraph (d)(2)(v) by removing the fifth sentence and by revising the first and last sentences to read as follows:

§ 1955.15 Foreclosure by the Government of loans secured by real estate.

* * * * *

(d) * * *

(2) * * *

(v) For MFH loans, the acceleration notice will advise the borrower of all applicable prepayment requirements, in accordance with 7 CFR part 3560, subpart N. * * * Letters of Priority Entitlement must be made available.

* * * * *

Subpart B—Management of Property

■ 44. Section 1955.51 is amended in the introductory text by adding a sentence after the third sentence to read as follows:

§ 1955.51 Purpose.

* * * This subpart does not apply to the Rural Rental Housing, Rural Cooperative Housing, or Farm Labor Housing programs of RHS. * * *

* * * * *

■ 45. Section 1955.55 is amended in paragraph (b)(2)(i) by revising the words ''Subpart C of Part 1930 of this chapter'' to read ''7 CFR part 3560'' and in paragraph (a) by revising the first sentence to read as follows:

§ 1955.55 Taking abandoned real or chattel property into custody and related actions.

(a) * * * (Multi-family housing type loans will be handled in accordance with 7 CFR part 3560, subpart J.) * * *

* * * * *

§ 1955.61 [Amended]

■ 46. Section 1955.61 is amended by revising the words ''Subpart L of Part 1944 of this chapter'' to read ''7 CFR part 3560, subpart D.''

■ 47. Section 1955.65 is amended in paragraph (c)(1) by removing the fourth sentence and by revising the sixth sentence to read as follows:

§ 1955.65 Management of inventory and/or custodial real property.

* * * * *

(c) * * *

(1) * * * For MFH projects, tenant occupancy and selection will be in accordance with the occupancy standards set forth in 7 CFR part 3560, subpart D. * * *

* * * * *

§ 1955.66 [Amended]

■ 48. Section 1955.66 is amended in paragraph (a)(2)(ii) by revising the words ''subpart C of part 1930 of this chapter'' to read ''7 CFR part 3560.''

Subpart C—Disposal of Inventory Property

§ 1955.101 [Amended]

■ 49. Section 1955.101 is amended by adding the words ''or to the Rural Rental Housing, Rural Cooperative Housing, and Farm Labor Housing programs'' to the end of the last sentence.

§ 1955.114 [Amended]

■ 50. Section 1955.114 is amended:

■ a. In paragraph (b) by revising the words ''subpart E of part 1965 of this chapter'' to read ''7 CFR part 3560, subpart N.''

■ b. In paragraph (c)(3) by revising the words ''the information outlined in Exhibit A–7 of subpart E of part 1944 of this chapter'' to read ''documentation as required by the Agency.''

■ c. In paragraph (c)(4) by revising the words ''subpart E of part 1944 of this chapter'' to read ''7 CFR part 3560.''

■ d. In paragraph (c)(5) by revising the words ''the definition of 'project' set forth in subpart E of part 1944 of this chapter'' to read ''the requirements of 7 CFR part 3560, subpart K.''

§ 1955.115 [Amended]

■ 51. Section 1955.115 is amended in paragraph (b) by revising the words ''subpart E of part 1965 of this chapter'' to read ''7 CFR part 3560, subpart N.''

§ 1955.117 [Amended]

■ 52. Section 1955.117 is amended in paragraph (c) by revising the words ''FmHA or its successor agency under Public Law 103–354 1944–51'' to read ''RD 3560–51.''

§ 1955.118 [Amended]

■ 53. Section 1955.118 is amended in paragraph (b)(3) by revising the words ''Form FmHA or its successor agency under Public Law 103–354 1944–51'' to read ''Form RD 3560–51.''

§ 1955.141 [Amended]

■ 54. Section 1955.141 is amended:

■ a. In paragraph (d) by revising the words ''Exhibit C of Subpart C of Part 1930 of this chapter'' to read ''7 CFR part 3560, subpart E.''

■ b. In paragraph (e) by revising the words ''Exhibit E of subpart C of part 1930 of this chapter'' to read ''7 CFR part 3560, subpart F.''

PART 1956—DEBT SETTLEMENT

■ 55. The authority citation for part 1956 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 31 U.S.C. 3711; 42 U.S.C. 1480.

Subpart B—Debt Settlement—Farm Loan Programs and Multi-Family Housing

■ 56. Section 1956.51 is amended by revising the last sentence to read as follows:

§ 1956.51 Purpose.

* * * This subpart does not apply to RHS direct Single Family Housing (SFH) loans, RHS NP loans secured by SFH property, or to the Rural Rental Housing, Rural Cooperative Housing, and Farm Labor Housing programs.

§ 1956.85 [Amended]

■ 57. Section 1956.85 is amended in paragraph (b)(1) by removing the words ''on Form FmHA or its successor agency under Public Law 103–354 1944–9, ''Multiple Family Housing Payment Transmittal,''.''

Subpart C—Debt Settlement—Community and Business Programs

§ 1956.143 [Amended]

■ 58. Section 1956.143 is amended in paragraph (c)(3)(iv)(G)(*1*) by revising the words ''Form FmHA or its successor agency under Public Law 103–354 1951–33'' to read ''Form RD 3560–15.''

PART 1965—REAL PROPERTY

Subpart B—Security Servicing for Multiple Housing Loans

■ 59. Subpart B (§§ 1965.51 through 1965.100) is removed and reserved.

Subpart E—Prepayment and Displacement Prevention of Multi-Family Housing Loans

■ 60. Subpart E (§§ 1965.201 through 1965.250 and all exhibits) is removed and reserved.

Chapter XXXV—[Amended]

■ 61. Part 3560, consisting of subparts A through P, is added to read as follows:

PART 3560—DIRECT MULTI-FAMILY HOUSING LOANS AND GRANTS

Authority: 42 U.S.C. 1480.

Subpart A—General Provisions and Definitions

§ 3560.1 Applicability and purpose.

(a) This part sets forth requirements, policies, and procedures for multi-family housing (MFH) direct loan and grant programs to serve eligible very-low, low- and moderate income households. The programs covered by this part are authorized by title V of the Housing Act of 1949 and are:

(1) *Section 515 Rural Rental Housing, which includes congregate housing, group homes, and Rural Cooperative Housing.* Section 515 loans may be made to finance multi-family units in rural areas as defined in § 3560.11.

(2) *Sections 514 and 516 Farm Labor Housing loans and grants.* Housing under these programs may be built in any area with a need and demand for housing for farm workers.

(3) *Section 521 Rental Assistance.* A project-based tenant rent subsidy which may be provided to Rural Rental Housing and Farm Labor Housing facilities.

(b) The programs covered by this part provide economically designed and constructed rural rental, cooperative, and farm labor housing and related facilities operated and managed in an affordable, decent, safe, and sanitary manner.

(c) Internal Agency procedures containing details for Agency processing under these regulations can be found in the program handbooks, available in any Rural Development office, or from the Rural Development Web site.

§ 3560.2 Civil rights.

(a) As per the Fair Housing Act, as amended and section 504 of the Rehabilitation Act of 1973, all actions taken by recipients of loans and grants will be conducted without regard to race, color, religion, sex, familial status, national origin, age, or disability. These actions include any actions in the sale, rental, or advertising of the dwellings, in the provision of brokerage services, or in residential real estate transactions involving Rural Housing Service (RHS) assistance. It is unlawful for a borrower or grantee or an agent of a borrower or grantee:

(1) To refuse to make reasonable accommodations in rules, policies, practices, or services that would provide a person with a disability an opportunity to use or continue to use a dwelling unit and all public and common use areas; or

(2) To refuse to provide a reasonable accommodation at the borrower's expense that would not cause an undue financial or administrative burden, or to refuse to allow an individual with a disability to make reasonable modifications to the unit at their own expense with the understanding that the owner may require the tenant to return the unit to its original condition when the unit is vacated by the tenant making the modifications (see § 3560.104(c)).

(b) Borrowers and grantees must take reasonable steps to ensure that Limited English Proficiency (LEP) persons receive the language assistance necessary to afford them meaningful access to USDA programs and activities, free of charge. Failure to ensure that LEP persons can effectively participate in or benefit from federally-assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d and Title VI regulations against national origin discrimination. USDA has issued guidance to clarify the responsibilities of recipients and subrecipients who receive financial assistance from USDA and to assist them in fulfilling their responsibilities to LEP persons under Title VI of the Civil Rights Act, as amended, and implementing regulations.

(c) Any tenant/member or prospective tenant seeking occupancy in or use of facilities financed by the Agency who

believes he or she is being discriminated against because of race, color, religion, sex, familial status, national origin, or disability may file a complaint in person with, or by mail to the U. S. Department of Agriculture's Office of Civil Rights, Room 326–W, Whitten Building, 14th and Independence Avenue, Washington, DC 20410. Complaints received by Agency employees must be directed to the National Office Civil Rights staff through the State Civil Rights Manager/ Coordinator.

(d) Borrowers or grantees that fail to comply with the requirements of federal civil rights requirements are subject to sanctions authorized by law. The following are the major civil rights laws affecting multifamily housing loan and grant programs:

(1) Equal Credit Opportunity Act (ECOA).

(2) Title VI of the Civil Rights Act of 1964.

(3) Title VIII of the Civil Rights Act of 1968.

(4) Section 504 of the Rehabilitation Act of 1973.

(5) Age Discrimination Act of 1975.

(6) Title IX of the Education Amendments of 1972.

§ 3560.3 Environmental requirements.

RHS will consider environmental impacts of proposed housing as equal with economic, social, and other factors. By working with applicants, Federal agencies, Indian tribes, state and local governments, interested citizens, and organizations, RHS will formulate actions that advance program goals in a manner that protects, enhances, and restores environmental quality. Loan and grant processing and servicing actions taken by RHS under this part are subject to an environmental review conducted in accordance with 7 CFR part 1940, subpart G or any successor regulation.

§ 3560.4 Compliance with other Federal requirements.

RHS is responsible for ensuring that the application is in compliance with all applicable Federal requirements, including the following specific requirements:

(a) *Intergovernmental review*. 7 CFR part 3015, subpart V, or any successor regulation, including the Agency supplemental administrative instruction, RD Instruction 1940-J, available in any Rural Development office.

(b) *National flood insurance*. The National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973; the National Flood Insurance Reform Act of 1994; and 7 CFR part 1806, subpart B, or any successor regulation.

(c) *Clean Air Act and Water Pollution Control Act Requirements*. For any contract, all applicable standards, orders or requirements issued under section 306 of the Clean Air Act; section 508 of the Clean Water Act, Executive Order 11738, and 40 CFR part 32.

(d) *Historic preservation requirements*. The provisions of 7 CFR part 1901, subpart F or any successor regulation.

(e) *Lead-based paint requirements*. The applicable provisions of 24 CFR part 35, subparts A through D, J, and R, as published by the U.S. Department of Housing and Urban Development.

§ 3560.5 State, local or tribal laws.

Borrowers must comply with all applicable state and local laws, and laws of Federally-recognized Indian tribes to the extent they are not inconsistent with this part.

§ 3560.6 Borrower responsibility and requirements.

(a) Borrower responsibilities and requirements specified in this part may be carried out by an individual or entity designated by the borrower to act on behalf of the borrower such as a resident manager or management agent. Ultimate accountability to the Agency, however, is with the borrower whether or not the borrower designated another person or entity to act on the borrower's behalf.

(b) Borrowers who have not executed a loan agreement, and who were not required to execute a loan agreement by the regulations in effect at the time of their loan closing are exempt from the requirements of subparts D through G of this part, as long as the borrower is not in default of any applicable requirement, security instrument, payment, or any other agreement with the Agency. Such borrowers must provide evidence of tenant income eligibility in accordance with § 3560.152(a), except in Farm Labor Housing where the tenant is not paying shelter cost.

§ 3560.7 Delegation of responsibility.

The RHS Administrator may delegate, on an individual or other basis, any decision-making responsibility for Agency programs, unless otherwise noted.

§ 3560.8 Administrator's exception authority.

The RHS Administrator may make an exception to any provision of this part or address any omissions provided that the exception is consistent with the applicable statute, does not adversely affect the interest of the Federal Government, and does not adversely affect the accomplishment of the purposes of the MFH programs or application of the requirement would result in undue hardship on the tenants. Exception requests presented to the RHS Administrator must have the concurrence of a Rural Development State Director or a Deputy Administrator for MFH.

§ 3560.9 Reviews and appeals.

Rural Housing Service decisions may be appealed pursuant to 7 CFR part 11.

§ 3560.10 Conflict of interest.

To reduce the potential for employee conflict of interest, all RHS activities will be conducted in accordance with 7 CFR part 1900, subpart D.

§ 3560.11 Definitions.

Unless otherwise noted, terms listed in this part shall be defined as follows:

Administrator. The head of the Rural Housing Service who reports directly to the Under Secretary for Rural Development in the U.S. Department of Agriculture.

Agency. The Rural Housing Service within the Rural Development mission area of the U.S. Department of Agriculture.

Amortization. Payment of debt in regular, periodic installments of principal and interest, as opposed to interest only payments.

Applicant. An individual, partnership or limited partnership, consumer cooperative, trust, state or local public agency, corporation, limited liability company, nonprofit organization, Indian tribe, association, or other entity that will be the owner of the project for which an application for funding from the Agency is submitted.

Appraisal. As used by the Agency, a written report developed by a qualified appraiser as established in subpart P that concludes an opinion of value(s) for a specific real property.

Assistance. Financial assistance in the form of a loan, grant, interest credit, or rental assistance.

Association of farmers. Two or more farmers acting as a single legal entity. Association members may include the individual members of farming partnerships or corporations.

Borrower. An individual, partnership or limited partnership, consumer cooperative, trust, state or local public agency, corporation, limited liability company, nonprofit organization, Indian tribe, association, or other entity that has received a loan from the Agency.

Capital Needs Assessment. A Capital Needs Assessment is designed to capture and report on the immediate

and the long-range capital needs of an individual property. It includes attention to site features, mechanical and electrical systems, building exterior and common area systems, and dwelling unit interiors.

Caretaker. An individual employed by a borrower or a management agent to handle routine interior and exterior maintenance and upkeep of a MFHMFH project.

Congregate housing. A housing program authorized by section 515 of the Housing Act of 1949 which provides housing for elderly persons, individuals with disabilities, and families who require some supervision and central services but are otherwise able to care for themselves. Such housing does not include any licensed healthcare facility.

Consumer cooperative. A corporation organized under the cooperative laws of a state or Federally recognized Indian tribe that will own and operate the housing on a cooperative basis solely for the benefit of its members.

Conventional rents for comparable units (CRCU). Market rents for comparable rental units in conventional housing located in the same geographic area as a particular Section 514, 515, or 516 project.

Current appraisal. An appraisal with a report date that is no more than 1 year old.

Daily Interest Accrual System (DIAS). A system where interest is charged daily on outstanding principal. Level loan payments are made by the borrower. The amount of interest due on any date is equal to the unpaid daily interest that has accrued.

Default. Failure by a borrower to meet significant monetary or non-monetary obligations or terms of a loan, grant, or other agreement with the Agency which remain unpaid or unperformed for more than 30 days after the date such obligation is due or required to be paid or performed, or within time periods specified in notices of compliance violations.

Disability. The term disability is considered equivalent to the term handicap. Eligibility requirements for fully accessible units are contained in §§ 3560.154(g)(1)(i) and 3560.155(b). A person is considered to have a disability if either of the following two situations occur:

(1) *As defined in section 501(b) of the Housing Act of 1949.* The person is the head of household (or his or her spouse) and is determined to have an impairment which:

(i) Is expected to be of long-continued and indefinite duration;

(ii) Substantially impedes his or her ability to live independently; and

(iii) Is of such a nature that such ability could be improved by more suitable housing conditions, or if such person has a developmental disability as defined in section 102(7) of the Developmental Disability and Bill of Rights Act (42 U.S.C. 6001(7)).

(2) *As defined in the Fair Housing Act; the Americans with Disabilities Act; and section 504 of the Rehabilitation Act of 1973.* The person has a physical or mental impairment which substantially limits one or more of such person's major life activities; a record of such impairment; or being regarded as having such an impairment. The term does not include current, illegal use of or addiction to a controlled substance. As used in this definition, physical or mental impairment includes:

(i) 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;

(ii) 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 infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance), and alcoholism;

(iii) Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;

(iv) 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 major life activities;

(v) Is regarded as having an impairment means:

(A) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by the borrower or management agent as constituting such a limitation;

(B) 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

(C) Has none of the impairments described in this definition but is treated by another person as having such an impairment.

Disabled domestic farm laborer. An individual with a disability as separately defined in this paragraph and who was a domestic farm laborer at the time of becoming disabled.

Domestic farm laborer. A person who, consistent with the requirements in § 3560.576(b)(2), receives a substantial portion of his or her income from farm labor employment (not self-employed) in the United States, Puerto Rico, or the Virgin Islands and either is a citizen of the United States or resides in the United States, Puerto Rico or the Virgin Islands after being legally admitted for permanent residence. This definition may include the immediate family members residing with such a person.

Due diligence on hazardous substances. Due diligence is the process of inquiring into the environmental conditions of real estate, in the context of a real estate transaction to determine the presence of contamination from hazardous substances, and to determine the impact such contamination may have on the market value of the property.

Elderly household or individual with a handicapped household. A household in which the tenant or co-tenant of the household is 62 years old or older or is an individual with a disability. An elderly household may include persons younger than 62 years old and the household of an individual with a handicap may include persons without disabilities.

Elderly person. A person who is at least 62 years old. The term also means a person with a disability as separately defined in this paragraph, regardless of age.

Engagement. An Agency defined financial review of a housing project's financial status that a borrower will contract with a certified public accountant or other qualified individual to perform. An engagement will result in annual financial reports for use by the Agency as described in § 3560.308.

Familial status. 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 protections afforded against discrimination on the basis of 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.

Family farm corporation or partnership. A private corporation or partnership involved in agricultural production in which at least 90 percent of the stock or interest is owned and controlled by persons related by blood, which shall include parents, siblings, and children, or law. If more than three separate households are supported by the farming operation, the family farm corporation or partnership must be:

(1) Legally organized and authorized to own and operate a farm business within the state;

(2) Legally able to carry out the purposes of the loan; and

(3) Prohibited from the sale or transfer of 90 percent of the stock or interest to other than family members by either the articles of incorporation, bylaws or by agreement between the stockholders or partners and the corporation or partnership.

Farm. A tract or tracts of land, improvements, and other appurtenances that are used or will be used in the production of crops, livestock, or aquaculture products for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term ''farm'' also includes the term ''ranch.'' It may also include land and improvements and facilities used in a non-eligible enterprise or the residence that, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.

Farmer. A person who is actually involved in day to day on-site operations of a farm and who devotes a substantial amount of time to personal participation in the conduct of the operation of a ''farm.''

Farm labor. Services in connection with cultivating the soil, raising or harvesting any agriculture or aquaculture commodity; or in catching, netting, handling, planting, drying, packing, grading, storing, or preserving in the unprocessed stage, without respect to the source of employment (but not self-employed), any agriculture or aquaculture commodity; or delivering to storage, market, or a carrier for transportation to market or to processing any agricultural or aquacultural commodity in its unprocessed stage.

Farm labor contractor. A person—other than an agricultural employer, a member of an agricultural association, or an employee of an agricultural employer or agricultural association—who recruits, solicits, hires, employs, furnishes, or transports any year-round or seasonal migrant farm laborer for money or other valuable consideration.

Farm labor housing. On-farm or off-farm housing for farm laborers authorized by section 514 and section 516 of the Housing Act of 1949.

Farm owner. A natural person, persons, or legal entity who are the owners of a ''farm'' as this term is further defined in this section.

Foreclosure. A proceeding in or out of court to extinguish all rights, title, and interest of the owners of property in order to sell the property to satisfy a lien against it.

General overhead. Includes general operation items necessary for the contractor to be in business. They may include, but are not limited to the following: tools and minor equipment; worker's compensation and employer's liability; unemployment tax; Social Security and Medicare; manager's, clerical, and estimator's salaries; pension and bonus plans; main office insurance, rental, utilities, miscellaneous expenses; general liability insurance; legal, accounting, and data processing; automotive and light truck expense; vehicle expenses; depreciation of overhead capital expenditures; and office equipment maintenance.

General requirements. Includes items that are required in the construction contract for the contractor to provide for the specific project. They do not include items that pertain to a specific trade nor overhead expenses of the contractor's general operation. Items may include, but are not limited to, the following: Field supervision; field engineering such as field office, sheds, toilets, phone; performance and payment or latent defects bonds; cost certification; building permits; site security; temporary utilities; property insurance; and cleaning or rubbish removal.

Grantee. An entity that has received a grant from the Agency.

Group home. Housing that is occupied by elderly persons or individuals with disabilities who share living space within a rental unit and in which a resident assistant may be required.

Household. The tenant or co-tenant and the persons or dependents living with a tenant or co-tenant, but not including a resident assistant.

Household furnishings. Basic durable items such as stoves, refrigerators, drapes, drapery rods, tables, chairs, dressers and beds.

Housing project. A property with two or more affordable, decent, safe and sanitary rental units and related facilities operated under one management plan and financed with funds appropriated under the authority of sections 515, 514, or 516 of the Housing Act of 1949.

Identity-of-Interest (IOI). A relationship between applicants, borrowers, grantees, management agents, or suppliers of materials or services described under, but not limited to, any of the following conditions:

(1) There is a financial interest between the applicant, borrower, grantee and a management agent or the supplying entity;

(2) One or more of the officers, directors, stockholders or partners of the applicant, borrower, or management agent is also an officer, director, stockholder, or partner of the supplying entity;

(3) An officer, director, stockholder, or partner of the applicant, borrower, or management agent has a 10 percent or more financial interest in the supplying entity;

(4) The supplying entity has or will advance funds to an applicant, borrower, or management agent;

(5) The supplying entity provides or pays on behalf of the applicant, borrower, or management agent the cost of any materials or services in connection with obligations under the management plan or management agreement;

(6) The supplying entity takes stock or a financial interest in the applicant, borrower, or management agent as part of the consideration to be paid them; or

(7) There exists or come into being any side deals, agreements, contracts or understandings entered into thereby altering, amending, or canceling any of the management plan, management agreement documents, organization documents, or other legal documents pertaining to the property, except as approved by the Agency.

Indian tribe. The term ''Indian tribe'' means any Indian tribe, band, group, and nation, including Alaskan Indians, Aleuts, and Eskimos, and any Alaskan-Native Village, which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Public Law 93–638) or under the State and Local Fiscal Assistance Act of 1972 (Public Law 92–512).

Interest credit. A form of assistance available to eligible borrowers that reduces the effective interest rate of the loan.

Lease. A contract setting forth the rights and obligations of a tenant or cooperative member and a property owner, including charges and terms under which a tenant or cooperative

member will occupy or use the housing or related facilities.

Legal or qualified alien. Legal or qualified alien refers to any person lawfully admitted to the country who meets the criteria in section 214 of the Housing and Community Development Act of 1980, 42 U.S.C. 1436a.

Letter of Priority Entitlement (LOPE). A letter issued by the Agency providing a tenant with priority entitlement to rental units in other Agency-financed housing projects for 120 days from the date of the LOPE.

Life cycle cost. The life cycle cost has 2 purposes: (1) To determine the expected usable life (utility) of a building component or furnishing and (2) to determine which building components or furnishings are the most cost efficient over the life of the building. Cost efficient is not to be construed to mean the least initial cost.

Life cycle cost analysis. Life cycle cost analysis is the comparison of different materials to examine anticipated useful life and the cost of using a specific material or building component. The analysis has multiple uses, such as: (1) To conduct a cost efficiency comparison between products, (2) for developing component replacement time tables, and (3) for estimating future component replacement costs. Life cycle cost analysis can be accomplished through various methods, such as; insurance actuary tables or Agency documentation of a component's life expectancy. Life cycle cost analysis is conducted by a design professional. For Agency financed projects, a life cycle cost analysis is to be conducted for specific components: (1) drives and parking, (2) roofing system and roofing material, (3) exterior finishes, and (4) energy source items.

Limited Liability Company (LLC). An unincorporated organization of one or more persons or entities established in accordance with applicable state laws and whose members may actively participate in the organization without being personally liable for the debts, obligations or liabilities of the organization.

Limited partnership. An ownership arrangement consisting of general and limited partners; general partners manage the business, while limited partners are passive and liable only for their own capital contributions.

Loan agreement. A written agreement between the Agency and the borrower that sets forth the borrower's responsibilities with respect to Agency financing.

Low-income household. A household that has an adjusted income that is greater than the Department of Housing and Urban Development's (HUD) established very-low income limit, but that does not exceed the HUD established low-income limit (generally 80 percent of median income adjusted for household size for the county where the property is or will be located).

Low-Income Housing Tax Credit (LIHTC). A federal tax credit allowed for investment in qualified low-income housing administered by the Internal Revenue Service (IRS) under section 42 of the Internal Revenue Code.

Management agent. A firm or individual employed or designated by a borrower to act on the borrower's behalf in accordance with a written management agreement.

Management agreement. A written agreement between a borrower and a management agent setting forth the management agent's responsibilities and fees for management services.

Management fee. The compensation provided to a management agent for services provided in accordance with a management agreement.

Management plan. A detailed description of the policies and procedures to be followed by the borrower in managing a MFH project.

Manufactured housing. Housing, constructed of one or more factory-built sections, which includes the plumbing, heating, and electrical systems contained therein, which is built to comply with the Federal Manufactured Home Construction and Safety Standards (FMHCSS), and which is designed to be used with a permanent foundation.

Market area. The geographic or locational delineation of the market for a specific project, including outlaying areas that will be impacted by the project, *i.e.*, the area in which alternative, similar properties effectively compete with the subject property.

Market rent. The most probable rent that a property should bring in a competitive and open market reflecting all conditions and restrictions of the specified lease agreement, including term, rental adjustment and revaluation, permitted uses, use restrictions, and expense obligations; the lessee and lessor each acting prudently and knowledgeably, and assuming consummation of a lease contract as a specified date and the passing of the leasehold from lessor to lessee.

Maximum debt limit. The maximum amount that the Agency will lend or grant for a MFHMFH project based on the appraised value or total development cost excluding costs ineligible for payment from loan or grant funds, whichever is less, reduced by all funding available to the borrower from sources other than the Agency, multiplied by 95, 97, or 102 percent depending upon the applicant entity and their use of the low-income housing tax credit, in accordance with § 3560.63(b).

Member or co-member. A stockholder or other person who has executed documents or stock pertaining to a cooperative housing type of living arrangement and has made a commitment to upholding the cooperative concept.

Migrants or migrant agricultural laborer. A person (and the family of such person) who receives a substantial portion of his or her income from farm labor employment and who establishes a residence in a location on a seasonal or temporary basis, in an attempt to receive farm labor employment at one or more locations away from their home base state, excluding day-haul agricultural workers whose travels are limited to work areas within one day of their residence.

Minor. An individual under 18 years of age who is a dependent of a tenant or an individual age 18 or older who is a full-time student and a dependent of a tenant.

Moderate-income household. A household that has an adjusted income that is greater than the HUD-established low-income limit but does not exceed the low-income limit by more than $5,500.

Mortgage or Deed of Trust. A form or security instrument or consensual lien on real property.

Net recovery value. The value realized from the Government's acquisition of security property in a default situation after subtracting all costs, actual or anticipated, from acquiring, holding, and disposing of the security property.

New construction. A MFHMFH project being constructed to be occupied for the first time.

Nonprofit organization. A private organization that:

(1) Is organized under state or local laws;

(2) Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; and

(3) Is approved by the Secretary of Agriculture and considered to be financially responsible.

Nonprofit organization for section 515 program (Prepayment or Purchase). To be eligible to purchase properties under the conditions of subpart N of this part, nonprofit organizations may not have among their officers or directorate any persons or parties with an identity-of-interest (or any persons or parties related to any person with identity-of-interest) in loans financed under section

515 that have been prepaid or have requested prepayment.

Nonprofit organization of farm workers. A nonprofit organization, as defined in this section, whose membership is composed of at least 51 percent farm workers.

Notice of Funding Availability (NOFA). A ''Notice of Funding Availability'' issued by the Agency to inform interested parties of the availability of assistance and other matters pertinent to the program.

Occupancy agreement. A contract establishing 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.

Occupancy charge. The amount of money charged a cooperative member to cover their proportional share of the cooperative's operating costs and cash requirements.

Off-farm labor housing. Housing for farm laborers in any location approved by the Agency but not on the farm where the laborer works.

Office of the General Counsel (OGC). The USDA Office of the General Counsel, including the Regional Attorney, Associate Regional Attorney, or Assistant Regional Attorney.

Office of the Inspector General (OIG). The USDA Office of the Inspector General.

On-farm labor housing. Housing for farm laborers located on the farm where they work that is away from service buildings or in the nearby community.

Overage. That portion of a tenant's net tenant contribution that exceeds basic rent up to note rent. Full overage is an amount equal to the difference between the note rent for a unit and the basic rent.

Plan I. A type of interest subsidy available to borrowers prior to October 27, 1980. Budgets and rental rates developed for Plan I loans are based on a 3 percent loan amortization.

Plan II. A type of interest subsidy available to borrowers operating on a limited profit basis. Budgets and rental rates developed for Plan II loans are based on both the loan being amortized at the interest rate shown on the promissory note and at a 1 percent subsidized rate.

Predetermined Amortization Schedule System (PASS). A system where loan payments are applied based on an amortization schedule.

Prepayment. Payment in full of the outstanding balance on an Agency loan prior to the note's originally scheduled maturity date.

Program requirements. All provisions related to MFHMFH contained in the loan document, grant agreement, statute, regulation, handbook, or administrative notice.

Promissory note. A legal document containing conditions (interest rate and timing) for repayment of indebtedness.

Real estate owned (REO) property. The real estate owned by the Agency acquired through voluntary conveyance, foreclosure or other action.

Rehabilitation. Rehabilitation is when the remodeling of a property is of a complex nature involving structural repairs or when two or more of the life cycle cost components are included in the remodeling of a property.

Related facilities. Facilities in a MFHMFH project that are related to the housing and are in addition to rental units, (*e.g.*, community rooms or buildings, cafeterias, dining halls, infirmaries, child care facilities, assembly halls, and essential service facilities such as central heating, sewerage, lighting systems, clothes washing facilities, trash disposal and safe domestic water supply).

Rent. The amount established as a charge for occupancy in a rental unit of Agency-financed MFH. Rents must be established at the same rate for all similar units in the housing project. The following terms are used to describe rents for various program purposes.

(1) *Note rent* is the rental charge established to cover expenses in the housing project's approved budget and the required loan payment set at the interest rate shown in the promissory note.

(2) *Basic rent* is the rental charge established to cover expenses in the housing project's approved budget and the required loan payment contained in the promissory note reduced by the interest credit agreement.

(3) *HUD contract rent* is the rental charge established for housing receiving project-based Section 8 rental subsidies in accordance with 24 CFR part 880 or part 884, as applicable.

(4) *Low-income housing tax credit (LIHTC) rent* is the rental charge established in accordance with LIHTC requirements.

Rental assistance (RA). The portion of the approved shelter cost paid by the Agency to compensate a borrower for the difference between the approved shelter cost and the tenant contribution when such contribution is less than the basic rent.

Rental assistance units. Dwelling units in a MFH project qualified for rental assistance. There are three types of rental assistance units.

(1) New construction units are units provided in conjunction with initial loans for construction or substantial rehabilitation of the MFHMFH projects.

(2) Replacement units are Agency-funded rental assistance units which replace units with expiring rental assistance agreements or which replace Section 8 units which have expired under the Section 8 contract.

(3) Servicing units are units provided to an operational MFHMFH project as a part of the Agency's general loan servicing or preservation activities.

Repair and replacement. Repair and replacement is the restoration of minor building materials, elements, components, equipment and fixtures. Examples include: Painting, carpeting, appliances, cabinets, and other fixtures.

Resident assistant. A person residing in a rental unit who is essential to the well-being and care of an elderly person or an individual with a disability, but who:

(1) Is not obligated for the tenant's financial support;

(2) Would not be living in the unit except to provide the needed services;

(3) May be a family member, but is not a dependent of the tenant for tax purposes;

(4) Is not subject to the eligibility requirements of a tenant; and

(5) Is not considered a household member in the determination of household income.

Resident or site manager. The individual employed by the borrower and who is responsible for the day-to-day operations of the housing.

Retired domestic farm laborer. An individual who is at least 55 years of age and who has spent the last 5 years prior to retirement as a domestic farm laborer or spent the majority of the last 10 years prior to retirement as a domestic farm laborer.

Return on Investment (ROI). The annual amount of profit an owner operating on a limited or full profit basis may withdraw from a project, as established in the loan agreement. The amount is calculated as a percentage of the owner's investment in the project.

Rural area. Any open country, or any place, town, village, or city which is not (except in the cases of Pajaro, in the State of California, and Guadalupe, in the State of Arizona) part of or associated with an urban area and which (1) has a population not in excess of 2,500 inhabitants, or (2) has a population in excess of 2,500 but not in excess of 10,000 if it is rural in character, or (3) has a population in excess of 10,000 but not in excess of 20,000 and (A) is not contained within a standard metropolitan statistical area,

and (B) has a serious lack of mortgage credit for lower and moderate-income families, as determined by the Secretary and the Secretary of Housing and Urban Development. For purposes of this title, any area classified as ''rural'' or a ''rural area'' prior to October 1, 1990, and determined not to be ''rural'' or a ''rural area'' as a result of data received from or after the 1990 or 2000 decennial census shall continue to be so classified until the receipt of data from the decennial census in the year 2010, if such area has a population in excess of 10,000 but not in excess of 25,000, is rural in character, and has a serious lack of mortgage credit for lower and moderate-income families. Notwithstanding any other provision of this section, the city of Plainview, Texas, shall be considered a rural area for purposes of this title, and the city of Altus, Oklahoma, shall be considered a rural area for purposes of this title until the receipt of data from the decennial census in the year 2000.

Rural Cooperative Housing (RCH). A housing program authorized under section 515 of the Housing Act of 1949, in which a consumer cooperative, organized and operating on a nonprofit basis, may own and operate a MFHMFH development.

Rural Housing Service (RHS). The Agency within the Rural Development mission area of the U.S. Department of Agriculture or its successor agency which administers programs authorized by sections 514, 515, 516, and 521 of the Housing Act of 1949, as amended.

Rural Rental Housing (RRH). A housing program authorized by section 515 of the Housing Act of 1949 to provide rental housing in rural areas for persons of very-low, low- and moderate income.

Seasonal housing. Housing operated on a seasonal basis, typically for migrants or migrant agricultural laborers as opposed to year round.

Security deposit. A one-time fee charged a tenant prior to occupancy of a unit to cover possible loss or damage to the housing unit caused by the tenant.

Self-employed. A person who meets the IRS definition of self-employed at 26 CFR 1.401–10.

Service agreement. A written agreement between a borrower and a service provider establishing the specific service to be provided to a MFH project, the cost of the service, and the length of time the service will be provided.

Service plan. A written plan describing how services will be provided to a MFH project and which, at a minimum, 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.

Service provider. A person who signs a written agreement with a borrower to provide services to a MFH project.

Shelter costs. Basic or note rent plus the utility allowance, when used, or the occupancy charge plus the utility allowance. If the utility costs are included in the rent, the rent will equal shelter costs.

Sources and Uses Comprehensive Evaluation (SAUCE). A computer software program used by the Agency to analyze the total funds provided to a MFH project to ensure that the Agency is not providing excess assistance.

Special note rent (SNR). A rental rate charged at a Plan II project experiencing vacancies that is less than note rent but higher than basic rent.

State consolidated plan. A planning document for an individual state that includes a housing and homeless needs assessment; a housing market analysis; a strategic plan for addressing the state's housing challenges; an Action Plan that is an annual description of the state's Federal and other resources that are expected to be available to address its priority housing needs and how the Federal funds will leverage other resources; certifications relating to fair housing, its antidisplacement and relocation plan, a drug-free workplace, and other statutory and program requirements; and a monitoring plan to ensure that the state is using its Federal funds appropriately and effectively.

Tenant or co-tenant. An individual who signs a lease and occupies or will occupy a rental unit in a MFH project. The term tenant or co-tenant also refers to a member of cooperative housing occupying or planning to occupy a dwelling unit in cooperative housing.

Tenant contribution. The portion of the approved shelter cost paid by the tenant household. The proportion of tenant income and adjusted income paid will vary according to the type of subsidy provided to the tenant household.

Total development cost (TDC). The cost of constructing, purchasing, improving, altering, or repairing MFH and related facilities, buying household furnishings (for sections 514/516 only), and purchasing or improving the necessary land, including architectural, engineering, or legal fees, and charges and other technical and professional fees and charges, but excluding fees, charges, or commissions such as payments to brokers, negotiators, or other persons for the referral of prospective applicants or solicitations of loans. Although a developer's fee is part of the project's development cost, such fees are not eligible for payment from Agency loan or grant funds and are not included in determining the Agency authorized development cost.

Utility allowance. An amount determined by a borrower as the amount to be considered a tenant's portion of utility cost in the calculation of a tenant's total shelter cost when utility costs are not included in the rent.

Very low-income household. A household that has an adjusted income that does not exceed the HUD established very low-income limit (generally 50 percent of median income adjusted for household size in the county where the property is or will be located).

Workout agreement. An agreement between a borrower and the Agency listing actions to be taken over a period of time to prevent or correct a compliance violation or to cure a monetary or non-monetary default.

§§ 3560.12–3560.49 [Reserved]

§ 3560.50 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 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. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart B—Direct Loan and Grant Origination

§ 3560.51 General.

This subpart contains the Agency's loan origination requirements for multi-family housing (MFH) direct loans for Rural Rental Housing, Rural Cooperative Housing, and Farm Labor Housing. Additional requirements for farm labor housing loans and grants are contained in subpart L of this part for Off-Farm Labor Housing and subpart M of this part for On-Farm Labor Housing.

§ 3560.52 Program objectives.

The Agency uses appropriated funds to finance the construction, rehabilitation of program properties, or purchase and rehabilitation of MFH and

related facilities to serve eligible persons in rural areas. The Agency encourages the use of such financing in conjunction with funding or financing from other sources.

§ 3560.53 Eligible use of funds.

Funds may be used for the following purposes.

(a) *Construct housing.* Funds may be used to construct MFH.

(b) *Purchase and rehabilitate buildings.* Funds may be used to purchase and rehabilitate buildings that have not been previously financed by the Agency.

(1) Rehabilitation must meet the definition of either moderate or substantial rehabilitation as defined in 7 CFR part 1924, subpart A.

(2) The building to be rehabilitated must be structurally sound and the improvements to the building must be necessary to meet the requirements of decent, safe, and sanitary living units.

(3) The total development cost (TDC) for the purchase and rehabilitation of existing buildings must not be more than the estimated TDC for construction of a similar type and unit size property in the same area.

(c) *Subsequent loans.* Funds may be used to provide subsequent loans in accordance with the provisions of § 3560.73.

(d) *Purchase and improve sites.* Funds may be used to purchase and improve the site on which MFH will be located, provided that the amount of loan funds used to purchase the site does not exceed the appraised market value of the site immediately prior to purchase.

(e) *Develop and install necessary systems.* Funds may be used to install streets, a water supply, sewage disposal, heating and cooling systems, electric, gas, solar, or other power sources for lighting and other features necessary for the housing. If such facilities are located off-site, loan funds may only be used if the following additional requirements are met:

(1) The loan applicant will hold title to the facility or have a legal right to use the facility in the form of an easement or other instrument acceptable to the Agency for a period of at least 50 percent longer than the term of the loan or grant and the title or right is transferable to any subsequent owner of the housing.

(2) The facilities will either be provided for the exclusive use of the proposed housing project, or Agency funds are limited to the prorated part of the total cost of the facility according to the use and benefit to the MFH project. If entities other than the housing project financed by the Agency use the facilities on a reimbursable fee basis, the loan applicant must agree, in writing, to apply any fees collected in excess of operating expenses to their Agency loan account as an extra loan payment.

(f) *Landscaping and site development.* Funds may be used to provide landscaping and site development related to a MFH project such as lighting, walks, fences, parking areas, and driveways.

(g) *Tenant-related facilities.* Funds may be used to develop tenant-related facilities appropriate to the size, economics, and prospective tenants of a MFH project, such as a community room, development of space for education and training purposes for tenants, central laundry facility, outdoor seating, space for passive recreation, tot lots, and a small emergency care infirmary. In congregate housing and group homes, funds may be used for central cooking and dining areas.

(h) *Management-related facilities.* Funds may be used to develop management-related facilities appropriate to the size and economics of a MFH project such as a maintenance workshop, storage facilities, office, and living quarters for a resident manager and other personnel.

(i) *Purchase and install equipment and appliances.* Funds may be used to purchase and install equipment and appliances affixed to the property as customary and appropriate for the area in which the housing is located.

(j) *Household furnishings (Section 514/516).* For farm labor housing sections 514 and 516 only, funds may be used to purchase household furnishings.

(k) *Initial operating capital.* Loan funds equal to 2 percent of total development cost or appraised value, whichever is less, may be used by a state or political subdivision thereof, Indian tribe, consumer cooperative, or any public or private nonprofit borrower who is not receiving low-income housing tax credits (LIHTC), to make the initial operating capital contribution required by § 3560.64. Other borrowers must use their own resources to make the required initial operating capital contribution and may not use loan funds for that purpose.

(l) *Builder's profit, overhead and general requirements.* Subject to the following limits, funds may be used for builder's profit, overhead and general requirements.

(1) Up to 10 percent of the construction contract may be used for builder's profit.

(2) Up to 4 percent of the construction contract may be used for general overhead.

(3) Up to 7 percent of the construction contract may be used for general requirements.

(m) *Legal, technical and professional services.* Funds may be used for the costs of legal, technical, and professional services related to the borrower's MFH project, including appraisals, environmental documentation, and construction plans and specifications.

(n) *Permit and application fees.* Funds may be used for required MFH permits and application fees.

(o) *Reimbursement to nonprofit organizations and public bodies.* Funds may be used to reimburse a nonprofit organization or public body for up to 2 percent of total development costs for section 515, or up to 4 percent of total development costs for off-farm labor housing, for costs that are reasonable and typical for the area, including:

(1) Development and packaging of a loan application and a MFH proposal; and

(2) Legal, technical, and professional fees incurred in the formation of the loan application and MFH proposal; or

(3) Technical assistance from another nonprofit organization to assist in the organization's formation and in the development and packaging of a loan application and MFH proposal.

(p) *Educational programs.* Funds may be used for educational programs related to owning and managing a cooperative housing project for the board of directors of a housing cooperative during the first year of the housing operation. Such funds will be available from the initial operating account. The amount of the funds disbursed will be subject to Agency approval and availability of financial resources from the project.

(q) *Interest and customary charges.* Funds may be used for interest accrued and customary charges necessary to obtain interim financing.

(r) *Purchase housing from an interim lender.* Funds may be used to purchase MFH from an interim lender that holds fee simple title to Agency-financed housing upon which construction commenced and a letter of commitment had been issued by the Agency but the original applicant for whom funds were obligated will not or cannot continue with construction of the housing. In order for the purchase to take place, there must be no outstanding unpaid obligations in connection with the housing.

(s) *Uniform Relocation Assistance and Real Property Acquisition Act of 1970.* Funds may be used for necessary costs incurred to comply with the Uniform

Relocation Assistance and Real Property Acquisition Act of 1970.

(t) *Demonstration programs.* With the RHS Administrator's approval, funds may be used to construct demonstration housing involving innovative units and systems which do not meet existing published standards, rules, regulations, or policies but meet the intent of providing affordable, decent, safe, and sanitary rural housing, and are consistent with the requirements of Title V of the Housing Act of 1949.

(u) *Conversion of section 502 properties.* In accordance with § 3560.506, loan funds may be used to finance the conversion of real estate owned units originally financed under section 502 of the Housing Act of 1949, to MFH authorized by section 515 of the Housing Act of 1949.

§ 3560.54 Restrictions on the use of funds.

(a) *Ineligible uses of funds.* Funds may not be used for:

(1) Housing intended to serve temporary and transient residents, with the exception of housing to serve migrant farm workers in accordance with § 3560.554;

(2) Special care facilities or institutional-type homes;

(3) Facilities which are not in compliance with the design requirements specified in § 3560.60;

(4) Any costs associated with space in a housing project that is leased for commercial use or any commercial facilities except essential service-type facilities when otherwise not conveniently available;

(5) Specialized equipment for training and therapy;

(6) Operating capital for a central dining facility or any items which do not become affixed to the real estate security with the exception of household furnishings for farm labor housing units financed under sections 514 and 516;

(7) Compensation to a loan applicant for value of land contributed in excess of the equity contribution requirements in § 3560.63(c);

(8) Refinancing of an applicant's debt except when the debt involves interim financing or when refinancing is necessary to obtain a release of an existing lien on land owned by a nonprofit organization;

(9) Payment of any fee, charge, or commission to a broker or anyone else as a developer's fee or for referral of a prospective loan applicant or solicitation of a loan;

(10) Payment to any officer, director, trustee, stockholder, member, or agent of an applicant; or

(11) Purchasing land for a site in excess of what is needed, except when:

(i) The applicant cannot acquire an alternate site or cannot acquire the needed land as a separate parcel;

(ii) The applicant agrees to sell the excess land as soon as practical and to apply the proceeds to the loan; and

(iii) Program site density requirements are met in accordance with the site requirements established under § 3560.58.

(b) *Obligations incurred before loan approval.* Funds may not be used for expenses incurred by an applicant prior to approval except when all the following conditions are met:

(1) The debts were incurred for eligible purposes;

(2) Contracts, materials, construction, and any land purchased meet Agency standards and requirements;

(3) Payment of the debts will remove any attached liens and any basis for liens that may attach to the property on account of such debts; and

(4) The appropriate level of environmental review in accordance with 7 CFR part 1940, subpart G has been completed.

§ 3560.55 Applicant eligibility requirements.

Applicants for off-farm labor housing loans and grants should also refer to § 3560.555, and applicants for on-farm labor housing loans should refer to § 3560.605.

(a) *General.* To be eligible for Agency assistance, applicants must meet the following requirements:

(1) Be a U. S. citizen or qualified alien(s); a corporation; a state or local public Agency; an Indian tribe as defined in § 3560.11; or a limited liability company (LLC), nonprofit organization, consumer cooperative, trust, partnership, or limited partnership in which the principals are U.S. citizens or qualified aliens;

(2) Be unable to obtain similar credit elsewhere at rates that would allow for rents within the payment ability of eligible residents;

(3) Possess the legal and financial capacity to carry out the obligations required for the loan or grant;

(4) Be able to maintain, manage, and operate the housing for its intended purpose and in accordance with all Agency requirements;

(5) With the exception of applicants who are a nonprofit organization, housing cooperative or public body, be able to provide the borrower contribution from their own resources (this contribution must be in the form of cash, or land, or a combination thereof);

(6) Have or be able to obtain a minimum of 2 percent of the total development costs for use as initial operating capital (for nonprofit organizations, cooperatives, or public bodies, this amount may be financed through Agency funds); and

(7) Not be suspended, debarred, or excluded based on the ''List of Parties Excluded from Federal Procurement and Nonprocurement Programs.'' The list is available to Federal agencies from the U.S. Government Printing Office. Non-federal parties should contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

(8) Not delinquent on Federal debt or a Federal judgment debtor, with the exception of those debtors described in § 3560.55 (b).

(b) *Additional requirement for applicants with prior debt.* If an applicant or the managing general partner of a borrower, as well as any affiliated entity having a 10 percent or more ownership interest, has a prior or existing Agency debt, the following additional requirements must be met.

(1) The applicant must be in compliance with any existing loan or grant agreements and with all legal and regulatory requirements or must have an Agency-approved workout agreement and be in compliance with the provisions of the workout agreement. The Agency may require that applicants with monetary or non-monetary deficiencies be in compliance with an Agency-approved workout agreement for a minimum of 6 consecutive months before becoming eligible for further assistance.

(2) The applicant must be in compliance with the Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and all other applicable civil rights laws.

(c) *Additional requirements for nonprofit organizations.* In addition to the eligibility requirements of paragraphs (a) and (b) of this section, nonprofit organizations must meet the following criteria:

(1) The applicant must have received a tax-exempt ruling from the IRS designating the applicant as a 501(c)(3) or 501(c)(4) organization.

(2) The applicant must have in its charter the provision of affordable housing.

(3) No part of the applicant's earnings may benefit any of its members, founders, or contributors.

(4) The applicant must be legally organized under state and local law.

(5) In the case of off-farm labor housing loans and grants, nonprofit organizations must be ''broad-based'' nonprofit organizations (refer to § 3560.555(a)(1)).

(d) *Additional requirements for limited partnerships.* In addition to the applicant eligibility requirements of paragraphs (a) and (b) of this section, limited partnership loan applicants must meet the following criteria:

(1) The general partners must be able to meet the borrower contribution requirements if the partnership is not able to do so at the time of loan request.

(2) The general partners must maintain a minimum 5 percent financial interest in the residuals or refinancing proceeds in accordance with the partnership organizational documents.

(3) The partnership must agree that new general partners can be brought into the organization only with the prior written consent of the Agency.

(e) *Additional requirements for Limited Liability Companies (LLCs).* In addition to the applicant eligibility requirements of paragraphs (a) and (b) of this section, LLC loan applicants must meet the following criteria:

(1) One member who holds at least a 5 percent financial interest in the LLC must be designated the authorized agent to act on the LLC's behalf to bind the LLC and carry out the management functions of the LLC.

(2) No new members may be brought into the organization without prior consent of the Agency.

(3) The members must commit to meet the equity contribution requirements if the LLC is not able to do so at the time of loan request.

§ 3560.56 Processing section 515 housing proposals.

Processing requirements for farm labor housing proposals are found in subpart L of this part for Off-Farm and subpart M of this part for On-Farm.

(a) *Notice of Funding Availability (NOFA) responses.* (1) The Agency will publish an annual NOFA with deadlines and other information related to submission of new construction MFH proposals, including expansion of existing MFH in designated places selected in accordance with § 3560.57.

(2) To be eligible for funding consideration, MFH proposals must be submitted in accordance with the NOFA and must provide information requested in the NOFA for the Agency to score and rank the proposals.

(3) MFH proposals needing rental subsidies must include requests for Agency rental assistance or a description of any non-Agency rental subsidy to be used with the proposal and must provide information required by § 3560.260 (c).

(4) The Agency will consider housing proposals requesting rental assistance in rank order to the extent rental assistance is available. When there is no rental assistance available, the Agency will consider only those housing proposals in rank order that do not require rental assistance.

(b) *Preliminary proposal assessment.* The Agency will make a preliminary assessment of the application using the following criteria and will reject those applications which do not meet all of these criteria:

(1) The proposal was received by the submission deadline specified in the NOFA,

(2) The proposal is complete as specified in the NOFA,

(3) The proposal is for an authorized purpose, and

(4) The applicant meets Agency eligibility requirements.

(c) *Scoring and ranking project proposals.* The Agency will score and rank each housing proposal that meets the criteria of paragraph (b) of this section.

(1) The following criteria will be used to score housing proposals as more completely established in the NOFA:

(i) The presence and extent of leveraged assistance in the proposal for the units that will serve tenants meeting Agency income limits at basic rents comparable to what the rent would be if the Agency provided full financing.

(ii) The proposal will provide rental units in a colonia, tribal land, Rural Economic Area Partnership (REAP) community, Enterprise Zone or Empowerment Community (EZ/EC) or in a place identified in the state Consolidated Plan or a state needs assessment as a high need community for MFH.

(iii) The proposal supports Agency initiatives announced in the NOFA.

(iv) The proposal uses a donated site which meets the following conditions:

(A) The site is donated by a state, unit of local government, public body or a nonprofit organization;

(B) The site is suitable for the housing proposals and meets Agency requirements;

(C) Site development costs do not exceed what they would be to purchase and develop an alternative site;

(D) The overall cost of the MFH is reduced by the donation of the site; and

(E) A return on investment is not paid to the borrower for the value of the donated site nor is the value of the site considered as part of the borrower's contribution.

(2) The Agency will rank housing proposals based on their scoring.

(i) When proposals have an equal score, preference will be given to Indian tribes as defined in § 3560.11 and local nonprofit organizations or public bodies whose principal purposes include low-income housing that meet the conditions of § 3560.55(c) and the following conditions.

(A) Is exempt from Federal income taxes under section 501(c)(3) or 501(c)(4) of the Internal Revenue code;

(B) Is not wholly or partially owned or controlled by a for-profit or limited-profit type entity;

(C) Whose members, or the entity, do not share an identity of interest with a for-profit or limited-profit type entity;

(D) Is not co-venturing with another entity; and

(E) The entity or its members will not be receiving any direct or indirect benefits pursuant to LIHTC.

(ii) A drawing will be held in the event of a tie score, first for proposals from applicants who meet the conditions of paragraph (c)(2)(i) of this section and next for proposals from applicants for which paragraph (c)(2)(i) of this section is not applicable. Each proposal will be numbered in the order in which it is drawn.

(3) The Agency will request initial loan applications from parties who submitted the housing proposals with the highest ranking, taking into consideration available funds. The Agency will notify non-selected parties with the reasons for their non-selection, and the process that may be used to seek a review of the non-selection decision.

(d) *Processing initial loan applications.* The Agency will review all initial loan applications submitted in accordance with Agency requirements to further evaluate the eligibility and feasibility of the housing proposals. This determination will include:

(1) A review of the preliminary plans and cost estimates,

(2) A market feasibility review,

(3) An Agency site visit to gather preliminary environmental information and determine that the proposed site meets the site requirements of § 3560.58,

(4) A review of the Affirmative Fair Housing Marketing Plan,

(5) An analysis of current credit reports,

(6) A review of Civil Rights Impact Analysis in accordance with 7 CFR part 2006, subpart P, and

(7) Completion of the appropriate level of environmental review in accordance with 7 CFR part 1940, subpart G.

(e) *Processing order of initial loan applications.* The Agency will process initial loan applications in rank order, taking into account available funds. If any initial loan applications are withdrawn, rejected, or delayed for a period of time that will not permit funding in the current funding cycle,

the Agency will process, in rank order, the next initial loan application as funding levels permit.

(f) *Other assistance.* During each stage of loan application processing, loan applicants must notify the Agency of all other assistance, including other Federal Government assistance proposed or approved for use in connection with the loan application.

(g) *Proposal withdrawal or rejection.* An applicant may withdraw a housing proposal, an initial loan application, or a final loan application at any time during the Agency review process with a written request. The Agency may reject a housing proposal, an initial loan application, or a final loan application at any time during the Agency review process when an applicant fails to provide information requested by the Agency within the time frame specified by the Agency.

(h) *Final applications.* Applicants, with initial loan applications that are selected by the Agency for further processing, must submit a final application, with any additional information requested by the Agency, to confirm and document a housing proposal's eligibility and feasibility, including an affirmative fair housing marketing plan. The Agency will notify applicants with initial loan applications that are not selected for further processing of their non-selection, the reasons for their non-selection, and the process that may be used to seek a review of the non-selection decision.

(i) *Rural cooperative housing proposals.* Rural cooperative housing loan proposals will be solicited through a NOFA and will be assessed and processed in the same manner described in paragraphs (a) through (h) of this section.

§ 3560.57 Designated places for section 515 housing.

(a) *Establish a list of designated places.* The Agency will establish a list of designated places from which loan proposals will be accepted. The list is updated each fiscal year and is available when the NOFA is published. The NOFA provides information on obtaining the list. This list will be developed from a list of rural places which the Agency identifies as having the greatest need for multifamily housing based on the following factors:

(1) Qualification as a rural area as defined in § 3560.11,

(2) Lack of mortgage credit, and

(3) Demonstrated need for MFH based on:

(i) The incidence of poverty,

(ii) The existence of substandard housing,

(iii) The lack of affordable housing, and

(iv) The following high need areas:

(A) Places identified in the state Consolidated Plan or similar state plan or needs assessment report,

(B) Indian reservations or communities located within the boundaries of tribal allotted or trust land, and

(C) EZ/EC or REAP communities.

(b) *Establishing partnership designated place list.* The Agency, in states with an active leveraging program and formal partnership agreement with the state agency, may establish a partnership designated place list consisting of places identified by the partnership as high need areas based on criteria consistent with the Agency's and the state's authorizing statutes. The partnership agreement and partnership designated place list must have the concurrence of the Administrator.

(c) *Administrator's discretion.* The Administrator may add to the list of designated places any place that is determined to have a compelling need for MFH, for example, a place that has had a substantial increase in population not reflected in the most recent census data, or a place that has experienced a loss of affordable housing because of a natural disaster.

(d) *Restrictions on loans in certain designated places.*

(1) Initial loan applications will not be requested and final loan applications will not be closed for housing proposals in designated places where any of the following conditions exist:

(i) The Agency has selected another MFH proposal in the designated place for processing.

(ii) A previously funded Agency, the U.S. Department of Housing and Urban Development (HUD), low-income housing tax credit or other similar assisted MFH in the designated place has not been completed or has not reached projected occupancy levels.

(iii) Existing assisted MFH in the designated place is experiencing high vacancy levels.

(iv) A special note rent or other loan servicing tool is pending or in effect for other assisted housing in the designated place, or

(v) The need in the market area is for additional rental assistance and not additional rental units.

(2) Exceptions to the provisions in § 3560.57(d)(1) may be made:

(i) When a group home is proposed for persons with disabilities in an area where the existing MFH is insufficient or unavailable for their needs; or

(ii) There is a compelling need for additional MFH, for example when the units that have been approved or are under development represent only a small portion of the total units needed in the community.

§ 3560.58 Site requirements.

(a) *Location.* (1) New construction section 515 loans will be made only in designated places selected by the Agency in accordance with the requirements of § 3560.57.

(2) Agency-financed MFH must be located in residential areas as part of established rural communities, except as permitted in § 3560.58(b), and for farm labor housing units financed under sections 514 and 516, which may be developed in any area where a need for farm labor housing exists.

(3) Communities in which Agency-financed MFH is located must have adequate facilities and services to support the needs of tenants.

(4) Housing complexes will not be located in areas where there are undesirable influences such as high activity railroad tracks; adjacent to or near industrial sites; bordering sites or structures which are not decent, safe, or sanitary; or bordering sites which have potential environmental concerns such as processing plants. Sites which are not an integral part of a residential community and do not have reasonable access, either by location or terrain, to essential community facilities such as water, sewerage removal, schools, shopping, employment opportunities, medical facilities, may not be acceptable. Consistent with Federal law and Departmental Regulation, the Agency must conduct an environmental assessment and a civil rights impact analysis before a site can be accepted. Sites may be determined by the Agency to be unacceptable if any of the adverse conditions described in this paragraph exist.

(b) *Structures located in central business areas.* The Agency will consider financing construction or the purchase and substantial rehabilitation of an existing structure located in the central business area of a rural community. With prior consent from the Agency, a portion of such a structure may be designated for commercial use on a lease basis. RHS funds may not be used to finance any cost associated with the commercial space.

(c) *Site development costs and standards.* The cost of site development must be less than or comparable to the cost of site development at other available sites in the community and the site must be developed in accordance with 7 CFR part 1924, subpart C and any applicable standards imposed by a state or local government.

(d) *Densities.* Allowable site densities will be determined based on the following criteria:

(1) Compatibility and consistency with the community in which the MFH is located;

(2) Impact on the total development costs; and

(3) Size sufficient to accommodate necessary site features.

(e) *Flood or mudslide-prone areas.* (1) The Agency will not approve sites subject to 100-year floods when non-floodplain sites exist. The environmental review process will assess the availability of a reasonable site outside the 100-year floodplain.

(2) Sites located within the 100 year floodplain are not eligible for federal financial assistance unless flood insurance is available through the National Flood Insurance Program (NFIP). The Agency will complete Federal Emergency Management Agency (FEMA) Form 81–93, Standard Flood Hazard Determination, to document the site's location in relation to the floodplain and the availability of insurance under NFIP.

§ 3560.59 Environmental requirements.

Under the National Environmental Policy Act, the Agency is required to assess the potential impact of the proposed action on protected environmental resources. Measures to avoid or at least mitigate adverse impacts to protected resources may require a change in the site or project design. Therefore, a site cannot be approved until the Agency has completed the environmental review in accordance with 7 CFR part 1940, subpart G, or any successor regulation. Likewise, the applicant should be informed that the environmental review must be completed and considered before the Agency can make a commitment of resources to the project.

§ 3560.60 Design requirements.

(a) *Standards.* All Agency-financed MFH will be constructed in accordance with 7 CFR part 1924, subpart A and will consist of two or more rental units plus appropriate related facilities. Single family structures may be used for group homes and cooperative housing. Also, manufactured homes may be used to create MFH and single family housing originally financed through section 502 of the Housing Act of 1949 may be converted to MFH. Maintenance requirements are listed in § 3560.103(a)(3).

(b) *Residential design.* All MFH must be residential in character, except as provided for in § 3560.58(b), and must meet the needs of eligible residents.

(c) *Economical construction, operation and maintenance.* Taking into consideration life-cycle costs, all housing must be economical to construct, operate, and maintain and must not be of elaborate design or materials.

(1) Economical construction means construction that results in housing of at least average quality with amenities that are reasonable and customary for the community and necessary to appropriately serve tenants.

(2) Economical operating and maintenance means housing with operational and maintenance costs that allow a basic rent structure less than or consistent with conventional rents for comparable units in the community or in a similar community except that when determined necessary by the Agency to allow for decent, safe and sanitary housing to be provided in market areas where conventional rents are not sufficient to cover necessary operating, maintenance, and reserve costs. Basic rents may be allowed to exceed comparable rents for conventional units, but in no case may the rent exceed 150% of the comparable rent for conventional unit rent level.

(3) In meeting the Agency objective of economical construction, operation and maintenance, housing proposals must:

(i) Contain costs without jeopardizing the quality and marketability of the housing;

(ii) Employ life-cycle cost analyses acceptable to the Agency to determine the types of materials which will reduce overall costs by lowering operation and maintenance costs, even though their initial costs may be higher; and

(iii) Provide assurances that costs will be reduced when the Agency determines that housing costs are not economical. If assurances cannot be provided, funding may be withdrawn.

(4) The housing proposal will give maximum consideration to energy conservation measures and practices.

(d) *Accessibility.* All housing will meet the following accessibility requirements.

(1) For new construction of MFH, at least 5 percent of the units (but not less than one) must be constructed as fully accessible units to persons with disabilities. The Uniform Federal Accessibility Standards (UFAS) will be followed. Individual copies of these standards are available from the Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW, Suite 1000, Washington, DC 20004–1111, Telephone: (202) 272–0080, TTY: (202) 272–0082, e-mail address: *info@access-board.gov*. When calculating how many accessible units are required, always round up to the next whole number to ensure the 5 percent requirement is met.

(2) For existing properties that do not have fully accessible units, the 5 percent requirement will apply when making substantial alterations as defined by UFAS. The UFAS defines substantial alteration as ''alteration to any building or facility is to be considered substantial if the total cost for a twelve month period amounts to 50 percent or more of the full and fair cash value of the building * * *'' UFAS further defines full and fair cash value as ''the assessed valuation of a building or facility as recorded in the assessor's office of the municipality and as equalized at one hundred percent (100%) valuation, or the replacement cost, or the fair market value.'' The 5 percent rule will also apply to repair or renovation work on a single unit. For instance, if a unit is damaged by fire and extensive repair is necessary, to the extent possible the unit is to be converted to a fully accessible unit.

(3) The variety of bedroom quantities of fully accessible units will be comparable to the variety of bedroom quantities of units which are not fully accessible. Borrowers will not, however, be required to exceed the 5 percent requirement simply to have an accessible unit of each bedroom quantity. In addition, accessible units should be distributed throughout the complex so not to concentrate the units in one location.

(4) All MFH must meet:

(i) The accessibility requirements as contained in section 504 of the Rehabilitation Act of 1973;

(ii) The requirements of the Fair Housing Amendments Act of 1988;

(iii) The requirements of the Americans with Disabilities Act of 1990, as applicable; and

(iv) All other Federal, State, and local requirements. When architectural standards differ, the most stringent standard will be followed.

§ 3560.61 Loan security.

(a) *General.* Each loan made by the Agency will be secured in a manner that adequately protects the financial interest of the Federal Government throughout the period of the loan.

(b) *Lien position.* (1) The Agency will seek a first or parity lien position on Agency-financed property in all instances. The Agency may accept a junior lien position if the Federal Government's interests are adequately secured.

(2) The Agency will seek a first or parity lien on revenue from rent; Agency, HUD, state or private rental

subsidy payments; chattels; assignments; and operating and reserve accounts. The Agency will accept a junior lien position if the Federal Government's interests are adequately secured.

(c) *Liability.* Personal liability will be required of all individual borrowers. Personal liability will not be required for the members or stockholders of any corporation or trust or any partners in a limited partnership.

(d) *Housing and land ownership.* Applicants must own the MFH and related land for which the loan is being requested, or become the owner when the loan is closed or have a leasehold interest in the land. If an applicant is not the owner of the housing and the related land, the following conditions must be met prior to or at loan closing.

(1) A recorded mortgage on the improvements is given as collateral.

(2) The amount of the loan against the collateral does not exceed its estimated security value.

(3) The unexpired term of the lease on the date of loan closing is at least 50 percent longer than the term of the loan and rent charged for the lease does not exceed the rate being paid for similar leases in the area.

(4) The applicant's leasehold interest is not subject to summary foreclosure or cancellation.

(5) The lease permits:

(i) The Agency to foreclose the mortgage and to transfer the lease;

(ii) The Agency to bid at a foreclosure sale or to accept voluntary conveyance of the security in lieu of foreclosure;

(iii) The Agency to occupy the property, sublet the property, or sell the leasehold for cash or credit if the leasehold is acquired through foreclosure, if the Agency accepts voluntary conveyance in lieu of foreclosure, or if the borrower abandons the property; and

(iv) The applicant, in the event of default or inability to continue with the lease and the loan, to transfer the leasehold subject to the mortgage to a transferee that will assume the property ownership obligations.

§ 3560.62 Technical, legal, insurance, and other services.

(a) *Legal services.* Applicants must have written contracts for any legal services that are to be paid out of Agency loan funds.

(b) *Title clearance.* Applicants must obtain title clearance in accordance with the provisions of 7 CFR part 1927, subpart B applicable to title clearance, which would include title insurance or title opinion, unless the loan applicant is leasing the property or is an organization or an individual with special title or loan closing problems, in which case title clearance and related legal services will be obtained in accordance with procedures approved by the Agency.

(c) *Architectural services.* Applicants must obtain a written contract for architectural services in accordance with the provisions of 7 CFR part 1924, subpart A.

(d) *Insurance.* Applicants must have property and liability coverage at loan closing as well as flood insurance, if needed. Fidelity coverage must be in force as soon as there are assets within the organization and it must be obtained before any loan funds or interim financing funds are made available to the borrower. At a minimum, applicants must meet the property, liability, flood, and fidelity insurance requirements in § 3560.105.

(e) *Surety bonding.* Applicants must comply with the surety bonding provisions of 7 CFR part 1924, subpart A.

§ 3560.63 Loan limits.

(a) *Determining the security value.* The security value for an Agency loan is the lesser of the total development cost (exclusive of any developer's fee as provided by paragraph (d)(2) of this section) or the housing project's security value as determined by an appraisal conducted in accordance with subpart P of this part, minus any prior or parity liens on the housing project. For purposes of determining security value:

(1) Total development cost must be calculated excluding costs not considered allowable under § 3560.54(a), and excluding costs related to compliance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970.

(2) The appraisal, which will determine the market value, subject to restricted rents, will be obtained by the Agency and conducted in accordance with subpart P of this part.

(b) *Limitations on loan amounts.* The Agency will not make any loans without adequate security. The following limitations will be set on loan amounts:

(1) For all loan applicants who will receive benefits from the low-income housing tax credit program, the amount of Agency financing for the housing will not exceed 95 percent of the security value available for the Agency loan.

(2) For all loan applicants who will not receive low-income housing tax credit benefits and who are comprised solely of nonprofit organizations, consumer cooperatives, or state or local public agencies, the amount of the loan will be limited to the security value available for the Agency loan, plus the 2 percent initial operating capital and any necessary relocation costs incurred.

(3) For all other loan applicants who will not receive low-income housing tax credit benefits, the loan amount will be limited to no more than 97 percent of the security value available for the Agency loan.

(c) *Equity contribution.* Loan applicants, with the exception of nonprofit organizations, consumer cooperatives, or state or local public agencies who will not be receiving tax credits, must make an equity contribution from their own resources.

(1) Loan applicants who will receive benefits from the low-income housing tax credit program must make an equity contribution in the amount of 5 percent of the Agency loan. The maximum Agency loan will be determined in accordance with § 3560.63(b).

(2) Loan applicants who will not receive benefits from the low-income housing tax credit program and are not nonprofit organizations, consumer cooperatives, or state or local public agencies must make an equity contribution in the amount of 3 percent of the Agency loan. The maximum Agency loan will be determined in accordance with § 3560.63(b).

(d) *Review of assistance from multiple sources.* The Agency will analyze Federal Government and other assistance provided to any MFH project to establish the maximum loan amount and to assure that the assistance is not more than the minimum necessary to make the housing affordable, decent, safe, and sanitary to potential tenants.

(1) *Determining minimum assistance.* For purposes of determining minimum assistance, the total amount paid for builder's profit, overhead, and general requirements may not exceed 21 percent of the construction contract. Unless specified differently in a Memorandum of Understanding between the Agency and the state agency that allocates low-income housing tax credits, limits will be those specified in § 3560.53(l).

(2) *Developer's fee.* While, in accordance with § 3560.54(a)(9), payment of a developer's fee is not an eligible use of Agency loan funds, the Agency will include in total development costs a developer's fee paid from other sources when analyzing the Federal Government assistance to the housing. The Agency may recognize a developer's fee paid from other sources on construction or rehabilitation of up to 15 percent of the total development costs authorized for low-income housing tax credit purposes, or by another Federal Government program. Likewise for transfer proposals

that include acquisition costs, the developer's fee on the acquisition cost may be recognized up to 8 percent of the acquisition costs only when authorized under a Federal Government program providing assistance. The developer's fee is not included in determining the Agency's maximum debt limit and loan amount.

(e) *Limits on equity loans.* For equity loans to avert prepayment, the amount of the Agency equity loan will be limited to no more than the difference between 90 percent of market value of the property when appraised as conventional unsubsidized MFH and all current unpaid balances. For information on appraisal issues, refer to subpart P of this part.

(f) *Cost overruns.* (1) All applicants must agree in writing to provide funds at no cost to the housing and without pledging the housing as security to pay any cost for completing planned construction after the maximum debt limit is reached.

(2) After loan approval, the Agency will only approve cost increases for housing proposals involving new construction or major rehabilitation when the additional costs will not cause the limits specified in § 3560.53(l) or the maximum debt limit to be exceeded and the cost increases were caused by:

(i) Unforeseen factors that are determined by the Agency to be beyond the borrower's control;

(ii) Design changes required by the Agency, state, or the local government; or

(iii) Financing changes approved by the Agency.

§ 3560.64 Initial operating capital contribution.

Borrowers are required to make an initial operating capital contribution to the general operating account in the amount of at least 2 percent of the total development cost or appraised value, whichever is less.

(a) Borrowers that are nonprofit organizations, consumer cooperatives, or state or local public agencies and are not receiving low-income housing tax credits, may use loan funds for their initial operating capital contribution. All other borrowers must fund the initial operating capital contribution from their own resources.

(b) Borrowers must provide to the Agency for approval a list of materials and equipment to be funded from the general operating account for initial operating expenses. As specified in § 3560.304(b), initial operating capital may be used only to pay for approved budgeted expenses. If total initial operating expenses exceed 2 percent, the additional amount must be paid by the borrower from its own resources, except that borrowers meeting the provisions of § 3560.64(a) who do not have sufficient resources for this purpose may request Agency assistance. Withdrawals from the reserve account will not be approved for such expenses.

(c) Borrowers must provide the Agency with documentation of their initial operating capital contribution deposited into the general operating account prior to the start of construction or loan closing, whichever comes first, and such funds thereafter, may only be used for authorized budgeted purposes.

(d) If the conditions specified in § 3560.304(c) are met, funds contributed as initial operating capital may be returned to the borrower.

§ 3560.65 Reserve account.

To meet major capital expenses of a housing project, borrowers must establish and fund a reserve account that meets requirements of § 3560.306. At a minimum, the borrower must agree to make monthly contributions to the reserve account at the rate of 1 percent annually of the amount of the total development cost until the reserve account equals 10 percent of the total development cost.

§ 3560.66 Participation with other funding or financing sources.

(a) *General requirements.* The Agency encourages the use of funding or financing from other sources in conjunction with Agency loans. When the Agency is not the sole source of financing for MFH, the following conditions must be met.

(1) The Agency will enter into a participation (or intercreditor) agreement with the other participants that clearly defines each party's relationship and responsibilities to the others.

(2) The rental units that will serve tenants eligible for housing under the Agency's income standards must meet Agency standards and the number of units that will serve the Agency's tenants are at least equal to the units financed by the Agency.

(3) All rental units must be operated and managed in compliance with the requirements of the Agency and the other sources. To the extent these requirements overlap, the most stringent requirement must be met. The Agency may negotiate the resolution of overlapping requirements on a case-by-case basis; however, at a minimum, Agency requirements must be met.

(4) If the number of units subject to the LIHTC rent and income restrictions is greater than the number of units projected to receive Agency rental assistance (RA) or similar tenant subsidy, the market feasibility documentation must clearly reflect a need and demand by LIHTC income-eligible households financially able to afford the projected rents without such a subsidy for the units not receiving RA or similar tenant subsidy.

(b) *Rental assistance.* The Agency may provide rental assistance with MFH loans participating with other sources of funding under the following conditions:

(1) The Agency's loan equals at least 25 percent of the housing's total development cost.

(2) The rental assistance is provided only to those rental units where the basic rents do not exceed what basic rents would have been had the Agency provided full financing.

(3) The provisions of subpart F of this part are met.

(c) *Security requirements.* The security requirements of § 3560.61 must be met for all Agency-financed MFH participating with other sources of funding.

(d) *Reserve requirements.* Reserve account requirements will be determined on a case-by-case basis, taking into consideration the reserve requirements of the other participating lenders, so that the aggregate fully funded reserve account is consistent with the requirements of § 3560.65. Reserve requirements and procedures for reserve account withdrawals must be agreed upon by all lenders and included in the intercreditor or participation agreement.

(e) *Design requirements.* Housing and related facilities must be planned and constructed in accordance with 7 CFR 1924, subparts A and C. If housing includes non-Agency financed common facilities, the following conditions must be met:

(1) The non-Agency-financed common facility's operating and maintenance costs must be paid through collection of a user fee from residents who use the facility,

(2) The non-Agency-financed common facility must be designed and operated with appropriate safeguards for the health and safety of tenants, and

(3) The facility must be fully available and accessible to all tenants.

§ 3560.67 Rates and terms for section 515 loans.

Rates and terms for farm labor housing loans are found in subpart L of this part for Off-Farm and subpart M of this part for On-Farm.

(a) *Interest.* Loans will be closed at the lower of the interest rate in effect at the time of loan approval or the interest rate that is in effect at time of loan closing.

(b) *Interest credit.* The Agency will provide interest credit to subsidize the interest on the Agency loan to a payment rate of 1 percent for all of the Agency's initial and subsequent loans.

(c) *Amortization period and term.* (1) Except for manufactured housing, loans will be amortized over a period not to exceed the lesser of the economic life of the housing being financed or 50 years and paid over a term not to exceed 30 years from the date of loan. The Agency may make a loan to the borrower to finance the final payment of a loan in accordance with § 3560.74.

(2) Loans for manufactured housing will be amortized and paid over a term not to exceed 30 years as specified in § 3560.70(c).

§ 3560.68 Permitted return on investment (ROI).

(a) *Permitted return.* Borrowers operating on a limited profit basis will be permitted a return not to exceed 8 percent of their required initial investment determined at the time of loan approval in accordance with § 3560.63(c).

(b) *Calculation of permitted return.* The permitted return will be based on the borrower's contributions from their own resources, which, when added to the Agency loan amount and all sources of funding or financing, do not exceed the security value of the MFH project as specified in § 3560.63(a).

(1) Proceeds received by the borrower from the syndication of low-income housing tax credit and contributed to the MFH project may be considered funds from the borrower's own resources for the portion of the proceeds which exceeds:

(i) The allowable developer's fee determined by the state agency administering the low-income housing tax credit, and

(ii) The borrower's expected contribution to the transaction, as determined by the state agency administering the low-income housing tax credit.

(2) A building site contributed by the borrower will be appraised by the Agency to determine its market value. A return may not be allowed on the amount above the equity contribution required by § 3560.63(c) if the market value as determined by the Agency, when added to the loan and grant amounts from all sources, exceeds the security value of the MFH project as specified in § 3560.63(a).

(c) *Return on additional investment.* The initial investment may exceed the equity contribution required by § 3560.63(c) and a return allowed on the investment if the additional return does not increase basic rents and rental assistance costs above what basic rents and rental assistance costs would have been with the Agency financing 95 or 97 percent of the total development cost.

(d) *Compensation to nonprofit organizations.* Although nonprofit organizations are not eligible to take a return on investment, with prior Agency approval, cooperatives and nonprofit organizations may use housing project funds to pay asset management expenses directly attributable to ownership responsibilities, as described in § 3560.303(b)(1)(ii).

§ 3560.69 Supplemental requirements for congregate housing and group homes.

(a) *General.* Congregate housing and group homes must be planned and developed in accordance with 7 CFR part 1924, subparts A and C.

(b) *Design criteria.* Congregate housing and group homes must be designed to accommodate all special services that will be provided.

(c) *Services.* Congregate housing and group home loan applicants, as part of their loan request, must submit a plan to make affordable services available to residents to assist the residents in living independently. The plan must address the availability of this assistance from service providers throughout the term of the loan.

(1) For congregate housing, the resident services plan must address how the following services will be provided or made available:

(i) One cooked meal per day, seven days per week;

(ii) Transportation to and from the property;

(iii) Assistance in housekeeping;

(iv) Personal services;

(v) Recreational and social activities; and

(vi) Access to medical services.

(2) For group homes, the resident services plan must address how access to the following services will be provided or made available:

(i) A common kitchen in which to prepare meals;

(ii) Transportation;

(iii) Nearby recreational and social activities which may be coordinated by the resident assistant, if applicable; and

(iv) Medical services as necessary.

(d) *Necessary items.* Borrowers must ensure items such as tables, chairs, and cookware necessary to furnish common areas are made available to congregate housing or group homes. The 2 percent initial operating capital may be used to purchase these items.

(e) *Association with other organizations.* Congregate housing and group homes may coordinate services or training with another organization, such as a workshop for the developmentally disabled. However, the housing facility must be a separate entity and not dependent on the other organization.

(f) *Market feasibility documentation.* Market feasibility documentation for congregate housing and group homes is subject to the following requirements:

(1) Must address the need for housing with services and include information concerning alternative service providers;

(2) Must contain demographic information pertaining to the population that is to be served by the congregate housing or group home project; and

(3) May consider an expanded market area that includes nondesignated places, but the facility must be located in a designated place.

(g) *Rental assistance for group homes.* A unit in a group home consists of a space occupied by a specific tenant household, which may be an apartment unit, a bedroom, or a part of a bedroom. Agency rental assistance will be made available to tenants sharing a unit so long as the total rent for the unit does not exceed conventional rents for comparable units in the area or a similar area.

§ 3560.70 Supplemental requirements for manufactured housing.

(a) *Design requirements.* Manufactured housing must meet the requirements of 7 CFR part 1924, subpart A applicable to manufactured housing.

(b) *Eligible properties.* The manufactured housing must include two or more housing units. The applicant will become the first owner purchasing the manufactured homes for purposes other than resale. The following exceptions may be made to this provision:

(1) A housing proposal may include the purchase of the real property with existing manufactured housing which will be redeveloped with the placement of new manufactured homes.

(2) A housing proposal may include the rehabilitation of existing manufactured housing only if the units to be rehabilitated are currently financed by the Agency. The proposal will include the results of the applicant's consultation with the manufacturer to determine if the proposed rehabilitation work will affect the structural integrity of the unit and, if so, the statement will include an explanation as to how.

(c) *Terms.* The maximum loan amount will be determined in accordance with the requirements of § 3560.63. The amortization period and term of loans

for manufactured housing will not exceed the lesser of the economic life of the housing being financed or 30 years.

(d) *Security.* A mortgage or deed of trust will be taken on the entire property purchased or improved with the loan. The encumbered property must be covered under a standard real estate title insurance policy or attorney's title opinion that identifies the housing as real property and insures or indemnifies against any loss if the manufactured home is determined not to be part of the real property. The property must be taxed as real estate by the jurisdiction where the housing is located if such taxation is permitted under applicable law when the loan is closed.

(e) *Special warranty requirements.* The general contractor or dealer-contractor, as applicable, must provide a warranty in accordance with the provisions of 7 CFR part 1924, subpart A.

(1) The warranty must establish that the manufactured homes, foundations, positioning and anchoring of the units to their permanent foundations, and all contracted improvements, are constructed in conformity with applicable approved plans and specifications.

(2) The warranty must include provisions that the manufactured homes sustained no hidden damage during transportation and, for double-wide units, that the sections were properly joined and sealed.

(3) The general contractor or dealer contractor must warrant that the manufacturer's warranty is in addition to and does not diminish or limit all other warranties, rights, and remedies that the borrower or lender may have.

(4) The seller of the manufactured homes must deliver to the borrower the manufacturer's warranty with an additional copy for RHS. The warranty must identify the units by serial number.

§ 3560.71 Construction financing.

(a) *Construction financing plan.* Prior to loan approval, applicants must submit to the Agency for its concurrence a plan for the construction financing and securing of the loan.

(b) *Interim financing.* Interim financing is required by the Agency for any construction, except as noted in paragraph (c) of this section.

(1) The Agency reserves the right to review and approve the interim financing arrangements proposed by the applicant.

(2) When interim financing is used, the Agency will obligate the funds and provide an interim financing letter to the lender that will confirm the procedures and conditions for the construction financing. The take-out loan will be closed and the interim lender paid off when the conditions of the interim financing letter have been met.

(3) The applicable provisions of 7 CFR part 1924, subpart A will be used to monitor the construction.

(4) An environmental review must be completed in accordance with 7 CFR part 1940, subpart G, prior to issuance of the interim financing letter.

(c) *Multiple advances.* When interim financing is not available or when it is in the best interest of the Federal Government, the Agency may provide for multiple advances of the funds to cover the cost of construction.

(1) The Agency will review and approve the multiple advances proposed by the borrower.

(2) When multiple advances are used, the Agency will close the loan prior to any advancement of funds and the relevant provisions of 7 CFR part 1924, subpart A will be used to monitor the construction.

(3) The loan check will be handled in accordance with 7 CFR part 1902, subpart A.

§ 3560.72 Loan closing.

(a) *Requirements.* Loans will be closed in accordance with 7 CFR part 1927, subpart B and any state supplements. In all cases, the borrower must:

(1) Provide evidence that an Agency-approved accounting system is in place;

(2) Execute a restrictive-use contract acceptable to the Agency that establishes the borrower's obligation to operate the housing for program purposes for the term of the Agency loan;

(i) For all section 514 loans, except as provided in § 3560.621, made pursuant to a contract entered into on or after the effective date of this regulation, the following language will be included in the mortgage and deed of trust: ''The borrower and any successors in interest agree to use the housing for the purpose of housing people eligible for occupancy as provided in sections 514 and 516 of title V of the Housing Act of 1949, and Rural Housing Service regulations then in effect. The restrictions are applicable for a term of 20 years from the date on which the last loan was closed. No eligible person occupying the housing will be required to vacate nor any eligible person denied occupancy for housing prior to the close of such period because of a prohibited change in the use of the housing. A tenant or person wishing to occupy the housing may seek enforcement of this provision as well as the Government.''

(ii) All other loans are subject to restrictive-use provisions as outlined in subpart N of this part.

(3) Provide evidence that construction financing arrangements are adequate when interim financing is going to be used;

(4) Provide evidence that all the funds from other sources as proposed in the application are available and that there have been no changes in the Sources and Uses Comprehensive Evaluation (SAUCE).

(5) Provide evidence of the title to all security required by the Agency;

(6) Provide a certification that all construction in the case of interim financing has been or, in the case of multiple advances, will be paid;

(7) Provide, in the case of interim financing, a dated and signed statement from the owner's architect certifying to substantial completion of the housing project;

(8) Provide a certification that all construction in the case of interim financing has been or, in the case of multiple advances, will be in accordance with the plans and specifications concurred in by the Agency;

(9) Provide evidence, if applicable, that the conditions of the interim financing letter have been met; and

(10) Attend a pre-occupancy conference with the Agency.

(b) *Cost certification.* In all cases, the borrower must report actual construction costs. Whenever the State Director determines it appropriate, and in all situations where there is an identity of interest as defined in 7 CFR 1924.4 (i), the borrower, contractor and any subcontractor, material supplier, or equipment lessor having an identity of interest must each provide certification as to the actual cost of the work performed in connection with the construction contract in accordance with 7 CFR part 1924, subpart A. The construction costs must also be audited in accordance with Governmental Auditing Standards, by a Certified Public Accountant (CPA). In some cases, the Agency will contract directly with a CPA for the cost certification. Funds that were included in the loan for cost certification and which are ultimately not needed because Agency contracts for the cost certification will be returned on the loan. Agency personnel will utilize exhibit M of 7 CFR part 1924, subpart A to assist in the evaluation of the cost certification process.

(c) *Notification of loan cancellation.* Loans may be canceled after approval and before loan closing. The Agency

will notify all parties of the cancellation and the reasons for the cancellation in accordance with 7 CFR part 1927, subpart B.

§ 3560.73 Subsequent loans.

(a) *Applicability.* The Agency may make a subsequent loan to a borrower to complete, improve, repair, or make modifications to MFH initially financed by the Agency or for equity for preservation purposes. Loan requests to add units to comply with accessibility requirements may be processed as a subsequent loan; however, loan requests to add units to meet market demand will be processed as an initial loan request and must compete under the NOFA.

(b) *Application requirements and processing.* Upon receipt of a subsequent loan request, the Agency will inform the applicant what information is required based on the nature and purpose of the loan request. Subsequent loan requests do not have to compete for funding against initial loan proposals.

(c) *Amortization and payment period.* Subsequent loans will be amortized over a period not to exceed the lesser of the economic life of the housing being financed or 50 years and paid over a term not to exceed the lesser of the economic life of the housing or 30 years from the date of the loan.

(d) *Equity contribution.* Applicants for subsequent loans must make contributions on the loans in the same proportion as outlined in § 3560.63(c). Loan applicants will not be given consideration for any increased equity value that the property may have since the initial loan.

(1) Excess initial investment on an initial loan may be credited toward the required investment on a subsequent loan.

(2) An initial operating capital contribution to the general operating account as described in § 3560.64 is required for a subsequent loan approved under the conditions set in § 3560.63(f) to complete housing construction but is not required for a subsequent loan to repair or improve existing housing.

(e) *Environmental requirements.* Subsequent loans are subject to the completion of an environmental review in accordance with 7 CFR part 1940, subpart G.

(f) *Design requirements.* All improvements, repairs, and modifications will be in accordance with 7 CFR part 1924, subparts A and C.

(g) *Architectural services.* The applicant must obtain architectural services when any of the following conditions exist:

(1) Enclosed space is being added,

(2) When required by state law, and

(3) When the Agency determines that the work being proposed requires architectural services.

(h) *Restrictive-use requirements.* Subsequent loans are subject to restrictive-use provisions as outlined in § 3560.662(a) and borrowers must execute a restrictive-use contract in accordance with § 3560.72(a)(2).

(i) *Designation changes from rural to nonrural.* If the designation of an area changes from rural to nonrural after the initial loan is made, a subsequent loan may be made only to make necessary improvements and repairs to the property or for equity when needed to avert prepayment.

(j) *Agency's discretion.* The Administrator may approve a subsequent loan in a place that is not on the list of designated places as a servicing action, for example, to replace units destroyed by a natural disaster.

§ 3560.74 Loan for final payments.

(a) *Use.* The Agency may finance final payments for borrowers holding existing loans for which the Agency approved an amortization period that exceeded the term of the loan.

(b) *Requirements.* The Agency may finance final payments if documentation regarding the market area shows that a need for low-income rental housing still exists for that area and one of the following conditions has been met.

(1) It is more cost efficient and serves the tenant base more effectively to maintain existing MFH than to build another property in the same location; or

(2) The MFH has been maintained to such an extent that it can be expected to continue providing affordable, decent, safe and sanitary housing for 20 years beyond the date of the loan to finance a final payment; and

(3) Funds are available.

(c) *Term.* The term of Agency loans to finance final payments will not exceed 20 years from the date of the initial loan final payment.

§§ 3560.75–3560.99 [Reserved]

§ 3560.100 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 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. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart C—Borrower Management and Operations Responsibilities

§ 3560.101 General.

This subpart sets forth borrower obligations regarding management and operations of multi-family housing (MFH) projects financed by the Agency. As noted in § 3560.6, the borrower requirements listed in this subpart must be complied with by the borrower. The borrower may designate in writing a person to act as the borrower's authorized agent.

§ 3560.102 Housing project management.

(a) *General.* Borrowers hold final responsibility for housing project management and must ensure that operations comply with the terms of all loan or grant documents, Agency requirements and applicable local, state and Federal laws and ordinances. Project operations shall be conducted to meet the actual needs and necessary expenses of the property or for any other purpose authorized under Agency regulations. Any party not meeting these responsibilities may be subject to penalties. It is expected that only typical and reasonable expenses be incurred for the services rendered. Consequently, methods to inflate, duplicate, obscure, or failure to disclose the true nature and cost of work performed for the services rendered will cause the Agency to deny budget requests for the services or issue a demand for recovery and reimbursement for unauthorized actions.

(b) *Management plan.* Borrowers must develop and maintain a management plan for each housing project covered by their loan or grant. The management plan must establish the systems and procedures necessary to ensure that housing project operations comply with Agency requirements.

(1) At a minimum, management plans must address the following items:

(i) Maintenance systems, including procedures for routine maintenance, capital item repair and replacement, and effective energy conservation practices;

(ii) Personnel policies, job descriptions, staffing plans, training procedures for on-site staff. The Borrower will include specific duties

and responsibilities of each property manager, site manager and caretaker;

(iii) Front-line management functions to be performed by off-site staff;

(iv) Plans and procedures for providing supplemental services including laundry, vending, and security;

(v) Plans for accounting, record keeping and meeting Agency reporting requirements;

(vi) Procurement procedures;

(vii) Rent and occupancy charge collection procedures, and procedures for requesting and implementing changes in rents, utility allowances, or occupancy charges;

(viii) Plans and procedures for marketing rental units and maintaining compliance with the Affirmative Fair Housing Marketing Plan in accordance with § 3560.104;

(ix) Unit leases and leasing policies and procedures, including procedures for maintaining and purging waiting lists, determining applicant eligibility, certifying and recertifying income, tenant selection, and occupancy policies such as security deposit amounts, occupancy rules, termination of leases or occupancy agreements and eviction;

(x) Plans for allowing tenant participation in property operations and for fostering tenant relationships with management;

(xi) Procedures for applicant and tenant appeals; and

(xii) Describe how management will make known to tenants and applicants that management will provide reasonable accommodations under the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, and regulations implemented thereunder at the borrower's expense unless to do so would cause an undue financial or administrative burden, how such requests are to be made, and who within management will have the authority to approve or disapprove a request for an accommodation.

(2) Loan or grant applicants must submit a management plan before the Agency will give final approval to the loan or grant application. The plan must address the required items identified in paragraph (b)(1) of this section in sufficient detail to enable the Agency to monitor housing project performance.

(c) *Management plan effective period.* A management plan remains in effect as long as it accurately reflects housing project operations and the housing project is in compliance with the Agency requirements.

(1) Borrowers must submit an updated management plan to the Agency if operations change or are no longer consistent with the management plan on file with the Agency.

(2) When there are no changes in operations, borrowers must submit a certification to the Agency every 3 years stating that operations are consistent with the management plan and the plan is adequate to assure compliance with the loan and grant documents and Agency requirements or applicable local, state and Federal laws.

(3) If the Agency determines that operations are in compliance with Agency requirements, loan or grant agreements, or applicable local, state, and Federal laws, but are not consistent with the management plan, the Agency will require the borrower to:

(i) Revise the management plan to accurately reflect housing operations;

(ii) Take actions to ensure the management plan is followed; or

(iii) Advise the Agency in writing of the action taken.

(4) When a housing project is being transferred from one borrower to another, the transferee must submit a management plan that addresses the required items identified in paragraph (b)(1) of this section in sufficient detail to enable the Agency to give final approval of the transfer.

(d) *Housing projects with compliance violations.* Upon receiving notice of compliance violations in accordance with § 3560.354, borrowers must submit to the Agency:

(1) Revisions to the management plan establishing the changes in housing operations that will be made to restore compliance;

(2) If the borrower determines the compliance violations were due to a failure to follow the management plan, the borrower must certify to the Agency that the management plan is adequate to assure compliance with the applicable requirements of this part and submit a written description of the actions they will take to ensure the management plan is followed; or

(3) If the Agency discovers continued discrepancies between a management plan and housing project operations or compliance violations, the Agency may require the borrower to install a different management agent acceptable to the Agency as described in paragraph (e) of this section.

(e) *Acceptable management agents.* Borrowers must obtain Agency approval of the agent proposed to manage a housing project prior to entering into any formal agreement with the agent and prior to allowing the agent to assume responsibility for housing project operations. Borrowers that plan to self-manage a housing project also must receive Agency approval before assuming responsibility for housing operations.

(1) Borrowers must submit a written request for Agency approval of the proposed management agent at least 45 days prior to the date the agent is to assume responsibility for operations. This request must include a profile of the proposed management agent that provides sufficient information to allow the Agency to evaluate whether the agent is acceptable.

(2) The Agency will deny approval of any proposed management agent that cannot provide evidence of at least two years of experience and satisfactory performance in directing and overseeing the management of similar federally-assisted MFH.

(3) The Agency may issue approval of a management agent that does not meet the requirements of § 3560.102(e)(2) if the management agent can provide evidence that indicates the ability to successfully manage a MFH project in accordance with Agency requirements.

(4) If a borrower enters into an agreement with a management agent or begins to self-manage prior to receiving Agency approval, the Agency will place the borrower in non-monetary default status and will require the borrower to immediately terminate the contract with the management agent.

(f) *Self-management.* Borrowers may self-manage a housing project but must receive Agency approval before assuming responsibility for housing operations. Borrowers that plan to self-manage must meet all requirements of § 3560.102, except for paragraph (h) of this section.

(g) *Identity-of-interest disclosure.* Borrowers and management agents must disclose to the Agency all identity-of-interest relationships which they have with firms and must receive Agency approval to use such firms prior to entering into any contractual relationships with such entities that involve Agency funds.

(1) This disclosure must include any identity-of-interest relationships between:

(i) The borrower and the management agent;

(ii) The borrower or management agent and the providers of supplies and services to the housing project; and

(iii) The borrower or the management agent and employees of any of the above.

(2) Failure to disclose such relationships may subject the borrower, the management agent, and the other firms or employees found to have an identity of interest relationship to suspension, debarment, or other remedies available to the Agency.

(3) After disclosure of an identity-of-interest relationship:

(i) The borrower, management agent, and supplier of goods and services must provide documentation proving that use of identity-of-interest firms is in the best interest of the housing project;

(ii) Any supplier of goods and services must certify in writing to the Agency that the individual or organization has a viable, on-going trade or business qualified and licensed, if appropriate, to do the work for which a contract is being proposed;

(iii) The borrower, management agent, and supplier of goods and services must agree, in writing, that all records related to the housing project will be made available to the Agency, Office of the Inspector General (OIG), General Accountability Office (GAO), or a representative of the Agency, upon request; and

(iv) The Agency will deny the use of an identity-of-interest firm when the Agency determines such use is not in the best interest of the Federal Government or the tenants.

(h) *Management agreement.* Borrowers contracting with a management agent must execute a management agreement that establishes:

(1) The management agent's responsibility to comply with Agency requirements and local, state, and Federal laws;

(2) That the management fee is payable out of the housing project's general operating account consistent with the requirements of paragraph (i) of this section; and

(3) The Agency's authority to terminate the agreement for failure to operate the housing project in accordance with Agency requirements or local, state, or Federal laws.

(i) *Management fees.* Management fees will be an allowable expense to be paid from the housing project's general operating account only if the fee is approved by the Agency as a reasonable cost to the housing project and documented on the management certification. Management fees must be developed in accordance with the following:

(1) The management fee may compensate the management entity only for the specifically identified bundle of services to be provided to the housing project. Costs and services to be paid as part of the bundle of services include:

(i) Supervision by the management agent and its staff (time, knowledge, and expertise) of overall operations and capital improvements of the site.

(ii) Hiring, supervision, and termination of on-site staff.

(iii) General maintenance of project books and records (general ledger, accounts payable and receivable, payroll, etc.). Preparation and distribution of payroll for all on-site employees, including the costs of preparing and submitting all appropriate tax reports and deposits, unemployment and workers' compensation reports, and other IRS- or state-required reports.

(iv) Training provided to on-site staff at the project site.

(v) Preparation and submission of proposed annual budgets and negotiation of approval with the Agency, other governmental agencies and the borrowers.

(vi) Preparation and distribution of the Agency or other governmental agency forms and routine financial reports to borrowers.

(vii) Preparation and distribution of required year-end reports to the Agency or other governmental agency and borrowers.

(viii) Preparation of requests for reserve withdrawals, rent increases, or other required adjustments.

(ix) Arranging for preparation by outside contractors of energy audits and utility allowance analysis. Implement appropriate changes.

(x) Preparation and implementation of Affirmative Fair Housing Marketing Plans as well as general marketing plans and efforts.

(xi) Review of tenant certifications and submission of monthly rental assistance requests, and overage. Submission of payments where required.

(xii) Preparation, approval, and distribution of operating disbursements; oversight of project receipts; and reconciliation of deposits.

(xiii) Overhead of management agent, including:

(A) Establish, maintain, and control an accounting system sufficient to carry out accounting supervision responsibilities.

(B) Maintain agent office arrangements, staff, equipment, furniture, and services necessary to communicate effectively with the properties, the Agency or other governmental agency and with the borrowers.

(C) Postage expenses related to the normal responsibility for mailings to the properties, the Agency or other governmental agency, the tenants, the vendors, and the owners.

(D) Expense of telephone and facsimile communication to the properties, tenants, the Agency or other governmental agency, and the borrowers.

(E) Direct costs of insurance (fidelity bonds covering central office staff, computer and data coverage, general liability, etc.) directly related to protection of the funds and records of the borrower.

(F) Central office staff training and ongoing certifications.

(G) Maintenance of all required profession and business licenses and permits. (This does not include project site office permits or licenses.)

(H) Insurance coverage for agent's office and operations (Property, Auto, Liability, E&O, Casualty, Workers Compensation, etc.)

(I) Travel of agent staff to the properties for on-site inspection, training, or supervision activities.

(J) Agent bookkeeping for their own business.

(xiv) Attendance at meetings (including travel) with tenants, owners, and the Agency or other governmental agency.

(xv) Development, preparation, and revision of management plans or agreements.

(xvi) Coordination of U.S. Department of Housing and Urban Development (HUD) certifications or vouchers with tenants, including all reporting to all pertinent agencies and borrowers.

(xvii) Directing the investment of project funds into required accounts.

(xviii) Maintenance of bank accounts and monthly reconciliations.

(xix) Preparation, request for, and disbursement of borrower's initial operating capital (for new projects) as well as administration of annual owner's return on investment.

(xx) Account maintenance, settlement, and disbursement of security deposits.

(xxi) Working with third party auditors for initial set-up of audits and annually thereafter for audit preparation and review. Assistance with supplemental letters and preparation of Agency financial reports or other governmental agency reports.

(xxii) Storage of records and adherence to records retention requirements.

(xxiii) Assist on-site staff with tenant relations and problems. Provide assistance to on-site staff in severe actions (eviction, death, insurance loss, etc.).

(xxiv) Oversight of general and preventive maintenance procedures and policies.

(xxv) Development and oversight of asset replacement plans.

(xxvi) Oversight of preparation of section 504 reviews, development of plans, and implementation of improvements necessary to comply with plans and section 504 requirements.

(xxvii) Reporting to general and limited partners and State agencies for Low Income Housing Tax Credit (LIHTC)-compliance purposes.

(2) Management fees may consist of a base per occupied unit fee and add-on fees for specific housing project characteristics. Management entities may be eligible to receive the full base per occupied unit fee for any month or part of a month during which the unit is occupied.

(i) Periodically, the Agency will develop a range of base per occupied unit fees that will be paid in each state. The Agency will develop the fees based on a review of housing industry data. The final base for occupied unit fees for each state will be made available to all borrowers.

(ii) Periodically, the Agency will develop the amount and qualifications to receive add-on fees. The final set of qualifications will be made available to all borrowers.

(3) Allowable Administrative Expenses. (i) *Identifying the Type of Administrative Expense.* Management Plans and Agreements must describe if administrative expenses are to be paid from the management fee or paid for as a project cost.

(A) A management plan is required for all projects. The management plan should describe administrative expenses paid from management agent fees or project operations. The management plan should provide job descriptions for the site manager, the management agent and other personnel. It is important that these documents accurately reflect the duties being performed by the various personnel. The management plan must meet the standards set out in this rule.

(B) A task list should be used to identify which services are included in the management fee, which services are included in project operations, and which are pro-rated along with the methodology used to pro-rating of expenses between management agent fees and project operations. Some property responsibilities are completed at the property and some offsite. Agent responsibilities may be performed at the property, the management office, or at some other location.

(C) Disputes may arise as to who performs certain services. The management plan and job descriptions should normally provide sufficient clarity to avoid or resolve any such disputes; however, sometimes clarifications and supporting materials may be required to resolve disputes. The decision must be made based on the most complete evaluation of the facts presented.

(ii) *Allowable Administrative Expenses.* Payroll related administrative expenses are allowable expenses. Postage expense to mail out rental applications, third-party (asset income and adjustments to income) verifications, application processing correspondence (acceptance or denial letters), mailing project invoice payments, required correspondence, and report submittals to various regulatory authorities for the managed property are allowable project expenses no matter what location or point of origin the mail is generated. Photocopying or printing expense related to actual production of project brochures, marketing pieces, forms, reports, notices, and newsletters are allowable project expenses no matter what location or point of origin the work is performed including outsourcing the work to a professional printer. Correspondence or reports required for record retention or project compliance are allowable project expenses. The cost or expense of equipment and any related equipment service contract is a management agent direct expense, unless the machine becomes the property of the project after purchase.

(iii) *Determining if Expenses are Reasonable.* Generally, expenses charged to project operations, whether for management agent services or other expenses, must be reasonable, typical, necessary and show a clear benefit to the residents of the property. Services and expenses charged to the property must show value added and be for authorized purposes. If such value is not apparent, the service or expense should be examined.

(A) Administrative expenses for project operations exceeding 23 percent, or those typical for the area, of gross potential basic rents and revenues (*i.e.*, referred to as gross potential rents in industry publications) highlight a need for closer review for unnecessary expenditures. Budget approval is required and project resources may not always permit an otherwise allowable expense to be incurred if it is not fiscally prudent in the market.

(B) Excessive administrative expenses can result in inadequate funds to meet other essential project needs, including expenditures for repair and maintenance needed to keep the project in sound physical condition. Actions that are improper or not fiscally prudent may warrant budget disapproval and/or a demand for recovery action.

(4) Unallowable Administrative Expenses.

(i) Certain expenses are not allowable such as legal fees, association dues, bonuses or monetary performance awards, parties, computer hardware and some software, and telephone purchases.

(ii) It is inappropriate to charge for legal services to represent any interest other than the borrower's interest (*i.e.*, representing a general partner or limited partner to defend their individual owner interest is not allowable). Where there is no finding of a borrower's fault, commercially reasonable legal expenses and costs for defending or settling lawsuits (without admission of liability) are allowable.

(iii) Charging for payment of penalties, including opposition legal fees resulting from an award finding improper actions on the part of the owner or management agent is generally an inappropriate project expense. The party responsible generally pays such expenses for violating the standards or by their insurance carriers.

(iv) Association dues to be paid by the project should only be related to training for site managers or management agents. To the extent that association dues can document training for site managers or management agents related to project activities by actual cost or pro-ration, a reasonable expense may be billed to the project.

(v) It is inappropriate for the project to pay for bonuses or monetary performance awards to site managers or management agents that are not clearly provided for by the site manager salary contract.

(vi) Billing the project for parties that are large or unreasonable, such as renting expensive party halls or hotel rooms and payment for alcoholic beverages or gifts to management agent staff are also inappropriate.

(vii) It is inappropriate to bill the project for computer hardware, some software, and internal connections that are beyond the scope and size reasonably needed for the services supplied (*i.e.*, purchasing equipment or software for use by a site manager that is clearly beyond that needed to support project operations). Note that computer learning center activities benefiting tenants are not covered in this prohibition.

(viii) It is inappropriate to bill the project for practices that are inefficient such as routine use of collect calls from a site manager to a management agent office.

(j) *Management certification.* (1) As a condition of approval of the management agent and the management fee, the borrower and the management agents must execute an Agency-approved certification establishing an allowable management fee to be paid

out of the housing project's general operating account and certifying that:

(i) The borrower and management agent agree to operate the housing project in accordance with the management plan;

(ii) The borrower and the management agent will comply with Agency requirements, loan or grant agreements, applicable local, state and Federal laws and ordinances, and contract obligations, will certify that no payments have been made to anyone in return for awarding the management contract to the management agent, and will agree that such payments will not be made in the future;

(iii) The borrower and the management agent will comply with Agency notices or other policy directives that relate to the management of the housing project;

(iv) The management agreement between the borrower and management agent complies with the requirements of this section;

(v) The borrower and the management agent will comply with Agency requirements regarding management fees as specified in paragraph (i) of this section, and allocation of management costs between the management fee and the housing project financial accounts specified in § 3560.302(c)(3);

(vi) The borrower and the management agent will not purchase goods and services from entities that have an identity-of-interest (IOI) with the borrower or the management agent until the IOI relationship has been disclosed to the Agency according to paragraph (g) of this section, not denied by the Agency under paragraph (d)(3) of this section, and it has been determined that the costs are as low as or lower than arms-length, open-market purchases; and

(vii) The borrower and the management agent agree that all records related to the housing project are the property of the housing project and that the Agency, OIG, or GAO may inspect the housing records and the records of the borrower, management agent, and suppliers of goods and services having an IOI with the borrower or with a management agent acting as an agent of the borrower upon demand.

(2) A certification will be executed each time a management agent is proposed and a management agreement is executed or renewed. Any amendment to a management certification must be approved by the Agency and the borrower.

(k) *Procurement.* The borrower and the agents of the borrower must obtain contracts, materials, supplies, utilities, and services at a reasonable cost and seek the most advantageous terms to the housing project. Any discounts, rebates, fees, proceeds, or commissions obtainable with respect to purchases, service contracts, or other transactions must be credited to the housing project.

(l) *Electronic Submission of Data to Agency.* For properties with eight or more housing units, the Agency may specify that borrowers submit information required by this part electronically.

§ 3560.103 Maintaining housing projects.

(a) *Physical maintenance.* (1) The purposes of physical maintenance are the following:

(i) Provide decent, safe, and sanitary housing; and

(ii) Maintain the security of the property.

(2) Borrowers are responsible for the long-term, cost-effective preservation of the housing project.

(3) At all times, borrowers must maintain housing projects in compliance with local, state and federal laws and regulations and according to the following Agency requirements for affordable, decent, safe, and sanitary housing. Agency design requirements are discussed in § 3560.60. The Agency acknowledges that property maintenance is an ongoing process and will not penalize borrowers for less than 100 percent compliance as long as it is evident that the borrower is striving to achieve the standards listed in this paragraph. In addition, the Agency understands that although its multifamily housing portfolio is relatively homogeneous, no one standard is appropriate for all properties.

(i) *Utilities.* The housing project must have an adequate and safe water supply, a functional and safe waste disposal system, and must be free of hazardous waste material.

(ii) *Drainage and erosion control.* The housing project must have drainage that effectively protects the housing project from water damage from standing water and erosion. Units, basements, and crawl spaces must be free of water seepage.

(iii) *Landscaping and grounds.* The housing project must be landscaped attractively. Lawns, plants and shrubs must be maintained and must allow air to windows, vents, and sills. Recreation areas must be maintained in a safe and clean manner and trash collection areas must be adequately sized, screened, and maintained.

(iv) *Drives, parking services and walks.* The housing project must have drives, parking lots, and walks that are free of holes and deterioration. Walks with changes in height between slabs of approximately ½ inch or greater will be considered unacceptable.

(v) *Exterior signage.* All signs at the housing project, including those related to the housing project name, buildings, parking spaces, unit numbers and other informational directions must be visible and well-kept. Sign requirements must conform to § 3560.104(d).

(vi) *Fences and retaining walls.* The housing project must have fence lines that are free of trash, weeds, vines, and other vegetation. Fences must be free of holes and damaged or loose sections. The bases of all retaining walls must be erosion free and drainage weep holes must be cleaned out to prevent excessive pressure behind the retaining wall.

(vii) *Debris and graffiti.* The housing project, including common areas, must be free of trash, litter, and debris. Public walkways, walls of buildings and common areas must be free of graffiti.

(viii) *Lighting.* The housing project must have functional exterior lighting and functional interior lighting in common areas which permits safe access and security.

(ix) *Foundation.* The housing project must have a foundation that is free of evidence of structural failure, such as uneven settlement indicated by horizontal cracks or severe bowing of the foundation wall. Structural members must not have evidence of rot or insect or rodent infestation.

(x) *Exterior walls and siding.* The housing project must have walls that are free from deterioration which allows elements to infiltrate the structure, eaves, gables, and window trim that are free from deterioration, exterior wall coverings that are intact, securely attached, and in good condition. Brick veneers must be free of missing mortar or bricks.

(xi) *Roofs, flashing, and gutters.* The housing project must have gutters and downspouts, where appropriate for climatic conditions, that are securely attached, clean, and finished or painted properly with splash blocks or extenders that direct water flow away from the building. The housing project must have a roof that is free of leaks, defective covering, curled or missing shingles and which is not sagging or buckling. Fascia and soffits must be intact.

(xii) *Windows, doors, and exterior structures.* The housing project must have screens that are free of tears, breaks and rips and windows that are unbroken. Window thermopane seals must be unbroken and caulking on the exterior of windows and doors must be continuous and free of cracks. Doors

must be weather tight, free of holes, and provide security with functional locks. Porches, balconies, and exterior stairs must be free of broken, missing, or rotting components.

(xiii) *Common area accessibility.* The housing project must have accessible, designated handicapped parking spaces with handicapped space signs properly posted. Common areas must be accessible through walks, ramps, porches, and thresholds. The laundry room must have accessible appliances and mailboxes must be at an accessible level. Elevators or mechanical lifts must be functional and kept in good repair.

(xiv) *Common area signage.* The following must be posted in a conspicuous place in a common area: ''Justice for All'' poster, HUD equal housing opportunity poster including the Spanish version if there are Hispanic Limited English Proficiency tenants or applicants, current affirmative fair housing marketing plan, the tenant grievance and appeal procedure, housing project occupancy rules, office hours and phone number, and emergency hours and phone number.

(xv) *Flooring.* If a housing project has carpeting, the carpet must be clean, without excessive wear, and seams that are secure and stretched properly. If the housing project has resilient flooring, the flooring must be clean, unstained, free of tears and breaks, and seams that are secure.

(xvi) *Walls, floors, and ceilings.* The housing project must have walls, floors, and ceilings that are free of holes, evidence of current water leaks, and free of material that appears in danger of falling. The housing project must have wallboard joints that are secure and free of cracks.

(xvii) *Doors and windows.* The housing project must have doors that are free of holes, secure, unbroken and easily operable hardware, deadbolt locks which are in place and secure, and, if doors are metal, free of rust. The housing project must have windows which are easily operated, free of bent blinds or torn curtains, and window interiors must be free of evidence of moisture damage.

(xviii) *Electrical, air conditioning and heating.* The housing project must have heating and cooling units that are free of bare wires and which are functioning properly, including thermostats. The housing project must not have uncovered outlets or other evident safety hazards, switches which work improperly, or light fixtures which are broken and inoperable.

(xix) *Water heaters.* The housing project must have water heaters which are operating properly, free of leaks, supply adequate hot water, and are fitted with temperature and pressure relief valves.

(xx) *Smoke alarms.* The housing project must have smoke alarms which are properly located according to local code and which operate properly.

(xxi) *Emergency call system.* If a housing project has an emergency call system, the switches must be located in the bathroom and bedroom, furnished with a pull cord, with the down position set to ''ON'', and must operate properly.

(xxii) *Insect or vermin infestation.* The housing project must have all units free of visible signs of insects or rodents and must be free of signs of insect or rodent damage.

(xxiii) *Range and range hood.* The housing project must have range units in which all elements are operable, electrical connections are secure and insulated, doors and drawers which are secure, control knobs and handles which are in place and secure, and housing which is sound and the finish is free of chips, damage, or signs of rust. The range hood fan and light must be operable.

(xxiv) *Refrigerator.* The housing project must have refrigerators in which the cooler and freezer are operating properly, the shelves and door containers are secure and free of rust, door gaskets are in good condition and functioning properly, and the housing is sound and the finish is free of chips, damage, or signs of rust.

(xxv) *Sinks.* The housing project must have sinks in which the fittings work properly and are free of leaks, plumbing connections under the cabinet which are free of leaks, the finish is free of chips, damage, or signs of rust, the strainer is in good condition and in place, and which are secured to a wall, counter, or vanity top.

(xxvi) *Cabinets.* The housing project must have cabinets and vanities which are secure to walls or floor and have faces, doors, and drawer fronts that are in good condition and free of breaks and peeling. Shelving must be in place, fastened securely, and free of warps. The housing project must have counter tops which are secure and free of burn marks or chips, bottoms under sinks which are free of evidence of warping, breaks, or being water soaked. Kitchen counter, vanity tops, and back splashes must be properly caulked.

(xxvii) *Water closets.* The housing project must have the base of the water closets at the floor properly caulked. The tanks must be free of cracks or leaks and have a lid which fits and is in good condition. The seats must be secure and in good condition, and the flushing mechanisms must be in good condition and operating properly. The stools must be free of cracks and breaks and be securely fastened to the floor.

(xviii) *Bathtub and shower stalls.* The housing project must have tubs or shower stalls which are free of cracks, breaks, and leaks, and a strainer in good condition and in place. The housing project must have walls and floors of the bathtubs which are properly caulked, tops and sides of shower stalls must be properly caulked, and the finish is free of chips, damage, or signs of rust.

(4) The Agency expects that upon discovery of a condition not in compliance with the standards listed in this section that the borrower will remedy the situation in a timeframe required by the Agency. The Borrower must provide documentation and justification for any failure to meet such timeframe. Properties with deficiencies in the process of being addressed will not be deemed to be out of compliance unless there are so many deficiencies that it would result in a declaration of substantial noncompliance and call into questions the viability of the property and the effectiveness of the borrower's maintenance program. Failure to make such corrections or repairs constitutes a non-monetary default under § 3560.452(e).

(b) *Maintenance systems.* Borrowers must establish the following maintenance systems and must describe these systems in their management plan.

(1) A system for routine maintenance, including:

(i) Regular maintenance tasks that can be prescheduled or planned; and

(ii) Tasks performed on a regular basis to maintain compliance with the standards established in paragraph (a)(3) of this section.

(2) A system for responsive maintenance including:

(i) A process for responding to requests for maintenance from tenants;

(ii) A process for responding to unexpected malfunctions of equipment or damages to building systems such as a furnace breakdown or a water leak; and

(iii) A ''work order'' process for managing and tracking responses to maintenance requests and the performance of maintenance tasks.

(3) A system for preventive maintenance including:

(i) Maintenance of mechanical systems, building exteriors, elevators, and heating and cooling systems which require specially trained personnel; and

(ii) Maintenance that supports energy-efficient operation of the housing project.

(4) A system for correcting deficiencies identified by periodic inspections, which must include:

(i) A move-in inspection;

(ii) A move-out inspection; and

(iii) An annual inspection of occupied units.

(c) *Capital budgeting and planning.* (1) Borrowers must develop a capital budget as part of their annual housing project budget required under § 3560.303. The capital budget must include anticipated expenditures on the long-term capital needs of the housing project to assure adequate maintenance and replacement of capital items.

(2) If the borrower requests an increase in the project's reserve for replacement account, the borrower must have a capital needs assessment prepared and submitted to the Agency to reflect anticipated needs of the housing project for replacement of capital equipment and systems. The cost for preparation of a capital needs assessment will be approved by the Agency as an eligible housing project expense provided the capital needs assessment is reasonable in cost and meets Agency requirements.

(3) [Reserved].

(4) As a part of the annual budget process, borrowers may request an increase in the amount to be contributed and held in the housing project reserve account to fund the needs identified in an Agency-approved capital needs assessment.

(5) At any time, borrowers may request and the Agency may approve amendments to loan or grant documents to increase the amount of funds to be contributed and held in a reserve account to cover the cost of capital improvements based on the needs identified in an Agency approved capital needs assessment. Borrowers must assure improvements are performed as specified in the capital needs assessment.

§ 3560.104 Fair housing.

(a) *General.* Borrowers must comply with the requirements of the Fair Housing Amendments Act of 1988, and this section to meet their fair housing responsibilities.

(b) *Affirmative Fair Housing Marketing Plan.* (1) Borrowers with housing projects that have four or more rental units must prepare and maintain an Affirmative Fair Housing Marketing Plan (AFHMP) as defined in 24 CFR part 200, subpart M.

(2) Loan or grant applicants must submit an AFHMP for Agency approval prior to loan closing or grant approval. Plans must be updated by the borrower whenever components of the plan change.

(3) Borrowers must post the approved AFHMP for public inspection at the housing project site, rental office, or at any other location where tenant applications for the project are received.

(4) When developing the plan, the following items must be considered by the borrower:

(i) *Direction of marketing activities.* The plan should be designed to attract 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 disability. The plan must show which efforts will be made to reach very low-income or low-income groups who would least likely be expected to apply without special outreach efforts.

(ii) *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 in the market area but who are least likely to apply for occupancy. Marketing must not rely on ''word of mouth'' advertising.

(A) *Advertising.* (*1*) *Frequency.* The borrower should advertise availability of housing units in advance of their availability to allow time to receive and process applications. Advertising by newsprint or electronic media must 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 used must identify that the complex is operated on an equal housing opportunity basis. This must be done through the use of the equal housing opportunity statement, slogan, or logo type. Copies of the proposed material must be sent when requesting approval of the plan.

(B) *Community contacts.* Community leaders and special interest groups such as community, public interest, religious organizations, and organizations for the disabled must be contacted. Owners and managers of projects with fully accessible apartments must adopt suitable means to ensure that information regarding the availability of accessible units reaches eligible persons with disabilities. In addition, owners and managers of elderly housing must ensure that information regarding eligibility reaches people who are less than 62 years old but who are eligible because they are disabled. Appropriate contacts are with physical rehabilitation centers, hospitals, workshops for the disabled, commissions on aging, and veterans organizations.

(C) *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 of fair housing marketing and in those actions necessary to carry out the marketing plan. Copies of instructions to the staff regarding fair housing and a summary of the training they have received must be attached to the plan when requesting approval.

(iii) *Marketing records.* Records must be maintained by the borrower reflecting efforts to fulfill the plan. These records will be reviewed by the Agency during civil rights compliance reviews. Plans will be updated as needed.

(c) *Accommodations and communication.* The borrower must take appropriate steps to ensure effective communication with applicants, tenants, and members of the public with disabilities. At a minimum, the following steps must be taken:

(1) Furnish appropriate auxiliary aids (electronic, mechanical, or personal assistance) where necessary, to afford an individual with disabilities an equal opportunity to participate in and enjoy the benefits of Agency financed housing.

(i) In determining what auxiliary aids are necessary, the borrower must give primary consideration to the requests of individuals with disabilities.

(ii) The borrower is not required to provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where a borrower communicates with applicants and tenants by telephone, telecommunication devices for deaf persons or equally effective communication systems must be available for use.

(3) The borrower must implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information concerning the existence and location of accessible services, activities, and facilities in the housing project and community.

(4) The borrower is required to provide reasonable accommodations at the project's expense unless doing so would result in undue financial or administrative burden on the project. Examples of reasonable accommodations may include such items as the installation of grab bars, ramps, and roll-in showers. Reasonable accommodations may also include the modification of rules or policies such as permitting a disabled tenant to have a

two-bedroom unit to accommodate a resident assistant or to permit a disabled tenant to have a companion animal. The decision whether the requested accommodation is reasonable or unreasonable or whether to provide the accommodation would cause an undue financial or administrative burden lies with the borrower and would be for the borrower to defend should a complaint subsequently be filed. Borrowers may wish to consult with their legal counsel prior to denying a request. If the borrower takes the position that providing an accommodation would cause an undue financial or administrative burden, the borrower must permit the tenant to make reasonable modifications at the tenant's expense. Requests for reasonable accommodations must be handled in accordance with the management plan.

(d) *Housing sign requirements.* (1) A permanent sign identifying the housing project is required for all housing projects approved on or after September 13, 1977. Permanent signs are recommended for all housing projects approved prior to September 13, 1977. The sign must meet the following requirements:

(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 office when the housing project has multiple sites and portable signs must be placed where vacancies exist at other site locations of a ''scattered site'' housing project;

(iii) May be of any shape;

(iv) Must be not less than 16 square feet of area for housing projects with 8 or more rental units (smaller housing projects may have smaller signs);

(v) Must be made of durable material including its supports;

(vi) Must include the housing project name;

(vii) Must show rental contact information including but not limited to the office location of the housing project and a telephone number where applicant inquiries may be made;

(viii) Must show either the equal housing opportunity logotype (the house and equal sign, with the words equal housing opportunity underneath the house); the equal housing opportunity slogan ''equal housing opportunity''; or the equal housing opportunity 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.'' If the logotype is used, the size of the logo must be no less than 5 percent of the total size of the project sign.

(ix) May display the Agency or Department logotype; and

(x) Must comply with state and local codes.

(2) Accessible parking spaces must be reserved for individuals with disabilities by a sign showing the international symbol of accessibility. The sign must be mounted on a post at a height that is readily visible from an occupied vehicle. In snow areas, the sign must be visible above piled snow. If there is an office, the designated parking space must be van accessible.

(3) When the continuous unobstructed ingress or egress disabled accessibility route to a primary building entrance is other than the usual or obvious route, the alternate route for disabled accessibility must be clearly marked with international accessibility symbols and directional signs to aid a disabled person's ingress or egress to the building, through an accessible entrance, and to the accessible common use and public and living areas.

§ 3560.105 Insurance and taxes.

(a) *General.* Borrowers must purchase and maintain property insurance on all buildings included as security for an Agency loan. Also, borrowers must furnish fidelity coverage, liability insurance, and any other insurance coverage required by the Agency in accordance with this paragraph to protect the security of the asset. Failure to maintain adequate insurance coverage or pay taxes may lead to a non-monetary default under § 3560.452(c).

(b) *General insurance requirements.* All insurance policies must meet the requirements established by the loan documents and this section.

(1) At loan closing, prior to loan approval, applicants must provide documentary evidence that insurance requirements have been met. The borrower must maintain insurance in accordance with requirements of their loan or grant documents and this section until the loan is repaid or the terms of the grant expire.

(2) Insurance companies must meet the requirements of paragraph (e) of this section.

(3) Insurance coverage amount, terms, and conditions must meet the requirements of paragraph (f) of this section.

(4) The Agency must be named as loss co-payee on all property insurance policies where it holds first lien position. The Agency must be named as an additional insured if its lien position is other than first.

(c) *Borrower failure or inability to meet insurance requirements.* The Agency will take the following actions in cases where a borrower is unwilling or unable to meet the Agency's insurance requirements:

(1) The Agency will obtain insurance for Agency financed property if the borrower fails to do so. If borrowers refuse to pay the insurance premium, the Agency will pay the insurance premium and charge the premium payment amount to the borrower's Agency account and will place the borrower in default as described in § 3560.452(c).

(2) If borrowers habitually fail to pay premiums in a timely manner, the Agency will require borrowers to escrow amounts appropriate to pay insurance premiums.

(3) If insurance that meets the Agency's specified requirements is not available (*e.g.* flood or hurricane insurance), the Agency may accept the insurance policy that most nearly conforms to established requirements.

(4) If the best insurance policy a borrower can obtain at the time the borrower receives the loan or grant contains a loss deductible clause greater than that allowed by paragraph (f)(8) of this section, the insurance policy and an explanation of the reasons why more adequate insurance is not available must be submitted to the Agency prior to loan or grant approval.

(d) *Credits, refunds, or rebates.* Borrowers must credit any refund or rebate from an insurance company to the project's general operating account or reserve account.

(e) *Insurance company requirements.* All insurers, insurance agents, and brokers must meet the following requirements:

(1) Be licensed or authorized to do business in the state or jurisdiction where the housing project is located; and

(2) Be deemed reputable and financially sound as determined by the Agency.

(f) *Property insurance.* The following conditions apply to property insurance purchased for Agency-financed housing projects.

(1) At a minimum, borrowers must obtain the following types of property insurance:

(i) *Hazard insurance.* A policy which generally covers loss or damage by fire, smoke, lightning, hail, explosion, riot, civil commotion, aircraft, and vehicles. These policies may also be known as ''Fire and Extended Coverage,''

''Homeowners,'' ''All Physical Loss,'' or ''Broad Form'' policies.

(ii) *Flood insurance.* This coverage is required for properties located in Special Flood Hazard Areas (SFHA) as defined in 44 CFR part 65, as determined by the Federal Emergency Management Agency (FEMA).

(iii) *Builder's risk insurance.* A policy that insures dwellings under construction or rehabilitation.

(iv) *Elevators, boiler, and machinery coverage.* This coverage is required for properties that operate elevators, steam boilers, turbines, engines, or other pressure vessels.

(2) Other types of insurance that the Agency may require:

(i) Windstorm Coverage.

(ii) Earthquake Coverage.

(iii) Sinkhole Insurance or Mine Subsidence Insurance.

(3) For property insurance, the minimum coverage amount must equal the ''Total Estimated Reproduction Cost of New Improvements,'' as reflected in the housing project's most recent appraisal. At a minimum, property insurance coverage must be adequate to cover the lesser of the depreciated replacement value of essential buildings or the unpaid balance of all secured debt, unless such coverage is financially unfeasible for the housing project.

(i) If the cost of the minimum level of property insurance coverage exceeds what the housing project can reasonably afford, the borrower, with Agency concurrence, must obtain the maximum amount of property insurance coverage that the housing project can afford.

(ii) If the coverage amount is less than the depreciated replacement value of all essential buildings, borrowers must obtain coverage on one or more of the most essential buildings, as determined by the Agency.

(iii) When required, the coverage amount for flood insurance must equal the outstanding loan balance or the maximum coverage allowed by FEMA's ''National Flood Insurance Program.''

(4) Except for flood insurance, property insurance is not required if the housing project:

(i) Has a depreciated replacement value of $2,500 or less; or

(ii) Is in a condition which the Agency determines makes insurance coverage not economical.

(5) Policies for several buildings or properties located on noncontiguous sites are acceptable if the insurer provides proof that each secured building or property related to the housing project is as fully protected as if a separate policy were issued.

(6) Borrowers must notify the Agency and their insurance company agents of any loss or damage to insured property and collect the amount of the loss.

(7) When the Agency is in the first lien position and an insurance settlement represents a satisfactory adjustment of a loss, the insurance settlement will be deposited in the housing project's general operating account unless the settlement exceeds $5,000. If the settlement exceeds $5,000, the funds will be placed in the reserve account for the housing project.

(i) Insurance settlement funds which remain after all repairs, replacements, and other authorized disbursements have been made retain their status as housing project funds.

(ii) If the indebtedness secured by the insured property has been paid in full or the insurance settlement is in payment for loss of property on which the Agency has no claim; a loss draft which includes the Agency as co-payee may be endorsed by the Agency without recourse and delivered to the borrower.

(8) When the Agency is not in the first lien position and the insurance settlement represents satisfactory adjustment of the loss, the Agency will release the settlement funds to the primary mortgagee upon agreement of all parties to the provisions contained in agreements between the Agency and the primary lienholder.

(9) Allowable deductible amounts are as follows:

(i) *Hazard/Property Insurance.* (A) $1,000 on any housing project with an insurable value under $200,000; or

(B) One-half of one percent (0.0050) of the insurable value, up to $10,000 on housing projects with insurance values over $200,000.

(ii) *Flood Insurance.* The Agency allows a maximum deductible of $5,000 per building.

(iii) *Windstorm Coverage.* When windstorm coverage is excluded from the ''All Risk'' policy, the deductible must not exceed five percent of the total insured value.

(iv) *Earthquake Coverage.* In the event that the borrower obtains earthquake coverage, the Agency is to be named as a loss payee. The deductible should be no more than 10 percent of the coverage amount.

(v) *Sinkhole Insurance or Mine Subsidence Insurance.* The deductible for sinkhole insurance or mine subsidence insurance should be similar to what would be required for earthquake insurance.

(10) Deductible amounts (excluding flood, windstorm, earthquake and sinkhole insurance or mine subsidence insurance) must be accounted for in the replacement reserve account. Borrowers who wish to increase the deductible amount must deposit an additional amount to the reserve account equal to the difference between the Agency's maximum deductible and the requested new deductible. The Borrower will be required to maintain this additional amount so long as the higher deductible is in force.

(g) *Liability insurance.* The borrower must carry comprehensive general liability insurance with coverage amounts that meet or exceed Agency requirements. This coverage must insure all common areas, commercial space, and public ways in the security premises. Coverage may also include borrower exposure to certain risks such as errors and omissions, environmental damages, or protection against discrimination claims. The insurer's limit of liability per occurrence for personal injury, bodily injury, or property damage under the terms of coverage must be at least $1 million.

(h) *Fidelity coverage.* Borrowers must provide fidelity coverage on any personnel entrusted with the receipt, custody, and disbursement of any housing monies, securities, or readily salable property other than money or securities. Borrowers must have fidelity coverage in force as soon as there are assets within the organization and it must be obtained before any loan funds or interim financing funds are made available to the borrower. In addition, the following conditions apply to fidelity insurance:

(1) Fidelity insurance coverage must be documented on a bond form acceptable to the Agency.

(2) Fidelity coverage policies must declare in the insuring agreements that the insurance company will provide protection to the insured against the loss of money, securities, and property other than money and securities, through any criminal or dishonest act or acts committed by any employee, whether acting alone or in collusion with others, not to exceed the amount of indemnity stated in the declaration of coverage.

(i) The fidelity insurance policy, at a minimum, must include an insuring agreement that covers employee dishonesty.

(ii) Fidelity coverage amounts and deductible:

Fidelity coverage	Deductible level
Under $50,000	$1,000
In the area of $100,000	2,500
In the area of $250,000	5,000
In the area of $500,000	10,000
In the area of $1,000,000	15,000

(3) Blanket crime insurance coverage or fidelity bonds are acceptable types of fidelity coverage.

(4) At a minimum, borrowers must provide an endorsement, listing all of the borrower's Agency financed properties and their locations covered under the policy or bond as evidence of required fidelity insurance. The policy or bond may also include properties or operations other than Agency financed properties on separate endorsement listings.

(5) Individual or organizational borrowers must have fidelity coverage when they have employees with access to the MFH complex assets. Borrowers who use a management agent with exclusive access to housing assets must require the agent to have fidelity coverage on all principals and employees with access to the housing assets. If active management reverts to the borrower, the borrower must obtain fidelity coverage, as a first course of business.

(6) Fidelity coverage is not required under the following circumstances:

(i) The borrower is an individual or a general partnership and the individual or general partner will be responsible for the financial activities of the housing project.

(ii) In the case of a land trust where the beneficiary is responsible for management, the beneficiary will be treated as an individual.

(iii) A limited partnership (or its general partners) unless one or more of its general partners perform financial acts within the scope of the usual duties of an ''employee.''

(7) The premium for fidelity coverage of employees and general partners at a housing project is an eligible operating account expense.

(i) The premium of a management agent's fidelity coverage for the agent's principals and employees will be the management agent's business expense (*i.e.*, it is included within the management fee).

(ii) When a housing project employee is covered under the ''umbrella'' of the management agent's fidelity coverage, the premium may be prorated among the housing projects covered..

(8) Borrowers must review fidelity coverage annually and adjust it as necessary to comply with the requirements of this section.

(i) *Taxes.* The borrower is responsible for paying all taxes and assessments on a housing project before they become delinquent.

(1) An exception to the above may be made if the borrower has formally contested the amount of the property assessment and escrowed the amount of taxes in question in a manner approved by the Agency.

(2) Failure to pay taxes and assessments when due will be considered a default. If a borrower fails to pay outstanding taxes and assessments, the Agency will pay the outstanding balance and charge the tax or assessment amount, assessed penalties, and any additional incurred costs to the borrower's Agency account.

(3) The Agency will require borrowers who have demonstrated an inability to pay taxes in a timely manner to escrow amounts sufficient to pay taxes.

§§ 3560.106–3560.149 [Reserved].

§ 3560.150 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 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. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart D—Multi-Family Housing Occupancy

§ 3560.151 General.

(a) *Applicability.* This subpart contains borrower and tenant requirements and Agency responsibilities related to occupancy of Agency-financed multi-family housing (MFH) projects. Occupancy eligibility requirements apply to the following:

(1) Family housing projects, including farm labor housing;

(2) Elderly housing projects; and

(3) Congregate housing or group homes for persons with special needs.

(b) *Civil rights requirements.* All occupancy policies must meet applicable civil rights requirements, as stated in § 3560.2.

§ 3560.152 Tenant eligibility.

(a) *General requirements.* Except as specified in paragraph (b) of this section, a tenant eligible for occupancy in Agency-financed housing must either:

(1) Be a United States citizen or qualified alien, and

(2) Qualify as a very low-, low-, or moderate-income household; or

(3) Be eligible under the requirements established to qualify for housing benefits provided by sources other than the Agency, such as U.S. Department of Housing and Urban Development (HUD) Section 8 assistance or Low Income Housing Tax Credit (LIHTC), when a tenant receives such housing benefits.

(b) *Exception.* Households with incomes above the moderate-income level may occupy housing projects with an Agency loan approved prior to 1968 with a loan agreement that does not restrict occupancy by income.

(c) *Requirements for elderly housing, elderly units in mixed housing, congregate housing, and group homes.* In addition to the requirements of paragraph (a) of this section, the following occupancy requirements apply to elderly housing, elderly units in mixed housing, and congregate housing or group homes:

(1) For elderly housing, elderly units in mixed housing, and congregate housing the following provisions apply:

(i) Households must meet the definition of an elderly household in § 3560.11 to be eligible for occupancy in elderly or congregate housing.

(ii) If non-elderly persons are members of a household where the tenant or co-tenant is an elderly person, the non-elderly persons are eligible for occupancy in the tenant's or co-tenant's rental unit.

(iii) Applicants who will agree to participate in the services provided by a congregate housing project may be given occupancy priority.

(2) For group homes, the following provisions apply:

(i) Occupancy may be limited to a specific group of tenants, such as elderly persons or persons with developmental disabilities, or mental impairments, if such an occupancy limitation is contained in the borrower's management plan.

(ii) Tenants must be able to demonstrate a need for the special services provided by the group home.

(iii) Tenants cannot be required to participate in an ongoing training or rehabilitation program.

(iv) Tenants must be selected from the market area prior to considering applicants from other areas.

(d) *Ineligible tenant waiver.* The Agency 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 to allow an eligible applicant to obtain occupancy, should one become available. The Agency must make the following determinations:

(1) There are no eligible persons on a waiting list.

(2) The borrower provided documentation that a diligent but unsuccessful effort to rent any vacant units to an eligible tenant household has been made. Such documentation may consist of advertisements in appropriate publications, posting notices in several public places, including places where persons seeking rental housing would likely make contacts, holding open houses, making appropriate contacts with public housing agencies and organizations, Chambers of Commerce, and real estate agencies.

(3) The borrower agrees to continue with aggressive efforts to locate eligible tenants and retain documentation of all marketing.

(4) The borrower is temporarily unable to achieve or maintain a level of occupancy sufficient to prevent financial default and foreclosure. The Agency's approval of the waiver would then be for a limited duration.

(5) The lease agreement will not be more than 12 months and at its expiration will convert to a month-to-month lease. The monthly lease will require that the unit be vacated upon 30 days notice when an eligible applicant is available.

(6) Tenants residing in Rural Rental Housing (RRH) units who are ineligible because their adjusted annual income exceeds the maximum for the RRH project will be charged the Rural Housing Service (RHS) approved note rent for the size of unit occupied in a Plan II RRH project. In projects operated under Plan I, ineligible tenants will be charged a rental surcharge of 25 percent of the approved note rent.

(e) *Tenant certification and verification.* Tenants and borrowers must execute an Agency-approved tenant certification form establishing the tenant's eligibility prior to occupancy. In addition, tenant households must be recertified and must execute a tenant certification form at least annually or whenever a change in household income of $100 or more per month occurs. Borrowers must recertify for changes of $50 per month, if the tenant requests that such a change be made.

(1) *Tenant requirements.* (i) Tenants must provide borrowers with the necessary income and other household information required by the Agency to determine eligibility.

(ii) Tenants must authorize borrowers to verify information provided to establish their eligibility or determination of tenant contribution.

(iii) Tenants must report all changes in household status that may affect their eligibility to borrowers.

(iv) Tenants who fail to comply with tenant certification and recertification requirements will be considered ineligible for occupancy and will be subject to unauthorized assistance claims, if applicable, as specified in subpart O of this part.

(2) *Borrower requirements.* (i) Borrowers must verify household income and other information necessary to establish tenant eligibility for the requested rental unit type, in a format approved by the Agency, prior to a tenant's initial occupancy and prior to annual or other recertifications.

(ii) Borrowers must review all reported changes in household status and assess the impact of these changes on the tenant's eligibility or tenant contribution.

(iii) Borrowers must submit initial or updated tenant certification forms to the Agency within 10 days of the effective date of an initial certification or any changes in a tenant's status. The effective date of an initial or updated tenant certification form will always be a first day of the month.

(iv) Since tenant certifications are used to document interest credit and rental assistance eligibility and are a basic responsibility of the borrower under the loan documents, borrowers who fail to submit annual or updated tenant certification forms within the time period specified in paragraph (e)(2)(iii) of this section will be charged overage, as specified in § 3560.203(c). Unauthorized assistance, if any, will be handled in accordance with subpart O of this part.

(v) Borrowers must submit tenant certification forms to the Agency using a format approved by the Agency.

(vi) Borrowers must retain executed tenant certification forms and any supporting documentation in the tenant file for at least 3 years or until the next Agency monitoring visit or compliance review, whichever is longer.

(3) The Agency maintains the right to independently verify tenant eligibility information.

§ 3560.153 Calculation of household income and assets.

(a) Annual income will be calculated in accordance with 24 CFR 5.609.

(b) Adjusted income will be calculated in accordance with 24 CFR 5.611.

§ 3560.154 Tenant selection.

(a) *Application for occupancy.* Borrowers must use tenant application forms that collect sufficient information to properly determine household eligibility and to enable the Agency to monitor compliance with the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, and title VI of the Civil Rights Act of 1964 during compliance reviews. At a minimum, borrowers must use application forms that collect the following information:

(1) Name of the applicant and present address;

(2) Number of household members and their birthdates;

(3) Annual income information calculated in accordance with § 3560.153(a);

(4) Adjustments to income calculated in accordance with § 3560.153(b);

(5) Net assets calculated in accordance with § 3560.153(c);

(6) Indication of a need for a unit accessible to individuals with disabilities and any disability adjustments to income;

(7) Certification by the applicant that the unit will serve as the household's primary residence, and a certification that the applicant is a U.S. citizen or a qualified alien as defined in § 3560.11;

(8) Signature of the applicant and date;

(9) Race, ethnicity, and sex designation. The following disclosure notice shall be used:

''The information regarding race, ethnicity, and sex designation solicited on this application is requested in order to assure the Federal Government, acting through the Rural Housing Service, that the Federal laws prohibiting discrimination against tenant applications on the basis of race, color, national origin, religion, sex, familial status, age, and disability 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, ethnicity, and sex of individual applicants on the basis of visual observation or surname,'' and

(10) Social security number.

(b) *Additional information.* Applicants are to be provided a list of any additional information that must be submitted with the application for the application to be considered complete (an application will be considered complete without verification of the applicant information). The list of information will be restricted to the same items for all Agency-assisted properties of a particular type, such as a family or elderly complex.

(c) *Application submission.* Borrowers must establish when applications may be submitted. Information on the place and times for tenant application submission must be documented in the housing project's management plan and Affirmative Fair Housing Marketing Plan.

(d) *Selection of eligible applicants.* (1) Applicants may be determined ineligible for occupancy based on selection criteria other than Agency requirements only if such criteria are contained in the borrower's management plan. Borrower established selection criteria may not contain arbitrary or discriminatory rejection criteria, but may consider an applicant's past rental and credit history and relations with other tenants.

(2) Borrowers with projects receiving low-income housing tax credits (LIHTCs), may leave a housing unit vacant if they are required to rent the available unit to an LIHTC-eligible applicant, and none of the applicants on the waiting list meet the applicable LIHTC eligibility requirements.

(e) *Recordkeeping.* Borrowers must retain all tenant application forms for at least 3 years. The Agency may require borrowers to submit application information for Agency review.

(f) *Waiting lists.* (1) When an applicant has submitted an application form the borrower must place the applicant on the waiting list. All applications, whether complete, eligible, or ineligible, will be placed on the list. The waiting list will document the final disposition of all applications (rejected, withdrawn, or placed in a unit).

(2) The date and time a complete application was submitted will be recorded on the waiting list and will establish priority for selection from the list. If an applicant submits an incomplete application (see paragraph (a) of this section), they must be notified in writing within 10 days of the items that are needed for the application to be considered complete and that priority will not be established until the additional items are received.

(3) The race and the ethnicity of each applicant shall be recorded on the waiting list. This information shall be collected for statistical purposes only and must not be used when making eligibility determinations or in any other discriminatory manner. The information shall be recorded using the race and ethnicity codes that are utilized on the Agency tenant certification form available in the servicing office.

(4) Within 10 days of receipt of a complete application, the Borrower must notify the applicant in writing that he has been selected for immediate occupancy, placed on a waiting list, or rejected.

(5) Selections from the completed applications on the waiting list shall be made in the following priority order:

(i) Very low-income applicants;

(ii) Low-income applicants; and

(iii) Moderate-income applicants.

(g) *Priorities and preferences for admission.* (1) Eligible applicants that meet the following conditions must be given priority for occupancy over all other tenants regardless of income. Such applicants, however, will be ranked among themselves by income level, giving priority first to very low-income households, then to low-income households, and finally to moderate-income households.

(i) Persons who require the special design features of a unit accessible to individuals with disabilities will have priority only for units with these features.

(ii) In congregate housing facilities, persons who agree to use the services provided by the facility will have priority over other applicants.

(2) Eligible applicants that meet any of the following conditions must be given priority over other applicants in their same income category.

(i) The applicant has a Letter of Priority Entitlement (LOPE) issued in accordance with § 3560.660(c).

(ii) The applicant was displaced from Agency-financed housing but was not issued a LOPE.

(iii) The applicant was displaced in a Federally declared disaster area.

(3) Borrowers receiving Section 8 project-based assistance may establish preferences in accordance with U.S. Department of Housing and Urban Development (HUD) regulations. The use of such preferences must be documented in the project's management plan.

(h) *Notices of ineligibility or rejection.* Borrowers must provide written notification to applicants who are determined to be ineligible or who are rejected for occupancy. Notices of ineligibility or rejection must give specific reasons for the ineligibility determination or rejection and, in accordance with § 3560.160, the notice must advise the applicant of ''the right to respond to the notice within ten calendar days after receipt'' and of ''the right to a hearing in accordance with § 3560.160 which is available upon request.'' When an applicant is rejected based on the information from a credit bureau report, the source of the credit bureau report must be revealed to the applicant in accordance with the Fair Credit Reporting Act.

(i) *Purging waiting list.* Procedures used by borrowers to purge waiting list must be documented in the project's management plan and must be based on the length of the waiting list or the extent of time an applicant will be expected to wait for housing. At a minimum, borrowers must document removal of any names from the waiting list with the time and date of the removal. If an electronic waiting list is used, borrowers must periodically print out electronic waiting lists or preserve backup copies showing how the waiting list appeared before and after the removal of each name.

(j) *Criminal activity.* Borrowers may deny admission for criminal activity or alcohol abuse by household members in accordance with the provisions of 24 CFR 5.854, 5.855, 5.856, and 5.857.

§ 3560.155 Assignment of rental units and occupancy policies.

(a) *General.* Available rental units are assigned in accordance with the requirements of this section and the priorities and preferences outlined in § 3560.154.

(b) *Rental units accessible to individuals with disabilities.* If a rental unit accessible to individuals with disabilities is available and there are no applicants that require the features of the unit, borrowers may rent the unit to a non-disabled tenant subject to the inclusion of a lease provision that requires the tenant to vacate the unit within 30 days of notification from management that an eligible individual with disabilities requires the unit and provided the accessible unit has been marketed as an accessible unit, outreach has been made to organizations representing the disabled, and marketing of the unit as an accessible unit continues after it has been rented to a tenant who is not in need of the special design features.

(c) *Transfer of existing tenants within a housing project.* When a rental unit becomes available for occupancy and an eligible tenant in the housing project is either over housed or under housed as provided for in paragraph (e) of this section, the borrower must use the available unit for the over housed or under housed tenant, if suitable, prior to selecting an eligible applicant from the waiting list.

(d) *Applicant placement.* When a specific rental unit type becomes available for occupancy, borrowers must select eligible applicants suitable for the available unit according to the priorities established in § 3560.154.

(e) *Occupancy policies.* Borrowers must establish occupancy policies for each housing project. Households living in a rental unit with more bedrooms than persons in the household will be considered over housed and must be relocated in accordance with paragraph (c) of this section. Households under housed as defined by the project's occupancy standards must be relocated in accordance with paragraph (c) of this section. Borrowers with no one-bedroom units in a housing project may make an exception to this requirement in their occupancy policies. In addition, a borrower's occupancy policies must establish:

(1) Reasonable standards for determining when a tenant household is considered under housed. The standards will describe the maximum number of persons that may occupy units of a given size based on occupancy guidelines provided by the Agency or another governmental source;

(2) The order in which eligible applicants and existing tenants will be housed or re-housed; and

(3) How fair housing requirements will be met, including how reasonable accommodations will be made for applicants and tenants with disabilities.

(f) *Agency concurrence.* The Agency must concur with a borrower's occupancy rules prior to initial occupancy of the housing project. All modifications to occupancy rules must be posted for tenant comment in accordance with § 3560.160 and receive Agency concurrence prior to implementation.

§ 3560.156 Lease requirements.

(a) *Agency approval.* Borrowers must use a lease approved by the Agency. The lease must be consistent with Agency requirements and the requirements of all programs participating in the housing project. Prior to submitting the lease to the Agency for approval, borrowers must have their attorney certify that the lease complies with state and local laws, Agency requirements, and the requirements of all programs participating in the housing project. If there are conflicting requirements the borrower shall notify the Agency of the conflict and request guidance. Borrowers must execute their Agency approved lease with each tenant household prior to tenant occupancy of a rental unit.

(b) *Lease requirements.* (1) All leases must be in writing.

(2) Initial leases must be for a 1-year period.

(3) If the tenant is not subject to occupancy termination according to § 3560.158 and § 3560.159, a renewal lease or lease extension must be for a 1-year period.

(4) In areas with a concentration of non-English speaking populations, leases (including the occupancy rules) must be available in both English and the non-English language.

(5) Leases must give the address of the management agent to which tenants may direct complaints.

(6) Leases must include a statement of the terms and conditions for modifying the lease.

(c) *Required items and provisions.* (1) Leases for tenants who hold a Letter of Priority Entitlement (LOPE) issued according to § 3560.655(d) and are temporarily occupying a unit for which they are not eligible must include a clause establishing the tenant's responsibility to move when a suitable unit becomes available in the housing project.

(2) Leases must contain a clause permitting escalation in the tenant contribution when there is an Agency-approved change in basic or note rate rents prior to the expiration of the lease. The escalation clause also must specify that the tenant contribution may be changed prior to expiration of the lease if the change is due to changes in tenant status, as documented on the tenant certification form, or the tenant's failure to properly recertify.

(3) Leases must specify that no change in the tenant contribution will occur due to monetary or non-monetary default or when rental assistance or interest credit, is suspended, canceled, or terminated due to the borrower's fault. For information on tenant contributions when a borrower prepays the Agency loan, refer to subpart N of this part.

(4) Leases must contain a requirement that tenants make restitution when unauthorized assistance is received due to applicant or tenant fraud or misrepresentation and a statement advising tenants that submission of false information could result in legal action.

(5) Leases must include a statement that the housing project is financed by the Agency and that the Agency has the right to further verify information provided by the applicant.

(6) Leases must state that the housing project is subject to:

(i) Title VI of the Civil Rights Act of 1964;

(ii) Title VIII of the Fair Housing Act;

(iii) Section 504 of the Rehabilitation Act of 1973; and

(iv) The Age Discrimination Act of 1975.

(7) Leases must establish the tenant's responsibility according to the housing project's occupancy rules to move to the next available appropriately sized rental unit if the household becomes over housed or under housed in the unit they occupy.

(8) Leases must include provisions that establish when a guest will be considered a member of the household and be required to be added to the tenant certification.

(9) Leases must include a provision stating that tenancy continues until the tenant's possessions are removed from the housing either voluntarily or by legal means, subject to state and local law.

(10) Leases must include a requirement that tenants who are no longer eligible for occupancy under the housing project's occupancy rules or do not meet the criteria set forth in § 3560.155(c) and (e) must vacate the property within 30 days of being notified by the borrower that they are no longer eligible for occupancy or at the expiration of their lease, or whichever is greater, unless the conditions cited in § 3560.158(c) exist;

(11) Leases for rental units receiving rental assistance must include clauses that specify that the tenant's monthly tenant contribution and a description of the circumstances under which the tenant's contribution may change.

(12) Leases must include a requirement that tenants notify borrowers when changes occur in their income or assets, their qualifications for adjustments to income, their citizenship status, or the number of persons living in the unit.

(13) A requirement that tenants agree to fulfill the tenant income verification and certification requirements established under § 3560.152.

(14) Leases for tenants living in Plan II interest credit rental units must include provisions establishing the net monthly tenant contribution.

(15) Leases, including renewals, must include the following language:

''It is understood that the use, or possession, manufacture, sale, or distribution of an illegal 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 a ''drug violation'') may be evidenced upon the admission to or conviction of the use, possession, manufacture, sale, or distribution of a controlled substance (as defined by local, state, or Federal law) in any local, state, or Federal court.

The landlord may require any lessee or other adult member of the tenant household occupying the unit (or other adult or non-adult 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, and not thereafter to enter upon the landlord's premises or the lessee's unit without the landlord's prior consent as a condition for continued occupancy by the remaining members of the tenant's household. 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 has successfully completed a counseling or recovery program.

The landlord may require any lessee to show evidence that any non-adult member of the tenant household occupying the unit, who committed a drug violation, agrees not to commit a drug violation in the future, and to show evidence that the person is either actively seeking or receiving assistance through a counseling or recovery program, complying with court orders related to a drug violation, or has successfully completed a counseling or recovery program within timeframes specified by the landlord as a condition for continued occupancy in the unit. Should a further drug violation be committed by any non-adult person occupying the unit the landlord may require the person to be severed from tenancy as a condition for continued occupancy by the lessee.

If a person vacating the unit, as a result of the above policies, is one of the lessees, the person shall be severed from the tenancy and the lease shall continue among any other remaining lessees and the landlord. The landlord may also, at the option of the landlord, permit another adult member of the household to be a lessee.

Should any of the above provisions governing a drug violation be found to violate any of the laws of the land the remaining enforceable provisions shall remain in effect. The provisions set out above do not supplant any rights of tenants afforded by law.''

(16) Leases for rental units accessible to individuals with disabilities occupied by those not needing the accessibility features must establish the tenant's responsibility to move to another unit when an appropriate unit becomes available or when the unit is needed by an eligible individual with disabilities. Additionally, the lease clause must require the borrower to provide tenants written notification of the date by which they must move to another unit in the project.

(17) If loan prepayment occurs and the housing project is subject to restrictive use provisions, leases and renewals must be amended to include a clause specifying the tenant protections required under subpart N of this part.

(18) All leases must contain the following information and provisions:

(i) The name of the tenant, any co-tenants, and all members of the household residing in the rental unit;

(ii) The identification of the rental unit;

(iii) The amount and due date of monthly tenant contributions, any late payment penalties, and security deposit amounts;

(iv) The utilities, services, and equipment to be provided for the tenant;

(v) The tenant's utility payment responsibility;

(vi) The certification process for determining tenant occupancy eligibility and contribution;

(vii) The limitations of the tenant's right to use or occupancy of the dwelling;

(viii) The tenant's responsibilities regarding maintenance and consequences if the tenant fails to fulfill these responsibilities;

(ix) The agreement of the borrower to accept the tenant contribution toward rent charges prior to payment of other charges that the tenant owes and a statement that borrowers may seek legal remedy for collecting other charges accrued by the tenant;

(x) The maintenance responsibilities of the borrower in buildings and common areas, according to state and local codes, Agency regulations, and Federal fair housing requirements;

(xi) The responsibility of the borrowers at move-in and move-out to provide the tenant with a written statement of rental unit's condition and provisions for tenant participation in inspection;

(xii) The provision for periodic inspections by the borrower and other circumstances under which the borrower may enter the premises while a tenant is renting;

(xiii) The tenant's responsibility to notify the borrower of an extended absence;

(xiv) A provision that tenants may not assign the lease or sublet the property;

(xv) A provision regarding transfer of the lease if the housing project is sold to an Agency-approved buyer;

(xvi) The procedures that must be followed by the borrower and the tenant in giving notices required under terms of the lease including lease violation notices;

(xvii) The good-cause circumstances under which the borrower may terminate the lease and the length of notice required;

(xviii) The disposition of the lease if the housing project becomes uninhabitable due to fire or other disaster, including rights of the borrower to repair building or terminate the lease;

(xix) The procedures for resolution of tenant grievances consistent with the requirements of § 3560.160;

(xx) The terms under which a tenant may, for good cause, terminate their lease, with 30 days notice, prior to lease expiration; and

(xxi) The signature and date clause indicating that the lease has been executed by the borrower and the tenant.

(d) *Prohibited provisions.* Borrowers are prohibited from including any of the following clauses in the lease:

(1) Clauses prohibiting families with children under 18;

(2) Clauses requiring prior consent by tenant to any lawsuit that borrowers may bring against the tenant in connection with the lease;

(3) Clauses authorizing borrowers to hold any of a tenant's property until the tenant fulfills an obligation;

(4) Clauses in which tenants agree not to hold borrowers liable for anything they may do or fail to do;

(5) Clauses in which tenants agree that borrowers may institute suit without any notice to the tenant that the suit has been filed;

(6) Clauses in which tenants agree that borrowers may evict the tenant or sell their possessions whenever borrowers determine that a breach or default has occurred;

(7) Clauses authorizing the borrower's attorneys to appear in court on behalf of the tenant, and to waive the tenant's right to a trial by jury;

(8) Clauses authorizing the borrower's attorneys to waive the tenant's right to appeal or to file suit; and

(9) Clauses requiring the tenant to agree to pay legal fees and court costs whenever the borrower takes action against the tenant, even if the court finds in favor of the tenant.

(e) *Housing projects and units receiving HUD assistance.* (1) In housing projects receiving Section 8 project-based assistance, borrowers may use the HUD model lease. The provisions of the HUD model lease will prevail, unless they conflict with Agency lease requirements in accordance with this section. If there is conflict between HUD requirements and Agency requirements, the provision that will be enforced will be the one that is most favorable to the tenant.

(2) For units occupied by Section 8 certificate and voucher holders, borrowers may use:

(i) A standard HUD-approved lease;

(ii) A HUD-approved lease that includes a number of modifications from the standard HUD-approved lease; or

(iii) An Agency-approved lease may be used if acceptable by HUD or the local housing authority.

(f) *State and local requirements.* Borrowers must use a lease that is consistent with state and local requirements.

(1) If any lease provision is in violation of state or local law, the lease may be modified to the extent needed to comply with the law, but any changes must be consistent with the provisions established in paragraph (c) of this section.

(2) Leases must include a procedure for handling tenant's abandoned property, as provided by state or local law.

§ 3560.157 Occupancy rules.

(a) *General.* The purpose of a borrower's occupancy rules is to outline the basis for the tenant and management relationship. Prior to Agency approval of occupancy rules, borrowers must provide written certification from their attorney that the housing project's occupancy rules are consistent with applicable Federal, state, and local laws, as well as Agency requirements, and the requirements of all programs participating in the housing project. Borrowers must obtain Agency approval of the occupancy rules prior to initial occupancy and obtain Agency approval prior to the implementation date of any subsequent modifications to the rules.

(b) *Requirements.* The occupancy rules must be in writing and posted for easy tenant access. A copy of these rules must be attached to the tenant's lease upon initial occupancy. At a minimum, the occupancy rules must address:

(1) The tenant's rights and responsibilities under the lease or occupancy agreement;

(2) The rent payment or occupancy charge policies;

(3) The policies regarding periodic inspection of units;

(4) The system for responding to tenant complaints;

(5) The maintenance request and work order procedures;

(6) The housing services and facilities available to tenants or members;

(7) The office locations, hours, and emergency telephone numbers;

(8) The restrictions on storage and prohibitions on non-functional vehicles in the housing project area;

(9) Other requirements related to a subsidy provided to a tenant from non-Agency sources;

(10) When a guest becomes a member of the tenant household; and

(11) The procedures tenants must follow to request reasonable accommodations.

(c) *Modification of occupancy rules.* The Agency must concur with any modification to the occupancy rules prior to implementation. Proper notice must be given to each tenant at least 30 days in advance of implementation of such rules in accordance with § 3560.160.

(d) *Federal, state and local requirements.* The occupancy rules must be consistent with Federal, state, and local law.

(e) *Pets/Assistance Animals.* All housing projects should establish reasonable written pet rules. No rules may be promulgated that would prevent occupancy by a household member who requires a service or assistance animal. In elderly housing, borrowers must not prohibit tenants from keeping domestic animals in their rental units as pets.

(f) *Tenant organizations.* Borrowers must not infringe on the rights of tenants to organize an association of tenants. Borrowers (or a designated management representative) should be available and willing to work with a tenant organization.

(g) *Community rooms.* Borrowers may not place unreasonable restrictions on tenants that desire to use a community room.

§ 3560.158 Changes in tenant eligibility.

(a) *General requirements.* Tenants must continue to meet the requirements of § 3560.152 to remain eligible for occupancy.

(b) *Tenants no longer eligible.* Tenants who are no longer eligible for occupancy under the housing project's occupancy rules or do not meet the criteria set forth in § 3560.155(c) and (e) must vacate the property within 30 days of being notified by the borrower that they are no longer eligible for occupancy or at the expiration of their lease, whichever is greater, unless the conditions specified in paragraph (c) of this section exist.

(c) *Temporary continuation of tenancy.* If conditions described in § 3560.454(b) or the following conditions exist, borrowers may permit tenants who are no longer eligible for occupancy to continue to reside at the housing project with prior approval of the Agency.

(1) The waiting list for the specific rental unit type has no eligible applicants; or

(2) The required time period for vacating the rental unit would create a hardship on the tenant household.

(d) *Surviving and remaining household members.* (1) Members of a household may continue to reside in a housing project after the departure or death of the tenant or co-tenant, provided that:

(i) They are eligible with respect to adjusted income;

(ii) They occupied a rental unit in the housing project at the time of the departure or death of the tenant or co-tenant;

(iii) They execute a tenant certification form establishing their own tenancy; and

(iv) They have the legal ability to sign a lease for the rental unit, except where a legal guardian may sign when the tenant or member is otherwise eligible.

(2) Surviving or remaining members of the household may remain in the housing project, taking into consideration the conditions of paragraph (d)(1) of this section, but must move to a suitably sized rental unit within 30 days of its availability.

(3) After the death of a tenant or co-tenant in elderly housing, the surviving members of the household, regardless of age but taking into consideration the conditions of paragraph (d)(1) of this section, may remain in the rental unit in which they were residing at the time of the tenant's or co-tenant's death, even if the household is over housed according to the housing project's occupancy rules as follows:

(i) Continued occupancy of the rental unit will not be allowed when in either situation of paragraph (d)(1) or (d)(3) of this section, the rental unit has accessibility features for individuals with disabilities, the household no longer has a need for such accessibility features, and the housing project has a tenant application from an individual with a need for the accessibility features;

(ii) If the housing project does not have a tenant application from an individual with a need for the accessibility features, the household may remain in the rental unit with such features until the housing project receives an application from an individual with a need for accessibility features. The household in the unit with accessibility features will be required to move within 30 days of the housing project's receipt of a tenant application requiring accessibility features if another suitably sized unit without accessibility features is available in the project. If a suitably sized unit is not available in the project within 30 days, the tenant may remain in the unit with accessibility features until the first available unit in the project becomes available and then must move within 30 days.

§ 3560.159 Termination of occupancy.

(a) *Tenants in violation of lease.* Borrowers, in accordance with lease agreements, may terminate or refuse to renew a tenant's lease only for material non-compliance with the lease provisions, material non-compliance with the occupancy rules, or other good causes. Prior to terminating a lease, the borrower must give the tenant written

notice of the violation and give the tenant an opportunity to correct the violation. Subsequently, termination may only occur when the incidences related to the termination are documented and there is documentation that the tenant was given notice prior to the initiation of the termination action that their activities would result in occupancy termination.

(1) Material non-compliance with lease provisions or occupancy rules, for purposes of occupancy termination by a borrower, includes actions such as:

(i) Violations of lease provisions or occupancy rules that are substantial and/or repeated;

(ii) Non-payment or repeated late payment of rent or other financial obligations due under the lease or occupancy rules; or

(iii) Admission to or conviction for use, attempted use, possession, manufacture, selling, or distribution of an illegal controlled substance when such activity occurred on the housing project's premises by the tenant, a member of the tenant's household, a guest of the tenant, or any other person under the tenant's control at the time of the activity.

(2) Good causes, for purposes of occupancy terminations by a borrower, include actions such as:

(i) Actions by the tenant or a member of the tenant's household which disrupt the livability of the housing by threatening the health and safety of other persons or the right of other persons to enjoyment of the premises and related facilities;

(ii) Actions by the tenant or a member of the tenant's household which result in substantial physical damage causing an adverse financial effect on the housing or the property of other persons; or

(iii) Actions prohibited by state and local laws.

(b) *Lease expiration or tenant eligibility.* A tenant's occupancy in an Agency-financed housing project may not be terminated by a borrower when the lease agreement expires unless the tenant's actions meet the conditions described in paragraph (a) of this section, or the tenant is no longer eligible for occupancy in the housing. Borrowers must handle terminations of occupancy due to a change in tenant eligibility status in accordance with § 3560.158. At a minimum, the occupancy termination notice must include the following information:

(1) A specific date by which lease termination will occur;

(2) A statement of the basis for lease termination with specific reference to the provisions of the lease or occupancy rules that, in the borrower's judgment, have been violated by the tenant in a manner constituting material non-compliance or good cause; and

(3) A statement explaining the conditions under which the borrower may initiate judicial action to enforce the lease termination notice.

(c) *Other terminations.* If occupancy is terminated due to conditions which are beyond the control of the tenant, such as a condition related to required repair or rehabilitation of the building, or a natural disaster, the tenants who are affected by such a circumstance are entitled to benefits under the Uniform Relocation Act and may request a Letter of Priority Entitlement (LOPE) from the Agency. If tenants need additional time to secure replacement housing, the Agency may, at the tenant's request, extend the LOPE entitlement period.

(d) *Criminal activity.* Borrowers may terminate tenancy for criminal activity or alcohol abuse by household members in accordance with the provisions of 24 CFR 5.858, 5.859, 5.860, and 5.861.

§ 3560.160 Tenant grievances.

(a) *General.* (1) The requirements established in this section are designed to ensure that there is a fair and equitable process for addressing tenant or prospective tenant concerns and to ensure fair treatment of tenants in the event that an action or inaction by a borrower, including anyone designated to act for a borrower, adversely affects the tenants of a housing project.

(2) Any tenant/member or prospective tenant/member seeking occupancy in or use of Agency facilities who believes he or she is being discriminated against because of age, race, color, religion, sex, familial status, disability, or national origin may file a complaint in person with, or by mail to the U.S. Department of Agriculture's Office of Civil Rights, Room 326–W, Whitten Building, 14th and Independence Avenue, SW., Washington DC 20250–9410 or to the Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development (HUD), Washington, DC 20410. Complaints received by Agency employees must be directed to the National Office Civil Rights Staff through the State Civil Rights Manager/Coordinator.

(b) *Applicability.* (1) The requirements of this section apply to a borrower action regarding housing project operations, or the failure to act, that adversely affects tenants or prospective tenants.

(2) This section does not apply to the following situations:

(i) Rent changes authorized by the Agency in accordance with the requirements of § 3560.203(a);

(ii) Complaints involving discrimination which must be handled in accordance with § 3560.2(b) and paragraph (a)(2) of this section;

(iii) Housing projects where an association of all tenants has been duly formed and the association and the borrower have agreed to an alternative method of settling grievances;

(iv) Changes required by the Agency in occupancy rules or other operational or management practices in which proper notice and opportunity have been given according to law and the provisions of the lease;

(v) Lease violations by the tenant that would result in the termination of tenancy and eviction;

(vi) Disputes between tenants not involving the borrower; and

(vii) Displacement or other adverse actions against tenant as a result of loan prepayment handled according to subpart N of this part.

(c) *Borrower responsibilities.* Borrowers must permanently post tenant grievance procedures that meet the requirements of this section in a conspicuous place at the housing project. Borrowers also must maintain copies of the tenant grievance procedure at the housing project's management office for inspection by the tenants and the Agency upon request. Each tenant must receive an Agency summary of tenant's rights when a lease agreement is signed. If a housing project is located in an area with a concentration of non-English speaking individuals, the borrower must provide grievance procedures in both English and the non-English language. The notice must include the telephone number and address of USDA's Office of Civil Rights and the appropriate Regional Fair Housing and Enforcement Agency.

(d) *Reasons for grievance.* Tenants or prospective tenants may file a grievance in writing with the borrower in response to a borrower action, or failure to act, in accordance with the lease or Agency regulations that results in a denial, significant reduction, or termination of benefits or when a tenant or prospective tenant contests a borrower's notice of proposed adverse action as provided in paragraph (e) of this section. Acceptable reasons for filing a grievance may include:

(1) Failure to maintain the premises in such a manner that provides decent, safe, sanitary, and affordable housing in accordance with § 3560.103 and applicable state and local laws;

(2) Borrower violation of lease provisions or occupancy rules;

(3) Modification of the lease;
(4) Occupancy rule changes;
(5) Rent changes not authorized by the Agency according to § 3560.205; or
(6) Denial of approval for occupancy.

(e) *Notice of adverse action.* In the case of a proposed action that may have adverse consequences for tenants or prospective tenants such as denial of admission to occupancy and changes in the occupancy rules or lease, the borrower must notify the tenant or prospective tenant in writing. In the case of a Borrower's proposed adverse action including denial of admission to occupancy, the Borrower shall notify the applicant/tenant in writing. The notice must be delivered by certified mail return receipt requested, or a hand-delivered letter with a signed and dated acknowledgement of receipt from the applicant/tenant, The notice must give specific reasons for the proposed action. The notice must also advise the tenant or prospective tenant of ''the right to respond to the notice within ten calendar days after date of the notice'' and of ''the right to a hearing in accordance with § 3560.160 (f), which is available upon request.'' The notice must contain the information specified in paragraph (a)(2) of this section. For housing projects in areas with a concentration of non-English speaking individuals, the notice must be in English and the non-English language.

(f) *Grievances and responses to notice of adverse action.* The following procedures must be followed by tenants, prospective tenants, or borrowers involved in a grievance or a response to an adverse action.

(1) The tenant or prospective tenant must communicate to the borrower in writing any grievance or response to a notice within 10 calendar days after occurrence of the adverse action or receipt of a notice of intent to take an adverse action.

(2) Borrowers must offer to meet with tenants to discuss the grievance within 10 calendar days of receiving the grievance. The Agency encourages borrowers and tenants or prospective tenants to make an effort to reach a mutually satisfactory resolution to the grievance at the meeting.

(3) If the grievance is not resolved during an informal meeting to the tenant or prospective tenant's satisfaction, the borrower must prepare a summary of the problem and submit the summary to the tenant or prospective tenant and the Agency within 10 calendar days The summary should include: The borrower's position; the applicant/tenant's position; and the result of the meeting. The tenant also may submit a summary of the problem to the Agency.

(g) *Hearing process.* The following procedures apply to a hearing process.

(1) *Request for hearing.* If the tenant or prospective tenant desires a hearing, a written request for a hearing must be submitted to the borrower within 10 calendar days after the receipt of the summary of any informal meeting.

(2) *Selection of hearing officer or hearing panel.* In order to properly evaluate grievances and appeals, the borrower and tenant must select a hearing officer or hearing panel. If the borrower and the tenant cannot agree on a hearing officer, then they must each appoint a member to a hearing panel and the members selected must appoint a third member. If within 30 days from the date of the request for a hearing, the tenant and borrower have not agreed upon the selection of a hearing officer or hearing panel, the borrower must notify the Agency by mail of the situation. The Agency will appoint a person to serve as the sole hearing officer. The Agency may not appoint a hearing officer who was earlier considered by either the borrower or the tenant, in the interest of ensuring the integrity of the process.

(3) *Standing hearing panel.* In lieu of the procedure contained in paragraph (g)(2) of this section for each grievance or appeal presented, a borrower may ask the Agency to approve a standing hearing panel for the housing project.

(4) *Examination of records.* The borrower must allow the tenant the opportunity, at a reasonable time before a hearing and at the expense of the tenant, to examine or copy all documents, records, and policies of the borrower that the borrower intends to use at a hearing unless otherwise prohibited by law or confidentiality agreements.

(5) *Scheduling of hearing.* If a standing hearing panel has been approved, a hearing will be scheduled within 15 calendar days after receipt of the tenant's or prospective tenant's request for a hearing. If a hearing officer or hearing panel must be selected, a hearing will be scheduled within 15 calendar days after the selection or appointment of a hearing panel or a hearing officer. All hearings will be held at a time and place mutually convenient to both parties. If the parties cannot agree on a meeting place or time, the hearing officer or hearing panel will designate the place and time.

(6) *Escrow deposits.* If a grievance involves a rent increase not authorized by the Agency, or a situation where a borrower fails to maintain the property in a decent, safe, and sanitary manner, rental payments may be deposited by the tenant into an escrow account, provided the tenant's rental payments are otherwise current.

(i) The escrow account deposits must continue until the complaint is resolved through informal discussion or by the hearing officer or panel.

(ii) The escrow account must be in a Federally-insured institution or with a bonded independent agent.

(iii) Failure to make timely rent payments into the escrow account will result in a termination of the tenant grievance and appeals procedure and all sums will immediately become due and payable under the lease.

(iv) Receipts of escrow account deposits must be available for examination by the borrower.

(7) *Failure to request a hearing.* If the tenant or prospective tenant does not request a hearing within the time provided by paragraph (f)(1) of this section, the borrower's disposition of the grievance or appeal will become final.

(h) *Requirements governing the hearing.* The following requirements will govern the hearing process.

(1) Subject to paragraph (f)(2) of this section, the hearing will proceed before a hearing officer or hearing panel at which evidence may be received without regard to whether that evidence could be used in judicial proceedings.

(2) The hearing must be structured so as to provide basic due process safeguards for both the borrower and the tenants or prospective tenants, which must protect:

(i) The right of both parties to be represented by counsel or another person chosen as their representative;

(ii) The right of the tenant or prospective tenant to a private hearing unless a public hearing is requested;

(iii) The right of the tenant or prospective tenant to present oral or written evidence and arguments in support of their grievance or appeal and to cross-examine and refute the evidence of all witnesses on whose testimony or information the borrower relies; and

(iv) The right of the borrower to present oral and written evidence and arguments in support of the decision, to refute evidence relied upon by the tenant or prospective tenant, and to confront and cross-examine all witnesses in whose testimony or information the tenant or prospective tenant relies.

(3) At the hearing, the tenant or prospective tenant must present evidence that they are entitled to the relief sought, and the borrower must present evidence showing the basis for action or failure to act against that

which the grievance or appeal is directed.

(4) The hearing officer or hearing panel must require that the borrower, the tenant or prospective tenant, counsel, and other participants or spectators conduct themselves in an orderly manner. Failure to comply may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate.

(5) If either party or their representative fails to appear at a scheduled hearing, the hearing officer or hearing panel may make a determination to postpone the hearing for no more than five days or may make a determination that the absent party has waived their right to a hearing under this subpart. If the determination is made that the absent party has waived their rights, the hearing officer or hearing panel will make a decision on the grievance. Both the tenant or prospective tenant and the borrower must be notified in writing of the determination of the hearing officer or hearing panel.

(i) *Decision.* Hearing decisions must be issued in accordance with the following requirements.

(1) The hearing officer or hearing panel has the authority to affirm or reverse a borrower's decision.

(2) The hearing officer or hearing panel must prepare a written decision, together with the reasons thereof based solely and exclusively upon the facts presented at the hearing within 10 calendar days after the hearing. The notice must state that the decision is not effective for 10 calendar days to allow time for an Agency review as specified in paragraphs (i)(3) and (i)(4) of this section.

(3) The hearing officer or hearing panel must send a copy of the decision to the tenant, or prospective tenant, borrower, and the Agency.

(4) The decision of the hearing officer or hearing panel shall be binding upon the parties to the hearing unless the parties to the hearing are notified within 10 calendar days by the Agency that the decision is not in compliance with Agency regulations.

(5) Upon receipt of written notification from the hearing officer or hearing panel, the borrower and tenant must take the necessary action, or refrain from any actions, specified in the decision.

§§ 3560.161–3560.199 [Reserved]

§ 3560.200 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 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. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart E—Rents

§ 3560.201 General.

This subpart sets forth the requirements for establishing and collecting rents charged to occupants of multi-family housing (MFH) projects financed by the Agency.

§ 3560.202 Establishing rents and utility allowances.

(a) *General.* Rents and utility allowances for rental units in Agency-financed housing projects are set by the borrower and must be based on the operating, management and maintenance expenses and other costs related to the housing project including loan payment amounts due to the Agency.

(b) *Agency approval.* All rents and utility allowances set by borrowers are subject to Agency approval.

(c) *Rents.* As applicable, borrowers must establish the following rents:

(1) Note rent;

(2) Basic rent;

(3) U.S. Department of Housing and Urban Development (HUD) contract rents; and

(4) Low-income housing tax credit (LIHTC) rents.

(d) *Utility allowances.* In projects where tenants pay the utilities, borrowers must establish utility allowances for each size and type of rental unit in the housing project based on estimated utility costs. Borrowers must review utility allowances annually, adjust for accuracy, and submit any utility allowance changes to the Agency for approval. If no changes are needed, the borrower must notify the Agency that no changes were made. Documentation to justify utility allowances must be maintained in the housing project files.

(e) *Funds contributed to reduce rents.* If borrowers use funds contributed from sources other than the Agency (*e.g.*, state or local grants, private contributions) to reduce general operating and management expenses, housing project rents must be reduced to reflect the funding being used to offset housing project expenses. When funds contributed from sources other than the Agency are used for housing project expenses, the borrower must certify to the Agency, in writing, that the funds provided will not need to be repaid with Agency funds. Funds from borrower contributions or rehabilitation loans will not be counted towards reducing rents.

(f) *Rents for resident manager, caretaker, or owner-occupied unit.*

(1) If approved as a part of a management plan, a borrower may occupy a rental unit in a housing project when they are acting as a management agent or resident manager as specified in § 3560.102(e).

(2) If the rental unit being occupied by a borrower or resident manager is designated as a revenue-producing unit, borrowers must calculate the rental charge to the borrower or resident manager in the same manner as tenant contributions.

(3) If the rental unit being occupied by a borrower or resident manager is designated as a non-revenue producing unit, borrowers must treat the cost of providing the unit the same as other non-revenue producing portions of the housing project.

(g) *LIHTC.* Borrowers who receive LIHTCs may establish rents in accordance with LIHTC requirements. However, borrowers are obligated to ensure that sufficient annual funds are available to cover expenses in the housing project's approved budget, including the required payments on the borrower's Agency loan. Borrowers must not use housing project funds to make up any difference between rents required under Agency program requirements and the maximum allowed rents under the LIHTC program.

§ 3560.203 Tenant contributions.

(a) *Tenant contributions.* A tenant's contribution to rent charged for a rental unit in an Agency financed housing project is based on the tenant's income, as calculated on the Agency's tenant certification forms, and the availability of Agency or non-Agency rental subsidies.

(1) *Tenant contributions.* Borrowers must set tenant contributions to rent at the highest of the following standards but never more than the note rent:

(i) Thirty percent of monthly adjusted income;

(ii) Ten percent of gross monthly income;

(iii) An amount equal to the portion of an assistance payment specifically

designated to meet the household's shelter costs if the household is receiving assistance payments from a public agency; or

(iv) The basic rent, unless RHS rental assistance is provided to the household.

(2) *Tenant contribution surcharge.* Tenants in a Plan I housing project with incomes above the eligibility standards set in § 3560.152(a)(1) must pay a 25 percent surcharge in addition to note rent.

(b) *Adjustment of tenant contribution.* Borrowers must adjust the tenant contribution whenever there is a change in tenant household status or income sufficient to generate a revised tenant certification in accordance with § 3560.152(e) or an Agency approved rent or utility allowance change that affects the tenant contribution amount.

(c) *Overage.* If a tenant's tenant contribution is higher than basic rent, borrowers must remit to the Agency the rent collected in excess of the basic rent and up to the note rent.

§ 3560.204 Security deposits and membership fees.

(a) *General.* Borrowers may collect security deposits when it is reasonable and customary for the area in which the housing is located. Borrowers must hold security deposits in a separate bank or bookkeeping account in accordance with § 3560.302(c)(3).

(b) *Allowable amounts.* Borrowers may charge security deposits that are typical for the area in which the housing is located, as long as the security deposit charged a tenant does not exceed that tenant's net contribution for one month's rent or basic rent, whichever is greater.

(1) As noted in § 3560.102(b)(1)(viii) and § 3560.156(c)(18)(iii), borrowers must specify in the housing project's management plan how the amount to be charged as a security deposit will be established and must specify the amount to be charged to individual tenants in the lease to be signed by the tenant.

(2) Borrowers may charge security deposits to households receiving HUD assistance in accordance with HUD requirements.

(3) Members of a cooperative shall be required to pay a membership fee no greater than one month's occupancy charge.

(4) Additional security deposits for pets may be charged as long as the additional deposit is not greater than basic rent for 1 month. No additional security deposit for assistance animals is allowed where an assistance animal is necessary for the normal functioning of a household member with a disability.

(5) Borrowers must not charge additional security deposits based on disabilities of tenants or other personal characteristics.

(c) *Payment plans.* Borrowers must offer, for persons who are eligible for rental assistance or Section 8 assistance, the option of paying the security deposit on an installment payment plan. Should installments not be met, the total charge may become due and payable in full.

(d) *Charges for damage or loss.* Borrowers may charge tenants for damage or loss caused or allowed by the tenant equal to the cost of the damage or loss.

(1) Borrowers must consider expenses due for addressing normal wear and tear as normal operating expenses and must not charge tenants a fee or withhold security deposits to pay for such costs.

(2) Borrowers may withhold security deposits and may charge tenants for damage or loss costs above security deposit amounts.

(e) *State and local security deposit requirements.* Borrowers must follow all state and local laws and other requirements governing the handling and disposition of security deposits.

(1) Resolution of any security deposit disputes must be handled in accordance with state and local law.

(2) Any interest earned on security deposits will accrue in accordance with state law.

(f) *Unclaimed security deposits.* Any funds in the housing project's security deposit account unclaimed by a tenant must be deposited into the housing project's general operating account.

§ 3560.205 Rent and utility allowance changes.

(a) *General.* Borrowers must fully document that changes to rents and utility allowances are necessary to cover housing or utility costs allowed under the approved budget for the housing. Any changes must apply to all similar units in the housing project.

(b) *Agency approval.* Borrowers must submit a fully documented request to the Agency to effect any rent or utility allowance change.

(1) Borrowers must obtain written consent or approval from the Agency as specified in paragraph (e) of this section before implementing any changes in the rents or utility allowances.

(2) If a borrower implements an unauthorized rent or utility allowance charge, the Agency will require the borrower to roll back rents to the last authorized rent charge, and the borrower must reimburse tenants for any unauthorized rents collected.

(c) *Timing of request for changes.* Borrowers must submit rent and utility allowance change requests in conjunction with the annual budget submission as required under § 3560.303(d). The effective dates of any approved changes will coincide with the start of the housing project's fiscal year or the start of the season for seasonally occupied farm labor housing. However, the Agency will accept borrower requests for rent or utility allowance changes anytime during the year if a change is necessary to preserve the financial integrity of the housing complex and the financial distress is due to circumstances beyond the borrower's control.

(d) *Tenant notification.* Borrowers must notify tenants and solicit their comments to proposed rent or utility allowance change requests that are submitted to the Agency at the same time that the initial request is made to the Agency.

(1) Tenants will be given 20 calendar days to provide their comments to the Agency.

(2) Borrowers must deliver the proposed rent or utility allowance change request notice to each tenant and post at least one copy of the notice at the housing project site in a visible location frequented by tenants.

(e) *Approval.* If the Agency approves a rent or utility allowance increase request on which the comments were solicited, the borrower will deliver a notice announcing the rent or utility allowance change to the tenants to be effective 30 calendar days from the date of the notification.

(f) *Denial of change request.* The Agency may deny a rent or utility allowance increase request in the following circumstances.

(1) The Agency determines that the borrower did not provide sufficient information to justify operating costs.

(2) The borrower is out of compliance with Agency requirements including any corrective action requirements agreed to in a workout agreement developed according to subpart J of this part.

(3) Sufficient funds are being collected under existing rents to meet approved expenses.

(g) *Notice of denial.* If the rent change will not be approved as requested, the Agency will notify the borrower of the denial in accordance with § 3560.303(d).

§ 3560.206 Conversion to Plan II (Interest Credit).

The Agency encourages any borrower not on Plan II to convert to Plan II to provide more favorable rent costs to very-low, low, and moderate-income households.

§ 3560.207 Annual adjustment factors for Section 8 units.

(a) *General.* For rental units receiving project-based Section 8 assistance, the Agency will review rents annually without regard to HUD's automatic annual adjustment.

(b) *Establishing rents in housing with HUD rent assistance.* Borrowers will set note and basic rents for housing receiving HUD project based Section 8 assistance, as specified in § 3560.202(c)(3).

(1) Borrowers must notify the Agency of any HUD rent changes.

(2) If allowed by the interest credit agreement, the borrower will remit the amount collected in excess of the basic rent up to the note rent to the Agency as overage.

(3) When HUD contract rents exceed note rents, borrowers must deposit HUD funds equal to the difference between the Agency approved note rent and the HUD approved rent into the reserve account for the housing project.

(c) *Excess HUD rents.* When permitted by the Agency interest credit agreement, the Agency may reduce or cancel the interest credit on the housing, if excess HUD rents deposited in the reserve account result in the reserve account being funded beyond the fully funded level approved by the Agency.

§ 3560.208 Rents during eviction or failure to recertify.

(a) *Rents during eviction.* If a tenant is appealing an eviction and the borrower refuses to accept rent payment during the appeal of the eviction, the tenant must escrow required rent payments to safeguard their occupancy, unless State or local laws specify otherwise.

(b) *Rents when tenants fail to recertify.* If a borrower can document that a tenant received a notice specifying a tenant recertification date and the tenant fails to comply by the specified date or fails to cooperate with verification or other procedures related to the tenant's recertification so that the tenant recertification cannot be completed by the recertification date, the borrower, within 10 days of the recertification date, shall give the tenant and the Agency written notification that:

(1) Termination proceedings are being initiated, in accordance with § 3560.159; and

(2) The tenant will be charged note rent until the tenant's lease is terminated.

(c) *Unauthorized assistance due to tenant recertification failure.* Any unauthorized assistance received because of the tenant's failure to be recertified will be collected in accordance with the provisions of subpart O of this part.

(d) *Rents when borrowers fail to recertify tenants.* If a borrower cannot document that a tenant received a recertification notice, and a tenant is not recertified within 12 months of the most recently executed tenant certification, tenants shall continue to make net tenant contributions to rent based on their most recent tenant certification and the borrower must remit to the Agency full overage as if the tenant was paying the note rent until the tenant is recertified.

(e) *Unauthorized assistance due to borrower recertification failure.* Any unauthorized assistance received as a result of the borrower's failure to recertify a tenant will be collected from the borrower in accordance with the provisions of subpart O of this part and may not be paid from housing project funds or funds collected from the tenant.

§ 3560.209 Rent collection.

(a) *General.* Borrowers must collect rents on a monthly basis and maintain a system for collecting and tracking rents.

(b) *Fees for late rent payments.* Borrowers may adopt a late fee schedule for overdue rental payments. Late fee schedules must be submitted to the Agency for approval as part of the housing project's management plan, be in accordance with State and local law, and consistent with the following requirements:

(1) A grace period of 10 days from the rental payment due date must be allowed for all tenants.

(2) The late fee must not exceed the higher of $10 or an amount equal to 5 percent of the tenant's gross tenant contribution.

(3) Tenants receiving housing benefits from sources other than the Agency may be subject to the late rent fee requirements of the other funding sources.

(c) *Improperly advanced rents.* Improperly advanced interest credit or rental assistance is considered unauthorized assistance and is subject to recapture in accordance with subpart O of this part.

§ 3560.210 Special note rents (SNRs).

When a Plan II housing project is experiencing severe vacancies due to market conditions, the Agency may allow the borrower to charge an SNR, which is less than note rent but higher than basic rent, to attract or retain tenants whose income level would require them to pay special note rent. The requirements for requesting and receiving an SNR are established under § 3560.454.

§§ 3560.211–3560.249 [Reserved]

§ 3560.250 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 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. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart F—Rental Subsidies

§ 3560.251 General.

This subpart contains policies for borrower administration and tenant use of rental subsidies in Agency financed multi-family housing (MFH) projects.

§ 3560.252 Authorized rental subsidies.

(a) *General.* The purpose of rental subsidies is to reduce amounts paid by tenants for rent. Rental subsidies equal the difference between the approved shelter costs and tenant contributions as calculated in accordance with § 3560.203(a)(1).

(b) *Forms of rental subsidies.* Rental subsidies may be in the form of:

(1) Agency rental assistance;

(2) HUD section 8 assistance, including project-based and vouchers;

(3) Private rental subsidies; or

(4) State or local government rental subsidies.

(c) *Multiple rent subsidies.* (1) Multiple types of rent subsidies may be used in the same MFH project.

(2) Tenants with subsidies from sources other than the Agency may be eligible for Agency rental assistance if the following conditions are met.

(i) The tenant qualifies for Agency rental assistance.

(ii) The rental subsidy the tenant is receiving is not a HUD voucher.

(iii) The rental subsidy being received by the tenant is less than the full amount of Agency rental assistance for which the tenant would qualify. In such cases, the Agency may provide the difference between the subsidy received by the tenant and the amount of Agency rental assistance for which the tenant qualifies.

(d) *Agency rental assistance (RA).* Agency RA is obligated to MFH projects on a rental unit basis. The obligation is composed of a number of rental units and associated dollar amounts of RA specified in a RA agreement with a borrower. The following types of Agency RA may be obligated to a housing project.

(1) *Renewal units.* RA may be assigned to a housing project to replace existing rental unit obligations because funds associated with the units have been fully disbursed.

(2) *New construction units.* RA may be provided in conjunction with initial Agency loans for construction or substantial rehabilitation of MFH projects.

(3) *Servicing units.* Additional RA may be provided to operational MFH projects as a part of the Agency's general loan servicing or preservation activities.

§ 3560.253 [Reserved]

§ 3560.254 Eligibility for rental assistance.

(a) *Eligible housing.* Housing projects eligible for Agency RA include the following types of projects.

(1) Housing projects that operate under an Interest Credit Plan II RA agreement.

(2) Housing projects financed with an Agency off-farm labor housing loan or grant. On-farm labor housing is not eligible for rental assistance.

(3) Housing projects financed with a direct or insured Rural Rental Housing loan approved prior to August 1, 1968, and operated under an interest credit agreement that identifies the housing project as a Plan RA project.

(4) Housing projects financed from Agency and other sources if the conditions of § 3560.66 are met.

(b) *Eligible units.* Borrowers may not request RA for rental units that the Agency determines are not habitable in accordance with § 3560.103.

(c) *Eligible households.* Households eligible for rental assistance are those:

(1) With very low-or low-incomes who are eligible to live in MFH;

(2) Whose net tenant contribution to rent determined in accordance with § 3560.203(a)(2) is less than the basic rent for the unit;

(3) Whose head of the household is a U.S. citizen or a legal alien as defined in § 3560.11;

(4) Who meet the occupancy rules established by the borrower in accordance with § 3560.155(e); and

(5) Who have a signed, unexpired tenant certification form on file with the borrower.

§ 3560.255 Requesting rental assistance.

(a) *Submitting requests.* Borrowers seeking an allocation of rental assistance for MFH must request the rental assistance from the Agency as follows.

(1) *Renewal rental assistance.* To the extent sufficient funds are available, the Agency will automatically renew expiring rental assistance agreements at the existing number of units.

(2) *New construction units.* Loan applicants proposing to use Agency rental assistance must include their request for rental assistance in their loan proposal in accordance with § 3560.56.

(3) *Servicing units.* Borrowers requesting rental assistance must have tenants or eligible tenant applicants on a waiting list who are RA eligible.

(b) *Denial of requests.* (1) If a rental assistance request is denied due to the loan applicant's or borrower's ineligibility, the Agency will send the loan applicant or borrower written notification of the decision with an explanation of the denial.

(2) If a rental assistance request to renew expiring rental assistance agreements is denied because funding is not available, the Agency will notify the borrower and the borrower must notify the tenants of rent increases in accordance with their lease and state and local law. Tenants losing rental assistance due to a lack of Agency funding may quit the lease and vacate the housing without penalty in accordance with the terms of their lease.

(3) Loan applicants or borrowers determined to be eligible for RA as a result of an appeal or funding review will receive RA, if RA funding is available, beginning with the month following the date of the appeal or funding review decision or beginning in the first month that RA funding becomes available.

§ 3560.256 Rental assistance payments.

(a) *Borrower submission requirements.* The borrower must submit monthly requests for RA payments to the Agency based on occupancy as of the first day of the month previous to the month in which the request is being made.

(b) *Basis of RA requests.* Borrower requests for RA payments must be based on the difference between the basic rent plus utility allowances for each rental unit eligible for RA and the net tenant contribution of the tenant.

(c) *Payments to borrower.* Prior to making RA payments to a borrower, the Agency will deduct from the approved RA payment amount any unpaid loan payments, late fees, and other amounts which the borrower owes to the Agency.

(d) *Utility payments to tenants.* The borrower must pay tenants the difference between the utility allowance and the tenant's net contribution to rent when a tenant receiving RA is billed directly for utilities and the utility allowance exceeds the net tenant contribution to rent. Such utility payments to tenants must be made on a monthly basis.

(e) *Administrative errors.* Borrowers are responsible for correcting borrower errors made in regard to RA requests for payments. In accordance with subpart O of this part, borrowers will be required to repay the Agency for any unauthorized RA received or any unauthorized use of RA except in certain cases of tenant error or fraud.

§ 3560.257 Assigning rental assistance.

(a) *Priorities for rental assistance.* (1) Borrowers must use the following priorities when assigning available rental assistance.

(i) First priority is to eligible very low-income tenants paying the highest percentage of their adjusted annual income for Agency approved shelter costs.

(ii) Second priority, if the housing project has vacant rental units, is to eligible very low-income applicants on the waiting list.

(iii) Third priority is to eligible low-income tenants paying the highest percentage of their adjusted annual income for Agency approved shelter costs.

(iv) Fourth priority, if the housing project has vacant rental units, is to eligible low-income applicants on the waiting list.

(v) Fifth priority is to households which are residing in a rental unit for which they do not qualify on the basis of an occupancy waiver or other special approval situations.

(2) In order to provide rental assistance to the third, fourth, and fifth priority categories, a borrower must fully document either that there are no very low-income households on the housing project's waiting list or that occupancy by low-income households is limited as follows:

(i) For housing occupied on or after November 30, 1983, no more than 5 percent of the units in the housing are occupied by low-income households; or

(ii) For housing occupied before November 30, 1983, no more than 25 percent of the units in the housing are occupied by low-income households.

(b) *Continued eligibility.* Tenants receiving rental assistance may continue to do so as long as they remain eligible for occupancy and for rental assistance under § 3560.254(c), and as long as rental assistance units are available.

(c) *Assignment of rental assistance.* Except as provided in § 3560.454(c) and using the priorities given in paragraph (a) of this section, borrowers must assign available rental assistance units as soon as rental assistance units become available.

(1) When a rental assistance unit is assigned to an eligible existing tenant on a day other than the first day of a month, the Agency will not provide the borrower rental assistance for the newly assigned existing tenant and the tenant will not pay reduced rental charges until the first of the month following the assignment of the rental assistance.

(2) When an eligible applicant moves into a rental assistance unit on a day other than the first day of a month, they will pay a prorated rent based on the number of days they occupy the rental assistance unit and the amount of rental assistance they will be receiving.

(d) *Incorrectly assigned rental assistance.* Incorrectly assigned rental assistance is viewed as unauthorized assistance and handled in accordance with subpart O of this part.

§ 3560.258 Terms of agreement.

(a) *Term of agreement.* Rental assistance agreements will be consistent with available funding. Rental assistance agreements expire when the funds obligated for rental assistance units are fully disbursed in accordance with the conditions of the agreement.

(b) *Replacing expiring obligations.* To the extent funds are available for replacement units, the Agency will renew rental assistance agreements.

§ 3560.259 Transferring rental assistance.

(a) *Agency authority.* The Agency may transfer rental assistance in the following instances:

(1) To accompany the transfer of a housing project to a different borrower;

(2) After a voluntary conveyance or a foreclosure sale;

(3) After a liquidation or prepayment;

(4) To the extent permitted by law, when any rental assistance units have not been used for a 6-month period; or

(5) When the loan cannot be closed.

(b) *Agency review before transferring rental assistance.* The Agency must perform a review to determine if all eligible tenants in the project are receiving rental assistance before the Agency transfers it to another project.

(c) *Transferring rental assistance for displaced tenants.* The Agency may transfer rental assistance from one housing project to another eligible housing project for a tenant who is moving due to displacement as a result of prepayment, liquidation, or a natural disaster. The tenant must begin using the rental assistance within 4 months of the transfer or the RA will become available for use by the next rental assistance eligible tenant in the housing project.

§ 3560.260 Rental subsidies from non-Agency sources.

(a) *General.* The Agency may authorize the use of rental subsidies from sources other than the Agency in Agency financed housing projects. The Agency will make no commitment to providing Agency rental assistance at the expiration of the rental subsidies from other sources.

(b) *HUD vouchers.* For tenants with HUD vouchers, the borrower must set the rental unit rent at the basic rent or the rent standard set by the public housing authority, whichever is less. The public housing authority distributing the HUD vouchers may set the utility allowance.

(c) *Loan proposals using non-Agency rental subsidy.* Loan applicants or borrowers proposing to use rental subsidy from sources other than the Agency must provide:

(1) Documentation demonstrating that a market exists for households eligible for the subsidy and the households are at income levels that would benefit from the amount of rental subsidy that will be provided;

(2) A plan describing actions to be taken when the rental subsidy expires to minimize the impact on tenants losing the rental assistance and to avoid displacement; and

(3) A copy of the project-based rental assistance agreement to be signed by the borrower and the provider of the rental assistance.

(d) *Rental subsidy agreement.* The borrower and the provider of rental subsidies from sources other than the Agency must execute a rental subsidy agreement and submit a copy of the agreement to the Agency. At a minimum, the rental subsidy agreement between the borrower and the source of the rental subsidy must include the following provisions:

(1) A description of how the subsidy will be paid. The rental subsidy payments may be paid directly to the tenants, to the borrower on behalf of the tenants, or deposited to a separate account established for the subsidy. The tenants must be advised of the amount and source of the subsidy through the lease or a supplement to the lease.

(2) The life of a project-based rental subsidy agreement with a non-Agency source must be similar to existing or current Agency rental assistance funding levels and sufficient funds must be set aside to assure availability of the rental subsidy for this term. The method of supplying the funds must be clearly established.

§ 3560.261 Improperly advanced rental assistance.

Improperly advanced RHS rental assistance resulting from tenant or borrower error or fraud constitutes unauthorized assistance and the provisions of subpart O of this part apply.

§§ 3560.262–3560.299 [Reserved]

§ 3560.300 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 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. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart G—Financial Management

§ 3560.301 General.

This subpart contains requirements for the financial management of Agency-financed multi-family housing (MFH) projects, including accounts, budgets, reports, and engagements. Financial management systems and procedures must cover all housing operations and provide adequate documentation to ensure that program objectives are met.

§ 3560.302 Accounting, bookkeeping, budgeting, and financial management systems.

(a) *General.* Borrowers must establish the accounting, bookkeeping, budgeting and financial management procedures necessary to conduct housing project operations in a financially safe and sound manner. Borrowers must maintain records in a manner suitable for an engagement and must be able to report accurate operational results to the Agency from these accounts and records.

(b) *Acceptable methods of accounting.* (1) Borrowers may use a cash, accrual, or modified accrual method of accounting, bookkeeping, and budget preparations as long as the method is consistent with the statements required by the engagement in accordance with the standards identified in § 3560.308.

(2) Borrowers must describe their accounting, bookkeeping, budget preparation, and financial reporting procedures, including Agency-approved engagements, in their management plan.

(3) Borrowers must notify the Agency of any changes in their accounting, bookkeeping, budget preparation, and financial management reporting systems through a revision of their management plan.

(c) *Account requirements.* (1) As used in this paragraph, the term account is used interchangeably to mean a bookkeeping account (ledger) or a bank account.

(2) At a minimum, borrowers must maintain the accounts required by their loan agreement or resolution.

(3) The following list identifies the financial accounts that are required for each housing project. Additional accounts may be required by third-party lenders. Accounts are to be funded in the following priority order, except that paragraphs (c)(3)(iv), (v), and (vi) of this section are funded directly by tenant security deposits or patron capital receipts respectively:

(i) General operating account;

(ii) Real estate tax and insurance account (if not part of the general operating account);

(iii) Reserve account;

(iv) Tenant security deposit account;

(v) Membership fee account for cooperative housing; and

(vi) For cooperative housing only, a patron capital account.

(4) Amounts escrowed for taxes and insurance may be kept in the general operating account as long as the accounting system reflects the amount escrowed.

(5) Regardless of the number or types of accounts established, the borrower must meet the following requirements:

(i) All housing project funds must be held only in financial institution accounts insured by an agency of the Federal Government, backed by collateral provided by the bank, or held in securities meeting the conditions in this subpart.

(ii) Funds maintained in an institution may not exceed the limit established for Federal deposit insurance. If funds exceed the amount covered by Federal deposit insurance, borrowers must obtain a collateral pledge from the institution to cover all funds or must move funds to an institution that will insure the funds.

(iii) All funds and proceeds in any account must be used only for authorized purposes as described in Agency's regulations, loan or grant documents. Use of funds for non-program purposes constitutes non-monetary default as described in § 3560.452(c).

(iv) All funds received and held in any account, except the tenant security deposit, membership fee, and patron capital accounts, must be held in trust by the borrower for the loan obligation until used and serve as security for the Agency loan or grant.

(v) Borrowers must be able to account for housing project funds with accounting methods or practices that maintain the proprietary identity of the funds for each project. A borrower may operate one account for multiple projects as long as the funds for each project themselves are accounted for separately.

(vi) Each borrower must have access to at least one demand deposit or checking account.

(vii) Housing project funds may not be pledged as collateral for debts without Agency approval. If such a need arises for an eligible program purpose, the borrower must obtain prior Agency approval.

(6) Tenant security deposit accounts or membership fee accounts and patron capital accounts must be maintained in a separate account in trust for the tenants or members and handled in a manner consistent with state and local laws.

(d) *Documentation of separate accountability.* Housing project funds may be combined in one or more bank accounts for two or more housing projects as long as the borrower's accounting system segregates and tracks funds for each project separately.

(1) When borrowers request Agency approval of an accounting system that combines funds from two or more housing projects, they must demonstrate to the Agency that the accounting systems are structured to segregate and maintain separate accountability for each housing project. Such demonstration must include a statement issued by a Certified Public Accountant (CPA) stating that the accounting system is structured to meet this principle of separate accountability.

(2) The accounting system and management plan must document the method for prorating revenue and expenses that are not clearly identifiable as being associated with a particular housing project.

(3) Funds for housing projects managed by the same management company must not be co-mingled.

(e) *Records.* (1) Borrowers must retain all housing project financial records, books, and supporting material for at least three years after the issuance of the engagement and financial reports. Upon request, these materials will immediately be made available to the Agency, its representatives, the USDA Office of the Inspector General (OIG), or the General Accountability Office (GAO).

(2) Borrower accounts and records will be kept or made available in a location with reasonable access for inspection, review, and copying by the Agency, other authorized representatives of the USDA, OIG, or GAO.

(3) Automated records may be used if they meet the conditions of paragraph (f) of this section.

(f) *Forms generated by automated systems.* (1) The forms and formats approved for use by borrowers may be prepared on automated systems when they meet the requirements of this paragraph.

(2) Forms may be automated if they meet the following requirements:

(i) The identical wording and nomenclature of an official form must be included in the automated version of the form, including the Office of Management and Budget (OMB) approval number.

(ii) The logic or mathematical calculation of an official form must be the same in an automated version of the form.

(iii) The name or logo of the source of the automated form must be visible on each output of the automated form.

(iv) Output size must be $8\frac{1}{2} \times 11$ inches.

(v) Nominal spacing adjustment and colored paper are allowed.

(g) *Farm Labor Housing.* Borrowers with on-farm labor housing units will be considered in compliance with this section by virtue of completing the record keeping and reporting requirements outlined in subpart M of this part.

§ 3560.303 Housing project budgets.

(a) *General requirements.* (1) Using an Agency-approved format, borrowers must submit to the Agency for approval a proposed annual housing project budget prior to the start of the housing project's fiscal year. The capital budget section of the annual project budget must include anticipated expenditures on the project's long-term capital needs as specified in § 3560.103(c).

(2) Budget projections regarding income, expenses, vacancies, and contingencies must be realistic given the housing project's history, current circumstances, and market conditions.

(3) Borrowers must document that the operating expenses included in the budget accurately reflect reasonable and necessary costs to operate the housing project in a manner consistent with the

objectives of the loan and in accordance with the applicable Agency requirements.

(4) Borrower must submit supporting documentation to justify housing project utility allowances.

(5) Upon Agency request, borrowers must submit any additional documentation necessary to establish that applicable Agency requirements have been met.

(b) *Allowable and unallowable project expenses.* Expenses charged to project operations, whether for management agent services or other expenses, must be reasonable, typical, necessary and show a clear benefit to the residents of the property. Services and expenses charged to the property must show value added and be for authorized purposes.

(1) *Allowable expenses.* Allowable expenses include those expenses that are directly attributable to housing project operations and are necessary to carry out successful operations.

(i) Housing project expenses must not duplicate expenses included in the management fee as defined in § 3560.102(i).

(ii) Actual costs for direct personnel costs of permanent and part-time staff assigned directly to the project site. This includes managers, maintenance staff, and temporary help including their:

(A) Gross salary;

(B) Employer FICA contribution;

(C) Federal unemployment tax;

(D) State unemployment tax;

(E) Workers compensation insurance;

(F) Health insurance premiums;

(G) Cost of fidelity or comparable insurance;

(H) Leasing, performance incentive or annual bonuses;

(I) Direct costs of travel to off-site locations by on-site staff for property business or training; and/or

(J) Retirement benefits.

(iii) Legal fees directly related to the operation and management of the property including tenant lease enforcement actions, property tax appeals and suits, and the preparation of all legal documents.

(iv) All outside account and auditing fees, if required by the Agency, directly related to the preparation of the annual audit, partnership tax returns and 401–K's, as well as other outside reports and year-end reports to the Agency, or other governmental agency.

(v) All repair and maintenance costs for the project including:

(A) Maintenance staffing costs and related expenses.

(B) Maintenance supplies.

(C) Contract repairs to the projects (e.g., heating and air conditioning, painting, roofing).

(D) Make ready expenses including painting and repairs, flooring replacement and appliance replacement as well as drapery or mini-blind replacement. (Turnover maintenance).

(E) Preventive maintenance expenses including occupied unit repairs and maintenance as well as common area systems repairs and maintenance.

(F) Snow removal.

(G) Elevator repairs and maintenance contracts.

(H) Section 504 and other Fair Housing compliance modifications and maintenance.

(I) Landscaping maintenance, replacements, and seasonal plantings.

(J) Pest control services.

(K) Other related maintenance expenses.

(vi) All operational costs related to the project including:

(A) The costs of obtaining and receiving credit reports, police reports, and other checks related to tenant selection criteria for prospective residents.

(B) The cost of duplicating forms for those properties not owning a copier. This will include the costs of producing or purchasing forms and mailing or delivering those forms to the project site.

(C) All bank charges related to the property including purchases of supplies (e.g., checks, deposit slips, returned check fees, service fees).

(D) Costs of site-based telephone including initial installation, basic services, directory listings, and long-distances charges.

(E) All advertising costs related specifically to the operations of that project. This can include advertising for applicants or employees in newspapers, newsletters, radio, cable TV, and telephone books.

(F) Postage and delivery costs from the site including expenses to the Agency or other governmental agencies, tenants, verifying third parties, central management offices, etc.

(G) Partnership or corporate business expenses including state taxes and other mandated state or local fees as well as other relevant expenses required for operation of the property by a third-party governmental unit. Costs of continuation financing statements and site license and permit costs.

(H) Expenses related to site utilities including actual costs and surcharges as well as deposits and expense of utility bonds in lieu of bonds.

(I) Site office furniture and equipment including site based computer and copiers. Service agreements and warranties for copiers, telephone systems and computers are also included (if approved by the Agency).

(J) Real estate taxes (personal tangible property and real property taxes) and expenses related to controlling or reducing taxes.

(K) All costs of insurance including property liability and casualty as well as fidelity or crime and dishonesty coverage for on-site employees and the owners.

(L) Costs of collecting rents on-site including bookkeeping supplies and recordkeeping items.

(M) Costs of preparing and maintaining tenant files and processing tenant certifications including all office supplies, copies and other associated expenses.

(N) Public relations expense relative to maintaining positive relationships between the local community and the tenants with the management staff and the borrowers. Chamber of Commerce dues, contributions to local charity events, and sponsorship of tenant activities, are examples.

(O) Tax Credit Compliance Monitoring Fees imposed by HFAs.

(P) All insurance deductibles as well as adjuster expenses.

(Q) Professional service contracts (audits and compilations, tax returns, energy audits, utility allowances, architectural, construction, rehabilitation and inspection contracts, etc.)

(R) On-site training pre-approved by the Agency provided by outside training vendors.

(S) Site manager salary for additional hours associated with congregate housing.

(vii) With prior Agency approval, cooperatives and nonprofit organizations may use housing project funds to pay asset management expenses directly attributable to ownership responsibilities. Such expenses may include:

(A) Errors and omissions insurance policy for the Board of Directors.

(B) Board of Director review and approval of proposed Agency's annual operating budgets, including proposed repair and replacement outlays and accruals.

(C) Board of Director review and approval of capital expenditures, financial statements, and consideration of any management comments noted.

(D) Long-term asset management reviews.

(2) *Unallowable expenses.* Housing project funds may not be used for any of the following:

(i) Equity skimming as defined in 42 U.S.C. 543 (a).

(ii) Purposes unrelated to the housing project.

(iii) Reimbursement of inaccurate or false claims.

(iv) Settlement agreements, court ordered decrees, legal fees, or other costs that result from the filing of civil rights complaints or legal action alleging the borrower, or a representative of the borrower, has committed a civil rights violation.

(v) Fines, penalties, and legal fees where the borrower or a borrower's representative has been found guilty of violating laws, including, but not limited to, civil rights, and building codes.

(vi) Association dues to be paid by the project should be related to training for site managers or management agents. To the extent that association dues can document training for site managers or management agents related to project activities by actual cost or pro-ration, a reasonable expense may be billed to the project.

(vii) Pay for bonuses or monetary performance awards to site managers or management agents that are not clearly provided for by the site manager salary contract.

(viii) Billing for parties that are large or unreasonable, such as renting expensive party halls or hotel rooms and payment for alcoholic beverages or gifts to management agent staff.

(ix) Billing for practices that are inefficient such as routine use of collect calls from a site manager to a management agent office.

(c) *Priorities.* The priority order of planned and actual budget expenditures will be:

(1) Senior position lienholder, if any;

(2) Operating and maintenance expenses, including taxes and insurance;

(3) Agency debt payments;

(4) Reserve account requirements;

(5) Other authorized expenditures; and

(6) Return on owner investment.

(d) *Agency review and approval.* (1) The Agency will only approve housing project budgets that meet the requirements of paragraphs (a), (b) and (c) of this section.

(2) If no rent change is requested, borrowers must submit budget documents for Agency approval 60 calendar days prior to the start of the housing project's fiscal year. The Agency will notify borrowers if the budget submission does not meet the requirements of paragraphs (a), (b), and (c) of this section. The borrower will have 10 days to submit the additional material.

(3) If a rent change is requested, the borrower must submit budget documents to the Agency and notify tenants of the requested rent change at least 90 calendar days prior to the start of the housing project's fiscal year.

(i) The Agency will notify borrowers if the budget submission does not meet the requirements of paragraphs (a), (b), and (c) of this section, or if the rent and utility allowance request has been denied in accordance with § 3560.205(f). The borrower will have 10 days to submit the additional material to address any issues raised by the Agency.

(ii) The rent change is not approved until the Agency issues a written approval. If there is no response from the Agency within the 30-day period, the rent change is considered automatic. The following budgets are not eligible for automatic approval:

(A) Budgets with rent increases above $25 per unit; and

(B) Budgets that are submitted late or that miss other deadlines set by the Agency.

(4) If the Agency denies the budget approval, the Agency will notify the borrower in writing.

(5) If budget approval is denied, the borrower shall continue to operate the housing project on the basis of the most recently approved budget.

§ 3560.304 Initial operating capital.

(a) *Purpose.* To provide a source of capital for start-up costs, such as the purchase of equipment, and paying operating, maintenance, and debt service expenses. Borrowers are required to make an initial operating capital contribution to the general operating account as described in § 3560.64.

(b) *Authorized uses of initial operating capital.* Initial operating capital may be used only to pay for approved budgeted expenses.

(c) *Withdrawal of initial operating capital.* Initial operating capital funds may be withdrawn by a borrower if:

(1) The initial operating capital was provided from the borrower's own funds;

(2) The borrower requests the withdrawal after the second year of housing project operations and prior to the 7th year of operations;

(3) The housing project has had a 90 percent occupancy rate for a period of 12 months prior to the withdrawal request;

(4) The withdrawal will not affect the financial viability of the housing project;

(5) Contributions to the reserve account are at authorized levels;

(6) The withdrawal request will not result in rent increases; and

(7) There are no outstanding deficiencies in management's physical maintenance of the housing project.

§ 3560.305 Return on investment.

(a) *Borrower's return on investment.* Borrowers may receive a return on their investment (ROI) in accordance with the terms of their loan agreement and the following:

(1) If there is a positive net cash flow in housing project operations, the ROI may be taken by the borrower after the housing project's fiscal year, provided that the balance of the reserve account is equal to or greater than required deposits minus authorized withdrawals. If the annual financial reports indicate that an ROI should not have been taken, borrowers will be required to return any unauthorized ROI.

(2) If there is negative cash flow in housing project operations, the Agency may authorize the borrower to take the ROI only after the Agency has reviewed the housing project's annual financial reports and determines:

(i) Surplus cash exists in either the general operating account as defined in § 3560.306(d)(1) or the reserve account, if the balance is greater than the required deposits minus authorized withdrawals.

(ii) The housing project has sufficient funds to address identified capital or operational needs.

(b) *Unpaid return on investment.* An earned, but unpaid ROI for the previous year only may be requested by the borrower and authorized by the Agency under the provisions of § 3560.305(a)(2) provided the current year's ROI has been paid first and a rent increase is not required to generate funds to pay the unpaid ROI.

§ 3560.306 Reserve account.

(a) *Purpose.* To meet the major capital expense needs of a housing project, borrowers must establish and maintain a reserve account.

(b) *Financial management of the reserve account.* Borrower management of the reserve account is subject to the requirements of 7 CFR part 1902, subpart A regarding supervised bank accounts.

(c) *Funding of the reserve account.* Borrowers must make payments to the reserve account in the amount established in loan documents, beginning with the first loan payment or a date specified in loan documents.

(d) *Transfer of surplus general operating account funds.* (1) The general operating account will be deemed to contain surplus funds when the balance at the end of the housing project's fiscal year, after all payables, exceeds 20 percent of the operating and maintenance expenses. If the borrower is escrowing taxes and insurance premiums, include the amount that

should be escrowed by year end and subtract such tax and insurance premiums from operating and maintenance expenses used to calculate 20 percent of the operating and maintenance expenses.

(2) If a housing project's general operating account has surplus funds at the end of the housing project's fiscal year, the Agency will require the borrower to use the surplus funds to address capital needs, make a deposit in the housing project's reserve account, reduce the debt service on the borrower's loan, or reduce rents in the following year. At the end of the borrower's fiscal year, if the borrower is required to transfer surplus funds from the general operating account to the reserve account, the transfer does not change the future required contributions to the reserve account.

(e) *Account requirements.* Borrowers must establish and maintain the reserve account according to § 3560.65, § 3560.302(c)(5), and the following requirements:

(1) Reserve accounts must be deposited in interest-bearing accounts or securities; and

(2) Reserve accounts must be supervised accounts that require Agency countersignatures on all withdrawals.

(f) *Funds invested in securities.* In addition to the requirements specified in paragraph (e) of this section, the following requirements apply when reserve funds are invested in securities:

(1) The reserve account must be held either at a Federally insured domestic institution such as a bank, savings and loan association, credit union, or at a domestic institution authorized to sell securities.

(2) The borrower must record the price actually paid for the securities. When designated as a reserve deposit, the price paid must equal the required contribution to reserves.

(3) Borrowers must be knowledgeable about industry practices and consider the impact of typical fees and charges for purchases and sales and maintenance of an account when making investment decisions. Such fees may be paid for out of reserves, only with the consent of the Agency. Housing project funds may not be used to pay for a financial advisor.

(g) *Use of the reserve account.* (1) Borrowers must request Agency approval of reserve account withdrawals prior to the withdrawal. Borrowers must inform the Agency of planned uses of reserve accounts in their annual capital budget if known at budget planning time. Any item on the approved capital budget does not require additional pre-approval by the Agency.

(2) The Agency will indicate any conditions governing withdrawals from a reserve account at the time it approves the withdrawal.

(3) In emergency situations, the Agency may specify special procedures to provide an expedited approval process for the use of the reserve account.

(4) The Agency may approve the use of reserve funds for operating costs when circumstances that are determined by the Agency to be beyond the borrower's control have resulted in a shortfall in the housing project's general operating account.

(h) *Allowable uses.* Allowable uses of reserve funds include the following:

(1) Major capital improvements and replacements.

(2) Housing project operating expenses provided the requirement of paragraph (g)(4) of this section has been met, including:

(i) Payments due on the loan, or

(ii) Payment of a return on investment at the end of the borrower's fiscal year if such payment comes from surplus operating funds in the reserve account.

(3) With Agency approval, borrowers operating on a for-profit or a limited profit basis may make an annual withdrawal from the reserve account, equal to no more than 25 percent of the interest earned on a reserve account during the prior year.

(4) For other purposes, which in the judgment of the Agency will promote the loan purposes, strengthen the security or facilitate, improve, or maintain the housing and the orderly collection of the loan without jeopardizing the loan or impairing the adequacy of the security.

(i) *Records.* Borrowers must maintain records documenting all expenses that were paid by withdrawals from the reserve account.

(j) *Changes to reserve requirements.* (1) 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.

(2) The Agency may approve a change in the reserve account funding level based on the findings of an approved capital needs assessment. The approval to increase reserve account funding levels will take into consideration the housing project's approved budget and the housing project's ability to support increased reserve account deposits without causing basic rents to exceed conventional rents for comparable units in the area.

(k) *Excess reserves.* Amounts in the reserve account which exceed the total required by the loan or grant agreement must be used, at the direction of the Agency, for any of the following:

(1) Pay for expenses specified in a long-term capital plan;

(2) Make payments and reamortize the Agency loan;

(3) Reduce rents by a transfer to the general operating account;

(4) Fund preservation incentives authorized in subpart N of this part; or

(5) Cover other expenditures determined to be related to the purpose of the housing project and in the best interest of the Federal Government.

(l) *Procurement.* The requirements of § 3560.102(g), (j), and (k), and all other Agency requirements relating to procurement, bidding, identity-of-interest, cost-reasonableness, and construction management apply to any work or services paid out of reserve funds. Structural repairs and other significant work on major building systems such as heating or air conditioning must be done in accordance with the requirements of 7 CFR part 1924, subpart A.

§ 3560.307 Reports.

(a) *Required reports.* Borrowers must submit required reports using Agency-approved formats.

(b) *Quarterly and monthly reports.* The Agency may require quarterly or monthly reports to monitor financial progress when closer supervision is warranted.

§ 3560.308 Annual financial reports.

(a) *General.* Borrowers must submit annual financial reports that meet the requirements of this section. The annual financial reports to be submitted are the Multi-Family Housing (MFH) Project Budget with actual expenditures and the MFH Balance Sheet. Annual financial reports are due to the Agency within 90 days of the end of the borrower's fiscal year.

(1) Borrowers with 16 or more units in their housing project must base their annual financial reports on an engagement report completed according to agreed upon procedures established by the Agency as specified in paragraph (b) of this section. Borrowers must include the engagement report with their annual financial reports submitted to the Agency.

(2) Borrowers with less than 16 units in their housing project must submit annual financial reports using a limited scope engagement based on Agency approved procedures and certify that the housing meets the performance standards established in paragraph (c) of this section. Borrowers may use a CPA to prepare this report. For properties

that prepare a limited scope engagement, the Agency may undertake random audits, once every two or three years.

(3) If a third party requires it, the borrower may have a CPA prepare an audit in accordance with generally accepted government auditing standards (GAGAS). Costs incurred to obtain this audit are an allowable project expense.

(b) *Engagement requirements.* Borrowers required to submit annual financial reports based on an engagement performed by a CPA must meet the following requirements:

(1) Borrowers must use an Agency approved engagement letter. Borrowers must submit the results of an engagement that examines specific records using agreed upon procedures established by the Agency and that describes the borrower's performance in meeting the standards described in paragraph (c) of this section.

(2) The engagement will be initiated by the borrower using the Agency's engagement letter, which will specify the engagement program and establish the reporting requirements for the engagement.

(3) The engagement must be conducted by a CPA in accordance with American Institute of Certified Public Accountant (AICPA) Standards and Agency requirements.

(4) All engagement reports must be prepared for use by the Agency.

(c) *Performance standards.* Borrowers must ensure that:

(1) Required accounts are properly maintained and tracked separately;

(2) Payments from operating accounts are disclosed and accurately represented on financial reports;

(3) The reserve amount is at the authorized level and there are no encumbrances;

(4) Tenant security deposit accounts are fully-funded and are maintained in separate accounts and meet state and local requirements;

(5) Amount of payment of owner return was consistent with the terms of the applicable loan agreement;

(6) The borrower has maintained proper insurance in accordance with the requirements of § 3560.105(b); and

(7) All financial records are adequate and suitable for examination.

(d) *Other financial reports.* (1) Nonprofit and public borrower entities must submit audits in accordance with 7 CFR part 3052 that must also include the requirements set forth in the limited scope engagement.

(2) The Agency may require additional opinions of financial condition and compliance, such as audits, to assure the security of the asset, determine whether the housing project is being operated at a reasonable cost, or to detect fraud, waste, or abuse.

(3) Any audits independently obtained by the borrower also must be submitted to the Agency.

§ 3560.309 Advancement (loan) of funds to a RRH project by the owner, member of the organization, or agent of the owner.

(a) 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 § 3560.453 of this part. Justification will be based on the following:

(1) A review of the documented circumstances and the project operating budget before any funds are advanced (loaned). The financial position of the project must not be jeopardized.

(2) Funds are not immediately available from any of the following sources:

(i) Reserve funds;

(ii) Initial operating capital; and

(iii) An imminent rent increase.

(b) The funds will be applied to ordinary project operating and maintenance expenses.

(c) Interest may be charged or paid on the loan from project income; however, interest must be reasonable. The proposal may be denied if Rural Development financing can be provided to resolve the problem in a more cost-effective manner.

(d) No lien in connection with the loan will be filed against the property securing the Rural Development loan or against 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.

(e) 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 Rural Development 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 Rural Development debt is current and the reserve requirements are being maintained at the authorized levels.

§§ 3560.310–3560.349 [Reserved]

§ 3560.350 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 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. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart H—Agency Monitoring

§ 3560.351 General.

This subpart contains policies for Agency monitoring of operations and management at multi-family housing (MFH) projects.

§ 3560.352 Agency monitoring scope, purpose, and borrower responsibilities.

(a) *Scope of Agency monitoring activities.* The Agency will review reports, records, and other materials related to the housing project, including borrower financial reports, housing project records, and other communications. The Agency also will review material related to a housing project submitted by a tenant or other source. To assess conditions such as a housing project's physical condition, record keeping procedures, and operations and management activities, including borrower compliance with Federal, state, and local laws and Agency requirements, the Agency will conduct periodic on-site monitoring reviews of a housing project.

(b) *Purpose of Agency monitoring activities.* Agency monitoring activities are designed to assess borrower and tenant compliance with Agency requirements, and to:

(1) Ensure housing projects are managed in accordance with the goals and objectives of the Agency's MFH programs and are maintained in accordance with Agency requirements for affordable, decent, safe, and sanitary housing;

(2) Preserve the value of the Agency-financed housing projects;

(3) Detect waste, fraud, and abuse in housing project operations or management and to ensure the cost of operations and management are necessary and reasonable;

(4) Verify compliance with Affirmative Fair Housing Marketing requirements, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, as amended, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Americans

with Disabilities Act of 1990, other applicable Federal laws, and Agency requirements related to occupancy and tenant eligibility.

(c) *Borrower responsibilities.* The borrower is responsible for cooperating fully and promptly with Agency monitoring activities. Agency monitoring activities do not diminish borrower operation and management responsibilities and do not relieve borrowers from any Agency requirements including, but not limited to, borrower requirements to comply with:

(1) The terms of all agreements with the Agency, including the loan or grant agreement, assurance agreement, loan resolution, promissory note, mortgage, interest credit agreement, rental assistance agreement, mitigation measures contained in the environmental review document, and workout agreement;

(2) The requirements contained in this part;

(3) The requirements of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, as amended; section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Americans with Disabilities Act of 1990; and

(4) Applicable Federal, state, and local laws.

§ 3560.353 Scheduling of on-site monitoring reviews.

Generally, the Agency will provide the borrower prior notice of an on-site monitoring review and will conduct the on-site monitoring review in the presence of the borrower. However, the Agency may visit a housing project, without prior notice, to observe physical conditions, operations and management activities, or other borrower or tenant activities. In addition, the Agency may conduct on-site reviews without the presence of the borrower, the management agent, or other designated representative of the borrower.

§ 3560.354 Borrower response to monitoring review notifications.

The Agency will notify borrowers, in writing, whenever Agency monitoring activities result in deficiency findings or compliance violations. The monitoring review notification will describe the deficiencies findings or compliance violations and will specify a time period by which corrective action must be taken by the borrower. The notification will offer borrowers an opportunity to discuss the reported deficiency findings or compliance violations with the Agency and will explain enforcement actions that the Agency may take if corrective action is not taken within the time period specified in the monitoring review notification. When civil rights non-compliance is found, the State Civil Rights Coordinator or Manager (SCRC/M) will be notified. If voluntary compliance cannot be obtained, appropriate enforcement or remedial action will be taken.

§§ 3560.355–3560.399 [Reserved]

§ 3560.400 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 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. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart I—Servicing

3560.401 General.

(a) *Purpose.* This subpart contains actions the Agency may take to service and collect loans or other debts owed by multi-family housing (MFH) borrowers. The loan servicing and other actions set forth are designed to protect Agency and tenant interests and assist borrowers in meeting program objectives.

(b) *General servicing policies.* Borrowers must repay loans or other amounts due to the Agency according to provisions specified in promissory notes, loan agreements and resolutions, mortgages, deeds-of-trust, assumption agreements, reamortization agreements, or other agreements executed between the borrower and the Agency.

(c) *Special servicing actions.* The Agency will not agree to any proposal for loan servicing or debt collection action other than actions consistent with this section, debt instruments, and other agreements. When payments due to the Agency from a borrower remain unpaid for more than 30 days after the due date, past due, after the Agency may initiate the special servicing actions described in subpart J of this part.

§ 3560.402 Loan payment processing.

(a) *Predetermined Amortization Schedule System (PASS) requirements.* All loans, except the loans specified in paragraph (c) of this section, must be closed and serviced using the PASS.

(b) *Required conversion to PASS.* Borrowers with Daily Interest Accrual System (DIAS) accounts must convert to PASS whenever a loan servicing action on the account involves a change in the loan rates or terms or whenever a subsequent loan to the borrower is closed.

(c) *Exceptions.* Seasonal farm labor housing loans and on-farm labor housing loans may be closed on DIAS, monthly, or annual payment schedules.

§ 3560.403 Account servicing.

(a) *Payment due dates.* Loan or other payments due to the Agency are due on the first day of each month unless otherwise established in the debt instrument or other agreement executed with the Agency.

(b) *Payment application order.* Loan payments will be applied to the borrower's account in the following order of priority:

(1) Amortized audit receivables. (*i.e.*, amounts due to the Agency, over a period of time, as a result of a finding from an audit or other monitoring activity.)

(2) Unamortized audit receivables. (*i.e.*, amounts due to the Agency, in a lump sum payment, as a result of a finding from an audit or other monitoring activity.)

(3) Late fees. (*i.e.*, amounts due to the Agency as a result of late payments.)

(4) Amortized recoverable costs. (*i.e.*, amounts due to the Agency, over a period of time, as a result of Agency payments made on behalf of a borrower for housing project related expenses such as taxes or insurance premiums.)

(5) Unamortized recoverable costs. (*i.e.*, amounts due to the Agency, in a lump sum payment, as a result of Agency payments made on behalf of a borrower for housing project related expenses such as taxes or insurance premiums.)

(6) Overage. (*i.e.*, amounts due to the Agency as a result of a tenant's tenant contribution being higher than basic rent.)

(7) Interest. (*i.e.*, amounts due to the Agency as a result of scheduled interest on a loan and as a result of interest charged on unpaid delinquent principal amounts.)

(8) Principal. (*i.e.*, amounts due to the Agency as the loan principal.)

(9) Advance payments. (Any funds remaining after disbursement of a payment to all other payment priorities will be applied to the borrower's account as an advance regular payment unless a borrower specifically designates, in writing, another application.)

(c) *Late fees.* If payments on a borrower's account, under PASS, are

more than $15 delinquent after the close of business on the 10th day after the payment due date, a late fee will be charged to the borrower's account.

(1) Late fees charged to a borrower's account will equal 6 percent of the total regular payments due as specified in any promissory notes, assumption agreements, or reamortization agreements related to the borrower's account.

(2) Late fees are a borrower expense and must not be paid from housing project funds.

(3) The Agency may waive late fees for circumstances beyond a borrower's control and when a waiver is determined by the Agency to be in the best financial interest of the Federal Government.

(d) *Interest on unpaid overdue principal.* On the first day of the month following a payment due date, the Agency will charge interest at the note rate on any unpaid principal payment due according to the loan's amortization schedule (*i.e.*, interest will be charged on delinquent principal). The interest charged on the unpaid principal payment due will be charged to the borrower in addition to the scheduled interest due on payments according to the loan's amortization schedule.

§ 3560.404 Final loan payments.

(a) *Payoff statements.* At the borrower's request, the Agency will provide a statement indicating the pay off amount necessary to pay the borrower's account in full.

(b) *Final payments.* A borrower's final loan payment must include repayment of all outstanding obligations to the Agency.

(1) Any supervised funds being held by the Agency will be applied to the borrower's account or, at the borrower's option, will be returned to the borrower following acceptance of final payment on all outstanding obligations.

(2) If a balance due remains on a borrower's account after Agency acceptance of a final payment, due to borrower error or fraud or Agency error, the Agency will initiate collection action in accordance with the unauthorized assistance collection procedures described in subpart O of this part.

(c) *Final payment loans.* Borrowers with loans for which the Agency approved an amortization period that exceeded the term of the loan may request a loan to finance the final payment in accordance with the requirements of § 3560.74.

(d) *Loan prepayment requests.* If prepayment of an Agency loan is requested, the applicable preservation requirements of subpart N of this part, including the execution of any appropriate restrictive-use agreements, must be met prior to the Agency's acceptance of a final loan payment under the prepayment request.

(e) *Payment forms.* Final payments may be made by cashier's check, certified check, money order, bank draft, or other withdrawal instruments approved by the Agency.

(1) If borrowers use forms of payment requiring special handling, the borrower is responsible for the cost of the special handling.

(2) When payment is provided in a form that is not the equivalent of cash, the Agency will consider the payment to be received at the time the payment has been converted to cash and funds have been transferred to the Agency.

(f) *Release of security instruments.* The Agency will release security instruments, subject to applicable restrictive-use agreements referenced in subpart N of this part, when full payment of all outstanding obligations to the Agency has been received, accepted, and the funds have been transferred to the Agency.

(1) If the Agency and the borrower agree to settle an account for less than the full amount owed, the Agency will release security instruments when the borrower has paid in full all agreed upon obligations.

(2) Recording costs for the release of the security instruments will be the responsibility of the borrower, except where state law requires the mortgagee to record or file the satisfaction.

(g) *Special circumstances—Refund of entire principal.* If the entire principal of the loan is refunded after the loan is closed, the borrower must pay interest from the date of the note to the date of receipt of the refund.

§ 3560.405 Borrower organizational structure or ownership interest changes.

(a) *General.* The requirements of this section apply to changes in a borrower entity's organizational structure or to a change in a borrower entity's controlling interest. If 100 percent of a borrower entity's ownership interest is transferred, within a 12-month period, the change will be considered a housing project transfer and the provisions of § 3560.406, which covers transfers or sales of housing projects, will apply.

(b) *Agency requirements.* Borrowers must notify the Agency prior to the implementation of any changes in a borrower entity's organizational structure. The Agency must give its consent prior to the implementation of changes in a borrower entity's controlling interest.

(1) Borrowers must submit written requests for Agency consent to the Agency at least 45 days prior to the anticipated effective date of the proposed organizational change. The request must document that the proposed changes will not adversely affect the program purposes or security interest of the Agency and will not adversely affect tenants.

(2) If the controlling interest change involves a transfer of interest to an entity not previously holding an ownership interest in the borrower entity, the request for consent must include a written certification, executed by the party receiving the ownership interest, certifying that the recipient of the ownership interest agrees to assume responsibilities and obligations required of a borrower as established in Agency program requirements including requirements in the promissory note, loan agreement, or other document related to Agency loans held by the borrower entity.

(3) The Agency will not take a consent request for a controlling interest change under consideration if the borrower's request fails to meet the requirements specified in paragraph (b)(2) of this section.

(c) *Documentation of organizational structures and ownership interest.* Borrowers must annually document their organizational structure and ownership.

(1) Documentation must be submitted with the annual financial reports required by § 3560.308 and must reflect any changes made during the 12-month period preceding the submission of the annual financial reports.

(2) If no changes in a borrower entity's organizational structure or ownership were made during the 12-month period prior to submission of the annual financial reports, borrowers are not required to submit documentation, but must submit a statement certifying that no changes have been made in the documents on file with the Agency.

(3) Organizational structure and ownership documentation must include the following items:

(i) A current organization description reflecting all approved changes in the organizational structure of the borrower entity and listing the names, addresses, and tax identification numbers of all parties with an ownership interest in the borrower entity; and

(ii) A written statement by the borrower certifying that the changes in the borrower entity's organizational structure or ownership interests were completed in compliance with state and local laws and in accordance with

organizational requirements of the borrower entity.

§ 3560.406 MFH ownership transfers or sales.

(a) *General.* The provisions of this section apply to ownership transfers or sales (*e.g.*, title transfers) involving an Agency financed housing project. The provisions cover situations where Agency loans are being assumed as a part of a housing project transfer or sale.

(b) *Agency consent requirements.* Agency consent must be obtained prior to an ownership transfer or sale and Agency consent will only be given when the transfer or sale is in the best interest of the Federal Government. Any ownership transfer or sale without the consent of the Agency will be considered a default and will be handled in accordance with subpart J of this part.

(1) Priority consideration will be given to ownership transfers or sales needed to remove a hardship to the borrower that was caused by circumstances beyond the borrower's control.

(2) Ownership transfers or sales with an assumption of debt at an amount less than the borrower's debt amount will only be approved by the Agency when all persons in the borrower entity who are transferring their ownership interest or are involved in the selling of the property are not part of the transferee organization.

(c) *Consent request requirements.* Borrowers must submit written requests for Agency consent to an ownership transfer or sale of a housing project to the Agency at least 45 days prior to proposed ownership transfer or sale date. The consent request must document that the proposed transfer or sale meets the requirements of paragraph (d) of this section and must include the following items:

(1) A statement disclosing any identity-of-interest between the borrower and the party to which the housing project ownership is being transferred or sold.

(2) A statement certifying that the housing project's financial accounts are funded at required levels, less authorized withdrawals, and that payments due for operation and maintenance expenses, tax assessments, insurance premiums, any required tenant security deposit accounts, and other obligations incurred as a part of the housing project operations are paid in full with no overdue balances or a statement explaining the housing project's financial situation and the reasons for overdue payments or under funded accounts.

(3) A proposed housing project budget covering the partial year, if applicable, and first full year operation following the ownership transfer or housing project sale.

(4) A written statement, signed by the proposed transferee or buyer, certifying that the transferee or buyer will assume the borrower responsibilities and obligations specified in Agency program requirements including requirements in a promissory note, loan agreement or other documents related to Agency loans held by the borrower entity.

(5) A certification from the borrower and the proposed transferee or buyer that the borrower does not and will not have a reversionary interest in the housing project.

(d) *Requirements for ownership transfers or sales.* An ownership transfer or sale of a housing project with an assumption of Agency loans by the transferee or buyer must comply with the following conditions:

(1) The transferee or buyer must be an eligible borrower under the requirements established by subpart B of this part;

(2) The transferee or buyer must agree to set basic rents at the housing project covered by the assumed loans at levels that do no exceed conventional rents for comparable units in the area, except that when determined necessary by the Agency to allow for decent, safe and sanitary housing to be provided in market areas where conventional rents are not sufficient to cover necessary operating, maintenance, and reserve costs. Basic rents may be allowed to exceed comparable rents for conventional units, but in no case by more than 150% of the comparable rent for conventional unit rent level; and

(3) The value of the housing project covered by the loans to be assumed, at the time of an ownership transfer or sale, must be sufficient to ensure that all Agency loans being assumed and all subsequent loans being offered as a part of the transfer or sale can be secured to a level that fully protects the Agency's interest. Loans from third-party sources that are not dependent on project revenue for payment will not be included in this determination.

(i) If the total value of the loans being offered as a part of an ownership transfer or sale is $100,000 or less, the security value of the housing project may be determined through either: An Agency review of monitoring reports conducted in accordance with the requirements in subpart H of this part or an appraisal paid for by the borrower and conducted in accordance with subpart P of this part.

(ii) If the total value of the loans being offered as a part of an ownership transfer or sale exceeds $100,000, the security value of the housing project must be determined through an appraisal obtained by the Agency and conducted in accordance with subpart P of this part.

(iii) The Agency may approve a loan write-down, in accordance with § 3560.455, prior to an ownership transfer or sale to reduce the amount of debt being assumed by the transferee or buyer.

(4) Prior to Agency approval of an ownership transfer or sale, an environmental review, as required under the National Environmental Policy Act and in accordance with 7 CFR part 1940, subpart G, must be conducted on all property related to the ownership transfer or sale. If contamination from hazardous substances or petroleum products is found on the property, the finding must be disclosed to the Agency and the transferee or buyer and must be taken into consideration in the determination of the housing project's value.

(5) All immediate and long-term repair and rehabilitation needs must be identified by a capital needs assessment. The reserve requirements for the housing project will be reviewed by the Agency and adjusted, if necessary, to adequately cover the cost of addressing the property's capital needs. The Agency may approve the release of the current reserve amount to the transferor provided the transferee agrees to deposit the amount to cover the project's immediate needs into the reserve account at closing.

(6) The borrower and transferee must disclose to the Agency all terms, conditions, or other considerations related to the ownership transfer or sale. All side or other agreements must be disclosed and all sources and uses of funds related to the ownership transfer or sale must be disclosed.

(7) An agreement must be signed between the borrower and the transferee listing all repairs known by the borrower to be necessary to bring the housing project into compliance with Agency requirements for decent, safe, and sanitary housing as listed in subpart C of this part.

(i) The agreement must include repairs required to correct compliance violations cited in a compliance violation notice issued by the Agency.

(ii) The agreement must specify whether each repair listed will be completed by the borrower prior to the ownership transfer or by the transferee in accordance with a workout agreement developed in accordance with the

requirements of § 3560.453 and executed between the transferee or buyer and the Agency.

(8) A civil rights compliance review, as required by 7 CFR part 1901, subpart E, will be conducted by the Agency prior to the ownership transfer or sale.

(9) During or immediately after the transfer, a review of the property must be conducted to ensure that it complies with or will comply with section 504(c) of the Americans with Disabilities Act (ADA), which covers accessibility requirements, and the Title VI of the Fair Housing Act of 1968.

(10) A transferee must ensure that tenant certifications in compliance with subpart D of this part for all occupied rental units are on file with the Agency.

(11) A transferee must comply with insurance and bonding requirements established in subpart C of this part at the time of the transfer.

(12) A transferee must agree to submit financial reports to the Agency according to subpart G of this part.

(13) A transferee must establish that there are no liens, judgments, or other claims against the housing project other than those by the Agency and those to which the Agency has previously agreed.

(14) A limited profit Rural Rental Housing transferee's initial investment and return on investment will remain the same as that originally provided to the transferor unless:

(i) The property is transferred to a non-profit entity and the return on investment is eliminated; or

(ii) The transferee contributes additional funds for repair or rehabilitation and the Agency agrees to recognize a higher initial investment.

(e) *Equity payments.* The Agency will withhold any equity payment due to the borrower, as part of an ownership transfer or sale, if any of the following conditions exist:

(1) The borrower's indebtedness to the Agency has not been paid in full or is not being assumed by the transferee. The Agency will require that all or part of an equity payment be applied against other Agency loans owed by the borrower if payments on the other loans are not current.

(2) Any non-Agency prior liens against a housing project are not paid in full.

(3) Any housing project financial accounts are not funded at required levels, less authorized withdrawals, or any payments due for operation and maintenance expenses, tax assessments, insurance premiums, tenant security deposits or other obligations incurred as a part of housing project operations are not paid in full.

(4) Any management deficiencies cited in a compliance violation notice issued by the Agency to the borrower have not been corrected or the housing project is not operating under an approved management plan or, if applicable, an approved management agreement.

(5) Any operation and maintenance deficiencies cited in compliance violation notices issued by the Agency have not been corrected or are not scheduled for correction in a workout agreement developed in accordance with the requirements of § 3560.453.

(6) The borrower entity is, at the time of the ownership transfer or sale, cited by the Agency or other Federal, state, or local agencies for violations of Fair Housing or Equal Opportunity requirements.

(7) The borrower entity is, at the time of the ownership transfer or sale, cited by the Agency or any other entity involved in the financing of the housing project for misappropriation of funds.

(f) *Equity payment funding sources.* Equity may be provided in cash or through a loan. If a full equity payment to the transferor is not paid at the time of the ownership transfer or sale or has not been paid through an Agency equity loan or third-party equity loan approved by the Agency to the borrower, the transferee must certify that equity payments due to the borrower will be paid from sources other than housing project's funds and must identify the sources of such payments.

(g) *Restrictive-use requirement.* Transferees assuming Agency loans, including loans approved prior to December 21, 1979, will be required to execute a restrictive-use agreement that contains the language specified in § 3560.662. The restrictive-use agreement will require the housing project to be used for program purposes for a specified period of time beyond the date that the ownership transfer or sale is closed. When an equity loan is involved at the time of transfer, the restrictions will be for 30 years.

(h) *Subsequent loans.* The Agency may approve a subsequent loan or permit a loan from a third-party source in conjunction with an ownership transfer or sale of a housing project. The subsequent loan may be in the form of a junior or parity lien.

(1) Subsequent loans on a housing project proposed in conjunction with an ownership transfer or sale must be requested and processed in accordance with the Agency loan origination requirements in subpart B of this part.

(2) The Agency may amortize the subsequent loan over a period not to exceed the remaining economic life of the housing or 50 years, whichever is less.

(3) The Agency may extend the term of the existing loan to a period not to exceed 30 years or the remaining economic life of the housing, whichever is less.

(i) *Loan assumption interest rates.* The interest rate for Agency loans assumed in conjunction with an ownership transfer or sale will be determined as follows:

(1) The interest rate for all loans, except farm labor housing loans, will be set at the lower of:

(i) The note rate of the existing Agency loan;

(ii) The Agency note rate on the day the transfer is approved;

(iii) The Agency note rate on the day the transfer is closed; or

(iv) If the rents are increased due to a transfer, the transfer will be done under new rates and terms when the Agency determines that it is in the best interest of the government. Subsequent loan may be in the form of a senior, junior or parity lien or soft second.

(2) The interest rate on farm labor housing loans will be the rate specified in the note, except that loans transferred to public bodies, nonprofit organizations of farm workers, and broadly-based nonprofit corporations for farm labor housing purposes may be at a one percent interest rate regardless of the rate specified in the note if the Agency determines that such a reduction is necessary to maintain affordable rental rates for tenants.

(j) *Loan assumption terms.* The amount of the loan balance that may be assumed through an ownership transfer or sale must not exceed the security value of the housing project determined according to § 3560.406(d)(3)(i).

(1) The Agency may reamortize a loan assumed through an ownership transfer or sale over a period not to exceed the remaining economic life of the housing or 50 years, whichever is less.

(2) The Agency may extend the term of the loan to a period not to exceed 30 years or the remaining economic life of the housing, whichever is less.

(3) When loans assumed through an ownership transfer or sale are amortized on an annual payment basis, the loans will be converted, at the time of the transfer or sale, to a monthly payment amortization and will be made subject to PASS. When on- or off-farm labor housing projects are involved in an ownership transfer or sale, the related loans may be transferred on a DIAS basis or converted to PASS if the Agency determines that such a conversion will not be detrimental to the operation of the farm labor housing.

(k) *Processing ownership transfers or sales.* (1) At the time of the transfer, the Agency will require the borrower to transfer all equipment, related facilities, and housing project financial accounts to the transferee including the operation and maintenance account, reserve account, tenant security deposit account, tax and insurance escrow accounts.

(i) Any funds remaining in a rental assistance contract not dispersed by the transferor will be assigned to the transferee unless the rental assistance is not needed for tenants or another form of rental subsidy is to be used.

(ii) Any rental assistance determined to be unnecessary will be reassigned to other housing projects in accordance with the provisions of subpart F of this part.

(2) The Agency will require that appropriate loan documents are executed by the transferee. The Agency may require such documents to be referenced in security instruments (e.g., mortgage or deed of trust).

(3) If all of a borrower's outstanding Agency debt is not assumed or paid off at the time of the transfer or sale, the Agency will not release a borrower from liability unless the Agency determines that the borrower is unable to pay the remaining debt from assets taken as security through the debt settlement procedure in accordance with § 3560.457.

(l) *Ownership transfers or sales under special rates, terms, and conditions.* Housing projects may be transferred or sold to entities that do not meet borrower eligibility requirements for the type of loans being assumed. However, such a transfer or sale will only be considered when it is determined by the Agency to be in the best interest of the Federal Government and the objectives of the original loan can no longer be met. The following special rates, terms, and conditions will apply to such situations.

(1) The transferee makes a down payment of at least 10 percent of the remaining loan balance to be assumed.

(2) The transferee has the ability to pay the Agency debt.

(3) Monthly or annual installments will be amortized over the term of the loan and the interest rate will be at a rate of interest at least one percent higher than the interest rate offered to eligible borrowers as specified in paragraphs (i)(1) or (2) of this section.

§ 3560.407 Sales or other disposition of security property.

(a) *General.* Borrowers must obtain Agency approval prior to selling or exchanging all or a part of, or an interest in, property serving as security for Agency loans. Agency approval also must be requested and received prior to the granting or conveyance of rights-of-way through property serving as security property. An environmental review must be completed in accordance with 7 CFR part 1940, subpart G, before the Agency approves all such sales or other dispositions of security property.

(b) *Request requirements.* Requests for Agency approval of transactions related to security property must document that the following conditions will be met.

(1) The borrower's ability to repay the Agency debt will not be impaired;

(2) The transaction will not interfere with the successful operation of the housing project or prevent the borrower from carrying out the purpose for which the loan was made.

(3) The monetary or other consideration offered in the transaction is equal to or greater than the market value of the security property being disposed of or the rights being granted, except that right-of-way easements may be granted or conveyed with minimal or no consideration being offered if:

(i) The value of the security property will not be reduced;

(ii) The suitability of the security property for the intended purpose will not be impaired; and

(iii) The easement is granted to allow the borrower to develop additional lots or units that will be integrated into the housing project or for enhancement of streets, utilities or other services provided by a public body.

(4) The property that will remain as security for Agency loans, after any transaction related to security property, will fully secure the borrower's debt to the Agency.

(5) Borrowers must report to the Agency the total of all proceeds derived from the sale or other disposition of property serving as security for Agency loans. The proceeds from the disposition of the security property will be used for purposes approved by the Agency.

§ 3560.408 Lease of security property.

(a) *General.* Borrowers must obtain Agency approval prior to entering into a lease agreement related to any property serving as security for Agency loans. An environmental review must be completed in accordance with 7 CFR part 1940, subpart G, before the Agency can give lease approval for real property serving as security for Agency loans.

(b) *Leases to public housing authorities.* Borrowers may not lease all or part of their housing facilities to a housing authority. Lease agreements in place prior to the effective date of this regulation may be continued provided that leases are in a form acceptable to the housing authority and are on terms that will enable the borrower to comply with Agency program requirements, to meet Agency program objectives, and make loan and other required payments to the Agency on an Agency approved schedule.

(c) *Lease of a portion of the security property.* The Agency may, subject to the applicable provisions governing loan purposes found in of § 3560.53, § 3560.553 and § 3560.603, approve the leasing of facilities related to a housing project (e.g., central kitchens, recreation facilities, laundry rooms, and community rooms) when the borrower will continue to operate the facilities for the purposes for which the loan was made. Agency approval is not required for leases with a term of less than 30 days. The Agency will only approve a lease with a term over 30 days if the following conditions are met:

(1) The lease is in the best interest of the borrower, the tenants, and the Federal Government.

(2) The amount of the consideration agreed to in the lease is adequate to pay all prorated operating and maintenance expenses, a prorated share of the annual reserve deposit, and the prorated part of the loan amortization at the note rate of interest.

(3) All compensation and considerations, whether payments, a share of proceeds, or improvements to the property paid for by the lessee, must be disclosed to the Agency. No payments or compensation for entering into a lease shall flow to the borrower or any identity-of-interest related to the borrower.

(4) The lease provides at its termination for the restoration of the leased space to its original condition or a condition acceptable to the owner and the Federal Government.

(5) Consent to the lease will not exceed 3 years at a time unless the Agency determines that a longer lease is advantageous to the borrower, the tenants, and the Federal Government.

(6) When another lienholder's mortgage requires that lienholder's consent to a lease, the borrower must obtain written consent from the lienholder before the Agency will consider approving the lease.

(d) *Mineral leases.* Mineral leases will be handled according to 7 CFR 3550.159 except that all references to County Supervisor will be construed to mean District Director when applied to the MFH Programs.

§ 3560.409 Subordinations or junior liens against security property.

(a) *General.* Borrowers must obtain Agency consent prior to entering into any financial transaction that will require a subordination of the Agency security interest in the property (i.e., granting of a prior interest to another lender.) An environmental review must be completed in accordance with 7 CFR part 1940, subpart G, before the Agency can consent to a subordination or junior lien against the property. Borrowers must use an Agency approved subordination agreement.

(1) If a lien is placed against property serving as security for an Agency loan without prior Agency consent, the Agency will declare the borrower to be in default and will pursue liquidation of the borrower's loans in accordance with the procedures specified in § 3560.457, unless an agreement can be reached between the borrower and the Agency to work out removal of the lien or post approve the lien.

(2) Subordinations or junior liens need not encompass the entire site, (e.g., a subordination or junior lien requested to permit an interim lender to advance construction funds may only cover the portion of the site proposed for construction.)

(3) The subordination or junior lien must be for a specific amount.

(4) The subordination or junior lien must not adversely impact the Agency's ability to service the loan according to the requirements of this part.

(b) *Consent request requirements.* Borrowers proposing to have the Agency subordinate its interest to another lender or to give a creditor a junior lien against property serving as security for an Agency loan must submit a consent request to the Agency. The consent request must document the following:

(1) The action will enable the borrower to obtain financial resources for improvements or repairs on the security property that are consistent with the purposes of the Agency loan secured by the property.

(2) The action will not adversely impact the borrower's financial condition and the borrower's ability to repay the Agency loan being secured by the property.

(3) The action will not result in basic rents at the security property that exceed conventional rents for comparable units in the area.

(4) The terms and conditions of the credit to be secured by the subordination or junior lien are not expected to adversely affect the borrowers ability to meet the terms and conditions of the Agency loan secured by the property.

(5) The proposed use of the funds obtained through the granting of a subordination or junior lien will not adversely affect the borrower's ability to meet Agency program requirements or to operate and manage the housing project in a manner consistent with program objectives.

(6) The creditor receiving the ''subordination'' of interest in the property or the junior lien will agree that a foreclosure or acceptance of a deed-in-lieu of foreclosure will not be initiated without at least 30 days prior notice to the Agency.

(7) The subordination or junior lien is not being secured with any funding from housing project financial accounts.

(8) The ''subordination'' of interest or junior lien will not cause the debt from all sources to exceed the value of the security property.

(9) The transaction related to the placement of a ''subordination'' of interest or junior lien against the property serving as security for an Agency loan is in the best interest of the Federal Government.

(c) *Required conditions for subordinations and junior liens.* Subordinations of interest in or junior liens against property serving as security for an Agency loan may be approved by the Agency only if they improve a borrower's financial condition and allow for improvements or repairs that are consistent with the purposes of the Agency loan secured by the property.

(1) Farm Labor Housing loans on farm tracts may be subordinated for essential farm improvements and operations.

(2) Any proposed development must be planned and performed according to 7 CFR part 1924, subpart A, or in a manner directed by the other lienholder that meets the objectives of 7 CFR part 1924, subpart A.

(d) *Other liens against a property or other assets.* (1) Borrowers must not enter into any agreements to place a lien on a housing project or any equipment related to a housing project without prior Agency approval and unless the following conditions are met:

(i) The transaction will not adversely affect the Agency's security position;

(ii) The lien is not related to a non-program eligible action;

(iii) The items to be acquired by the funding related to the lien is needed for the operation of the property; and

(iv) The financing arrangements are otherwise sound.

(2) In cases where the above criteria are met, borrowers must complete and provide the Agency a copy of the financing statement, loan document, or contract, as applicable, as well as a security agreement acceptable to the Agency.

§ 3560.410 Consolidations.

(a) *General.* With Agency approval, loans, loan agreements, or loan resolutions may be consolidated to reduce the administrative burden (i.e., record keeping, budgeting), to improve the cost effectiveness and efficiencies of housing project operations, and to effectively utilize facilities common to housing projects.

(b) *Loan consolidations.* Loan consolidations will only be considered when:

(1) Multiple loans to the one borrower entity are being transferred to a different borrower entity in accordance with § 3560.406, or

(2) One borrower entity has an initial loan and one or more subsequent loans for the same housing project and all the loans were closed on the same date and with the same rates and terms.

(c) *Loan agreement or loan resolution consolidations.* Loan agreements or loan resolutions may be consolidated, even if the loans related to the agreement or resolution are not consolidated, to allow borrowers to comply with reporting, accounting, and other Agency requirements as a single housing project.

(1) The loan agreements or loan resolutions may only be consolidated when they are related to loans made for the same purposes, to the same borrower, and operating under the same type of interest credit, if applicable.

(2) All of a borrower's loan accounts must be current after the loan agreement or loan resolution consolidation is processed, unless otherwise approved by the Agency.

§§ 3560.411–3560.449 [Reserved]

§ 3560.450 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 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. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart J—Special Servicing, Enforcement, Liquidation, and Other Actions

§ 3560.451 General.

This subpart contains special servicing, enforcement, liquidation, and other actions that the borrower may request or the Agency may implement when compliance violations, monetary defaults, or non-monetary defaults cannot be resolved through regular servicing.

(a) *Agency obligations.* The Agency is under no obligation to offer or agree to any special servicing actions.

(b) *Relationship to workout agreements.* Special servicing actions may be implemented either as a part of a workout agreement, developed in accordance with § 3560.453, or as an action approved by the Agency separate from a workout agreement unless indicated otherwise in this subpart.

§ 3560.452 Monetary and non-monetary defaults.

(a) *General.* Borrowers are in default when they have received a compliance violation notice, issued in accordance with § 3560.354, and have failed to correct the compliance violation identified in the compliance violation notice within the time period specified in the notice. Compliance violations include, but are not limited to, violations of promissory note provisions, loan or grant agreement provisions, regulatory, or other Agency requirements, including requirements imposed on a borrower through a workout agreement developed in accordance with § 3560.453.

(b) *Monetary defaults.* A monetary default exists when any amount due to the Agency or a third party (such as real estate taxes and insurance) under a promissory note, loan or grant agreement, workout agreement, or other agreement remains due more than 30 days after the due date.

(c) *Nonmonetary defaults.* A nonmonetary default exists when a borrower fails to correct a compliance violation, other than a monetary amount past due, within the time period specified in a compliance violation notice issued in accordance with § 3560.354. Nonmonetary defaults include, but are not limited to, failure to:

(1) Operate and manage a housing project in accordance with the Agency approved management plan or Agency requirements;

(2) Maintain the physical condition of a housing project in a decent, safe, and sanitary manner and in accordance with Agency requirements;

(3) Keep general operating expense, reserve, and other financial accounts related to a housing project at required funding levels;

(4) Occupy rental units with eligible tenants, unless granted an exception by the Agency;

(5) Charge correct rents or to correctly calculate net tenant contributions, utility allowances, or rental assistance payments or to properly administer the Agency rental assistance assigned to the housing project;

(6) Submit required annual financial reports to the Agency within time periods specified in § 3560.308;

(7) Submit management plans, leases, occupancy rules, and other required materials to the Agency in accordance with Agency requirements; and,

(8) Comply with applicable Federal laws including laws related to civil rights, fair housing, disabilities, and environmental conditions.

(d) *Default notice.* When borrowers are in default, the Agency will notify borrowers, in writing, that they are in default. The default notice will identify the compliance violation that led to the default, will specify actions necessary to cure the default, and will establish a date by which the default must be cured to preclude Agency initiation of enforcement actions, liquidation, or other actions.

(e) *Agency action.* If a borrower fails to cure a default within the time period specified in the default notice, the Agency may initiate the enforcement actions described in § 3560.461 or liquidation as described in § 3560.456. Also, Agency compliance violation notices and related default notices may be referred to Federal, state, and local agencies with jurisdictions related to the violations for handling, in accordance with their requirements.

§ 3560.453 Workout agreements.

(a) *General.* (1) Prevention or resolution of compliance violations or default cures are a borrower's responsibility.

(2) A borrower may develop and submit to the Agency for approval a workout agreement that proposes actions to be taken over a period of time to prevent or correct a compliance violation or to cure a monetary or non-monetary default.

(3) A borrower developed workout agreement may propose, but is not limited to, the following actions:

(i) A combination of one or more of the special servicing actions outlined in §§ 3560.454 and 3560.455;

(ii) A change in operations and management at a housing project; or

(iii) A commitment of additional financial resources to the housing project with the amount and source of the additional resources to be committed to the housing project specifically identified.

(b) *Workout agreement approval.* (1) The Agency is under no obligation to approve a workout agreement as submitted by a borrower or to act with forbearance when a housing project is in monetary or non-monetary default.

(2) Borrower developed workout agreements may not be implemented until the borrower receives written approval from the Agency.

(3) The Agency will only approve a workout agreement if the Agency determines that the actions proposed are likely to prevent or correct compliance violations or cure a default and approval is in the best interest of the Federal Government and tenants.

(4) The Agency will only approve a workout agreement if the proposed actions are consistent with the borrower's management plan. If proposed actions are not consistent with the borrower's management plan, applicable revisions to the borrower's management plan must be made before approval of the workout agreement is given.

(c) *Workout agreement required content.* (1) Workout agreements submitted to the Agency for approval must be in writing and signed by the borrower. Workout agreements must describe proposed actions in sufficient detail to demonstrate the likelihood of the actions to prevent or correct compliance violations or cure defaults.

(2) At a minimum, workout agreements must include the following.

(i) The name and address of the housing project, project number, borrower's tax identification number, and other information necessary to identify the housing project.

(ii) A description of the potential or actual compliance violation or default situation, including an explanation of related causes, such as cash flow concerns, budget revisions, deferred maintenance, vacancies, or violations of statutes.

(iii) A definition and description of the housing project's market area, including information on housing availability, rents, and vacancy rates in the market area.

(iv) A description of the proposed actions to prevent or correct compliance violations or to cure defaults along with a date specific schedule indicating when interim and final actions will be taken to correct the compliance violation or cure the default.

(v) A description of financial and other resources necessary to prevent or correct the compliance violation or cure

the default including an identification of the sources for such resources.

(d) *Workout agreement budgets.* Budget revisions submitted as a part of a workout agreement for a housing project experiencing cash flow problems must prioritize cash disbursements in the following order:

(1) Prior lienholder, if any;

(2) Critical operating and maintenance expenses, including taxes and insurance;

(3) Agency debt payments;

(4) Reserve account requirements; and

(5) Other authorized expenditures.

(e) *Workout agreement terms and cancellation.* (1) Workout agreements shall be in effect for no longer than a 2-year time period, beginning on the date of Agency approval. If an approved workout agreement calls for actions that extend beyond a 2-year period, borrowers must submit an updated and, if necessary, revised workout agreement to the Agency for approval. The updated workout agreement must be submitted to the Agency, 30 days prior to the expiration of the workout agreement in effect.

(2) The Agency may cancel a workout agreement at any time if the borrower fails to comply with the terms of the agreement. The Agency will provide notice to the borrower upon cancellation of the workout agreement.

§ 3560.454 Special servicing actions related to housing operations.

(a) *Changing rents or revising budgets.* The Agency may approve a borrower request for a rent change, rent incentives, or a revised budget, at any time during a housing project's fiscal year.

(b) *Occupancy waivers.* If the Agency determines that a housing project with high vacancies could be kept operationally and financially viable by allowing the borrower to accept as tenants persons with incomes above the income eligibility standards specified in § 3560.152(a), the Agency, in writing, may grant the borrower an occupancy waiver to allow such persons as tenants. Occupancy waivers will be in effect only during the time period specified by the Agency when the waiver is granted. In addition, borrowers must rent to all eligible applicants on the housing projects waiting list prior to accepting persons with incomes above the Agency standards as tenants.

(c) *Additional rental assistance (RA).* If the Agency determines that a housing project with high vacancies could be kept operationally and financially viable by increasing the amount of RA allocated to the housing project, the Agency, subject to available funds, may offer the housing project RA as a means of preventing or correcting a compliance violation or curing a default.

(d) *Special note rents.* When a Plan II housing project is experiencing severe vacancies due to market conditions, the Agency may approve a rent less than the note rent to attract and keep tenants whose incomes, according to the formula in § 3560.203, would require them to pay the note rent. The reduced rent is called a Special Note Rent (SNR) and, as noted in § 3560.210, approval of an SNR may affect approvals of loan proposals submitted to the Agency for the market area where the SNR is in effect.

(1) An SNR rent may only be requested as a part of a proposed workout agreement and must include documentation of market conditions, the housing project's vacancy rates, evidence of marketing efforts, and other concerns necessitating the request for an SNR.

(2) Borrowers must forego the annual return to owner for each housing project's fiscal year that an SNR is in effect for all or part of a fiscal year at a housing project.

(3) SNR's may be increased, decreased, or terminated any time during a housing project's fiscal year when market conditions, vacancy rates, or other concerns that necessitated the SNR warrant a change.

(4) In addition to any state lease law requirements that might be related to the implementation of an SNR, the borrower must notify each tenant of any change in rents or utility allowances that result from approval of an SNR, in accordance with § 3560.205(c) and must submit the appropriate budget changes to the Agency for approval.

(e) *Termination of management agreement.* If the Agency determines that a compliance violation or loan default was caused, in full or in part, by actions or inactions of the housing project's management agent, the Agency will require the borrower to terminate the management agreement with that agent, or in the case of a borrower managed housing project, to enter an agreement with a third-party non-identity of interest management agent, unless the borrower and the Agency agree on a written plan to prevent reoccurrence of the violation. Housing project funds may not be used to pay a management fee to a management agent after the Agency has directed the borrower to terminate a management agreement with that agent, except during an Agency approved transition period.

§ 3560.455 Special servicing actions related to loan accounts.

(a) *General.* To prevent or correct a compliance violation or to prevent or cure a default in a situation that cannot be resolved through regular servicing, the Agency may approve a deferral of loan payments or a loan restructuring. Nothing herein precludes the Agency from initiating appropriate legal action to correct a compliance violation if the Agency determines such action is more in the Government's interest than entering into a special servicing agreement as provided for in this section. Procedures for debt collection are discussed in § 3560.460. As part of a workout agreement, the Agency may agree to accept less than full monthly payment installments due on an Agency loan for a specified period of time, not to exceed the effective period of the workout agreement.

(b) *Loan reamortizations.* A loan reamortization is a restructuring of loan terms and conditions over a period of time that does not exceed the remaining useful life of the housing project.

(1) Loan reamortizations will only be approved when they are in the best interest of the Federal Government and tenants and when the following conditions are met.

(i) The Agency determines that the borrower will be unable to meet their obligations without a reduction in monthly payment installments; and

(ii) The Agency is satisfied that the security, including the potential income for debt service, will be adequate to protect the Agency's interest over the term of the reamortization and that the reamortization will not adversely affect the Federal Government's lien priority.

(2) If the Agency approves a reamortization of a loan under this section, it will be at the existing note rate, or the current interest rate at the time of reamortization closing or approval, whichever is less.

(3) Loan reamortization may be used to:

(i) Restructure loan repayments to prevent or correct a compliance violation or cure a default caused by circumstances beyond the borrower's control in situations where the borrower is otherwise in compliance with Agency requirements;

(ii) Repay principal, outstanding interest, overage, and advances made by the Agency for recoverable cost items when less than full payments were authorized under the provisions of an Agency approved workout agreement;

(iii) Restructure a borrower's loan payments in conjunction with an incentive package developed in

accordance with § 3560.656 to prevent prepayment of the loan;

(iv) Restructure an existing loan in conjunction with a subsequent loan for rehabilitation; or

(v) Restructure remaining debt when a portion of the property serving as loan security is sold and there is a need to reestablish the financial stability of the housing project.

(c) *Loan writedowns.* A loan writedown is a reduction of a borrower's debt approved by the Agency.

(1) Loan writedowns will only be approved when they are in the best interest of the Federal Government and when the following conditions exist:

(i) Sound management of the housing project is evident or sound management practices are proposed for correction in accordance with an Agency approved workout agreement; and

(ii) The housing project's financial stability is being affected by conditions beyond the borrower's control, such as market weaknesses, unforeseen site problems, or natural disasters.

(2) Prior to Agency approval for a loan writedown, the borrower must obtain an appraisal of the housing project that concludes the ''as-is' market value,'' subject to restricted rents, conducted in accordance with subpart P of this part. The Agency will not approve a loan write-down unless the appraisal indicates the Federal Government's interests are secured at the proposed writedown level.

(3) Any writedown will be conditioned on a finding that the borrower does not have the ability to pay a higher loan payment, even if the loan is reamortized.

(4) Loan writedowns may be used to allow for a loan transfer and assumption for less than the total amount of outstanding debt.

§ 3560.456 Liquidation.

Prior to any servicing action which might lead to the acquisition of real property by the Agency, the Agency must complete a due diligence report to assess any potential contamination of the property from hazardous substances, hazardous wastes, or petroleum products. The borrower must cooperate with the Agency in the development of this report.

(a) *Before acceleration.* Before accelerating a project loan, the Agency will consider the possibility that the borrower is forcing an acceleration to circumvent the prepayment process. If it is found that this is the borrower's motivation, the Agency will consider alternatives to acceleration, such as suing for specific performance under loan and management documents.

(b) *Acceleration.* When a borrower is in monetary or non-monetary default, the Agency will accelerate the loan unless the Agency decides other enforcement measures are more appropriate.

(1) If the borrower does not pay the full account balance and meet the other terms of the acceleration notice within the time period set forth in the acceleration notice, the Agency will foreclose or acquire the security property through deed in lieu of foreclosure.

(2) The Agency will suspend interest credit and rental assistance.

(3) The Agency will not accept partial payment of an accelerated loan unless required by state law.

(c) *Voluntary liquidation.* After acceleration, borrowers may voluntarily liquidate through either of the following mechanisms:

(1) Deed in lieu of foreclosure. RHS may accept a deed in lieu of foreclosure to convey title to the security property only after the debt has been accelerated and when it is in the Government's best interest.

(2) Offer by third party. If a junior lienholder or cosigner makes an offer in the amount of at least the net recovery value, RHS may assign the note and mortgage after all appeal rights have expired.

(d) *Foreclosure.* (1) The Agency will initiate foreclosure when a borrower is in monetary or non-monetary default and foreclosure is in the best interest of the Federal Government.

(2) When a junior lienholder foreclosure does not result in payment in full of the Agency debt but the property is sold subject to the Agency lien, the Agency will liquidate the account.

(e) *Acquisition of chattel properties.* (1) The Agency will accept voluntary conveyance of chattel property only when the borrower can convey ownership free of other liens and the Agency has agreed to release the borrower from further liability on the account.

(2) If the Agency decides to accept an offer of voluntary conveyance of chattel property, the borrower must provide an itemized listing of each chattel property item being conveyed and provide title to vehicles or other equipment, where applicable.

§ 3560.457 Negotiated debt settlement.

(a) *Borrower proposals to settle debt.* A borrower who cannot pay the full amount of loan payments may propose an offer to settle an outstanding debt for less than the full amount of that debt. The Agency may approve a negotiated debt settlement only in cases where a default is evident and doing so is in the best interest of the Federal Government and tenants.

(b) *Required information.* Borrowers requesting debt settlement must submit complete and accurate information from which a full determination of financial condition can be made. Debt settlement offers will not be approved by the Agency unless the financial information submitted by the borrower indicates that the borrower will be able to make the debt settlement payments as proposed.

(c) *Effective date of approval.* Debt settlement offers will not be accepted until the borrower receives written approval from the Agency.

(d) *Appraisal requirement.* No debt settlement offer will be accepted for less than the net recovery value of the security as determined by a licensed appraiser or other qualified official, and concurred in by the Agency's qualified appraisal review official or other qualified official.

(e) *Disposition of security prior to offer.* Borrowers are not required to dispose of security prior to making a debt settlement offer. However, if a borrower has disposed of security prior to making a debt settlement offer, the proceeds from the disposed security must be applied to the borrower's account prior to any negotiations on the debt settlement offer.

(f) *Final release condition.* Upon full payment of the approved debt settlement, the Agency will release the borrower from liability.

§ 3560.458 Special property circumstances.

(a) *Abandonment.* When the Agency determines that a borrower has abandoned security for a loan under this part, the Agency will take the steps necessary to protect the Federal Government's interest in the security. Costs associated with managing abandoned property are the responsibility of the borrower and will be charged to the borrower's account until liquidation is completed.

(b) *Other security.* The Agency will service security such as collateral assignments, assignments of rents, Housing Assistance Payments Contracts, and notices of lienholder interest according to acceptable practices in the respective states.

(c) *Taking of additional security to protect Agency interests.* The Agency may require borrowers to provide additional security in the form of real estate, cash reserves, letters of credit, or other security when needed to improve the chances that the Agency will not suffer a loss, and when:

(1) The account is in default; or

(2) The property has not been properly managed or maintained.

(d) *Due diligence.* When the Agency has completed an environmental review in accordance with 7 CFR part 1940, subpart G, and decides not to acquire security property through liquidation action or chooses to abandon its security interest in real property, whether due in whole or in part, to the presence of contamination from hazardous substances, hazardous wastes, or petroleum products, the Agency will provide the appropriate environmental authorities with a copy of its due diligence report.

§ 3560.459 Special borrower circumstances.

(a) *Deceased borrower, bankruptcy, insolvency, and divorce actions.* The Agency will address borrower accounts affected by special circumstances such as death, bankruptcy, insolvency, and divorce on a case-by-case basis. The Agency will make servicing decisions in such cases on the basis of best interest to the Federal Government and tenants. The Agency will bring a legal action to establish the legal capacity of the borrower to administer the project if found necessary to protect the government's interests. In order for the Agency to make servicing decisions in such cases, the borrower or the borrower's representative will provide to the Agency:

(1) On the part of the heirs or executor of the borrower's estate, evidence of legal action due to a will or court actions that establish who is to become the owner;

(2) The financial status of the borrower and any member pledging additional security for the debt;

(3) The status of the security property; and

(4) The impact of the identified actions on the operation of the project.

(b) *Membership liability agreements.* If a borrower's note is endorsed by individuals other than the borrower or a borrower has security agreements with members of the organization for the purchase of shares of stock or for the payment of a pro rata share of the loan in the event of default, or has individual liability agreements, which are usually assigned to and held by the Agency as additional security for the loan, the security and liability agreements must be adequate to protect the Agency's interest.

(c) *Security issues in participation loans.* When a multi-family housing (MFH) project is receiving financing or a subsidy from sources other than the Agency, the Agency will service the account in accordance with the participation agreements made with the Agency and the other funding sources under § 3560.65.

§ 3560.460 Double damages.

(a) *Action to recover assets or income.* (1) The Agency may request to the Attorney General to bring an action in a United States district court to recover any assets or income used by any person in violation of the provisions of a loan made by the Agency under this section or in violation of any applicable statute or regulation.

(2) For the purposes of this section, a use of assets or income in violation of the applicable loan, statute, or regulation includes any use for which the documentation in the books and accounts does not establish that the use was made for a reasonable operating expense or necessary repair of the project or for which the documentation has not been maintained in accordance with the requirements of the Agency and in reasonable condition for proper audit.

(3) For the purposes of this section, the term ''person'' means:

(i) Any individual or entity that borrows funds in accordance with programs authorized by this section;

(ii) Any individual or entity holding 25 percent or more interest in any entity that the Agency funds in accordance with programs authorized by this section; and

(iii) Any officer, director, or partner of an entity that borrows funds in accordance with programs authorized by this section.

(b) *Amount recoverable.* (1) In any judgment favorable to the United States entered under this section, the Attorney General may recover double the value of the assets and income of the project that the court determines to have been used in violation of the provisions of a loan made by the Agency under this section or any applicable statute or regulation, plus all costs related to the actions, including reasonable attorney and auditing fees.

(2) Notwithstanding any other provisions of law, the Agency may use amounts recovered under this section for activities authorized under this section and such funds must remain available for such use until expended.

(c) *Time limitation.* Notwithstanding any other provisions of law, an action under this section may be commenced at any time during the six-year period beginning on the date that the Agency discovered or should have discovered the violation of the provisions of this section or any related statutes or regulations.

(d) *Continued availability of other remedies.* The remedy provided in this section is in addition to and not in substitution of any other remedies available to the Agency or the United States.

§ 3560.461 Enforcement provisions.

(a) *Equity skimming.* (1) *Criminal penalty.* Whoever, as an owner, agent, employee, or manager, or is otherwise in custody, control, or possession of property that is security for a loan made under this title, willfully uses, or authorizes the use, of any part of the rents, assets, proceeds, income, or other funds derived from such property, for any purpose other than to meet actual, reasonable, and necessary expenses of the property, or for any other purpose not authorized by this title or the regulations adopted pursuant to this title, must be fined under title 18, United States Code, or imprisoned not more than five years, or both.

(2) *Civil sanctions.* An entity or individual who as an owner, operator, employee, or manager, or who acts as an agency for a property that is security for a loan made under this title where any part of the rents, assets, proceeds, income, or other funds derived from such property are used for any purpose other than to meet actual, reasonable, and necessary expenses of the property, or for any other purpose not authorized by this title of the regulations adopted pursuant to this title, must be subject to a fine of not more than $25,000 per violation. The sanctions provided in this paragraph may be imposed in addition to any other civil sanctions or civil monetary penalties authorized by law.

(b) *Civil monetary penalties.* (1) *When civil monetary penalties may be imposed.* The Agency may, after notice and opportunity for a hearing, impose a civil monetary penalty in accordance with this section against any individual or entity, including its owners, officers, general partners, limited partners, or employees, who knowingly and materially violate, or participate in the violation of, the provisions of this title, the regulation issued by the Agency pursuant to this title, or agreements made in accordance to this title by:

(i) Submitting information to the Agency that is false.

(ii) Providing the Agency with false certifications.

(iii) Failing to submit information requested by the Agency in a timely manner.

(iv) Failing to maintain the property subject to loans made under this title in good repair and condition, as determined by the Agency.

(v) Failing to provide management for a project that received a loan made under this title that is acceptable to the Agency.

(vi) Failing to comply with the provisions of applicable civil rights statutes and regulations.

(2) *Amount.* (i) The amount of a civil penalty imposed under this section must not exceed the greater of twice the damages the Agency or the project that is secured for a loan under this section suffered or would have suffered as a result of the violation, or $50,000 per violation.

(ii) Determination. In determining the amount of a civil monetary penalty under this section, the Agency must take into consideration:

(A) The gravity of the offense;

(B) Any history of prior offenses by the violator (including offenses occurring prior to the enactment of this section);

(C) Any injury to tenants;

(D) Any injury to the public;

(E) Any benefits received by the violator as a result of the violation;

(F) Deterrence of future violations; and

(G) Such other factors as the Agency may establish by regulation.

(3) *Payment of penalties.* No payment of a penalty assessed under this section may be made from funds provided under this title or from funds of a project which serve as security for a loan made under this title.

(4) *Remedies for noncompliance.* (i) *Judicial intervention.* If a person or entity fails to comply with a final determination by the Agency imposing a civil monetary penalty, the Agency may request the Attorney General of the United States to bring an action in an appropriate district court to obtain a monetary judgment against such an individual or entity and such other relief as may be available. The monetary judgment may, in the court's discretion, include attorney's fees and other expenses incurred by the United States in connection with the action.

(ii) *Reviewability of determination.* In an action under this paragraph, the validity and appropriateness of a determination by the Agency imposing the penalty must not be subject to review.

(c) *Conditions for renewal extension.* The Agency may require that expiring loan or assistance agreements entered into under this title must not be renewed or extended unless the owner executes an agreement to comply with additional conditions prescribed by the Agency, or executes a new loan or assistance agreement in the form prescribed by the Agency.

§ 3560.462 Money laundering.

The Agency will act in accordance with U.S. Code Title 18, part I, chapter 95, section 1956(c)(7)(D).

§ 3560.463 Obstruction of Federal audits.

The Agency will act in accordance with U.S. Code Title 18, part I, chapter 73, section 1516(a).

§§ 3560.464–3560.499 [Reserved]

§ 3560.500 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 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. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart K—Management and Disposition of Real Estate Owned (REO) Properties

§ 3560.501 General.

This subpart contains Agency procedures and other policies related to the management and disposition of multi-family housing (MFH) projects in the Agency's inventory (Real Estate Owned (REO) property). Housing projects will not be accepted into the Agency's inventory unless one of the following has occurred:

(a) The borrower has abandoned the housing project and the Agency has performed the required steps to take the housing project into custody.

(b) The housing project title has been transferred to the Agency as a result of foreclosure, voluntary conveyance, redemption, or other action.

§ 3560.502 Tenant notifications and assistance.

Each tenant in an REO property designated to be sold as a non-program property will be notified by the Agency, in writing, of the housing projects' non-program designation and will be given an opportunity to obtain a Letter Of Priority Entitlement (LOPE) as specified in § 3560.159(c).

§ 3560.503 Disposition of REO property.

(a) Preference will be given to offers from bidders who are determined eligible by the Agency to purchase REO property designated to be sold as program property. It is the Agency's priority that property previously operated as program property prior to becoming REO inventory property be sold as program property. However, REO property may be sold under whatever Agency program is most appropriate for the property and the community needs regardless of the program under which the property was originally financed or whether the property was being used to secure loans under more than one Agency program.

(b) When the Agency determines that the REO property to be sold is not decent, safe, and sanitary and/or does not meet cost effective energy conservation standards, it will disclose the basis for this determination to prospective purchasers. The deed by which such an REO property is conveyed will contain a covenant restricting it from residential use until it is decent, safe, and sanitary, and meets the Agency's cost effective conservation standards. The Agency will also notify any potential purchaser of any known lead based paint hazards.

§ 3560.504 Sales price and bidding process.

(a) The loan documents related to REO property sold for program purposes must contain the restrictive-use language specified in § 3560.662(a).

(b) Entities bidding on REO property designated to be sold as program property must submit a loan application package that meets the requirements specified in subpart B of this part.

(1) Bidders on REO property designated to be sold as program property must meet the eligibility requirements established under § 3560.55.

(2) Bidders determined by the Agency to be ineligible to purchase REO property designated to be sold as program property will be notified in writing. The bidding process will continue regardless of pending appeals.

(3) All offers from bidders determined to be eligible to purchase REO property designated to be sold as program property will be considered in the bidding process and must provide evidence of financial stability and credit worthiness.

(c) The Agency will determine the successful bidder on REO property designated to be sold as program property by conducting a drawing of sealed bids.

(1) The Agency may authorize the sale of an REO property by sealed bid or public auction when it is in the best interest of the Government. The Agency will publicly solicit requests for sealed

bids and publicize auctions. If the highest bid is lower than the minimum acceptable bid established by the Agency, or if no acceptable bids are received, the Agency may negotiate a sale without further public notice.

(2) Bidders who desire to withdraw their bids must do so prior to the drawing date.

(d) Property designated to be sold as non-program property may be sold to entities that do not meet the Agency's eligible borrower requirements specified in § 3560.55, and must be sold for cash or on terms approved by the Agency. Cash sales will be given first preference and will be drawn before any sales on terms.

§ 3560.505 Agency loans to finance purchases of REO properties.

(a) Agency loans to finance the purchase of REO property designated to be sold as program property must meet the same requirements as specified in subparts A and B of this part. In addition, the following provisions apply.

(1) At the borrower's option, the interest rate will be the prevailing rate at the time of loan approval or the prevailing rate at loan closing.

(2) Purchasers may pay closing costs from their own funds or, if allowable under subparts B, L, or M of this part, as applicable, may finance such costs as part of the Agency loan.

(b) Agency loans to finance the purchase of REO property designated to be sold as non-program property must meet the following terms.

(1) A down payment of not less than 10 percent of the purchase price is required at closing.

(2) The interest rate will equal the lesser of the prevailing interest rate at the time of loan approval or loan closing for MFH loans plus one-half percent.

(3) The note amount will be amortized over a period not to exceed 10 years. If the Agency determines that more favorable terms are necessary to facilitate the sale, the note amount may be amortized using a 30-year factor with payment in full due no later than 10 years from the date of closing (balloon payment). In no case will the term be longer than the useful life of the property.

(4) Agency loans to finance the purchase of non-program REO property are subject to the availability of funds.

(c) Loan limits and allowable uses of loan funds specified in subparts B, L, and M of this part, as applicable, are applicable to any Agency-financed (credit) sale of REO property.

(d) Title clearance and loan closing for an Agency financed sale and any subsequent loan to be closed simultaneously with the sale must meet the requirements in subpart B of this part for an initial loan, with the following exceptions:

(1) A ''Quit Claim'' or other non-warranty deed will be used; and

(2) The buyer must pay attorney's fees, insurance costs, recording fees and other customary fees unless they are included in a subsequent loan and the subsequent loan is for purposes other than closing costs and fees.

(e) After approval of an Agency-financed sale of occupied REO property designated to be sold as program property, but prior to closing, the purchaser must prepare a budget for housing operations in accordance with subpart B of this part. If a rent increase is necessary, procedures specified in subparts E and F of this part for calculating rents, net tenant contributions, and rental assistance will be followed by the borrower.

§ 3560.506 Conversion of single family type REO property to MFH use.

Single family type REO property may be sold for conversion to MFH program use under the following conditions:

(a) The Agency will allow nonprofit organizations, public bodies, or for-profit entities to purchase single family type REO property for conversion to MFH program use. When the Agency finances the sale of single family-type REO property for conversion to rural rental housing program use (*i.e.*, MFH including group homes and homes for the elderly or disabled, farm labor housing, or rural cooperative housing), the sale price will be the lesser of the Federal Government's investment or an amount based on the ''as-is'' market value of the housing project as determined by an appraisal conducted in accordance with subpart P of this part.

(b) The Agency will only accept written offers to purchase two or more single family type REO properties for conversion to rural rental housing from nonprofit organizations, public bodies, or for-profit entities with a good record of providing housing under the Agency's MFH programs. The single family type properties are not required to be contiguous, however, they must be located in close enough proximity so that management capabilities are not diminished because of distance.

§§ 3560.507–3560.549 [Reserved]

§ 3560.550 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 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. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart L—Off-Farm Labor Housing

§ 3560.551 General.

This subpart establishes the requirements for making loans and grants for off-farm labor housing and for ongoing operations of this housing. Unless otherwise specified in this subpart, the requirements of subparts A through K, N, O, and P of this part will apply in addition to the requirements in this subpart.

§ 3560.552 Program objectives.

(a) In addition to the objectives stated in § 3560.52, off-farm labor housing loan and grant funds will be used to increase:

(1) The supply of affordable housing for farm labor; and

(2) The ability of communities to attract farm labor by providing housing which is affordable, decent, safe and sanitary.

(b) Under section 516(i) of the Housing Act of 1949 (42 U.S.C. 1486(i)), the Agency may award technical assistance grants to encourage the development of farm labor housing.

§ 3560.553 Loan and grant purposes.

(a) In addition to the purposes stated in § 3560.53, off-farm labor housing loan and grant funds may be used to provide facilities for seasonal or temporary residential use with appropriate furnishings and equipment. A temporary residence is a dwelling which is used for occupancy, usually for a short period of time, but is not the legal domicile for the occupant.

(b) The Agency may award technical assistance grants to eligible private and public nonprofit agencies. These grant recipients will, in turn, assist other organizations to obtain loans and grants for the construction of farm labor housing.

(c) Technical assistance services may not be used to reimburse a nonprofit or public body applicant for technical services provided by a nonprofit organization, with housing and/or community development experience, to assist the nonprofit applicant entity in

the development and packaging of its loan/grant docket and project. In addition, technical assistance will not be funded by the Agency when an identity of interest exists between the technical assistance provider and the loan or grant applicant.

§ 3560.554 Use of funds restrictions.

Off-farm labor housing loan and grant funds may not be used for any purpose prohibited by § 3560.54 except § 3560.54(a)(1). Off-farm labor housing may be used to serve migrant farmworkers.

§ 3560.555 Eligibility requirements for off-farm labor housing loans and grants.

(a) *Eligibility for loans.* Applicants for off-farm labor housing loans must be:

(1) A broad-based nonprofit organization, a nonprofit organization of farmworkers, a federally recognized Indian tribe, a community organization, or an agency or political subdivision of State or local government, and must meet the requirements of § 3560.55, excluding § 3560.55(a)(6). A broad-based nonprofit organization is a nonprofit organization that has a membership that reflects a variety of interests in the area where the housing will be located; or

(2) A limited partnership with a non-profit general partner which meets the requirements of § 3560.55(d).

(b) *Eligibility for grants.* To be eligible for off-farm labor housing grants, applicants must:

(1) Meet the requirements in § 3560.555(a)(1); and

(2) Be able to contribute at least one-tenth of the total farm labor housing development cost from its own or other resources. The applicant's contribution must be available at the time of grant closing. An off-farm labor housing loan financed by RHS may be used to meet this requirement.

(c) *Limitation.* Limited partnerships eligible under paragraph (a)(2) of this section are not eligible for farm labor housing grants.

§ 3560.556 Application requirements and processing.

Off-farm loans and grants will be available under a Notice of Funding Availability (NOFA) that will be published in the **Federal Register** each fiscal year.

§ 3560.557 [Reserved]

§ 3560.558 Site requirements.

The requirements established in § 3560.58 apply to all applications for off-farm labor housing loans and grants except that off-farm labor housing are not limited to rural areas.

§ 3560.559 Design and construction requirements.

(a) *General.* The requirements established in § 3560.60 apply to all applications for off-farm labor housing loans and grants except that seasonal off-farm labor housing that will be occupied for eight months or less per year by migrant farmworkers while they are away from their residence, may be constructed in accordance with Exhibit I of 7 CFR part 1924, subpart A.

(b) *Additional requirements.* In addition to the requirements established in § 3560.60, it is encouraged that the design of off-farm labor housing incorporate outdoor shower, boot washing station, and/or hose bibb facilities as necessary to protect the resident and the asset from excess dirt and chemical exposure.

(c) *Davis-Bacon wage requirements.* Construction financed with the assistance of a Section 516 grant will be subject to the provisions of the Davis-Bacon Act (40 U.S.C. 276(a)–276(a)(7)), and the implementing regulations published by the Department of Labor at 29 CFR parts 1, 3, and 5.

§ 3560.560 Security.

The security requirements established in § 3560.61 will apply to all applications for off-farm labor housing loans.

§ 3560.561 Technical, legal, insurance and other services.

The requirements established under § 3560.62 apply to all applications for off-farm labor housing loans and grants.

§ 3560.562 Loan and grant limits.

(a) *Determining the security value.* The requirements established under § 3560.63(a) apply to off-farm labor housing loans.

(b) *Maximum amount of loan.* The requirements established in § 3560.63(c)(1) and (2), regarding borrower equity contribution apply to all applications for off-farm labor housing loans. (For applicants eligible under § 3560.555(a)(2), the amount of Agency financing for the housing will not exceed 95 percent of the total development cost or 95 percent of the security value available for the Agency loan, whichever is lower.) In determining the amount of the loan, the Agency will also review the capacity of the applicant to amortize such loan, considering any rental assistance provided for use in the housing, and any rents anticipated to be paid by farmworkers expected to occupy the housing.

(c) *Maximum amount of grant.* The amount of any off-farm labor housing grant must not exceed the lesser of:

(1) Ninety percent of the total development cost, or

(2) That portion of the total development cost which exceeds the sum of any amount provided by the applicant from their own resources plus the amount of any loans approved for the applicant, considering the capacity of the applicant to amortize the loan.

§ 3560.563 Initial operating capital.

The requirements for § 3560.64 apply to all applications for off-farm labor housing loans and grants.

§ 3560.564 Reserve accounts.

The requirements for § 3560.65 apply to all applications for off-farm labor housing loans and grants.

§ 3560.565 Participation with other funding or financing sources.

The requirements established in § 3560.66 apply to all applications for off-farm labor housing loans and grants, except that the 25 percent requirements stated in paragraph § 3560.66(b)(1) may consist of loan and/or grant funds.

§ 3560.566 Loan and grant rates and terms.

(a) *Amortization period.* The loan will be amortized over a period not to exceed 33 years. The amortization schedule will take into account the depreciation of the security and ensure that the loan will be adequately secured.

(b) *Interest rate.* The effective interest rate will be 1 percent.

(c) *Term of grant agreement.* The grant agreement will remain in effect for so long as there is a need for farm labor housing..

§ 3560.567 Establishing the profit base on initial investment.

The requirements established under § 3560.68 apply to applicants eligible under § 3560.555(a)(2) and operating as a limited partnership with a nonprofit general partner.

§ 3560.568 Supplemental requirements for seasonal off-farm labor housing.

For off-farm labor housing operating on a seasonal basis, the management plan must establish specific opening and closing dates. During the off-season, off-farm labor housing may be used as defined in subpart A of this part under short-term lease provisions. Where rents are charged on a per-unit basis and family income qualifies the household for rental assistance, rental assistance may be used.

§ 3560.569 Supplemental requirements for manufactured housing.

The requirements established in § 3560.70 apply to all applications for off-farm labor housing loans and grants.

§ 3560.570 Construction financing.

The requirements established in § 3560.71 apply to all applications involving off-farm labor housing loans and grants. In addition, the following requirements apply.

(a) Equity contributions being made by a borrower or grantee must be contributed and disbursed prior to any disbursement of interim loan funds and any loan or grant funds from the Agency.

(b) If the Agency is providing both loan and grant funds, loan funds must be fully released and expended prior to the release of grant funds by the Agency.

(c) If construction is financed with a Labor Housing grant, it is subject to the provisions of the Davis-Bacon Act (published in the Department of Labor regulations 29 CFR parts 1, 2, and 5).

§ 3560.571 Loan and grant closing.

The requirements established in § 3560.72 apply to all applications for off-farm labor housing loans and grants. In addition, the following requirements apply.

(a) A nonprofit organization will have its Board of Directors adopt an Agency-approved loan and/or grant resolution, which is required as part of the loan docket before loan and/or grant approval. All other loan applicants will execute an Agency-approved loan agreement.

(b) For grants, an Agency approved grant agreement, must be executed by the applicant on the date of grant closing.

(c) The obligations incurred by the applicant, as a condition of accepting the grant, will be in accordance with the off-farm labor housing grant agreement.

(d) Off-farm labor housing loans used to build or acquire new units made pursuant to a contract entered into on or after the effective date of this regulation, will be subject to the restrictive-use provision stated in § 3560.72(a)(2)(ii). All other off-farm labor housing loans are subject to the restrictive-use provisions contained in their loan documents and as outlined in subpart N of this regulation. Such restrictions must be included in the mortgage and deed of trust.

§ 3560.572 Subsequent loans.

The requirements established in § 3560.73 will apply to all applications for subsequent off-farm labor housing loans.

§ 3560.573 Rental assistance.

(a) Rental assistance may be provided to income eligible tenants living in off-farm labor housing in accordance with subpart F of this part. The requirements established in § 3560.252 apply to all tenants receiving rental assistance.

(b) For dormitory style facilities operating on a per bed basis, rental assistance will be made available to the housing on a per unit basis, but may be pro-rated to tenants on a per bed basis. However, total rent charged for a unit must not exceed conventional rent for comparable units in the area or a similar area and per bed rents must be comparable to per bed rents in the market.

§ 3560.574 Operating assistance.

Operating assistance may be used in lieu of tenant-specific rental assistance in off-farm labor housing projects financed under section 514 or section 516(i) of the Housing Act of 1949 (U.S.C. 1486(i)) that serve migrant farmworkers. Owners of eligible projects may choose tenant-specific rental assistance as described in § 3560.573 or operating assistance, or a combination of both, however, any tenant or unit assisted under this section may not receive rental assistance under § 3560.572. The objective of this program is to provide assistance toward the cost of operating the project so that rents may be set at rates that are affordable to very low and low-income migrant farmworkers.

(a) *Project eligibility requirements.* To be eligible for the operating assistance program, projects must be:

(1) Off-farm labor housing projects financed under section 514 or section 516 with units that are for migrant farmworkers. Housing units for year-round farmworker households are ineligible; and

(2) Eligible for the Agency's rental assistance program as defined in § 3560.573.

(b) *Operating assistance limits.* The amount of operating assistance requested by the owner must be based on the project's actual income and expenses and must be approved by the Agency. In the case of a mixed project, the amount of operating assistance must be based on the portion of actual income and expenses that are attributable to the units that are for migrant farmworkers. In no instance may the annual amount of operating assistance exceed 90 percent of the annual operating costs that are attributable to the migrant units.

(c) *Owner responsibilities.* (1) *Requesting for operating assistance program.* Owners of off-farm labor housing projects with units for migrant farmworkers may request operating assistance by submitting a request to the Agency, which must include a budget. The budget must include:

(i) Estimated operating costs for the migrant units, including authorized expenditures such as reserve deposits;

(ii) Proposed rental rates for the migrant units to generate sufficient funds for operating costs of those units, taking into consideration all other sources of project income; and

(iii) Estimated rental income from tenants, based on a tenant contribution of 30 percent of the average adjusted monthly income of migrant farmworker households in the area.

(2) *Requesting operating assistance payments.* Each month, the owner will submit a request for operating assistance to the Agency.

(3) *Verifying tenant income eligibility.* Owners are responsible for verifying tenant income eligibility. Only very low or low-income households are eligible for the operating assistance rents. Households with incomes above the low-income limits must pay the full rent.

(4) *Reporting requirements.* (i) Owners will complete and submit to the Agency tenant certifications to document tenant income and eligibility.

(ii) Owners will complete and submit monthly to the Agency a project worksheet for operating assistance.

(iii) Owners must submit an annual planning budget to the Agency prior to the project's fiscal year.

§ 3560.575 Rental structure and changes.

Off-farm labor housing is subject to the tenant contribution and rental unit rent requirements for Plan II housing established under subpart E of this part, except where seasonal housing will be occupied for less than a 3-month period. In such instances the best available and practical income verification methods may be used with prior approval of the Agency.

§ 3560.576 Occupancy restrictions.

(a) *Restrictions on conditions of occupancy.* (1) No borrower or grantee will be permitted to require that an occupant work on any particular farm or for any particular owner or interest as a condition of occupancy of the housing.

(2) Tenant selection should be in accordance with the loan agreement, subpart D of this part and § 3560.577.

(3) No borrower or grantee will discriminate, or permit discrimination by any agent, lessee, or other operator in the use or occupancy of the housing or related facilities because of race, color, religion, sex, age, disability, familial status, or national origin.

(b) *Eligible households.* To be eligible for occupancy in off-farm labor housing, households must meet the following requirements.

(1) *Occupational.* An eligible household must include a domestic tenant or co-tenant farm laborer, a retired domestic farm laborer, or a disabled domestic farm laborer.

(2) *Income.* The household must meet the definition of income eligible as established in § 3560.152 and the tenant or co-tenant must receive a substantial portion of income from farm labor employment. To determine if a substantial portion of income is from farm labor employment, the following measures will be used.

(i) For housing rented to farm laborers and owned by public bodies, public or private nonprofit organizations, and limited partnerships when charging rent.

(A) Actual dollars earned from farm labor by domestic farm laborers other than migrant farmworkers must equal at least 65 percent of the annual income limits indicated for the Standard Federal regions as published by the Agency for their particular region of the country. For migrant farmworkers living in seasonal housing the actual dollars earned from farm labor by a domestic farm laborer must equal at least 50 percent of annual income limits indicated for the Standard Federal regions, as published by the Agency.

(B) An alternate measure for determining substantial portion of income when actual earnings are not available may be the duration of time a farm laborer worked on a farm or other farming enterprise as a domestic farmworker during the preceding 12 months. In order to be considered as substantial the farm laborer must have worked at least 110 whole days in farm work. For purposes of this section one whole day is the equivalent of at least 7 hours. When using a period of more than 1 year, a yearly average must amount to at least 110 days per year.

(ii) For housing owned by a farmer, family-farm partnership, family-farm corporation, or an association of farmers which was initially provided on a non-rental basis, a substantial portion of income is earned when housing is provided by the owner as part of employment compensation for farm labor.

(iii) When a natural disaster has occurred, such as a drought, flood, freeze, etc., figures for the 12 months preceding such disaster will be used to determine substantial portion of income under paragraph (b)(2) of this section.

(iv) The tenant who qualifies as a domestic farm laborer residing in a property with a nonrestrictive farm labor clause in the mortgage covenants must not have adjusted income which exceeds the moderate income limit for the appropriate household size and appropriate geographical area.

(3) *Occupancy.* The household must remain in compliance with the borrower's occupancy policy as established in § 3560.155.

(c) *Tenant eligibility requirements for operating assistance rents.* To be eligible for operating assistance rents, tenants must meet the rental assistance eligibility requirements described in § 3560.573 and in § 3560.252.

(d) *Ineligible tenants.* Tenants who, at any time, fail to meet all the requirements in paragraph (b) of this section will be deemed ineligible for occupancy in off-farm labor housing. Ineligible tenants in off-farm labor housing will be addressed in accordance with the requirements of § 3560.158.

(e) *Non-farm laborer tenants.* When there is a diminished need for housing for persons or families in the above categories, units in off-farm labor housing complexes may be made available to persons or families eligible for occupancy under § 3560.152. Eligible tenants under this section may occupy the labor housing until such time the units are again needed by persons or families eligible under paragraph (b) of this section. As the basis for Agency approval or disapproval of the borrower's determination of diminished need, the borrower must submit a current analysis of need and demand to the Agency, identical to the market analysis that is required of loan applicants in the loan origination process. The borrower's determination and the State Director's recommendation should be forwarded to the National Office for concurrence. The procedures specified in § 3560.158 shall be followed when tenants are required to vacate housing to allow for occupancy by persons eligible under paragraph (b) of this section.

§ 3560.577 Tenant priorities for labor housing.

Tenant occupancy in off-farm labor housing is based on eligible farm labor certified through the income certification process required by § 3560.152 and is prioritized in the following order.

(a) First priority is to be given to eligible active farm laborer households with first priority going to very low-income households, next priority to low-income households, and last to moderate-income households.

(b) Second priority is given to retired domestic farm laborer households and disabled domestic farm laborer households who were active in the local farm labor market area at the time of retiring or becoming disabled. Occupancy priority will be given in accordance with paragraph (a) of this section.

(c) Third priority is to be given to retired domestic farm laborer households and disabled domestic farm laborer households who were not active in the local farm labor market at the time of retiring or becoming disabled. Occupancy priority will be given in accordance with paragraph (a) of this section.

§ 3560.578 Financial management of labor housing.

The requirements established in subpart G of this part will apply to all off-farm labor housing.

§ 3560.579 Servicing off-farm labor housing.

The requirements established in subparts I and J of this part will apply to all off-farm labor housing. Servicing according to subparts I and J of this part shall apply throughout the term of the loan or grant, whichever is longer.

§§ 3560.580–3560.599 [Reserved]

§ 3560.600 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 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. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart M—On-Farm Labor Housing

§ 3560.601 General.

This subpart contains the requirements for making loans for on-farm labor housing and for ongoing operation and management of on-farm labor housing. Unless otherwise specified in this subpart, the requirements of subparts A through K, N, O, and P of this part will apply in addition to requirements given in this subpart.

§ 3560.602 Program objectives.

In addition to the objectives stated in § 3560.52, on-farm labor housing funds will be used to increase:

(a) The supply of affordable housing for farm labor; and

(b) The ability of the farmer to provide affordable, decent, safe and sanitary housing for farm workers.

§ 3560.603 Loan purposes.

On-farm labor housing loans may be made only for the purposes established in § 3560.553. Grants are not available for on-farm labor housing.

§ 3560.604 Restrictions on use of funds.

On-farm labor housing loans may not be used for any purpose prohibited by § 3560.54 except § 3560.54(a)(1). On-farm labor housing may be used to serve migrant workers. In addition, on-farm labor housing loan funds may not be used to provide housing for members of the immediate family of the applicant when the applicant is an individual farm owner, family farm corporation, family farm partnership, or a member of an association of farmers. Immediate family includes mother, father, brothers, sisters, sons, and daughters of the applicant and spouse.

§ 3560.605 Eligibility requirements.

(a) To be eligible for an on-farm labor housing loan, the applicant must meet the requirements of § 3560.55(a) with the exception of § 3560.55(a)(1), (5), and (6) and the following requirements.

(1) The applicant must be a farm owner, family farm partnership, family farm corporation, or an association of farmers engaged in agricultural or aquacultural farming operations whose farming operations demonstrate a need for on-farm labor housing and who will own the housing and operate it on a nonprofit basis.

(2) The applicant must agree to use the labor housing to engage in the farming operations of the individual farm owner applicant, or in the farming operations of its members if it is a family farm corporation or partnership, or an association of farmers.

(3) The applicant must, as determined by the Agency, be unable to provide the necessary housing from the applicant's own resources and be unable to obtain credit from any other source upon terms and conditions which the applicant could reasonably be expected to fulfill. If the applicant is an association of farmers or family farm corporation or partnership, the individual members, individually and jointly, must be unable to provide the necessary housing by utilizing their own resources and be unable, by pledging their personal liability, to obtain other credit that would enable them to provide housing for farm workers at rental rates they can afford to pay. The individual resources of family farm corporation or partnership members with less than a 10 percent corporate or partnership interest should not be considered when determining if the applicant can obtain credit elsewhere.

(b) The Agency may make an exception to the requirement that an individual farm owner, family farm corporation, family farm partnership or an association of farmers be unable to obtain the necessary credit elsewhere when all of the following conditions exist:

(1) There is a housing need in the area for domestic farmworkers who are migrants and the applicant will provide such housing; and

(2) There are no qualified state or political subdivisions or public or private nonprofit organizations available, or likely to become available within 12 months of the application, that are willing and able to provide the housing.

(c) When an applicant is determined eligible under paragraph (b) of this section, the interest rate for such loans will be determined in accordance with 7 CFR part 1810, subpart A.

(d) On-farm labor housing that consists of buildings with less than three units is not subject to the requirement that five percent of the units be constructed as fully accessible units, as described in § 3560.60(d).

§ 3560.606 Application requirements and processing.

(a) On-farm labor housing loan applications will be processed according to 7 CFR part 1940, subpart L. Applicants must submit an application in an Agency-approved format that adequately documents the need for the housing and the eligibility of the applicant.

(b) The applicant must certify that the farm workers for which the housing is intended are or will be involved in the applicant's agricultural or aquacultural farming operations.

(c) The applicant must certify that housing operations will be conducted in a non-profit manner such that income from the housing does not exceed eligible expenses associated with the housing. Eligible expenditures for the housing include, but are not limited to housing repairs and upkeep, payment of installments on the loan, taxes, insurance and reserves and other essential uses needed for success of the operations.

§ 3560.607 [Reserved]

§ 3560.608 Site and construction requirements.

(a) *General.* Cost and development standards for on-farm labor housing will be consistent with the requirements, standards, and cost limits specified in subpart B of this part, if the housing is a multi-family housing type structure, or consistent with section 502 of the Housing Act of 1949, if the housing is a single family type structure.

(b) *Permanent units.* On-farm labor housing occupied for 8 months or more of the year will be required to meet the following requirements.

(1) Housing may be multi-family or single family in type and may be located on the farm away from farm service buildings, or in the nearby community. Single-family type housing is defined as an individual or a group of individual single family detached dwelling units. All sites and housing shall be planned and constructed in accordance with 7 CFR part 1924, subparts A and C.

(2) Sites must be accessible from a public road, when feasible.

(c) *Seasonal units.* On-farm labor housing occupied for less than 8 months of the year will be considered seasonal housing. Such housing must meet the following requirements.

(1) Housing designed for seasonal occupancy may be either single family or multi-family.

(2) Seasonal housing may be constructed in accordance with exhibit I of 7 CFR part 1924, subpart A. If constructed in accordance with exhibit I, the housing must be suitable to allow for conversion to full-year occupancy if the need for migrant farmworkers in the area declines.

(d) *Accessibility.* On-farm labor housing that consists of buildings with less than three units, need not meet the requirement that five percent of the units be constructed as fully accessible units, as described in § 3560.60(d). This does not, however, eliminate any other accessibility requirements.

§ 3560.609 [Reserved]

§ 3560.610 Security.

(a) Security instruments must meet the requirements established under § 3560.560.

(b) When feasible, the on-farm labor housing will be located on a tract of land that is surveyed such that, for security purposes, it is considered separate and distinct from the farm. The security for the loan must include a lien on the tract of land where the on-farm labor housing is located and the security must have adequate value to protect the Federal government's interest. The Agency will seek a first or parity lien position on Agency-financed property in all instances, however, the Agency may accept a junior lien position if the Federal government's interests are adequately secured.

(c) The Agency will determine the value of the security for the loan in accordance with 7 CFR part 1922, subpart B if the farm is used as security or in accordance with section 502 of the Housing Act of 1949, if only the on-farm labor housing and related land is used for security.

(d) If necessary to provide adequate security for the loan, the Agency may require that any household furnishings purchased with loan funds also be secured.

(e) Personal liability and recourse will be required of all borrowers, including the individual members, stockholders or partners of an association of farmers, family farm corporations or partnerships, respectively.

§ 3560.611 Technical, legal, insurance and other services.

When technical, legal, insurance, or services are required for development of on-farm labor housing, applicants must comply with the applicable requirements of § 3560.62. Regarding insurance coverage, the requirements of § 3560.62(d) apply to on-farm labor housing.

§ 3560.612 Loan limits.

The maximum loan amount will be 100 percent of the allowable total development costs of on-farm labor housing and related facilities subject to §§ 3560.603, 3560.604 and 3560.608.

§ 3560.613 [Reserved]

§ 3560.614 Reserve accounts.

When on-farm labor housing operations include 12 or more units, the Agency will require such properties to comply with the reserve account requirements in § 3560.65.

§ 3560.615 Participation with other funding sources.

The Agency encourages the use of other funding sources in conjunction with on-farm labor housing loans. Use of such financing in conjunction with an on-farm labor housing loan is subject to the approval of the Agency and must comply with the requirements of § 3560.66.

§ 3560.616 Rates and terms.

(a) The interest rate for on-farm labor housing loans will be 1 percent.

(b) The term of the on-farm labor housing loan will not exceed 33 years.

(c) Loan amortization for on-farm labor housing may be on a monthly or an annual basis.

§ 3560.617 [Reserved]

§ 3560.618 Supplemental requirements for on-farm labor housing.

The management plan for on-farm labor housing operated on a seasonal basis must have specific opening and closing dates. During the off-season, on-farm labor housing may be used under short-term lease provisions.

§ 3560.619 Supplemental requirements for manufactured housing.

On-farm labor housing loan funds used for manufactured housing must comply with § 3560.70. Manufactured housing located on-farm may consist of individual units.

§ 3560.620 Construction financing.

The requirements established in § 3560.71 apply to all applications involving on-farm labor housing loans.

§ 3560.621 Loan closing.

Applicants for on-farm labor housing loans must execute an Agency-approved loan agreement. In addition, if determined appropriate by the Agency, on-farm labor housing loans made on or after the effective date of this regulation may be subject to the restrictive-use provisions as stated in § 3560.72(a)(2)(ii). All other on-farm labor housing loans are subject to the restrictive-use provisions contained in their loan documents and as outlined in subpart N of this regulation.

§ 3560.622 Subsequent loans.

The requirements established in § 3560.572 apply to all applications for on-farm labor housing subsequent loans.

§ 3560.623 Housing management and operations.

Borrowers with on-farm labor housing loans must:

(a) Develop and submit to the Agency a management plan in a format specified by the Agency. At a minimum, the management plan will detail the borrower's operational and occupancy policies, how the borrower will deal with resident complaints, and how repairs will be completed; and

(b) Maintain a lease or employment contract with each tenant specifying employment with the borrower as a condition for continued occupancy.

§ 3560.624 Occupancy restrictions.

(a) The immediate relatives of the borrowers are ineligible occupants for on-farm labor housing.

(b) Occupants must meet the definition of a domestic farm laborer, as defined in § 3560.11.

(a) Occupancy of on-farm labor housing is restricted to employees of the borrower unless otherwise approved by the Agency.

(d) With prior written permission of the Agency, on-farm labor housing may be occupied by ineligible tenants on a short-term basis. The permission of the Agency must also be for a limited duration.

§ 3560.625 Maintaining the physical asset.

On-farm labor housing must meet state and local building and occupancy codes.

§ 3560.626 Affirmative Fair Housing Marketing Plan.

On-farm labor housing must meet the requirements of § 3560.104.

§ 3560.627 Response to resident complaints.

The management plan submitted in accordance with § 3560.623 (a) will include a provision for dealing with resident complaints.

§ 3560.628 Establishing and modifying rental charges.

If it becomes necessary to establish or modify a shelter cost, the borrower must obtain Agency approval as specified in subpart E of this part.

§ 3560.629 Security deposits.

Borrowers that require security deposits to be paid by the tenants will be required to comply with the requirements of § 3560.204.

§ 3560.630 Financial management.

Financial information must be submitted in an Agency-approved format and will show operation of the housing in a non-profit manner.

§ 3560.631 Agency monitoring.

A compliance review and physical inspection will be conducted by the Agency at least once every 3 years. The purpose of this review will be to inspect:

(a) Tenant eligibility documentation;

(b) Financial information on the operation and management of the labor housing, including relevant borrower financial materials;

(c) Payment of taxes, insurance and hazard insurance;

(d) Compliance with the security deposit requirements;

(e) Compliance with the operating plan;

(f) Compliance with the loan agreement;

(g) Compliance with Agency requirements for affordable, decent, safe, and sanitary housing; and

(h) Compliance with civil rights requirements.

§§ 3560.632–3560.649 [Reserved]

§ 3560.650 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 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. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart N—Housing Preservation

§ 3560.651 General.

(a) This subpart contains the Agency's housing preservation requirements as related to prepayment requests and restrictive-use provisions (RUPs). The requirements of this subpart support the Agency's commitment to the preservation of decent, safe, sanitary, and affordable multi-family housing (MFH) for very low-, low-, and moderate-income households.

(b) The Agency will coordinate, direct, and monitor the Agency's MFH preservation activities from the National Office level.

§ 3560.652 Prepayment and restrictive-use categories.

(a) Loans with prepayment prohibitions include:

(1) Initial section 515 loans made on or after December 15, 1989, and

(2) Subsequent loans made on or after December 15, 1989, for additional rental units.

(b) Loans without prepayment prohibitions but with restrictive-use provisions include:

(1) All loans made after December 21, 1979, but prior to December 15, 1989;

(2) Subsequent loans made on or after December 15, 1989, for purposes other than additional rental units; or

(3) Loans subsequently restricted by servicing actions including transfers.

(c) Loans without prepayment prohibitions or restrictive-use provisions include all loans made on or before December 21, 1979 or loans that had restrictive-use provisions that have expired. Such loans are eligible to receive incentives subject to the provisions of this subpart.

(d) Loans may be prepaid if another loan or grant from the Agency imposes the same or more stringent restrictive-use provisions on the housing project covered by the loan being prepaid.

§ 3560.653 Prepayment requests.

(a) Borrowers seeking to prepay an Agency loan must submit a written prepayment request to the Agency at least 180 days in advance of the anticipated prepayment date and must obtain Agency approval before the Agency will accept prepayment.

(b) Prior to submitting a prepayment request, borrowers must take whatever actions are necessary to provide the following items:

(1) A clear description of the loan to be prepaid, the housing project covered by the loan being prepaid, and the requested date of prepayment.

(2) A statement documenting the borrower's ability to prepay under the terms specified.

(3) A certification that the borrower will comply with any federal, state, or local laws or regulations which may relate to the prepayment request and a statement of actions needed to assure such compliance.

(4) A copy of lease language to be used during the period between the submission date and the final resolution of the prepayment request notifying tenant applicants that the housing project has submitted a prepayment request to the Agency and explaining the potential affect of the request on the lease.

(5) Borrowers are required to submit a signed release of information form along with the prepayment request. The Agency will notify nonprofit organizations and public bodies involved in providing affordable housing or financial assistance to tenants of the receipt of a borrower's request to prepay their MFH (MFH) loan(s). Additionally, the Agency is to notify nonprofit organizations and public bodies whenever a borrower, who has requested prepayment, is required or elects to offer their property for sale to a nonprofit or public body.

(6) A certification that the borrower has notified all governmental entities involved in providing affordable housing or financial assistance to tenants in the project of the prepayment request and a statement specifying how long financial assistance from such parties will be provided to tenants after prepayment.

(7) A statement affirming that units in the property applying for prepayment will continue to be available for rent by eligible residents during the prepayment process.

(c) The Agency will review complete requests to determine if:

(1) The loan is eligible for prepayment under § 3560.652(b);

(2) The borrower has the ability to prepay; and

(3) The borrower has complied or has the ability to comply with applicable Federal, state, and local laws related to the prepayment request.

(d) If a prepayment request lacks full and complete information on any item, the Agency will return the prepayment request to the borrower with a letter citing the deficiencies in the prepayment request. The Agency will offer borrowers an opportunity, within 30 days following the date of the return, to address the reasons given by the Agency for the return of the prepayment request and will allow the borrower to submit a revised prepayment request.

(e) If the Agency determines that the prepayment request appropriately satisfies all the conditions listed in paragraph (d) of this section, the Agency will process the prepayment request and make a reasonable effort to enter into a new restrictive-use agreement with the borrower in accordance with § 3560.662 or § 3560.655. If the Agency determines that a loan is ineligible for prepayment or the borrower does not have the ability to prepay, the Agency will return the prepayment request to the borrower with a written explanation of the Agency's determinations.

§ 3560.654 Tenant notification requirements.

(a) Within 30 calendar days of receiving a complete prepayment request, the Agency will send a prepayment request notice to each tenant in the housing project. Borrowers must post the Agency's prepayment request notice in public areas throughout the housing project from the date of the notice until the final resolution of the prepayment request. The prepayment request notice will establish a date and place where tenants may meet with the Agency to discuss the prepayment request and will advise tenants that:

(1) They may review all information submitted with the prepayment request except financial information regarding the borrower entity, which the Agency will withhold from tenant review unless given written permission for the release of the information from the borrower; and,

(2) They have 30 days from the date of the prepayment request notice to give the Agency comments on the prepayment request.

(b) Borrowers may provide a prepayment request notice of their own directly to tenants and may establish a date and place where tenants may meet

with the borrower to discuss the prepayment request. The Agency and other providers of housing assistance for very-low, low, and moderate-income households may attend a borrower's prepayment request meeting with tenants.

(c) If the Agency agrees to accept prepayment on a loan, the Agency will send a prepayment acceptance notice to each tenant in the housing project at least 60 days prior to the prepayment date. Borrowers must post copies of the Agency's prepayment acceptance notice in public areas throughout the housing project until prepayment is made. If the prepayment acceptance was based on a borrower's agreement to comply with restrictive-use provisions, the notice will describe the restrictive-use provisions that will apply to the housing project after prepayment and the tenant's rights to enforcement of the provisions.

(d) If the borrower withdraws the prepayment request, the Agency will provide a prepayment request cancellation notice to each tenant in the housing project. Borrowers must post copies of the prepayment request cancellation notice in the public areas throughout the housing project for a period of 60 days following the date of the prepayment request cancellation notice.

(e) If the borrower agrees to accept incentives and restrictive-use provisions, the Agency will notify each tenant, in writing, of the agreement and provide a description of the restrictive-use provision.

(f) If a borrower agrees to sell a housing project involved in a prepayment request to a nonprofit organization or public body, the Agency will notify each tenant, in writing, of the proposed sale to a nonprofit organization or public body and will explain the timeframes involved with the proposed sale, any potential impact on tenants, and the actions tenants may take to alleviate any adverse impact. Borrowers must post copies of the Agency's proposed sale notice in public areas throughout the housing project until the housing project is sold or the offer to sell is withdrawn.

(g) If a tenant applicant signs a lease in a housing project for which a prepayment request has been submitted, the borrower must provide the tenant with copies of all notifications provided to tenants by the Agency or the borrower prior to the tenant's occupancy in the housing project.

(h) If a borrower is unable to sell a housing project involved in a prepayment request to a nonprofit organization or public body within 180 days as specified in § 3560.659, the Agency will send a notice to each tenant in the housing project explaining the potential impact of the borrower's inability to sell the housing project on tenants and the actions tenants may take to alleviate any adverse impact. Borrowers must post the Agency's notice in public areas throughout the housing project for a period of 60 days following the date of the notice.

§ 3560.655 Agency requested extension.

Before accepting an offer to prepay from a borrower with a restricted loan, the Agency must first make a reasonable effort to enter into a new restrictive-use agreement with the borrower. Under this agreement, the borrower would make a binding commitment to extend the low-income use of the housing and related facilities for 20 years for loans with interest credit, beginning on the date on which the new agreement is executed. If the borrower is unwilling to enter into a new restrictive-use provisions and restrictive-use agreement, the Agency should proceed to take the actions described in § 3560.658.

§ 3560.656 Incentives offers.

(a) The Agency will offer a borrower, who submits a prepayment request meeting the conditions of § 3560.653(d), incentives to agree to the restrictive-use period in § 3560.662 if the following conditions are met:

(1) The market value of the housing project is determined by the Agency, based on an appraisal conducted in accordance with subpart P of this part.

(2) There are no restrictive-use agreements or prepayment prohibitions in affect.

(b) Specific incentives offered will be based on the Agency's assessment of:

(1) The value of the housing project as determined by the Agency based on an ''as-is'' market value appraisal conducted in accordance with subpart P of this part;

(2) An incentive amount that will provide a fair return to the borrower;

(3) An incentive amount that will not cause basic rents at the housing project to exceed conventional rents for comparable units; except that when determined necessary by the Agency to allow for decent, safe and sanitary housing to be provided in market areas where conventional rents are not sufficient to cover necessary operating, maintenance, and reserve costs. Basic rents may be allowed to exceed comparable rents for conventional units, but in no case by more than 150% of the comparable rent for conventional unit rent level; and

(4) An incentive amount that will be the least costly alternative for the Federal Government while being consistent with the Agency's commitment to the preservation of housing for very-low, low, and moderate income households in rural areas.

(c) The Agency may offer the following incentives:

(1) The Agency may increase the borrower's annual return on equity by one of the following two methods. The actual withdrawal of the return remains subject to the procedures and conditions for withdrawal specified in subpart G of this part.

(i) The Agency may recognize the borrower's current equity in the housing project. The equity will be determined using an Agency accepted appraisal based on the housing project's value as unsubsidized conventional housing.

(ii) When a current appraisal indicates an equity loan can not be made, the Agency may recognize the borrower's current equity in the housing project at the higher of the original rate of return or the current 15-year Treasury bond rate plus 2 percent rounded to the nearest one-quarter percent. The equity will be determined using the most recent Agency accepted appraisal of the housing project prior to receiving the prepayment request.

(2) The Agency may agree to convert projects without interest credit or with Plan I interest credit to Plan II interest credit or increase the interest credit subsidy for loans with Section 8 assistance to lower the interest rate on the loan and make basic rents more financially feasible.

(3) The Agency may offer additional rental assistance, or an increase in assistance provided under existing contracts under §§ 521(a)(2), 521(a)(5) of the Housing Act of 1949 (42 U.S.C. 1490a(a)(2)) or section 8 of the United States Housing Act of 1937 (42 U.S.C. § 1437f).

(4) The Agency may make an equity loan to the borrower. The equity loan must not adversely affect the borrower's ability to repay other Agency loans held by the borrower and must be made in conformance with the following requirements:

(i) The equity loan must not exceed the difference between the current unpaid loan balance and 90 percent of the housing project's value as determined by an ''as-is'' market value appraisal conducted in accordance with subpart P of this part.

(ii) Borrowers with farm labor housing loans are not eligible to receive equity loans as incentives.

(iii) If an incentive offer for an equity loan is accepted, the equity loan may be

processed and closed with the borrower or any eligible transferee.

(iv) Excess reserve funds will be used to reduce the amount of an equity loan offered to a borrower.

(v) Equity loans may not be offered unless the Agency determines that other incentives are not adequate to provide a fair return on the investment of the borrower to prevent prepayment of the loan or to prevent displacement of project tenants.

(5) The Agency will offer rental assistance to protect tenants from rent overburden caused by any rent increase as a result of a borrower's acceptance of an incentive offer or tenants who are currently overburdened.

(6) In housing projects with project-based section 8 assistance, the Agency may permit the borrower to receive rents in excess of the amounts determined necessary by the Agency to defray the cost of long-term repair or maintenance of such a project.

(d) The Agency must determine that the combination of assistance provided is necessary to provide a fair return on the investment of the borrower and is the least costly alternative for the Federal Government.

(e) At the time the incentive is developed, the Agency must take into consideration the costs of any deferred maintenance, items in the housing project's operating budget, and any expected long-term repair or replacement costs based on a capital needs assessment developed in accordance with § 3560.103(c). Deferred maintenance may include specific items identified in previous Agency inspections where the borrower has had the opportunity and resources available to take corrective actions and did not.

(1) Deferred maintenance does not include routine repair and replacement that results from normal wear and tear of the physical asset. The amount required for the reserve account to be considered fully funded will be adjusted accordingly. To determine if basic rents exceed conventional rents for comparable units in the area, monthly contributions necessary to obtain the adjusted fully funded reserve account will be included in the calculation of basic rents.

(2) Deferred maintenance including any deficiencies identified in project compliance with section 504 of the Rehabilitation Act of 1973 must be addressed as part of the development of the incentive and must be completed as part of an acceptance agreement of any incentive.

(f) Existing loans must be consolidated, provided consolidation retains the Agency's lien position, and reamortized in accordance with subparts I and J of this part, provided it maintains feasibility of the housing for the tenants or reduces the debt service or the level of monthly rental assistance.

(g) The borrower must accept or reject the incentive offer within 30 days. If no answer to the offer is received within 30 days, the Agency may consider the incentive offer to be rejected.

(1) If the borrower accepts the incentive offer, procedures outlined in § 3560.657 must be followed.

(2) If the borrower rejects the incentive offer, the borrower must comply with requirements listed in § 3560.658.

§ 3560.657 Processing and closing incentive offers.

(a) *Borrower responsibilities.* If a borrower accepts the Agency's offer of incentives, the borrower must complete the following actions:

(1) Subject to the Agency's approval, the borrower must legally restrict the use of the project in accordance with and for the number of years stated in § 3560.662.

(2) If the incentive offer accepted includes an equity loan, the borrower must complete an application for the equity loan, and the borrower must continue to qualify as an eligible borrower or transferee in accordance with subpart B of this part.

(3) If the incentive offer accepted includes rent increases, the borrower must follow the rent increase requirements established in subpart E of this part.

(b) *Waiting lists.* If funds for components of incentive offers are limited, the Agency will establish a waiting list of accepted incentive offers for funding in the date order that the complete prepayment request was received.

(c) *Unfunded incentive offers.* If the borrower accepts the incentive offer but the Agency is unable to fund the incentive within 15 months, the borrower may choose one of the following actions:

(1) The borrower may offer to sell the housing project in accordance with § 3650.659. In this case the borrower will be removed from the list of borrowers awaiting incentives.

(2) The borrower may stay on the list of borrowers awaiting incentives until the borrower's incentive offer is funded. The Agency will not negotiate the incentive offer; but, at a borrower's request, may adjust the incentive amount to reflect an updated appraisal, loan balance, and terms of third party financing.

(3) The borrower may withdraw the prepayment request and be removed from the list of borrowers awaiting incentives and either continue operating the housing project for program purposes and in accordance with Agency requirements or continue processing their prepayment process in accordance with § 3560.658. If the borrower chooses to withdraw their request, the borrower may resubmit an updated prepayment request, at any time, and repeat the prepayment process in accordance with this subpart.

(4) The borrower may elect to obtain a third-party equity loan provided rents will not exceed comparable rents in the market area.

§ 3560.658 Borrower rejection of the incentive offer.

(a) If a borrower rejects the incentive package offered by the Agency or an Agency request to extended restrictive-use provisions, made in accordance with § 3560.662, the loan will only be prepaid if the borrower elects to agree to the following:

(1) The borrower agrees to sign restrictive-use provisions to extend restrictive-use by 10 years from the date of prepayment, and at the end of the restrictive-use period offer to sell the housing to a qualified nonprofit organization or public body in accordance with § 3560.659.

(2) If restrictive-use provisions are in place, the borrower will agree to sign the restrictive-use provisions, as determined by the Agency, and at the end of the restrictive-use period offer to sell the housing to a qualified nonprofit organization or public body in accordance with § 3560.659.

(3) If restrictive-use provisions are not in place prior to prepayment, the borrower will offer to sell the housing to a qualified nonprofit organization or public body in accordance with § 3560.659.

(b) If the borrower does not elect or agree to enter an agreement in accordance with paragraph (a) of this section, then the Agency will assess the impact of prepayment on two factors: housing opportunities for minorities and the supply of decent, safe, sanitary, and affordable housing in the market area. The Agency will review relevant information to determine the availability of comparable affordable housing for existing tenants in the market area and if minorities in the project, on the waiting list or in the market area will be disproportionately adversely affected by the loss of the affordable rental housing units.

(1) If the Agency determines that prepayment will have an adverse impact on minorities, then the borrower must offer to sell to a qualified nonprofit

organization or public body in accordance with the provisions of paragraph (a) of this section.

(2) If the Agency determines that the prepayment will not have an adverse effect on housing opportunities for minorities but there is not an adequate supply of decent, safe, and sanitary rental housing affordable to program eligible tenant households in the market area, the loan may be prepaid only if the borrower agrees to sign restrictive-use provisions, as determined by the Agency, to protect tenants at the time of prepayment.

(3) If the Agency determines that there is no adverse impact on minorities and there is an adequate supply of decent, safe, and sanitary rental housing affordable to program eligible tenant households in the market area the prepayment will be accepted with no further restriction.

(c) If the borrower agrees to the restrictive-use provisions, as determined by the Agency, the applicable language must be included in the release documents and the borrower must execute a restrictive-use agreement acceptable to the Agency and a deed restriction.

(d) If the borrower will not agree to applicable restrictive-use provisions, as determined by the Agency, the borrower must offer to sell to a nonprofit or public body in accordance with § 3560.659 or withdraw their prepayment request.

§ 3560.659 Sale or transfer to nonprofit organizations and public bodies.

(a) *Sales price.* For the purposes of establishing a sales price when a borrower is required or elects to sell a housing project to a nonprofit organization or public body, two independent appraisals will be ordered, one by the Agency and one by the borrower. Both appraisals will conclude market value and be in accordance with subpart P of this part. If the borrower's assessment of the Agency's appraised market value indicates that no further appraisal is needed, the borrower may agree to accept the Agency's appraisal.

(1) The expense of the borrower's appraisal shall be borne by the borrower. The appraiser selected may not have an identity of interest with the borrower.

(2) If the two appraisers fail to agree on the market value, the Agency and the borrower will jointly select an appraiser whose appraisal will be binding on the Agency and the borrower. The Agency and the borrower shall jointly fund the cost of the appraisal.

(b) *Marketing to nonprofit organizations and public bodies.* If a borrower must offer the property for sale to a nonprofit organization or public body under this paragraph, the borrower must take the following actions to inform appropriate entities of the sale:

(1) The borrower must advertise and offer to sell the project for a minimum of 180 days. The borrower may choose to suspend advertising and other sales efforts while eligibility of an interested purchaser is determined. If the purchaser is determined to be ineligible, the borrower must resume advertising for the balance of the required 180 days.

(2) The Agency will assist the borrower in initially notifying nonprofit organizations and public bodies.

(3) The borrower must provide the nonprofit organizations and public bodies contacted with sufficient information regarding the housing project and its operations for interested purchasers to make an informed decision. The information provided must include the minimum value of the housing project based on the market value determined in accordance with paragraph (a) of this section.

(4) If an interested purchaser requests additional information concerning the housing project, the borrower must promptly provide the requested materials.

(c) *Preference for local nonprofit and public bodies.* Local nonprofit organizations and public bodies have priority over regional and national nonprofit organizations and public bodies. The Agency may determine that no local nonprofit organizations or public bodies are available to purchase the housing project. After this determination, the borrower may accept an offer from a regional or national nonprofit organization or public body.

(d) *Eligible nonprofit organizations.* To be eligible to purchase properties under the conditions of this subpart, nonprofit organizations may not have among its officers or directorate any persons or parties with an identity-of-interest (or any persons or parties related to any person with identity-of-interest) in loans financed under section 515 that have been prepaid. In addition to local nonprofit organizations, eligible nonprofit organizations include regional or national nonprofit organizations or public bodies provided no part of the net earnings of which accrue to the benefit of any member, founder, contributor or individual.

(e) *Requirements for nonprofit organizations and public bodies.* To purchase and operate a housing project, a nonprofit organization or public body must meet the following requirements:

(1) The purchaser must agree to maintain the housing project for very low- and low-income families or persons for the remaining useful life of the housing and related facilities. However, currently eligible moderate-income tenants will not be required to move.

(2) The purchaser must agree that no subsequent transfer of the housing project will be permitted for the remaining useful life of the housing project unless the Agency determines that the transfer will further the provision of housing for low-income households, or there is no longer a need for the housing project. Language to be included in the deed, conveyance instrument, loan resolution, and assumption agreement (as applicable) is provided in § 3560.662.

(3) The purchaser must demonstrate financial feasibility of the housing project including anticipated funding.

(4) The purchaser must certify to the Agency that no identity-of-interest relationships in accordance with § 3560.102(g). The purchaser must not have any identity of interest with the seller or any borrower that has previously prepaid or requested prepayment of an Agency MFH loan.

(5) The purchaser must complete an Agency-approved application and obtain Agency approval in accordance with subpart B of this part.

(6) The purchaser must make a bona fide offer taking into consideration the value of the housing project as determined in accordance with paragraph (a) of this section.

(f) *Selection priorities.* If more than one qualified nonprofit organization or public body submits an offer to purchase the project at the same time, priority will be given to local nonprofit organizations and public bodies over regional and national nonprofit organizations or public bodies. When selecting between offers equally meeting all other criteria, the borrower will first consider the success of the nonprofit organization's or public body's previous experience in developing and maintaining subsidized housing, with preference given to the most successful. If the offers continue to be equal, the borrower will then consider the number of years experience that the nonprofit organization or public body has had in developing and maintaining subsidized housing, with preference given to the greater number of years.

(g) *Loans made by the Agency or other sources to nonprofit organizations and public bodies.* Agency loans to nonprofit organizations or public bodies may be made for the purposes described in this paragraph. Agency loans will be processed in accordance with subpart B of this part. Loans from other sources

will be approved by the Agency in accordance with subpart I of this part.

(1) Agency loans to nonprofit organizations or public bodies for the purchase of a housing project will be based on the appraised value determined in accordance with paragraph (a) of this section.

(2) With proper justification, an Agency loan may be made to help the nonprofit organization or public body meet the housing project's first year operating expenses if there are insufficient funds in the housing project's general operating and expense account to meet such expenses. An Agency loan, for the purpose of covering first year operating expenses, may not exceed 2 percent of the housing project's appraised value determined in accordance with paragraph (c) of this section.

(h) *Advances for nonprofit organizations and public bodies.* The Agency may make advances, in accordance with section 502(c)(5)(c)(i), not in excess of limits established by Congress to nonprofit organizations or public bodies that are purchasing housing under this subpart. Grant funds may be used to cover any direct costs other than the purchase price, incurred by nonprofit organizations or public bodies in purchasing and assuming responsibility for the housing project.

(i) *Waiting list.* If funds for sales to nonprofit organizations and public bodies are limited, the Agency will add the funding requests to the waiting list for incentives and follow the process established in § 3560.657(b) and (c).

(j) *Withdrawal from sales process.* A borrower may withdraw the prepayment request at any time prior to the sale of the property. The borrower will be responsible for any damages associated with breaking a sales contract established with a nonprofit organization or public body.

(k) *When no offer to purchase is received.* Prepayment with no further restriction may be accepted by the Agency when the borrower agrees to offer the housing project for sale to a nonprofit organization or public body in accordance with § 3560.659 and no good faith offer is received within 180 days from the date that the housing project was advertised for sale to a nonprofit organization or public body, or a good faith offer was received within 180 days from the advertisement date but the offeror was unable to fulfill the terms of the offer within 24 months of the offer date, provided the owner cooperated with the potential purchaser.

§ 3560.660 Acceptance of prepayments.

(a) When the Agency agrees to accept prepayment, the Agency will notify borrowers, in writing, of the conditions under which the Agency will accept prepayment including the specific restrictive-use provisions to which the borrower has agreed and the date by which the borrower must make the prepayment.

(1) Prepayment must be made 180 days from the date of the Agency's prepayment acceptance notice to the borrower.

(2) If the borrower's prepayment is not received within 180 days of the prepayment acceptance notice and the Agency has not agreed to an alternative date based on a written request from the borrower, the Agency may cancel the prepayment acceptance agreement.

(b) Tenants will be notified of the prepayment acceptance agreement in accordance with § 3560.654(c). If a prepayment is anticipated to result in increased net tenant contributions, displacements or involuntary relocations, the tenants, who are affected by such a circumstance, may request a Letter Of Priority Entitlement (LOPE) in accordance with § 3560.159(c). Tenants must request a LOPE within one year of the prepayment acceptance notice date.

(c) Owners will provide certification stating that they will meet state and local laws prior to prepayment acceptance.

§ 3560.661 Sale or transfers.

(a) If a sale or transfer is to take place in conjunction with the Agency incentive offer, the sale or transfer must comply with the processing provisions of subpart I of this part.

(b) If a proposed transferee is determined not to be eligible for the transfer and assumption, the borrower will be given an additional 45 days to find another transferee.

(c) In cases where the existing owner is in program non-compliance or default, the Agency may make an offer of incentives contingent on the successful transfer of the housing to an acceptable purchaser. The Agency may offer a smaller incentive or no incentive if the borrower does not agree to transfer the project to an acceptable purchaser, or if the transfer does not take place.

§ 3560.662 Restrictive-use provisions and agreements.

All restrictions require Agency approval and must be in accordance with the following restrictions:

(a) The undersigned, and any successors in interest, agree to use the property (described herein) in compliance with 42 U.S.C. 1484 or 1485, whichever is applicable, and applicable regulations and the subsequent amendments, for the purpose of housing:

(1) Very low-, or low-income households when required by § 3560.658(a)(3), or

(2) Very low-, low-, or moderate-income households.

(b) The period of the restriction will be inserted in accordance with the following:

(1) 10 years if required by § 3560.658(a)(1);

(2) The last existing tenant (that occupied the property on the date of prepayment) voluntarily vacates if required by § 3560.658(b)(2);

(3) 30 years if required by § 3560.406(g);

(4) Remaining period of existing restrictive-use provisions and any agreed extension if required by § 3560.655 or § 3560.658 (a)(2);

(5) The remaining useful life of the housing and related facilities if required by § 3560.658(a)(3); and

(6) 20 years in all other cases.

(c) When required by § 3560.658(a)(1) or (a)(2), the undersigned agrees that at the end of the expiration of the period described in paragraph (b) of this section, the property will be offered for sale to a qualified nonprofit organization or public body, in accordance with previously cited statutes and regulations.

(d) The Agency and eligible tenants or applicants may enforce these restrictions.

(e) The undersigned also agrees to:

(1) To set rents, other charges, and conditions of occupancy in a manner to meet these restrictions;

(2) To post an Agency approved notice of this restriction for the tenants of the property;

(3) To adhere to applicable local, state, and Federal laws; and

(4) To obtain Agency concurrence for any rental procedures that deviate from those approved at the time of prepayment, prior to implementation.

(f) The undersigned will be released from these obligations before the termination period in paragraph (b) of this section only when the Agency determines that there is no longer a need for the housing or that financial assistance provided the residents of the housing will no longer be provided due to no fault, action or lack of action on the part of the borrower.

§ 3560.663 Post-payment responsibilities for loans subject to continued restrictive-use provisions.

(a) If a borrower prepays a loan and the housing project remains subject to

restrictive-use provisions, the requirements of this section apply after prepayment.

(b) Owners of prepaid housing projects will be responsible for ensuring that the restrictive-use provisions agreed to as a condition of prepayment are observed.

(c) Owners must maintain appropriate documentation to demonstrate compliance with the restrictive-use provisions and must make the documentation and the housing project site available for Federal Government inspection upon request.

(1) Owners must document rent increases in accordance with subpart G of this part.

(2) Owners must document tenant eligibility in accordance with § 3560.152.

(3) In an Agency approved format, owners must provide the agency with a signed and dated certification within 30 days of the beginning of each calendar year for the full period of the restrictive-use provisions establishing that the restrictive-use provisions are being met.

(d) Owners must observe Agency policies on tenant grievances as described in § 3560.160. The Agency may enforce restrictive-use provisions through administrative and legal actions. Tenants may enforce the restrictive-use provisions by contacting the Agency or through legal action. The Agency will release the restrictive-use provisions when the Agency conditions have been met.

§§ 3560.664–3560.699 [Reserved]

§ 3560.700 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 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. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart O—Unauthorized Assistance

§ 3560.701 General.

(a) This subpart contains the policies for recapturing unauthorized assistance when the Agency determines that a borrower or tenant was ineligible for, or improperly used, assistance received from the Agency.

(b) The Agency may seek repayment of any unauthorized assistance provided to a borrower or tenant, plus the cost of collection, regardless of whether the unauthorized assistance was due to errors by the Agency, the borrower, or the tenant.

§ 3560.702 Unauthorized assistance sources and situations.

(a) Unauthorized assistance can be received by a borrower or tenant in the form of loans, grants, interest credit, rental assistance, or other assistance provided by the Agency including assistance received as a result of an incorrect interest rate being applied to an Agency loan. Agency officials may pursue identification and recapture of unauthorized assistance through any legal remedies available.

(b) Unauthorized assistance may result from situations such as:

(1) Assistance being provided to an ineligible borrower or tenant;

(2) Assistance to an eligible borrower or tenant being used for an unauthorized purpose;

(3) Assistance being obtained as a result of inaccurate, incomplete, or fraudulent information provided by a borrower or tenant; or

(4) Assistance being obtained as a result of errors by the Agency, borrower, or tenant.

§ 3560.703 Identification of unauthorized assistance.

(a) The Agency will use all available means to identify unauthorized assistance, including Agency monitoring activities, OIG reports, GAO reports, and reports from any source, if the information provided can be substantiated by the Agency.

(b) Borrowers have the primary responsibility for identifying repayment of unauthorized assistance received by tenants.

§ 3560.704 Unauthorized assistance determination notice.

(a) The Agency will notify borrowers, in writing, when a determination has been made that unauthorized assistance was received by the borrower. Borrowers will notify tenants, in writing, when a determination is made that unauthorized assistance was received by the tenant and will simultaneously send the Agency of copy of the written notice to the tenant.

(b) The unauthorized assistance determination notice is a preliminary notice, not a demand letter. The unauthorized assistance determination notice will:

(1) Specify the reasons the assistance was determined to be unauthorized;

(2) State the amount of unauthorized assistance to be repaid and specify the party responsible for repayment of the unauthorized assistance (*i.e.*, the tenant or borrower) according to the provision of § 3560.708;

(3) Establish a place and time when the person receiving the unauthorized assistance determination notice may meet with the Agency or, in the case of tenants, may meet with the borrower, to discuss issues related to the unauthorized assistance notice such as the establishment of a repayment schedule; and

(4) Advise the borrower or tenant that they may present facts, figures, written records, or other information within a specified period of time which might alter the determination that the assistance received was unauthorized.

(c) Upon request, the Agency or borrower, in the case of tenants, will grant additional time for discussions related to an unauthorized assistance determination notice. Borrowers must notify the Agency of schedule revisions when additional time is granted to a tenant in unauthorized assistance claims.

§ 3560.705 Recapture of unauthorized assistance.

(a) The Agency will seek repayment of all unauthorized assistance received by a borrower or tenant, plus the cost of collection, to the fullest extent permitted by law. Agency efforts to collect unauthorized assistance may include offsets, the use of private or public collection agents, and any other remedies available. Agency findings related to unauthorized assistance determinations will be referred to credit reporting bureaus and other federal, state, or local agencies with jurisdictions related to the unauthorized assistance findings for suspension, debarment, civil or criminal action to the fullest extent permitted by law.

(b) If a borrower or tenant agrees to repay unauthorized assistance, the amount due will be the amount stated in the unauthorized assistance determination notice unless another amount has been approved by the Agency.

(c) Repayment may be made either with a lump sum payment or through payments made over a period of time. If a borrower or tenant agrees to repay unauthorized assistance, the borrower or tenant proposed repayment schedule must be approved by Agency prior to implementation. Agency approval of a repayment schedule will take into consideration the best interest of the

borrower, the tenant, and the Federal Government.

(d) Borrowers must retain copies of all correspondence and a record of all conversations between the borrower and a tenant regarding unauthorized assistance received by a tenant.

(e) When a tenant, who has received unauthorized assistance due to tenant error or fraud as determined by the Agency, moves out of a housing project, the borrower is no longer responsible for recapturing the unauthorized assistance provided that the borrower notifies the Agency of the tenant's move and transfers all records related to the tenant's unauthorized assistance to the Agency within 30 days of the tenant's move. The Agency will pursue collection of the unauthorized assistance from the tenant.

(f) If a borrower refuses to enter into an unauthorized assistance repayment schedule with the Agency, the Agency will initiate liquidation procedures, in accordance with § 3560.456, or other enforcement actions, such as suspension, debarment, civil, or criminal penalties, in accordance with § 3560.461. If a tenant refuses to enter into an unauthorized assistance repayment schedule, the Agency will initiate recovery actions against the tenant.

(g) Borrowers may not use housing project funds to pay amounts due to the Agency as a result of unauthorized assistance due to borrower fraud.

§ 3560.706 Offsets.

Offsets and any other available remedies may be used by the Agency to recapture unauthorized assistance. Guidance concerning use of offsets can be found at 7 CFR 3550.210.

§ 3560.707 Program participation and corrective actions.

(a) With Agency approval, a borrower or tenant, who has received unauthorized assistance, may continue to participate in the project if they have the legal and financial capabilities to do so. Approval considerations for such forbearance and repayment are in § 3560.705.

(b) A borrower or tenant who was responsible for the circumstances causing the unauthorized assistance must take appropriate action to correct the problem within 90 days of the unauthorized assistance determination notice date, unless an alternative date is agreed to by the Agency.

(c) When the interest rate shown in a debt instrument resulted in the receipt of unauthorized assistance, the debt instrument will be modified to the correct interest rate. All payments made by the borrower at the incorrect interest rate will be reapplied at the correct interest rate, and remaining payments due on the loan will be recalculated on the basis of the correct interest rate, plus any amounts due to the Agency as a result of the use of an incorrect interest rate, unless the Agency agrees to a separate repayment process.

§ 3560.708 Unauthorized assistance received by tenants.

(a) Tenant actions that require tenant repayment of unauthorized assistance received by tenants include, but are not limited to:

(1) Knowingly or mistakenly misrepresenting income, assets, adjustments to income, or household status to the borrower as required under subpart D of this part; or

(2) Failure to properly report changes in income, assets, adjustments to income, or household status to the borrower as required in subpart D of this part.

(b) Borrower actions that require borrower repayment of unauthorized assistance received by tenants include, but are not limited to:

(1) Incorrect determination of tenant income or household status by the borrower, resulting in rental assistance or interest credit that is not allowable under the provisions of subparts D, E, or F of this part, as applicable; or

(2) Assignment of rental assistance to a household that is ineligible under the requirements of subpart F of this part.

(c) When it is determined that a tenant has received unauthorized assistance, the borrower shall notify the tenant and the Agency through the procedure specified in § 3560.704.

(d) Borrowers may not charge tenants to pay amounts due to the Agency as a result of unauthorized assistance to tenants through borrower error.

(e) Borrowers must notify the Agency of all collections from tenants as repayments for unauthorized assistance and must remit or credit the amounts collected to applicable housing project accounts.

(f) When rental assistance was improperly assigned to a tenant, for any reason, the rental assistance benefit must be canceled and reassigned.

(1) Before a borrower notifies a tenant of rental assistance cancellation, the borrower must request Agency approval. If the Agency determines that the unauthorized rental assistance was received by the tenant due to borrower fraud or error, the borrower must give the tenant 30 days notice, in writing, that the unit was assigned in error and that the rental assistance benefit will be canceled effective on date that the next monthly rental payment is due after the end of the 30-day notice period.

(2) Tenants also must be notified, in writing, that they may cancel their lease without penalty at the time the rental assistance is canceled. Tenants must be offered an opportunity to meet with a borrower to discuss the rental assistance cancellation.

§ 3560.709 Demand letter.

(a) If a borrower fails to respond to an unauthorized assistance determination notice or fails to agree to a repayment schedule, the Agency will send the borrower a demand letter specifying:

(1) The amount of unauthorized assistance to be repaid and the basis for the unauthorized assistance determination; and

(2) The actions to be taken by the Agency if repayment is not made by a specified date.

(b) If a tenant fails to respond to the unauthorized assistance determination notice or fails to agree to a repayment schedule, the borrower will send the tenant a demand letter specifying:

(1) The amount of unauthorized assistance to be repaid and the basis for the unauthorized assistance determination;

(2) The actions to be taken if repayment is not made by a specified date, including termination of tenancy; and

(3) The appeal rights of the tenant as specified in § 3560.160.

(c) A demand letter may be sent to a borrower or tenant, in lieu of an unauthorized assistance determination notice, when the evidence documenting the unauthorized assistance determination is deemed to be conclusive by the Agency or borrower sending the letter.

§§ 3560.710–3560.749 [Reserved]

§ 3560.750 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 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. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart P—Appraisals

§ 3560.751 General.

This subpart sets forth appraisal policies for Agency-financed multi-family housing (MFH) projects consisting of five or more rental units. Agency-financed housing projects with fewer than five rental units may be appraised in accordance with the Agency's single family housing appraisal policies established under 7 CFR 3550.62.

§ 3560.752 Appraisal use, request, review, and release.

(a) *Appraisal uses.* The Agency will use appraisals to determine whether the security offered by an applicant or borrower is adequate to secure a loan or determine appropriate servicing or preservation decisions. Appraisals used for Agency decision-making must be current, unless the Agency and the applicant, or borrower, mutually agree to the use of an appraisal that is not current. A current appraisal is an appraisal with a report date that is not more than one year old.

(b) *Appraisal requests.* Appraisal requests must be in writing and must specify the client and other intended users, the intended use, the purpose, and the scope of work of the appraisal, including the type and definition of the value(s) to be developed.

(1) *Type of Value.* The appraisal request must indicate whether the ''market value'', the ''market value, subject to restricted rents'', or any other type of value of the housing project and related facilities is to be concluded.

(i) A request for ''market value, subject to restricted rents'' means the appraisal will take into consideration any rent limits, rent subsidies, expense abatements, or restrictive-use conditions that will affect the property as a result of an agreement with the Agency or any other financing source. Each type of financing involved, including, but not limited to, interest credit subsidy, low-interest loans from other sources, tax-exempt bond financing, tax credits, and grants, must be valued separately in the appraisal.

(ii) A request for ''market value'' means the appraisal will take into consideration the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

(A) Buyer and seller are typically motivated;

(B) Both parties are well informed or well advised and acting in what they consider their best interests;

(C) A reasonable time is allowed for exposure in the open market;

(D) Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and

(E) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(2) *'''As-is' Value'' or ''Prospective Value''.* The appraisal request must indicate whether the '''as-is' value'' or ''prospective value'' of the housing is to be concluded.

(i) '''As-is' value'' means the value of the housing and related facilities as of the effective date of the appraisal. It relates to what physically exists and is legally permissible at the time of the appraisal and excludes all hypothetical conditions.

(ii) ''Prospective value'' means the forecasted value of the housing and related facilities as of a specified future date. For Agency appraisals, this date will typically be the projected completion date of proposed new construction or rehabilitation.

(3) *Section 8 project-based assistance.* Depending on the intended use of the appraisal, the Agency will specify whether or not section 8 project-based assistance will be considered in the valuation of the housing. The remaining term of the section 8 contract and the probability of subsequent renewal terms being authorized will be taken into consideration when making this determination.

(4) *Low-Income Housing Tax Credit (LIHTC) and other financing sources.* Depending on the intended use of the appraisal, the Agency will specify whether or not tax credits and other financing sources involved in the housing will be considered in the valuation of the housing.

(c) *Appraisal review.* All MFH appraisals that were not written by an Agency appraiser will be reviewed by an Agency appraiser, who will write and file a technical review report that complies with the Uniform Standards of Professional Appraisal Practice (USPAP) and Agency requirements.

(d) *Release of appraisals.* MFH appraisals procured by the Agency will be released to owners/applicants, from their own files, upon their request.

§ 3560.753 Agency appraisal standards and requirements.

(a) *General.* The Agency recognizes USPAP as the basic standards for appraisals. Appraisals used by the Agency must comply with USPAP and this subpart.

(b) *Appraisers.* MFH appraisals prepared for the Agency will be written by Agency appraisers or independent fee appraisers who are state certified general appraisers, certified in the state where the property is located. Technical review reports will be written by Agency state certified general appraisers.

(c) *Appraisal report.* The appraisal report format may be a form appraisal or a narrative appraisal. The Agency will specify the appraisal format that is most appropriate for the scope of work involved when the appraisal is requested.

(1) *Form appraisal reports.* The Agency will accept appraisal report forms that meet generally accepted industry standards, comply with USPAP, and have been approved by the Agency.

(2) *Narrative appraisal reports.* Narrative appraisal reports must, at a minimum, contain the following items:

(i) Transmittal letter;

(ii) Factual information about the property;

(iii) Regional and neighborhood data;

(iv) Description of the subject property;

(v) Description of existing and planned improvements;

(vi) A highest and best use analysis;

(vii) A statement regarding any environmental issues, such as potential contamination of the property from hazardous substances, hazardous wastes, or petroleum products;

(viii) A cost approach analysis (if applicable);

(ix) A sales comparison approach analysis (if applicable);

(x) An income approach analysis (if applicable);

(xi) A reconciliation of the value indications derived from the included approaches to value; and

(xii) A signed and dated certification of value.

(3) At the time an appraisal is requested, the Agency will specify either a complete or a limited appraisal and one of the following types of appraisal reports, based upon the complexity of the appraisal assignment.

(i) A self-contained report that comprehensively describes all information significant to the solution of the appraisal problem;

(ii) A summary report that summarizes all information significant

to the solution of the appraisal problem; or

(iii) A restricted use report, intended for Agency use only, that briefly states all information significant to the solution of the appraisal problem.

(d) *Highest and best use statement and analysis.* The highest and best use is to be concluded for the subject site as though it was vacant, and for the subject property as improved, if improvements have been made. If the highest and best use of a subject property is for something other than MFH, the appraisal report must provide this information to the Agency for consideration in the loan process. In addition to being reasonably probable and appropriately supported, the highest and best use of both the land as though vacant and the property as improved must meet four implicit criteria. The highest and best use must be:

(1) Physically possible;

(2) Legally permissible;

(3) Financially feasible; and

(4) Maximally productive.

(e) *Valuation methods and variances.* The final opinion of value presented in an appraisal report must have considered a cost approach, a sales comparison approach, and an income approach. If one of these standard approaches is not used, the reconciliation narrative will provide a full and complete explanation of the reasons the approach was excluded. The reconciliation will fully discuss and reconcile variances in the value indications concluded by each approach.

(f) *Real estate history.* Appraisals must contain a 5-year ownership and sales history for the housing project being appraised.

(g) *Reserve accounts.* Funds in the housing project's reserve account will not be considered in the valuation of the housing project.

(h) *Escrow accounts.* Short-term prepaid escrow accounts for general operating expenses, such as taxes and insurance, shall not be considered in the valuation of the housing project.

(i) *Rental rates comparison.* The appraisal report must document whether the housing project's basic rents are less than, equal to, or greater than market rents for comparable conventional, or non-subsidized, units in the area where the housing is located.

(j) *Description of housing and property rights.* The appraisal report must identify and describe both the real estate, which is the land and improvements, and the real property, or property rights, being appraised.

(k) *Exclusion of rental units from valuation.* The Agency will provide appraisers with instructions and supporting information on any rental units that do not produce rental income at the time of the appraisal.

(l) *Non-contiguous sites.* When a housing project has real property located on non-contiguous sites, a separate appraisal must be developed for each site.

§§ 3560.754–3560.799 [Reserved]

§ 3560.800 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 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. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

PART 3565—GUARANTEED RURAL RENTAL HOUSING PROGRAM

■ 62. The authority citation for part 3565 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart E—Loan Requirements

§ 3565.204 [Amended]

■ 63. Section 3565.204 is amended in paragraph (c)(2) by removing the words ''part 1944, subpart E'' and by adding in its place the word ''3560.63 (d).''

Subpart H—Project Management

§ 3565.351 [Amended]

■ 64. Section 3565.351 is amended in paragraph (c) by removing the words ''part 1944, subpart L'' and by adding in their place the words ''part 3560, subpart D.''

Dated: November 12, 2004.

Gilbert Gonzalez,

Acting Under Secretary, Rural Development.

Dated: November 12, 2004.

J.B. Penn,

Under Secretary, Farm and Foreign Agricultural Services.

[FR Doc. 04–25599 Filed 11–24–04; 8:45 am]

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Federal Register

Friday,
November 26, 2004

Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 416

Medicare Program; Update of Ambulatory Surgical Center List of Covered Procedures; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 416

[CMS–1478–P]

RIN: 0938–AM85

Medicare Program; Update of Ambulatory Surgical Center List of Covered Procedures

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would make additions to and deletions from the current list of Medicare approved ambulatory surgical center (ASC) procedures.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on January 25, 2005.

ADDRESSES: In commenting, please refer to file code CMS–1478–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments to *http://www.cms.hhs.gov/regulations/ecomments* or to *http://www.regulations.gov* (attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word).

2. *By mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1478–P, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Bob Cereghino, (410) 786–4645.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this proposed rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–1478–P and the specific ''issue identifier'' that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. After the close of the comment period, CMS posts all electronic comments received before the close of the comment period on its public Web site. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–7195.

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I. Background

A. Legislative History

Section 1832(a)(2)(F)(i) of the Social Security Act (the Act) provides that benefits under the Medicare Supplementary Medical Insurance program (Part B) include payment for facility services furnished in connection with surgical procedures we specify and which are performed in an ambulatory surgical center (ASC). To participate in the Medicare program as an ASC, a facility must meet the standards specified in section 1832(a)(2)(F)(i) of the Act; in 42 CFR 416.25, which sets forth general conditions and requirements for ASCs; and, in 42 CFR 416, Subpart C, which provides specific conditions for coverage for ASCs.

There are two primary elements in the total cost of performing a surgical procedure—the cost of the physician's professional services in performing the procedure and the cost of items and services furnished by the facility where the procedure is performed (for example, surgical supplies and equipment and nursing services). This proposed notice addresses the second element, the coverage and payment of facility fees for ASC services under the current payment system. As we note below, section 626(b) of the Medicare Prescription, Improvement and Modernization Act of 2003 (MMA) requires that we develop a revised payment system for ASC facility services that would be implemented no earlier than January 1, 2006. This proposed rule addresses additions to and deletions from the list of Medicare approved ASC procedures prior to the implementation of that revised payment system.

Under the current ASC facility services payment system, the ASC payment rate is a standard overhead amount established on the basis of our estimate of a fair fee that takes into account the costs incurred by ASCs generally in providing facility services in connection with performing a specific procedure. The report of the Conference Committee accompanying

section 934 of the Omnibus Budget Reconciliation Act of 1980 (OBRA) (Pub. L. 96–499), which enacted the ASC benefit in December 1980, states that this overhead factor is expected to be calculated on a prospective basis using sample survey and similar techniques to establish reasonable estimated overhead allowances, which take account of volume (within reasonable limits), for each of the listed procedures. (See H.R. Rep. No. 96–1479, at 134 (1980)).

To establish those reasonable estimated allowances for services furnished prior to implementation of the revised payment system mandated by the MMA, we are required by section 1833(i)(2)(A)(i) of the Act, as amended by section 626(b)(1) of MMA, to take into account the audited costs incurred by ASCs to perform a procedure, in accordance with a survey. Payment for ASC facility services is subject to the usual Medicare Part B deductible and coinsurance requirements, and the amounts paid by Medicare must be 80 percent of the standard fee.

Section 1833(i)(1) of the Act requires us to specify, in consultation with appropriate medical organizations, surgical procedures that can be safely performed in an ASC and to review and update the list of ASC procedures at least every two years.

Section 141(b) of the Social Security Act Amendments of 1994 (SSAA 1994) requires us to establish a process for reviewing the appropriateness of the payment amount provided under section 1833(i)(2)(A)(iii) of the Act for IOLs with respect to a class of new-technology IOLs. That process was the subject of a separate final rule entitled ''Adjustment in Payment Amounts for New Technology Intraocular Lenses Furnished by Ambulatory Surgical Centers,'' published on June 16, 1999 in the **Federal Register** (64 FR 32198).

B. Summary of Updates of the ASC List

Section 934 of the Omnibus Budget Reconciliation Act of 1980 amended sections 1832(a)(2) and 1833 of the Act to authorize the Secretary to specify surgical procedures that, although appropriately performed in an inpatient hospital setting, can also be performed safely on an ambulatory basis in an ASC, a hospital outpatient department, or a rural primary care hospital. The report accompanying the legislation explained that the Congress intended procedures currently performed on an ambulatory basis in a physician's office that do not generally require the more elaborate facilities of an ASC not be included in the list of covered procedures (H.R. Rep. No. 96–1167, at 390, reprinted in 1980 U.S.C.C.A.N. 5526, 5753). In a final rule published August 5, 1982 in the **Federal Register** (47 FR 34082), we established regulations that included criteria for specifying which surgical procedures were to be included for purposes of implementing the ASC facility benefit.

Subsequently, in accordance with 42 CFR 416.65(c), we published updates of the ASC list in the **Federal Register** on April 21, 1987 (52 FR 13176), June 1, 1989 (54 FR 23540), December 31, 1991 (56 FR 67666), January 26, 1995 (60 FR 5185), and March 28, 2003 (68 FR 15268).

During years when we do not update the list through the proposed rule and comment process in the **Federal Register**, we revise the list to be consistent with annual calendar year changes in codes established by the American Medical Association (AMA) Current Procedural Terminology (CPT), removing from the ASC list codes that are deleted by CPT and adding new codes that replace codes already on the ASC list. These annual CPT updates are implemented through program instructions to carriers who process ASC claims.

C. Regulatory Requirements

1. Sections 416.65(a) and (b)

Section 416.65(a) specifies general standards for procedures on the ASC list. ASC procedures are those surgical and medical procedures that are:

- Commonly performed on an inpatient basis but may be safely performed in an ASC;
- Not of a type that are commonly performed or that may be safely performed in physicians' offices;
- Limited to procedures requiring a dedicated operating room or suite and generally requiring a post-operative recovery room or short term (not overnight) convalescent room; and
- Not otherwise excluded from Medicare coverage.

Specific standards in § 416.65(b) limit ASC procedures to those that do not generally exceed 90 minutes operating time and a total of 4 hours recovery or convalescent time. If anesthesia is required, the anesthesia must be local or regional anesthesia, or general anesthesia of not more than 90 minutes duration.

Section 416.65(c) excludes from the ASC list procedures that generally result in extensive blood loss, that require major or prolonged invasion of body cavities, that directly involve major blood vessels, or that are generally emergency or life-threatening in nature.

2. Criteria for Additions to or Deletions From the ASC List

In April 1987, we adopted quantitative criteria as a tool for identifying procedures that were commonly performed either in a hospital inpatient setting or in a physician's office. Collectively, commenters responding to a notice published on February 16, 1984 in the **Federal Register** (49 FR 6023) had recommended that virtually every surgical CPT code be included on the ASC list. Consulting with other specialist physicians and medical organizations as appropriate, our medical staff reviewed the recommended additions to the list to determine which code or series of codes were appropriately performed on an ambulatory basis within the framework of the regulatory criteria in § 416.65. However, when we arrayed the proposed procedures by the site where they were most frequently performed according to our claims payment data files (1984 Part B Medicare Data (BMAD)), we found that many codes were not commonly performed on an inpatient basis or were performed in a physician's office the majority of the time, and, thus, would not meet the standards in our regulations. Therefore, we decided that if a procedure was performed on an inpatient basis 20 percent of the time or less, or in a physician's office 50 percent of the time or more, it would be excluded from the ASC list. (See **Federal Register** April 21, 1987 (52 FR 13176).)

At the time, we believed that these utilization thresholds best reflected the legislative objectives of moving procedures from the more expensive hospital inpatient setting to the less expensive ASC setting without encouraging the migration of procedures from the less expensive physician's office setting to the ASC. We applied these quantitative standards not only to codes proposed for addition to the ASC list, but also to the codes that were currently on the list, to delete codes that did not meet the thresholds.

The trend towards performing surgery on an ambulatory or outpatient basis grew steadily, and, by 1995, we discovered that a number of procedures that were on the ASC list at the time fell short of the 20 percent and 50 percent thresholds even though the procedures were obviously appropriate in the ASC setting. The most notable of these was cataract extraction with intraocular lens insertion, very few cases of which were being performed on an inpatient basis by the early 1990s. We were also excluding from the ASC list certain

newer procedures, such as CPT code 66825, Repositioning of intraocular lens prosthesis, requiring an incision (separate procedure), that were rarely performed on a hospital inpatient basis but that were appropriate for the ASC setting. Strict adherence to the same 20 percent and 50 percent thresholds both to add and remove procedures did not provide latitude for minor fluctuations in utilization across settings or errors that could occur in the site-of-service data drawn from the National Claims History File that we were then using, replacing BMAD data, for analysis.

In an effort to avoid these anomalies but still retain a relatively objective standard for determining which procedures should comprise the ASC list, we adopted in the **Federal Register** notice published on January 26, 1995 (60 FR 5185) a modified standard for deleting procedures already on the list. We deleted from the list only those procedures whose combined inpatient, hospital outpatient, and ASC site of service volume was less than 46 percent of the procedure's total volume and that were either performed 50 percent of the time or more in the physician's office or 10 percent of the time or less in an inpatient hospital setting. We retained the 20 percent and 50 percent standard to determine which procedures would be appropriate additions to the ASC list.

D. Office of the Inspector General Recommendations, January 2003

In January 2003, the Office of the Inspector General (OIG) issued the results of a study entitled ''Payments for Procedures in Outpatient Departments and Ambulatory Surgical Centers' (OEI–05–00–00340). The objective of that study was to determine the extent to which Medicare payments for the same procedure codes continue to vary between hospital outpatient departments and ambulatory surgical centers and to assess the effect of this variance on the Medicare program.

The OIG concluded, as a result of its study, that there should be a greater parity of payments for services performed in an outpatient setting and those performed in ASCs. The OIG based this conclusion both on its belief that the Congress intended Medicare to be a prudent purchaser of services and to pay only for those costs that are necessary for the efficient delivery of needed health services and on its finding that disparities in Medicare payment amounts for the same services furnished in ASCs and hospital outpatient departments resulted in an estimated $1.1 billion in additional Medicare program payments. The OIG also found that CMS's failure to remove certain procedure codes from the list of ASC-approved procedures resulted in an estimated $8 to $14 million in additional Medicare program payments.

The OIG recommended that we—

- Seek authority to set rates that are consistent across sites and reflect only the costs necessary for the efficient delivery of health services,
- Conduct and use timely ASC-survey data to reevaluate ASC-payment rates, and
- Remove the procedure codes that meet our criteria for removal from the ASC list of covered procedures. (In its final report, the OIG included a list of 72 CPT codes that it found, based on its analysis of calendar year 1999 data, met our criteria for deletion from the ASC list.)

In our response to the OIG's recommendations, we indicated that we would consider the OIG's first recommendation as we develop future legislative proposals. In response to the second recommendation, we indicated our concerns about using survey data as the basis for setting ASC payment rates and that we were considering how to implement the survey requirement. (Enactment of section 626(b) of the MMA repealing the survey requirement and mandating implementation of a revised payment system in accordance with certain requirements set forth in the MMA supersedes our earlier response to this OIG recommendation.)

In this proposed notice, we are taking action to address the OIG's third recommendation, that we remove codes that meet our criteria for deletion from the ASC list. We did not address this recommendation in the March 28, 2003 final rule with comment period, because we had not provided an opportunity for public comment on the OIG's recommended deletions prior to issuance of the March 28, 2003 final rule. However, in this proposed notice, we are proposing to remove 54 of the 72 procedure codes recommended by the OIG for deletion from our current list. These codes are included in the list of proposed deletions in Table 2. In section II.C. of this proposed notice, we discuss why we are proposing to retain 11 of the procedures recommended for deletion by the OIG. Seven codes proposed for deletion by the OIG were removed from the ASC list effective July 1, 2003.

E. Current ASC Payment Rates

Procedures on the ASC list are assigned to one of nine payment groups based on our estimate of the costs incurred by the facility to perform a procedure. Payment groups 1 through 8 were first implemented in September 1990, based on a survey of ASC costs conducted in 1986 (55 FR 4539). Payment group 9 was added on December 31, 1991 (56 FR 67666) to establish a payment rate for extracorporeal shockwave lithotripsy (ESWL). There is no clinical consistency among the procedures in a payment group. Rather, assignment to a payment group is based solely on an estimate of facility costs associated with performing the procedures.

In a proposed rule published on June 12, 1998 in the **Federal Register** (63 FR 32290), we proposed a new ratesetting methodology based on ambulatory payment classification (APC) groups that were proposed for the new hospital outpatient prospective payment system (OPPS). We used data from a survey of ASC costs collected in 1994 as the basis for the APC payment rates in the June 12, 1998 proposed rule. The Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113) required us to phase in full implementation of the proposed ASC rates over a 3-year period. The Medicare, Medicaid and SCHIP Benefit Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554) prohibited implementation of a revised prospective payment system for ASCs before January 1, 2002 and required that, by January 1, 2003, ASC rates be rebased using data from a 1999 or later Medicare survey of ASC costs.

We discuss in the final rule published on March 28, 2003 in the **Federal Register** (68 FR 15270) the reasons why we did not implement the requirements set forth in BBRA and BIPA with regard to rebasing ASC payment rates. The March 28, 2003 final rule with comment period implemented additions to and deletions from the ASC list that had been proposed in the June 12, 1998 proposed rule, but did not implement any of the other proposed changes, including the proposed ratesetting methodology. We indicated that we were studying approaches to ratesetting, some of which may require legislative changes.

Section 626(b) of MMA repeals the requirement that we conduct a survey of ASC costs as the basis for rebasing ASC rates and requires us to implement a revised payment system between January 1, 2006 and January 1, 2008, that takes into account recommendations in the report to the Congress that is to be submitted by January 1, 2005 by the Comptroller General of the United States. Section 626(b)(1) amends section 1833(i)(2) of Act, requiring us to base payment for ASC services on survey data prior to implementation of the revised payment system. Therefore, the proposed

additions to the ASC list in this proposed notice are assigned to one of the existing nine ASC payment groups and rates that are derived from data collected in the 1986 survey of ASC costs, updated for inflation. The proposed payment group for each addition to the ASC list in this proposed notice is based on the payment group to which procedures currently on the list, which our medical advisors judged to be similar in terms of time and resource inputs, are assigned. As of April 1, 2004, in accordance with the requirements in section 626(a) of MMA and instructions that we issued to our contractors who process ASC claims in Transmittal 51, Change Request 3082, on February 6, 2004, the ASC payment rates are the following:

Group 1, $333
Group 2, $446
Group 3, $510
Group 4, $630
Group 5, $717
Group 6, $826 ($676 plus $150 for IOL)
Group 7, $995
Group 8, $973 ($823 plus $150 for IOL)
Group 9, $1339

II. Provisions of the Proposed Notice

A. Proposed Additions

(If you choose to comment on issues in this section, please include the caption ''PROPOSED ADDITIONS'' at the beginning of your comments.)

1. Proposed Additions Recommended by Commenters and Other Interested Parties

Commenters recommended that the codes in Table 1 be added to the list of Medicare-approved ASC procedures. These proposed additions are based on comments and recommendations that have been communicated to us by trade associations, medical specialty societies, physicians, ASC staff, and other individuals and organizations since the close of the extended comment period for the June 12, 1998 proposed rule, which ended July 30, 1999. After careful review by our medical staff to determine whether these procedures are consistent with our criteria (see section I.C.2 of this proposed notice), we agree with commenters that the procedures in Table 1 are appropriate and safely performed in an ASC setting. Therefore, we are proposing to add the following CPT codes to the ASC list and to assign them to the payment group that is designated for each code:

TABLE 1.—PROPOSED ADDITIONS RECOMMENDED BY COMMENTERS AND OTHER INTERESTED PARTIES

HCPCS code	Short descriptor	Payment group	Payment amount
15001	Skin graft add-on	1	$333
15836	Excise excessive skin tissue	3	510
15839	Excise excessive skin tissue	3	510
21120	Reconstruction of chin	7	995
21125	Augmentation, lower jaw bone	7	995
29873	Knee arthroscopy/surgery	3	510
30220	Insert nasal septal button	3	510
31500	Insert emergency airway	1	333
31603	Incision of windpipe	1	333
35475	Repair arterial blockage	9	1,339
35476	Repair venous blockage	9	1,339
36834	Repair AV aneurysm	3	510
37205	Transcatheter stent	9	1,339
37206	Transcatheter stent add-on	9	1,339
37500	Endoscopy ligate perf veins	3	510
42665	Ligation of salivary duct	7	995
44397	Colonoscopy w/stent	1	333
45327	Proctosigmoidoscopy w/stent	1	333
45341	Sigmoidoscopy w/ultrasound	1	333
45342	Sigmoidoscopy w/us guide bx	1	333
45345	Sigmoidoscopy w/stent	1	333
45387	Colonoscopy w/stent	1	333
57288	Repair bladder defect	5	717
62264	Epidural lysis on single day	1	333
67343	Release eye tissue	7	995

2. CPT Code Changes in 2004

Effective for services furnished on or after January 1, 2004, we revised the ASC list to reflect changes in the 2004 CPT (Transmittal AB–03–137, Change Request 2890, issued August 29, 2003). We deleted from the ASC list the following codes that were discontinued in the 2004 CPT:

HCPCS code	Short descriptor
36488	Insertion of catheter, vein.
36489	Insertion of catheter, vein.
36490	Insertion of catheter, vein.
36491	Insertion of catheter, vein.
36530	Insertion of infusion pump.
36531	Revision of infusion pump.
36532	Removal of infusion pump.
36533	Insertion of access device.
36534	Revision of access device.
36535	Removal of access device.

We added to the ASC list the following new codes created in the 2004 CPT to replace the discontinued codes:

HCPCS code	Short descriptor	Payment group	Payment amount
36555	Insert non-tunnel cv cath	1	$333
36556	Insert non-tunnel cv cath	1	333
36557	Insert tunneled cv cath	2	446
36558	Insert tunneled cv cath	2	446
36560	Insert tunneled cv cath	3	510
36561	Insert tunneled cv cath	3	510
36563	Insert tunneled cv cath	3	510
36565	Insert tunneled cv cath	3	510
36566	Insert tunneled cv cath	3	510
36568	Insert tunneled cv cath	1	333
36569	Insert tunneled cv cath	1	333
36570	Insert tunneled cv cath	3	510
36571	Insert tunneled cv cath	3	510
36575	Repair tunneled cv cath	2	446
36576	Repair tunneled cv cath	2	446
36578	Replace tunneled cv cath	2	446
36580	Replace tunneled cv cath	1	333
36581	Replace tunneled cv cath	2	446
36582	Replace tunneled cv cath	3	510
36583	Replace tunneled cv cath	3	510
36584	Replace tunneled cv cath	1	333
36585	Replace tunneled cv cath	3	510
36589	Removal tunneled cv cath	1	333
36590	Removal tunneled cv cath	1	333

B. Proposed Deletions

(If you choose to comment on issues in this section, please include the caption ''PROPOSED DELETIONS'' at the beginning of your comments.)

Our medical advisors, in accordance with the statutory requirement that we review and update the ASC list at least every two years, reviewed the current ASC list against the criteria discussed in section I.C.2 of this proposed rule. We also carefully considered and took into account deletions recommended by medical specialty societies and other commenters. Further, we reviewed the codes that the OIG recommended be deleted from the ASC list. (See section I.D. of this proposed rule). In most cases, our medical advisors agreed that the procedures recommended by the OIG for deletion no longer meet the criteria for ASC procedures, and we are proposing to delete most of those codes from the ASC list, as indicated in Table 2. We removed the following seven codes recommended for deletion by the OIG from the ASC list effective July 1, 2003: 21920, 42104, 51725, 56405, 56605, 62367, and 62368. However, there are 11 codes the OIG recommended for deletion that we believe should remain on the ASC list for reasons that we discuss in section II.C of this proposed notice. Based on our review, we are proposing to delete from the ASC list the codes listed in Table 2, for the reasons specified.

Rationale for deletion is indicated as follows:

1. Procedure is performed in physician's office more than 50 percent of the time.

2. Medical specialty organizations recommended deletion because of safety concerns.

3. Procedure is performed predominantly in the inpatient setting.

4. OIG recommended for deletion and CMS medical advisors concur.

TABLE 2.—PROPOSED DELETIONS FROM THE ASC LIST

HCPCS code	Short descriptor	Rationale
11404	Removal of skin lesion	4
11424	Removal of skin lesion	4
11444	Removal of skin lesion	4
11446	Removal of skin lesion	4
11604	Removal of skin lesion	4
11624	Removal of skin lesion	4
11644	Removal of skin lesion	4
12021	Closure of split wound	4
13100	Repair of wound or lesion	4
13101	Repair of wound or lesion	4
13120	Repair of wound or lesion	4
13121	Repair of wound or lesion	4
13131	Repair of wound or lesion	4
13132	Repair of wound or lesion	4
13150	Repair of wound or lesion	4
13151	Repair of wound or lesion	4
13152	Repair of wound or lesion	4
14000	Skin tissue rearrangement	4
14020	Skin tissue rearrangement	4

TABLE 2.—PROPOSED DELETIONS FROM THE ASC LIST—Continued

HCPCS code	Short descriptor	Rationale
14021	Skin tissue rearrangement	4
14040	Skin tissue rearrangement	4
14041	Skin tissue rearrangement	4
14060	Skin tissue rearrangement	4
14061	Skin tissue rearrangement	4
15732	Muscle-skin graft, head/neck	2
15734	Muscle-skin graft, trunk	2
15738	Muscle-skin graft, leg	2
15740	Island pedicle flap graft	4
19100	Bx breast percut w/o image	4
20670	Removal of support implant	4
21040	Removal of jaw bone lesion	1
21050	Removal of jaw joint	2
21206	Reconstruct upper jaw bone	1
21210	Face bone graft	1
21249	Reconstruction of jaw	1
21325	Treatment of nose fracture	1
21355	Treat cheek bone fracture	1
21440	Treat dental ridge fracture	1
21485	Reset dislocated jaw	1
22305	Treat spine process fracture	4
23600	Treat humerus fracture	4
23620	Treat humerus fracture	4
24576	Treat humerus fracture	1
24670	Treat ulnar fracture	4
25505	Treat fracture of radius	1
26605	Treat metacarpal fracture	4
27520	Treat kneecap fracture	4
27760	Treatment of ankle fracture	4
27780	Treatment of fibula fracture	4
27786	Treatment of ankle fracture	4
27808	Treatment of ankle fracture	4
28400	Treatment of heel fracture	4
30801	Cauterization, inner nose	4
30915	Ligation, nasal sinus artery	2
30920	Ligation, upper jaw artery	2
31233	Nasal/sinus endoscopy, dx	4
31235	Nasal/sinus endoscopy, dx	4
31237	Nasal/sinus endoscopy, surg	4
31238	Nasal/sinus endoscopy, surg	4
38505	Needle biopsy, lymph nodes	4
40700	Repair cleft lip/nasal	2
40701	Repair cleft lip/nasal	2
40814	Excise/repair mouth lesion	4
41009	Drainage of mouth lesion	1
41010	Incision of tongue fold	1
41112	Excision of tongue lesion	4
41520	Reconstruction, tongue fold	1
41800	Drainage of gum lesion	1
41827	Excision of gum lesion	1
42000	Drainage mouth roof lesion	1
42107	Excision lesion, mouth roof	1
42200	Reconstruct cleft palate	2
42205	Reconstruct cleft palate	2
42210	Reconstruct cleft palate	2
42215	Reconstruct cleft palate	2
42220	Reconstruct cleft palate	2
42409	Drainage of salivary cyst	1
42425	Excise parotid gland/lesion	3
42860	Excision of tonsil tags	1
42892	Revision pharyngeal walls	3
52000	Cystoscopy	4
52281	Cystoscopy and treatment	4
53850	Prostatic microwave thermotx	1
55700	Biopsy of prostate	4
58820	Drain ovary abscess, open	3
60000	Drain thyroid/tongue cyst	1
64420	N block inj, intercost, sng	4
64430	N block inj, pudendal	1
64736	Incision of chin nerve	1
65800	Drainage of eye	1
65805	Drainage of eye	4

TABLE 2.—PROPOSED DELETIONS FROM THE ASC LIST—Continued

HCPCS code	Short descriptor	Rationale
67141	Treatment of retina	4
68340	Separate eyelid adhesions	1
68810	Probe nasolacrimal duct	4
69145	Remove ear canal lesion(s)	4
69450	Eardrum revision	2
69725	Release facial nerve	1
69740	Repair facial nerve	2
69745	Repair facial nerve	2
69840	Revise inner ear window	1

C. Procedures Recommended for Deletion by OIG That We Propose To Retain on the ASC List

(If you choose to comment on issues in this section, please include the caption ''DELETIONS RECOMMENDED BY OIG'' at the beginning of your comments.)

Our medical staff carefully reviewed the 72 codes recommended by the OIG for deletion from the ASC list to determine if they meet the criteria for ASC procedures. We agreed that 54 of the codes on the current ASC list recommended for deletion by the OIG no longer meet our criteria, and we are proposing to delete them from the ASC list (see Table 2). However, our medical advisors determined that for health and safety reasons, the following codes should be retained on the list:

HCPCS code	Short descriptor
30802	Cauterization, inner nose.
31525	Diagnostic laryngoscopy.
31570	Laryngoscopy with injection.
45305	Proctosigmoidoscopy w/bx.
46050	Incision of anal abscess.
51710	Change of bladder tube.
51726	Complex cystometrogram.
51772	Urethra pressure profile.
52285	Cystoscopy and treatment.
67031	Laser surgery, eye strands.
67921	Repair eyelid defect.

CPT codes 30802, 31525 and 31570, according to our 2002 claims data, are being performed less than 50 percent in a physician office. Therefore, we are retaining these codes on the ASC list. While the remaining eight procedures may be safely performed in a physician's office for the majority of patients, our medical advisors believe that, in certain cases, the patient's health or medical condition may demand the more extensive services afforded by ASCs in order to ensure a safe surgical outcome. Therefore, we are proposing not to delete these codes from the ASC list.

D. Proposed Changes in Response to Public Comments on the March 28, 2003 Final Rule With Comment Period

Only certain designated codes that we identified in the Addendum of the March 28, 2003 final rule with comment period published in the **Federal Register** (68 FR 15268) were subject to public comment during the 60-day comment period following publication of the rule. That is, we solicited comment on new codes created by CPT in 1999, 2000, 2001, 2002, and 2003 that we believe meet our criteria for the ASC list, but were not included in the additions to the ASC list that we proposed in the June 12, 1998 proposed rule and, therefore, were not among the proposed additions to the ASC list that we made final in the March 2003 final rule with comment period. We received more than 100 timely comments, the overwhelming majority of which addressed payment rates, codes, and issues other than the designated codes for which comments were solicited. Because these other issues were not subject to public comment, we are not responding to comments on them in this proposed notice. However, we did review recommended additions to and deletions from the ASC list and, where appropriate, we included those codes in Table 1 and Table 2, above. Only seven commenters addressed the designated codes that were subject to public comment.

None of the commenters disagreed with the designated codes for which we requested comment on as additions to the ASC list. However, the seven commenters that addressed the designated codes that were subject to public comment disagreed with the payment group assignments for several of those codes. We address those comments below.

Comment: Seven commenters recommended that the following CPT codes be assigned to a higher payment group for which we requested comment in the March 28, 2003 final rule with comment period: CPT codes 29827, 43231, 43232, 43240, 43242, 43256, 52344, 52345, and 52346.

Response: We did not make final the payment groups and rates based on data collected in a 1994 survey of ASC costs that we had proposed in the June 12, 1998 proposed rule. Because provisions in BIPA prohibited us from using the 1994 survey data to set rates, we had no data upon which to base payment rate assignments or changes in the March 28, 2003 final rule with comment period. Therefore, we assigned both the proposed and final additions to the ASC list in the March 28 final rule with comment period to payment groups to which related codes already on the list, that are similar in terms of time and resource inputs, are assigned. Although commenters expressed concern that the payment group assignments for the nine codes listed above were too low, they did not furnish information or data to demonstrate that resource costs for the codes were similar to resource costs associated with codes in higher

payment groups. We reviewed the payment group assignments proposed for the nine codes cited by the commenters, and our medical advisors determined that, in the absence of corroborative data to the contrary, the payment groups proposed for the codes were appropriate and consistent with the method we explained in the March 28, 2003 final rule. Therefore, we are not proposing changes based on these comments in this proposed rule.

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the ''DATES'' section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Statement

A. Overall Impact

We have examined the impact of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). Our Actuary has prepared a fiscal impact estimate. As shown in the table below, for fiscal years 2005 through 2009, the effect on Medicare program expenditures if we implement the additions to and deletions from the ASC list proposed in this proposed rule is estimated to have zero impact in 2005, increasing to $20 million savings per year from 2007 through 2009. We expect the estimated savings to result from procedures proposed for deletion moving to a less costly office or clinic setting, and proposed additions shifting to ASCs from the more costly hospital setting. Therefore, this notice will not have a major impact on the Medicare budget.

FY	Cost (tens of $ millions)
2005	0
2006	−10
2007	−20
2008	−20
2009	−20

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either because of their nonprofit status or because they have revenues of $6 million to $29 million in any 1 year. According to small business associations, approximately 73 percent of all ASCs are considered small entities because they have revenues of $11.5 million or less. Individuals and States are not included in the definition of a small entity.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. This notice does not have a significant impact on the operations of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local or tribal governments, in the aggregate, or by the private sector, of $110 million. This proposed rule will not have an effect on the governments mentioned, and the private sector costs will be less than the $110 million threshold.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This rule will not have a substantial effect on State or local governments.

B. Anticipated Effects

The entities affected by this proposed notice are Medicare certified ASCs, physician offices and clinics, hospitals, and beneficiaries. No other providers are affected. This proposed rule will not affect State or local governments. There are more than 3,000 ASCs currently certified by Medicare, nearly three-quarters of which fit the definition of a ''small entity''.

This proposed rule would add 25 CPT codes to the ASC list of approved procedures. Professional societies, physicians, ASC administrators, and ASC associations recommended most of the codes proposed for addition to the ASC list. Currently, the procedures that we propose to add to the ASC list are performed predominantly in a hospital outpatient setting. Our medical advisors agree that the proposed additions meet the criteria for ASC procedures that are discussed in section I.C.2 of this preamble and that they can be safely and appropriately performed in an ASC.

Currently, if ASCs perform the 25 procedures proposed for addition, Medicare does not allow payment of an ASC facility fee. By adding these procedures to the ASC list, ASCs would benefit because Medicare would allow payment of a facility fee for the procedures. ASCs could serve a greater number of beneficiaries if they are able to offer an increased number of surgical services, and beneficiaries would have an additional setting from which to choose were it necessary for them to have one of these surgical procedures performed. We expect that most of the physician office volume for the proposed additions will, to the limited extent they are performed in physician offices, migrate to an ASC setting. This would increase Medicare program spending and beneficiary copayment amounts because the ASC facility fee for these procedures exceeds the practice expense payment that is allowed when the procedures are performed in an office setting. However, cases would also move to the ASC setting from hospital outpatient departments. To the extent that hospital outpatient utilization decreases and ASC utilization increases, the Medicare program will realize a savings because the ASC facility fee for most of the proposed additions to the ASC list is lower than the payment rate for the same procedures under the OPPS. Beneficiary copayments will also decrease for those procedures for which

the beneficiary coinsurance under the OPPS exceeds 20 percent. Because hospitals perform a much higher volume of ambulatory surgeries overall than are performed in ASCs, we do not expect significant hospital revenue losses from procedures proposed for addition to the ASC list shifting to the ASC setting.

In addition, we are proposing to delete 105 procedures from the existing ASC list. There are a few codes that we are proposing to delete on the basis of recommendations from physicians or specialty societies because the procedures do not meet our safety criteria; however, these codes are very seldom performed in ASCs, so deleting these codes from the list will have no effect on ASCs or beneficiaries. As we explained above, most of the codes that we are proposing to delete are procedures that are being performed primarily in a physician office setting, and they do not require the more elaborate resources of an ASC to be safely performed. Because many of the procedures that we propose to delete from the ASC list are for reconstructive surgery, ASCs that limit their services to this specialty would no longer receive a Medicare facility fee for these procedures and could be adversely affected. However, we do not believe that deleting these procedures from the ASC list would limit beneficiary access or compromise patient safety because the procedures are being widely and safely performed in either an office or hospital outpatient setting. Further, the Medicare program would realize substantial savings from discontinuing payment to ASCs for the codes that we propose to delete from the ASC list because payment when these procedures are performed in a hospital or physician office setting is lower than the current ASC payments for the same procedures.

For the above reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this notice would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

C. Alternatives Considered

We are issuing this proposed notice to meet a statutory requirement to update the list of approved ASC procedures biennially. We last updated the ASC list effective July 1, 2003. We implement the biennial update of the list through notice in the **Federal Register** and give interested parties an opportunity to comment on proposed additions to and deletions from the ASC list. If we do not update the ASC list by July 2005, we would be out of compliance with the statute, and we would be denying beneficiary access to surgical procedures in the ASC setting that meet our criteria and are safely and appropriately performed in an ASC.

In accordance with the provisions of Executive Order 12866, this proposed regulation was reviewed by the Office of Management and Budget.

Authority: (Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 10, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare Medicaid Services.

Approved: August 6, 2004.

Tommy G. Thompson,

Secretary.

BILLING CODE 4120–01–P

Addendum-List of Medicare Approved ASC Procedures with Proposed Additions and Deletions

HCPCS Code	Short Descriptor	Status	ASC Payment Group	ASC Payment Rate
10121	Remove foreign body		2	446.00
10180	Complex drainage, wound		2	446.00
11010	Debride skin, fx		2	446.00
11011	Debride skin/muscle, fx		2	446.00
11012	Debride skin/muscle/bone, fx		2	446.00
11042	Debride skin/tissue		2	446.00
11043	Debride tissue/muscle		2	446.00
11044	Debride tissue/muscle/bone		2	446.00
11404	Removal of skin lesion	D	1	333.00
11406	Removal of skin lesion		2	446.00
11424	Removal of skin lesion	D	2	446.00
11426	Removal of skin lesion		2	446.00
11444	Removal of skin lesion	D	1	333.00
11446	Removal of skin lesion	D	2	446.00
11450	Removal, sweat gland lesion		2	446.00
11451	Removal, sweat gland lesion		2	446.00
11462	Removal, sweat gland lesion		2	446.00
11463	Removal, sweat gland lesion		2	446.00
11470	Removal, sweat gland lesion		2	446.00
11471	Removal, sweat gland lesion		2	446.00
11604	Removal of skin lesion	D	2	446.00
11606	Removal of skin lesion		2	446.00
11624	Removal of skin lesion	D	2	446.00
11626	Removal of skin lesion		2	446.00
11644	Removal of skin lesion	D	2	446.00
11646	Removal of skin lesion		2	446.00
11770	Removal of pilonidal lesion		3	510.00
11771	Removal of pilonidal lesion		3	510.00
11772	Removal of pilonidal lesion		3	510.00
11960	Insert tissue expander(s)		2	446.00
11970	Replace tissue expander		3	510.00
11971	Remove tissue expander(s)		1	333.00
12005	Repair superficial wound(s)		2	446.00
12006	Repair superficial wound(s)		2	446.00
12007	Repair superficial wound(s)		2	446.00
12016	Repair superficial wound(s)		2	446.00
12017	Repair superficial wound(s)		2	446.00

12018	Repair superficial wound(s)		2	446.00
12020	Closure of split wound		1	333.00
12021	Closure of split wound	D	1	333.00
12034	Layer closure of wound(s)		2	446.00
12035	Layer closure of wound(s)		2	446.00
12036	Layer closure of wound(s)		2	446.00
12037	Layer closure of wound(s)		2	446.00
12044	Layer closure of wound(s)		2	446.00
12045	Layer closure of wound(s)		2	446.00
12046	Layer closure of wound(s)		2	446.00
12047	Layer closure of wound(s)		2	446.00
12054	Layer closure of wound(s)		2	446.00
12055	Layer closure of wound(s)		2	446.00
12056	Layer closure of wound(s)		2	446.00
12057	Layer closure of wound(s)		2	446.00
13100	Repair of wound or lesion	D	2	446.00
13101	Repair of wound or lesion	D	3	510.00
13120	Repair of wound or lesion	D	2	446.00
13121	Repair of wound or lesion	D	3	510.00
13131	Repair of wound or lesion	D	2	446.00
13132	Repair of wound or lesion	D	3	510.00
13150	Repair of wound or lesion	D	3	510.00
13151	Repair of wound or lesion	D	3	510.00
13152	Repair of wound or lesion	D	3	510.00
13160	Late closure of wound		2	446.00
14000	Skin tissue rearrangement	D	2	446.00
14001	Skin tissue rearrangement		3	510.00
14020	Skin tissue rearrangement	D	3	510.00
14021	Skin tissue rearrangement	D	3	510.00
14040	Skin tissue rearrangement	D	2	446.00
14041	Skin tissue rearrangement	D	3	510.00
14060	Skin tissue rearrangement	D	3	510.00
14061	Skin tissue rearrangement	D	3	510.00
14300	Skin tissue rearrangement		4	630.00
14350	Skin tissue rearrangement		3	510.00
15000	Skin graft		2	446.00
15001	Skin graft add-on	A	1	333.00
15050	Skin pinch graft		2	446.00
15100	Skin split graft		2	446.00
15101	Skin split graft add-on		3	510.00
15120	Skin split graft		2	446.00
15121	Skin split graft add-on		3	510.00
15200	Skin full graft		3	510.00
15201	Skin full graft add-on		2	446.00
15220	Skin full graft		2	446.00

15221	Skin full graft add-on		2	446.00
15240	Skin full graft		3	510.00
15241	Skin full graft add-on		3	510.00
15260	Skin full graft		2	446.00
15261	Skin full graft add-on		2	446.00
15350	Skin homograft		2	446.00
15351	Skin homograft add-on		2	446.00
15400	Skin heterograft		2	446.00
15401	Skin heterograft add-on		2	446.00
15570	Form skin pedicle flap		3	510.00
15572	Form skin pedicle flap		3	510.00
15574	Form skin pedicle flap		3	510.00
15576	Form skin pedicle flap		3	510.00
15600	Skin graft		3	510.00
15610	Skin graft		3	510.00
15620	Skin graft		4	630.00
15630	Skin graft		3	510.00
15650	Transfer skin pedicle flap		5	717.00
15732	Muscle-skin graft, head/neck	D	3	510.00
15734	Muscle-skin graft, trunk	D	3	510.00
15736	Muscle-skin graft, arm		3	510.00
15738	Muscle-skin graft, leg	D	3	510.00
15740	Island pedicle flap graft	D	2	446.00
15750	Neurovascular pedicle graft		2	446.00
15760	Composite skin graft		2	446.00
15770	Derma-fat-fascia graft		3	510.00
15775	Hair transplant punch grafts		3	510.00
15776	Hair transplant punch grafts		3	510.00
15820	Revision of lower eyelid		3	510.00
15821	Revision of lower eyelid		3	510.00
15822	Revision of upper eyelid		3	510.00
15823	Revision of upper eyelid		5	717.00
15824	Removal of forehead wrinkles		3	510.00
15825	Removal of neck wrinkles		3	510.00
15826	Removal of brow wrinkles		3	510.00
15828	Removal of face wrinkles		3	510.00
15829	Removal of skin wrinkles		5	717.00
15831	Excise excessive skin tissue		3	510.00
15832	Excise excessive skin tissue		3	510.00
15833	Excise excessive skin tissue		3	510.00
15834	Excise excessive skin tissue		3	510.00
15835	Excise excessive skin tissue		3	510.00
15836	Excise excessive skin tissue	A	3	510.00
15839	Excise excessive skin tissue	A	3	510.00
15840	Graft for face nerve palsy		4	630.00

15841	Graft for face nerve palsy		4	630.00
15845	Skin and muscle repair, face		4	630.00
15876	Suction assisted lipectomy		3	510.00
15877	Suction assisted lipectomy		3	510.00
15878	Suction assisted lipectomy		3	510.00
15879	Suction assisted lipectomy		3	510.00
15920	Removal of tail bone ulcer		3	510.00
15922	Removal of tail bone ulcer		4	630.00
15931	Remove sacrum pressure sore		3	510.00
15933	Remove sacrum pressure sore		3	510.00
15934	Remove sacrum pressure sore		3	510.00
15935	Remove sacrum pressure sore		4	630.00
15936	Remove sacrum pressure sore		4	630.00
15937	Remove sacrum pressure sore		4	630.00
15940	Remove hip pressure sore		3	510.00
15941	Remove hip pressure sore		3	510.00
15944	Remove hip pressure sore		3	510.00
15945	Remove hip pressure sore		4	630.00
15946	Remove hip pressure sore		4	630.00
15950	Remove thigh pressure sore		3	510.00
15951	Remove thigh pressure sore		4	630.00
15952	Remove thigh pressure sore		3	510.00
15953	Remove thigh pressure sore		4	630.00
15956	Remove thigh pressure sore		3	510.00
15958	Remove thigh pressure sore		4	630.00
16015	Treatment of burn(s)		2	446.00
19020	Incision of breast lesion		2	446.00
19100	Bx breast percut w/o image	D	1	333.00
19101	Biopsy of breast, open		2	446.00
19102	Bx breast percut w/image		2	446.00
19103	Bx breast percut w/device		2	446.00
19110	Nipple exploration		2	446.00
19112	Excise breast duct fistula		3	510.00
19120	Removal of breast lesion		3	510.00
19125	Excision, breast lesion		3	510.00
19126	Excision, addl breast lesion		3	510.00
19140	Removal of breast tissue		4	630.00
19160	Removal of breast tissue		3	510.00
19162	Remove breast tissue, nodes		7	995.00
19180	Removal of breast		4	630.00
19182	Removal of breast		4	630.00
19290	Place needle wire, breast		1	333.00
19291	Place needle wire, breast		1	333.00
19316	Suspension of breast		4	630.00
19318	Reduction of large breast		4	630.00

19324	Enlarge breast		4	630.00
19325	Enlarge breast with implant		9	1,339.00
19328	Removal of breast implant		1	333.00
19330	Removal of implant material		1	333.00
19340	Immediate breast prosthesis		2	446.00
19342	Delayed breast prosthesis		3	510.00
19350	Breast reconstruction		4	630.00
19355	Correct inverted nipple(s)		4	630.00
19357	Breast reconstruction		5	717.00
19366	Breast reconstruction		5	717.00
19370	Surgery of breast capsule		4	630.00
19371	Removal of breast capsule		4	630.00
19380	Revise breast reconstruction		5	717.00
20005	Incision of deep abscess		2	446.00
20200	Muscle biopsy		2	446.00
20205	Deep muscle biopsy		3	510.00
20206	Needle biopsy, muscle		1	333.00
20220	Bone biopsy, trocar/needle		1	333.00
20225	Bone biopsy, trocar/needle		2	446.00
20240	Bone biopsy, excisional		2	446.00
20245	Bone biopsy, excisional		3	510.00
20250	Open bone biopsy		3	510.00
20251	Open bone biopsy		3	510.00
20525	Removal of foreign body		3	510.00
20650	Insert and remove bone pin		3	510.00
20670	Removal of support implant	D	1	333.00
20680	Removal of support implant		3	510.00
20690	Apply bone fixation device		2	446.00
20692	Apply bone fixation device		3	510.00
20693	Adjust bone fixation device		3	510.00
20694	Remove bone fixation device		1	333.00
20900	Removal of bone for graft		3	510.00
20902	Removal of bone for graft		4	630.00
20910	Remove cartilage for graft		3	510.00
20912	Remove cartilage for graft		3	510.00
20920	Removal of fascia for graft		4	630.00
20922	Removal of fascia for graft		3	510.00
20924	Removal of tendon for graft		4	630.00
20926	Removal of tissue for graft		4	630.00
20975	Electrical bone stimulation		2	446.00
21010	Incision of jaw joint		2	446.00
21015	Resection of facial tumor		3	510.00
21025	Excision of bone, lower jaw		2	446.00
21026	Excision of facial bone(s)		2	446.00
21029	Contour of face bone lesion		2	446.00

21034	Removal of face bone lesion		3	510.00
21040	Removal of jaw bone lesion	D	2	446.00
21044	Removal of jaw bone lesion		2	446.00
21046	Excision, benign tumor, mandible		2	446.00
21047	Excision, benign tumor, mandible		2	446.00
21050	Removal of jaw joint	D	3	510.00
21060	Remove jaw joint cartilage		2	446.00
21070	Remove coronoid process		3	510.00
21100	Maxillofacial fixation		2	446.00
21120	Reconstruction of chin	A	7	995.00
21121	Reconstruction of chin		7	995.00
21122	Reconstruction of chin		7	995.00
21123	Reconstruction of chin		7	995.00
21125	Augmentation, lower jaw bone	A	7	995.00
21127	Augmentation, lower jaw bone		9	1,339.00
21181	Contour cranial bone lesion		7	995.00
21206	Reconstruct upper jaw bone	D	5	717.00
21208	Augmentation of facial bones		7	995.00
21209	Reduction of facial bones		5	717.00
21210	Face bone graft	D	7	995.00
21215	Lower jaw bone graft		7	995.00
21230	Rib cartilage graft		7	995.00
21235	Ear cartilage graft		7	995.00
21240	Reconstruction of jaw joint		4	630.00
21242	Reconstruction of jaw joint		5	717.00
21243	Reconstruction of jaw joint		5	717.00
21244	Reconstruction of lower jaw		7	995.00
21245	Reconstruction of jaw		7	995.00
21246	Reconstruction of jaw		7	995.00
21248	Reconstruction of jaw		7	995.00
21249	Reconstruction of jaw	D	7	995.00
21267	Revise eye sockets		7	995.00
21270	Augmentation, cheek bone		5	717.00
21275	Revision, orbitofacial bones		7	995.00
21280	Revision of eyelid		5	717.00
21282	Revision of eyelid		5	717.00
21295	Reconst lwr jaw w/o fixation		1	333.00
21296	Reconst lwr jaw w/fixation		1	333.00
21300	Treatment of skull fracture		2	446.00
21310	Treatment of nose fracture		2	446.00
21315	Treatment of nose fracture		2	446.00
21320	Treatment of nose fracture		2	446.00
21325	Treatment of nose fracture	D	4	630.00
21330	Treatment of nose fracture		5	717.00
21335	Treatment of nose fracture		7	995.00

21336	Treat nasal septal fracture		4	630.00
21337	Treat nasal septal fracture		2	446.00
21338	Treat nasoethmoid fracture		4	630.00
21339	Treat nasoethmoid fracture		5	717.00
21340	Treatment of nose fracture		4	630.00
21345	Treat nose/jaw fracture		7	995.00
21355	Treat cheek bone fracture	D	3	510.00
21400	Treat eye socket fracture		2	446.00
21401	Treat eye socket fracture		3	510.00
21421	Treat mouth roof fracture		4	630.00
21440	Treat dental ridge fracture	D	3	510.00
21445	Treat dental ridge fracture		4	630.00
21450	Treat lower jaw fracture		3	510.00
21451	Treat lower jaw fracture		4	630.00
21452	Treat lower jaw fracture		2	446.00
21453	Treat lower jaw fracture		3	510.00
21454	Treat lower jaw fracture		5	717.00
21461	Treat lower jaw fracture		4	630.00
21462	Treat lower jaw fracture		5	717.00
21465	Treat lower jaw fracture		4	630.00
21480	Reset dislocated jaw		1	333.00
21485	Reset dislocated jaw	D	2	446.00
21490	Repair dislocated jaw		3	510.00
21493	Treat hyoid bone fracture		3	510.00
21494	Treat hyoid bone fracture		4	630.00
21497	Interdental wiring		2	446.00
21501	Drain neck/chest lesion		2	446.00
21502	Drain chest lesion		2	446.00
21555	Remove lesion, neck/chest		2	446.00
21556	Remove lesion, neck/chest		2	446.00
21600	Partial removal of rib		2	446.00
21610	Partial removal of rib		2	446.00
21700	Revision of neck muscle		2	446.00
21720	Revision of neck muscle		3	510.00
21725	Revision of neck muscle		3	510.00
21800	Treatment of rib fracture		1	333.00
21805	Treatment of rib fracture		2	446.00
21820	Treat sternum fracture		1	333.00
21925	Biopsy soft tissue of back		2	446.00
21930	Remove lesion, back or flank		2	446.00
21935	Remove tumor, back		3	510.00
22305	Treat spine process fracture	D	1	333.00
22310	Treat spine fracture		1	333.00
22315	Treat spine fracture		2	446.00
22505	Manipulation of spine		2	446.00

22900	Remove abdominal wall lesion		4	630.00
23000	Removal of calcium deposits		2	446.00
23020	Release shoulder joint		2	446.00
23030	Drain shoulder lesion		1	333.00
23031	Drain shoulder bursa		3	510.00
23035	Drain shoulder bone lesion		3	510.00
23040	Exploratory shoulder surgery		3	510.00
23044	Exploratory shoulder surgery		4	630.00
23066	Biopsy shoulder tissues		2	446.00
23075	Removal of shoulder lesion		2	446.00
23076	Removal of shoulder lesion		2	446.00
23077	Remove tumor of shoulder		3	510.00
23100	Biopsy of shoulder joint		2	446.00
23101	Shoulder joint surgery		7	995.00
23105	Remove shoulder joint lining		4	630.00
23106	Incision of collarbone joint		4	630.00
23107	Explore treat shoulder joint		4	630.00
23120	Partial removal, collar bone		5	717.00
23125	Removal of collar bone		5	717.00
23130	Remove shoulder bone, part		5	717.00
23140	Removal of bone lesion		4	630.00
23145	Removal of bone lesion		5	717.00
23146	Removal of bone lesion		5	717.00
23150	Removal of humerus lesion		4	630.00
23155	Removal of humerus lesion		5	717.00
23156	Removal of humerus lesion		5	717.00
23170	Remove collar bone lesion		2	446.00
23172	Remove shoulder blade lesion		2	446.00
23174	Remove humerus lesion		2	446.00
23180	Remove collar bone lesion		4	630.00
23182	Remove shoulder blade lesion		4	630.00
23184	Remove humerus lesion		4	630.00
23190	Partial removal of scapula		4	630.00
23195	Removal of head of humerus		5	717.00
23330	Remove shoulder foreign body		1	333.00
23331	Remove shoulder foreign body		1	333.00
23395	Muscle transfer,shoulder/arm		5	717.00
23397	Muscle transfers		7	995.00
23400	Fixation of shoulder blade		7	995.00
23405	Incision of tendon & muscle		2	446.00
23406	Incise tendon(s) & muscle(s)		2	446.00
23410	Repair of tendon(s)		5	717.00
23412	Repair of tendon(s)		7	995.00
23415	Release of shoulder ligament		5	717.00
23420	Repair of shoulder		7	995.00

23430	Repair biceps tendon		4	630.00
23440	Remove/transplant tendon		4	630.00
23450	Repair shoulder capsule		5	717.00
23455	Repair shoulder capsule		7	995.00
23460	Repair shoulder capsule		5	717.00
23462	Repair shoulder capsule		7	995.00
23465	Repair shoulder capsule		5	717.00
23466	Repair shoulder capsule		7	995.00
23480	Revision of collar bone		4	630.00
23485	Revision of collar bone		7	995.00
23490	Reinforce clavicle		3	510.00
23491	Reinforce shoulder bones		3	510.00
23500	Treat clavicle fracture		1	333.00
23505	Treat clavicle fracture		1	333.00
23515	Treat clavicle fracture		3	510.00
23520	Treat clavicle dislocation		1	333.00
23525	Treat clavicle dislocation		1	333.00
23530	Treat clavicle dislocation		3	510.00
23532	Treat clavicle dislocation		4	630.00
23540	Treat clavicle dislocation		1	333.00
23545	Treat clavicle dislocation		1	333.00
23550	Treat clavicle dislocation		3	510.00
23552	Treat clavicle dislocation		4	630.00
23570	Treat shoulder blade fx		1	333.00
23575	Treat shoulder blade fx		1	333.00
23585	Treat scapula fracture		3	510.00
23600	Treat humerus fracture	D	1	333.00
23605	Treat humerus fracture		2	446.00
23615	Treat humerus fracture		4	630.00
23616	Treat humerus fracture		4	630.00
23620	Treat humerus fracture	D	1	333.00
23625	Treat humerus fracture		2	446.00
23630	Treat humerus fracture		5	717.00
23650	Treat shoulder dislocation		1	333.00
23655	Treat shoulder dislocation		1	333.00
23660	Treat shoulder dislocation		3	510.00
23665	Treat dislocation/fracture		2	446.00
23670	Treat dislocation/fracture		3	510.00
23675	Treat dislocation/fracture		2	446.00
23680	Treat dislocation/fracture		3	510.00
23700	Fixation of shoulder		1	333.00
23800	Fusion of shoulder joint		4	630.00
23802	Fusion of shoulder joint		7	995.00
23921	Amputation follow-up surgery		3	510.00
23930	Drainage of arm lesion		1	333.00

23931	Drainage of arm bursa		2	446.00
23935	Drain arm/elbow bone lesion		2	446.00
24000	Exploratory elbow surgery		4	630.00
24006	Release elbow joint		4	630.00
24066	Biopsy arm/elbow soft tissue		2	446.00
24075	Remove arm/elbow lesion		2	446.00
24076	Remove arm/elbow lesion		2	446.00
24077	Remove tumor of arm/elbow		3	510.00
24100	Biopsy elbow joint lining		1	333.00
24101	Explore/treat elbow joint		4	630.00
24102	Remove elbow joint lining		4	630.00
24105	Removal of elbow bursa		3	510.00
24110	Remove humerus lesion		2	446.00
24115	Remove/graft bone lesion		3	510.00
24116	Remove/graft bone lesion		3	510.00
24120	Remove elbow lesion		3	510.00
24125	Remove/graft bone lesion		3	510.00
24126	Remove/graft bone lesion		3	510.00
24130	Removal of head of radius		3	510.00
24134	Removal of arm bone lesion		2	446.00
24136	Remove radius bone lesion		2	446.00
24138	Remove elbow bone lesion		2	446.00
24140	Partial removal of arm bone		3	510.00
24145	Partial removal of radius		3	510.00
24147	Partial removal of elbow		2	446.00
24155	Removal of elbow joint		3	510.00
24160	Remove elbow joint implant		2	446.00
24164	Remove radius head implant		3	510.00
24201	Removal of arm foreign body		2	446.00
24301	Muscle/tendon transfer		4	630.00
24305	Arm tendon lengthening		4	630.00
24310	Revision of arm tendon		3	510.00
24320	Repair of arm tendon		3	510.00
24330	Revision of arm muscles		3	510.00
24331	Revision of arm muscles		3	510.00
24340	Repair of biceps tendon		3	510.00
24341	Repair arm tendon/muscle		3	510.00
24342	Repair of ruptured tendon		3	510.00
24345	Repr elbw med ligmnt w/tissu		2	446.00
24350	Repair of tennis elbow		3	510.00
24351	Repair of tennis elbow		3	510.00
24352	Repair of tennis elbow		3	510.00
24354	Repair of tennis elbow		3	510.00
24356	Revision of tennis elbow		3	510.00
24360	Reconstruct elbow joint		5	717.00

24361	Reconstruct elbow joint		5	717.00
24362	Reconstruct elbow joint		5	717.00
24363	Replace elbow joint		7	995.00
24365	Reconstruct head of radius		5	717.00
24366	Reconstruct head of radius		5	717.00
24400	Revision of humerus		4	630.00
24410	Revision of humerus		4	630.00
24420	Revision of humerus		3	510.00
24430	Repair of humerus		3	510.00
24435	Repair humerus with graft		4	630.00
24470	Revision of elbow joint		3	510.00
24495	Decompression of forearm		2	446.00
24498	Reinforce humerus		3	510.00
24500	Treat humerus fracture		1	333.00
24505	Treat humerus fracture		1	333.00
24515	Treat humerus fracture		4	630.00
24516	Treat humerus fracture		4	630.00
24530	Treat humerus fracture		1	333.00
24535	Treat humerus fracture		1	333.00
24538	Treat humerus fracture		2	446.00
24545	Treat humerus fracture		4	630.00
24546	Treat humerus fracture		5	717.00
24560	Treat humerus fracture		1	333.00
24565	Treat humerus fracture		2	446.00
24566	Treat humerus fracture		2	446.00
24575	Treat humerus fracture		3	510.00
24576	Treat humerus fracture	D	1	333.00
24577	Treat humerus fracture		1	333.00
24579	Treat humerus fracture		3	510.00
24582	Treat humerus fracture		2	446.00
24586	Treat elbow fracture		4	630.00
24587	Treat elbow fracture		5	717.00
24600	Treat elbow dislocation		1	333.00
24605	Treat elbow dislocation		2	446.00
24615	Treat elbow dislocation		3	510.00
24620	Treat elbow fracture		2	446.00
24635	Treat elbow fracture		3	510.00
24655	Treat radius fracture		1	333.00
24665	Treat radius fracture		4	630.00
24666	Treat radius fracture		4	630.00
24670	Treat ulnar fracture	D	1	333.00
24675	Treat ulnar fracture		1	333.00
24685	Treat ulnar fracture		3	510.00
24800	Fusion of elbow joint		4	630.00
24802	Fusion/graft of elbow joint		5	717.00

24925	Amputation follow-up surgery		3	510.00
25000	Incision of tendon sheath		3	510.00
25020	Decompress forearm 1 space		3	510.00
25023	Decompress forearm 1 space		3	510.00
25024	Decompress forearm 2 spaces		3	510.00
25025	Decompress forarm 2 spaces		3	510.00
25028	Drainage of forearm lesion		1	333.00
25031	Drainage of forearm bursa		2	446.00
25035	Treat forearm bone lesion		2	446.00
25040	Explore/treat wrist joint		5	717.00
25066	Biopsy forearm soft tissues		2	446.00
25075	Remove forearm lesion subcut		2	446.00
25076	Remove forearm lesion deep		3	510.00
25077	Remove tumor, forearm/wrist		3	510.00
25085	Incision of wrist capsule		3	510.00
25100	Biopsy of wrist joint		2	446.00
25101	Explore/treat wrist joint		3	510.00
25105	Remove wrist joint lining		4	630.00
25107	Remove wrist joint cartilage		3	510.00
25110	Remove wrist tendon lesion		3	510.00
25111	Remove wrist tendon lesion		3	510.00
25112	Reremove wrist tendon lesion		4	630.00
25115	Remove wrist/forearm lesion		4	630.00
25116	Remove wrist/forearm lesion		4	630.00
25118	Excise wrist tendon sheath		2	446.00
25119	Partial removal of ulna		3	510.00
25120	Removal of forearm lesion		3	510.00
25125	Remove/graft forearm lesion		3	510.00
25126	Remove/graft forearm lesion		3	510.00
25130	Removal of wrist lesion		3	510.00
25135	Remove & graft wrist lesion		3	510.00
25136	Remove & graft wrist lesion		3	510.00
25145	Remove forearm bone lesion		2	446.00
25150	Partial removal of ulna		2	446.00
25151	Partial removal of radius		2	446.00
25210	Removal of wrist bone		3	510.00
25215	Removal of wrist bones		4	630.00
25230	Partial removal of radius		4	630.00
25240	Partial removal of ulna		4	630.00
25248	Remove forearm foreign body		2	446.00
25250	Removal of wrist prosthesis		1	333.00
25251	Removal of wrist prosthesis		1	333.00
25260	Repair forearm tendon/muscle		4	630.00
25263	Repair forearm tendon/muscle		2	446.00
25265	Repair forearm tendon/muscle		3	510.00

25270	Repair forearm tendon/muscle		4	630.00
25272	Repair forearm tendon/muscle		3	510.00
25274	Repair forearm tendon/muscle		4	630.00
25275	Repair forearm tendon sheath		4	630.00
25280	Revise wrist/forearm tendon		4	630.00
25290	Incise wrist/forearm tendon		3	510.00
25295	Release wrist/forearm tendon		3	510.00
25300	Fusion of tendons at wrist		3	510.00
25301	Fusion of tendons at wrist		3	510.00
25310	Transplant forearm tendon		3	510.00
25312	Transplant forearm tendon		4	630.00
25315	Revise palsy hand tendon(s)		3	510.00
25316	Revise palsy hand tendon(s)		3	510.00
25320	Repair/revise wrist joint		3	510.00
25332	Revise wrist joint		5	717.00
25335	Realignment of hand		3	510.00
25337	Reconstruct ulna/radioulnar		5	717.00
25350	Revision of radius		3	510.00
25355	Revision of radius		3	510.00
25360	Revision of ulna		3	510.00
25365	Revise radius & ulna		3	510.00
25370	Revise radius or ulna		3	510.00
25375	Revise radius & ulna		4	630.00
25390	Shorten radius or ulna		3	510.00
25391	Lengthen radius or ulna		4	630.00
25392	Shorten radius & ulna		3	510.00
25393	Lengthen radius & ulna		4	630.00
25400	Repair radius or ulna		3	510.00
25405	Repair/graft radius or ulna		4	630.00
25415	Repair radius & ulna		3	510.00
25420	Repair/graft radius & ulna		4	630.00
25425	Repair/graft radius or ulna		3	510.00
25426	Repair/graft radius & ulna		4	630.00
25440	Repair/graft wrist bone		4	630.00
25441	Reconstruct wrist joint		5	717.00
25442	Reconstruct wrist joint		5	717.00
25443	Reconstruct wrist joint		5	717.00
25444	Reconstruct wrist joint		5	717.00
25445	Reconstruct wrist joint		5	717.00
25446	Wrist replacement		7	995.00
25447	Repair wrist joint(s)		5	717.00
25449	Remove wrist joint implant		5	717.00
25450	Revision of wrist joint		3	510.00
25455	Revision of wrist joint		3	510.00
25490	Reinforce radius		3	510.00

25491	Reinforce ulna		3	510.00
25492	Reinforce radius and ulna		3	510.00
25505	Treat fracture of radius	D	1	333.00
25515	Treat fracture of radius		3	510.00
25520	Treat fracture of radius		1	333.00
25525	Treat fracture of radius		4	630.00
25526	Treat fracture of radius		5	717.00
25535	Treat fracture of ulna		1	333.00
25545	Treat fracture of ulna		3	510.00
25565	Treat fracture radius & ulna		2	446.00
25574	Treat fracture radius & ulna		3	510.00
25575	Treat fracture radius/ulna		3	510.00
25605	Treat fracture radius/ulna		3	510.00
25611	Treat fracture radius/ulna		3	510.00
25620	Treat fracture radius/ulna		5	717.00
25624	Treat wrist bone fracture		2	446.00
25628	Treat wrist bone fracture		3	510.00
25635	Treat wrist bone fracture		1	333.00
25645	Treat wrist bone fracture		3	510.00
25660	Treat wrist dislocation		1	333.00
25670	Treat wrist dislocation		3	510.00
25671	Pin radioulnar dislocation		1	333.00
25675	Treat wrist dislocation		1	333.00
25676	Treat wrist dislocation		2	446.00
25680	Treat wrist fracture		2	446.00
25685	Treat wrist fracture		3	510.00
25690	Treat wrist dislocation		1	333.00
25695	Treat wrist dislocation		2	446.00
25800	Fusion of wrist joint		4	630.00
25805	Fusion/graft of wrist joint		5	717.00
25810	Fusion/graft of wrist joint		5	717.00
25820	Fusion of hand bones		4	630.00
25825	Fuse hand bones with graft		5	717.00
25830	Fusion, radioulnar jnt/ulna		5	717.00
25907	Amputation follow-up surgery		3	510.00
25922	Amputate hand at wrist		3	510.00
25929	Amputation follow-up surgery		3	510.00
26011	Drainage of finger abscess		1	333.00
26020	Drain hand tendon sheath		2	446.00
26025	Drainage of palm bursa		1	333.00
26030	Drainage of palm bursa(s)		2	446.00
26034	Treat hand bone lesion		2	446.00
26040	Release palm contracture		4	630.00
26045	Release palm contracture		3	510.00
26055	Incise finger tendon sheath		2	446.00

26060	Incision of finger tendon		2	446.00
26070	Explore/treat hand joint		2	446.00
26075	Explore/treat finger joint		4	630.00
26080	Explore/treat finger joint		4	630.00
26100	Biopsy hand joint lining		2	446.00
26105	Biopsy finger joint lining		1	333.00
26110	Biopsy finger joint lining		1	333.00
26115	Remove hand lesion subcut		2	446.00
26116	Remove hand lesion, deep		2	446.00
26117	Remove tumor, hand/finger		3	510.00
26121	Release palm contracture		4	630.00
26123	Release palm contracture		4	630.00
26125	Release palm contracture		4	630.00
26130	Remove wrist joint lining		3	510.00
26135	Revise finger joint, each		4	630.00
26140	Revise finger joint, each		2	446.00
26145	Tendon excision, palm/finger		3	510.00
26160	Remove tendon sheath lesion		3	510.00
26170	Removal of palm tendon, each		3	510.00
26180	Removal of finger tendon		3	510.00
26185	Remove finger bone		4	630.00
26200	Remove hand bone lesion		2	446.00
26205	Remove/graft bone lesion		3	510.00
26210	Removal of finger lesion		2	446.00
26215	Remove/graft finger lesion		3	510.00
26230	Partial removal of hand bone		7	995.00
26235	Partial removal, finger bone		3	510.00
26236	Partial removal, finger bone		3	510.00
26250	Extensive hand surgery		3	510.00
26255	Extensive hand surgery		3	510.00
26260	Extensive finger surgery		3	510.00
26261	Extensive finger surgery		3	510.00
26262	Partial removal of finger		2	446.00
26320	Removal of implant from hand		2	446.00
26350	Repair finger/hand tendon		1	333.00
26352	Repair/graft hand tendon		4	630.00
26356	Repair finger/hand tendon		4	630.00
26357	Repair finger/hand tendon		4	630.00
26358	Repair/graft hand tendon		4	630.00
26370	Repair finger/hand tendon		4	630.00
26372	Repair/graft hand tendon		4	630.00
26373	Repair finger/hand tendon		3	510.00
26390	Revise hand/finger tendon		4	630.00
26392	Repair/graft hand tendon		3	510.00
26410	Repair hand tendon		3	510.00

26412	Repair/graft hand tendon		3	510.00
26415	Excision, hand/finger tendon		4	630.00
26416	Graft hand or finger tendon		3	510.00
26418	Repair finger tendon		4	630.00
26420	Repair/graft finger tendon		4	630.00
26426	Repair finger/hand tendon		3	510.00
26428	Repair/graft finger tendon		3	510.00
26432	Repair finger tendon		3	510.00
26433	Repair finger tendon		3	510.00
26434	Repair/graft finger tendon		3	510.00
26437	Realignment of tendons		3	510.00
26440	Release palm/finger tendon		3	510.00
26442	Release palm & finger tendon		3	510.00
26445	Release hand/finger tendon		3	510.00
26449	Release forearm/hand tendon		3	510.00
26450	Incision of palm tendon		3	510.00
26455	Incision of finger tendon		3	510.00
26460	Incise hand/finger tendon		3	510.00
26471	Fusion of finger tendons		2	446.00
26474	Fusion of finger tendons		2	446.00
26476	Tendon lengthening		1	333.00
26477	Tendon shortening		1	333.00
26478	Lengthening of hand tendon		1	333.00
26479	Shortening of hand tendon		1	333.00
26480	Transplant hand tendon		3	510.00
26483	Transplant/graft hand tendon		3	510.00
26485	Transplant palm tendon		2	446.00
26489	Transplant/graft palm tendon		3	510.00
26490	Revise thumb tendon		3	510.00
26492	Tendon transfer with graft		3	510.00
26494	Hand tendon/muscle transfer		3	510.00
26496	Revise thumb tendon		3	510.00
26497	Finger tendon transfer		3	510.00
26498	Finger tendon transfer		4	630.00
26499	Revision of finger		3	510.00
26500	Hand tendon reconstruction		4	630.00
26502	Hand tendon reconstruction		4	630.00
26504	Hand tendon reconstruction		4	630.00
26508	Release thumb contracture		3	510.00
26510	Thumb tendon transfer		3	510.00
26516	Fusion of knuckle joint		1	333.00
26517	Fusion of knuckle joints		3	510.00
26518	Fusion of knuckle joints		3	510.00
26520	Release knuckle contracture		3	510.00
26525	Release finger contracture		3	510.00

26530	Revise knuckle joint		3	510.00
26531	Revise knuckle with implant		7	995.00
26535	Revise finger joint		5	717.00
26536	Revise/implant finger joint		5	717.00
26540	Repair hand joint		4	630.00
26541	Repair hand joint with graft		7	995.00
26542	Repair hand joint with graft		4	630.00
26545	Reconstruct finger joint		4	630.00
26546	Repair nonunion hand		4	630.00
26548	Reconstruct finger joint		4	630.00
26550	Construct thumb replacement		2	446.00
26555	Positional change of finger		3	510.00
26560	Repair of web finger		2	446.00
26561	Repair of web finger		3	510.00
26562	Repair of web finger		4	630.00
26565	Correct metacarpal flaw		5	717.00
26567	Correct finger deformity		5	717.00
26568	Lengthen metacarpal/finger		3	510.00
26580	Repair hand deformity		5	717.00
26587	Reconstruct extra finger		5	717.00
26590	Repair finger deformity		5	717.00
26591	Repair muscles of hand		3	510.00
26593	Release muscles of hand		3	510.00
26596	Excision constricting tissue		2	446.00
26605	Treat metacarpal fracture	D	2	446.00
26607	Treat metacarpal fracture		2	446.00
26608	Treat metacarpal fracture		4	630.00
26615	Treat metacarpal fracture		4	630.00
26645	Treat thumb fracture		1	333.00
26650	Treat thumb fracture		2	446.00
26665	Treat thumb fracture		4	630.00
26675	Treat hand dislocation		2	446.00
26676	Pin hand dislocation		2	446.00
26685	Treat hand dislocation		3	510.00
26686	Treat hand dislocation		3	510.00
26705	Treat knuckle dislocation		2	446.00
26706	Pin knuckle dislocation		2	446.00
26715	Treat knuckle dislocation		4	630.00
26727	Treat finger fracture, each		7	995.00
26735	Treat finger fracture, each		4	630.00
26742	Treat finger fracture, each		2	446.00
26746	Treat finger fracture, each		5	717.00
26756	Pin finger fracture, each		2	446.00
26765	Treat finger fracture, each		4	630.00
26776	Pin finger dislocation		2	446.00

26785	Treat finger dislocation		2	446.00
26820	Thumb fusion with graft		5	717.00
26841	Fusion of thumb		4	630.00
26842	Thumb fusion with graft		4	630.00
26843	Fusion of hand joint		3	510.00
26844	Fusion/graft of hand joint		3	510.00
26850	Fusion of knuckle		4	630.00
26852	Fusion of knuckle with graft		4	630.00
26860	Fusion of finger joint		3	510.00
26861	Fusion of finger jnt, add-on		2	446.00
26862	Fusion/graft of finger joint		4	630.00
26863	Fuse/graft added joint		3	510.00
26910	Amputate metacarpal bone		3	510.00
26951	Amputation of finger/thumb		2	446.00
26952	Amputation of finger/thumb		4	630.00
26990	Drainage of pelvis lesion		1	333.00
26991	Drainage of pelvis bursa		1	333.00
27000	Incision of hip tendon		2	446.00
27001	Incision of hip tendon		3	510.00
27003	Incision of hip tendon		3	510.00
27033	Exploration of hip joint		3	510.00
27035	Denervation of hip joint		4	630.00
27040	Biopsy of soft tissues		1	333.00
27041	Biopsy of soft tissues		2	446.00
27047	Remove hip/pelvis lesion		2	446.00
27048	Remove hip/pelvis lesion		3	510.00
27049	Remove tumor, hip/pelvis		3	510.00
27050	Biopsy of sacroiliac joint		3	510.00
27052	Biopsy of hip joint		3	510.00
27060	Removal of ischial bursa		5	717.00
27062	Remove femur lesion/bursa		5	717.00
27065	Removal of hip bone lesion		5	717.00
27066	Removal of hip bone lesion		5	717.00
27067	Remove/graft hip bone lesion		5	717.00
27080	Removal of tail bone		2	446.00
27086	Remove hip foreign body		1	333.00
27087	Remove hip foreign body		3	510.00
27097	Revision of hip tendon		3	510.00
27098	Transfer tendon to pelvis		3	510.00
27100	Transfer of abdominal muscle		4	630.00
27105	Transfer of spinal muscle		4	630.00
27110	Transfer of iliopsoas muscle		4	630.00
27111	Transfer of iliopsoas muscle		4	630.00
27193	Treat pelvic ring fracture		1	333.00
27194	Treat pelvic ring fracture		2	446.00

27202	Treat tail bone fracture		2	446.00
27230	Treat thigh fracture		1	333.00
27238	Treat thigh fracture		1	333.00
27246	Treat thigh fracture		1	333.00
27250	Treat hip dislocation		1	333.00
27252	Treat hip dislocation		2	446.00
27257	Treat hip dislocation		3	510.00
27265	Treat hip dislocation		1	333.00
27266	Treat hip dislocation		2	446.00
27275	Manipulation of hip joint		2	446.00
27301	Drain thigh/knee lesion		3	510.00
27305	Incise thigh tendon & fascia		2	446.00
27306	Incision of thigh tendon		3	510.00
27307	Incision of thigh tendons		3	510.00
27310	Exploration of knee joint		4	630.00
27315	Partial removal, thigh nerve		2	446.00
27320	Partial removal, thigh nerve		2	446.00
27323	Biopsy, thigh soft tissues		1	333.00
27324	Biopsy, thigh soft tissues		1	333.00
27327	Removal of thigh lesion		2	446.00
27328	Removal of thigh lesion		3	510.00
27329	Remove tumor, thigh/knee		4	630.00
27330	Biopsy, knee joint lining		4	630.00
27331	Explore/treat knee joint		4	630.00
27332	Removal of knee cartilage		4	630.00
27333	Removal of knee cartilage		4	630.00
27334	Remove knee joint lining		4	630.00
27335	Remove knee joint lining		4	630.00
27340	Removal of kneecap bursa		3	510.00
27345	Removal of knee cyst		4	630.00
27347	Remove knee cyst		4	630.00
27350	Removal of kneecap		4	630.00
27355	Remove femur lesion		3	510.00
27356	Remove femur lesion/graft		4	630.00
27357	Remove femur lesion/graft		5	717.00
27358	Remove femur lesion/fixation		5	717.00
27360	Partial removal, leg bone(s)		5	717.00
27372	Removal of foreign body		7	995.00
27380	Repair of kneecap tendon		1	333.00
27381	Repair/graft kneecap tendon		3	510.00
27385	Repair of thigh muscle		3	510.00
27386	Repair/graft of thigh muscle		3	510.00
27390	Incision of thigh tendon		1	333.00
27391	Incision of thigh tendons		2	446.00
27392	Incision of thigh tendons		3	510.00

27393	Lengthening of thigh tendon		2	446.00
27394	Lengthening of thigh tendons		3	510.00
27395	Lengthening of thigh tendons		3	510.00
27396	Transplant of thigh tendon		3	510.00
27397	Transplants of thigh tendons		3	510.00
27400	Revise thigh muscles/tendons		3	510.00
27403	Repair of knee cartilage		4	630.00
27405	Repair of knee ligament		4	630.00
27407	Repair of knee ligament		4	630.00
27409	Repair of knee ligaments		4	630.00
27418	Repair degenerated kneecap		3	510.00
27420	Revision of unstable kneecap		3	510.00
27422	Revision of unstable kneecap		7	995.00
27424	Revision/removal of kneecap		3	510.00
27425	Lateral retinacular release		7	995.00
27427	Reconstruction, knee		3	510.00
27428	Reconstruction, knee		4	630.00
27429	Reconstruction, knee		4	630.00
27430	Revision of thigh muscles		4	630.00
27435	Incision of knee joint		4	630.00
27437	Revise kneecap		4	630.00
27438	Revise kneecap with implant		5	717.00
27441	Revision of knee joint		5	717.00
27442	Revision of knee joint		5	717.00
27443	Revision of knee joint		5	717.00
27496	Decompression of thigh/knee		5	717.00
27497	Decompression of thigh/knee		3	510.00
27498	Decompression of thigh/knee		3	510.00
27499	Decompression of thigh/knee		3	510.00
27500	Treatment of thigh fracture		1	333.00
27501	Treatment of thigh fracture		2	446.00
27502	Treatment of thigh fracture		2	446.00
27503	Treatment of thigh fracture		3	510.00
27508	Treatment of thigh fracture		1	333.00
27509	Treatment of thigh fracture		3	510.00
27510	Treatment of thigh fracture		1	333.00
27516	Treat thigh fx growth plate		1	333.00
27517	Treat thigh fx growth plate		1	333.00
27520	Treat kneecap fracture	D	1	333.00
27530	Treat knee fracture		1	333.00
27532	Treat knee fracture		1	333.00
27538	Treat knee fracture(s)		1	333.00
27550	Treat knee dislocation		1	333.00
27552	Treat knee dislocation		1	333.00
27560	Treat kneecap dislocation		1	333.00

27562	Treat kneecap dislocation		1	333.00
27566	Treat kneecap dislocation		2	446.00
27570	Fixation of knee joint		1	333.00
27594	Amputation follow-up surgery		3	510.00
27600	Decompression of lower leg		3	510.00
27601	Decompression of lower leg		3	510.00
27602	Decompression of lower leg		3	510.00
27603	Drain lower leg lesion		2	446.00
27604	Drain lower leg bursa		2	446.00
27605	Incision of achilles tendon		1	333.00
27606	Incision of achilles tendon		1	333.00
27607	Treat lower leg bone lesion		2	446.00
27610	Explore/treat ankle joint		2	446.00
27612	Exploration of ankle joint		3	510.00
27614	Biopsy lower leg soft tissue		2	446.00
27615	Remove tumor, lower leg		3	510.00
27618	Remove lower leg lesion		2	446.00
27619	Remove lower leg lesion		3	510.00
27620	Explore/treat ankle joint		4	630.00
27625	Remove ankle joint lining		4	630.00
27626	Remove ankle joint lining		4	630.00
27630	Removal of tendon lesion		3	510.00
27635	Remove lower leg bone lesion		3	510.00
27637	Remove/graft leg bone lesion		3	510.00
27638	Remove/graft leg bone lesion		3	510.00
27640	Partial removal of tibia		2	446.00
27641	Partial removal of fibula		2	446.00
27647	Extensive ankle/heel surgery		3	510.00
27650	Repair achilles tendon		3	510.00
27652	Repair/graft achilles tendon		3	510.00
27654	Repair of achilles tendon		3	510.00
27656	Repair leg fascia defect		2	446.00
27658	Repair of leg tendon, each		1	333.00
27659	Repair of leg tendon, each		2	446.00
27664	Repair of leg tendon, each		2	446.00
27665	Repair of leg tendon, each		2	446.00
27675	Repair lower leg tendons		2	446.00
27676	Repair lower leg tendons		3	510.00
27680	Release of lower leg tendon		3	510.00
27681	Release of lower leg tendons		2	446.00
27685	Revision of lower leg tendon		3	510.00
27686	Revise lower leg tendons		3	510.00
27687	Revision of calf tendon		3	510.00
27690	Revise lower leg tendon		4	630.00
27691	Revise lower leg tendon		4	630.00

27692	Revise additional leg tendon		3	510.00
27695	Repair of ankle ligament		2	446.00
27696	Repair of ankle ligaments		2	446.00
27698	Repair of ankle ligament		2	446.00
27700	Revision of ankle joint		5	717.00
27704	Removal of ankle implant		2	446.00
27705	Incision of tibia		2	446.00
27707	Incision of fibula		2	446.00
27709	Incision of tibia & fibula		2	446.00
27730	Repair of tibia epiphysis		2	446.00
27732	Repair of fibula epiphysis		2	446.00
27734	Repair lower leg epiphyses		2	446.00
27740	Repair of leg epiphyses		2	446.00
27742	Repair of leg epiphyses		2	446.00
27745	Reinforce tibia		3	510.00
27750	Treatment of tibia fracture		1	333.00
27752	Treatment of tibia fracture		1	333.00
27756	Treatment of tibia fracture		3	510.00
27758	Treatment of tibia fracture		4	630.00
27759	Treatment of tibia fracture		4	630.00
27760	Treatment of ankle fracture	D	1	333.00
27762	Treatment of ankle fracture		1	333.00
27766	Treatment of ankle fracture		3	510.00
27780	Treatment of fibula fracture	D	1	333.00
27781	Treatment of fibula fracture		1	333.00
27784	Treatment of fibula fracture		3	510.00
27786	Treatment of ankle fracture	D	1	333.00
27788	Treatment of ankle fracture		1	333.00
27792	Treatment of ankle fracture		3	510.00
27808	Treatment of ankle fracture	D	1	333.00
27810	Treatment of ankle fracture		1	333.00
27814	Treatment of ankle fracture		3	510.00
27816	Treatment of ankle fracture		1	333.00
27818	Treatment of ankle fracture		1	333.00
27822	Treatment of ankle fracture		3	510.00
27823	Treatment of ankle fracture		3	510.00
27824	Treat lower leg fracture		1	333.00
27825	Treat lower leg fracture		2	446.00
27826	Treat lower leg fracture		3	510.00
27827	Treat lower leg fracture		3	510.00
27828	Treat lower leg fracture		4	630.00
27829	Treat lower leg joint		2	446.00
27830	Treat lower leg dislocation		1	333.00
27831	Treat lower leg dislocation		1	333.00
27832	Treat lower leg dislocation		2	446.00

27840	Treat ankle dislocation		1	333.00
27842	Treat ankle dislocation		1	333.00
27846	Treat ankle dislocation		3	510.00
27848	Treat ankle dislocation		3	510.00
27860	Fixation of ankle joint		1	333.00
27870	Fusion of ankle joint		4	630.00
27871	Fusion of tibiofibular joint		4	630.00
27884	Amputation follow-up surgery		3	510.00
27889	Amputation of foot at ankle		3	510.00
27892	Decompression of leg		3	510.00
27893	Decompression of leg		3	510.00
27894	Decompression of leg		3	510.00
28002	Treatment of foot infection		3	510.00
28003	Treatment of foot infection		3	510.00
28005	Treat foot bone lesion		3	510.00
28008	Incision of foot fascia		3	510.00
28011	Incision of toe tendons		3	510.00
28020	Exploration of foot joint		2	446.00
28022	Exploration of foot joint		2	446.00
28024	Exploration of toe joint		2	446.00
28030	Removal of foot nerve		4	630.00
28035	Decompression of tibia nerve		4	630.00
28043	Excision of foot lesion		2	446.00
28045	Excision of foot lesion		3	510.00
28046	Resection of tumor, foot		3	510.00
28050	Biopsy of foot joint lining		2	446.00
28052	Biopsy of foot joint lining		2	446.00
28054	Biopsy of toe joint lining		2	446.00
28060	Partial removal, foot fascia		2	446.00
28062	Removal of foot fascia		3	510.00
28070	Removal of foot joint lining		3	510.00
28072	Removal of foot joint lining		3	510.00
28080	Removal of foot lesion		3	510.00
28086	Excise foot tendon sheath		2	446.00
28088	Excise foot tendon sheath		2	446.00
28090	Removal of foot lesion		3	510.00
28092	Removal of toe lesions		3	510.00
28100	Removal of ankle/heel lesion		2	446.00
28102	Remove/graft foot lesion		3	510.00
28103	Remove/graft foot lesion		3	510.00
28104	Removal of foot lesion		2	446.00
28106	Remove/graft foot lesion		3	510.00
28107	Remove/graft foot lesion		3	510.00
28110	Part removal of metatarsal		3	510.00
28111	Part removal of metatarsal		3	510.00

28112	Part removal of metatarsal		3	510.00
28113	Part removal of metatarsal		3	510.00
28114	Removal of metatarsal heads		3	510.00
28116	Revision of foot		3	510.00
28118	Removal of heel bone		4	630.00
28119	Removal of heel spur		4	630.00
28120	Part removal of ankle/heel		7	995.00
28122	Partial removal of foot bone		3	510.00
28126	Partial removal of toe		3	510.00
28130	Removal of ankle bone		3	510.00
28140	Removal of metatarsal		3	510.00
28150	Removal of toe		3	510.00
28153	Partial removal of toe		3	510.00
28160	Partial removal of toe		3	510.00
28171	Extensive foot surgery		3	510.00
28173	Extensive foot surgery		3	510.00
28175	Extensive foot surgery		3	510.00
28192	Removal of foot foreign body		2	446.00
28193	Removal of foot foreign body		4	630.00
28200	Repair of foot tendon		3	510.00
28202	Repair/graft of foot tendon		3	510.00
28208	Repair of foot tendon		3	510.00
28210	Repair/graft of foot tendon		3	510.00
28222	Release of foot tendons		1	333.00
28225	Release of foot tendon		1	333.00
28226	Release of foot tendons		1	333.00
28234	Incision of foot tendon		2	446.00
28238	Revision of foot tendon		3	510.00
28240	Release of big toe		2	446.00
28250	Revision of foot fascia		3	510.00
28260	Release of midfoot joint		3	510.00
28261	Revision of foot tendon		3	510.00
28262	Revision of foot and ankle		4	630.00
28264	Release of midfoot joint		1	333.00
28270	Release of foot contracture		3	510.00
28280	Fusion of toes		2	446.00
28285	Repair of hammertoe		3	510.00
28286	Repair of hammertoe		4	630.00
28288	Partial removal of foot bone		3	510.00
28289	Repair hallux rigidus		3	510.00
28290	Correction of bunion		2	446.00
28292	Correction of bunion		2	446.00
28293	Correction of bunion		3	510.00
28294	Correction of bunion		3	510.00
28296	Correction of bunion		3	510.00

28297	Correction of bunion		3	510.00
28298	Correction of bunion		3	510.00
28299	Correction of bunion		5	717.00
28300	Incision of heel bone		2	446.00
28302	Incision of ankle bone		2	446.00
28304	Incision of midfoot bones		2	446.00
28305	Incise/graft midfoot bones		3	510.00
28306	Incision of metatarsal		4	630.00
28307	Incision of metatarsal		4	630.00
28308	Incision of metatarsal		2	446.00
28309	Incision of metatarsals		4	630.00
28310	Revision of big toe		3	510.00
28312	Revision of toe		3	510.00
28313	Repair deformity of toe		2	446.00
28315	Removal of sesamoid bone		4	630.00
28320	Repair of foot bones		4	630.00
28322	Repair of metatarsals		4	630.00
28340	Resect enlarged toe tissue		4	630.00
28341	Resect enlarged toe		4	630.00
28344	Repair extra toe(s)		4	630.00
28345	Repair webbed toe(s)		4	630.00
28400	Treatment of heel fracture	D	1	333.00
28405	Treatment of heel fracture		2	446.00
28406	Treatment of heel fracture		2	446.00
28415	Treat heel fracture		3	510.00
28420	Treat/graft heel fracture		4	630.00
28435	Treatment of ankle fracture		2	446.00
28436	Treatment of ankle fracture		2	446.00
28445	Treat ankle fracture		3	510.00
28456	Treat midfoot fracture		2	446.00
28465	Treat midfoot fracture, each		3	510.00
28476	Treat metatarsal fracture		2	446.00
28485	Treat metatarsal fracture		4	630.00
28496	Treat big toe fracture		2	446.00
28505	Treat big toe fracture		3	510.00
28525	Treat toe fracture		3	510.00
28531	Treat sesamoid bone fracture		3	510.00
28545	Treat foot dislocation		1	333.00
28546	Treat foot dislocation		2	446.00
28555	Repair foot dislocation		2	446.00
28575	Treat foot dislocation		1	333.00
28576	Treat foot dislocation		3	510.00
28585	Repair foot dislocation		3	510.00
28605	Treat foot dislocation		1	333.00
28606	Treat foot dislocation		2	446.00

28615	Repair foot dislocation		3	510.00
28635	Treat toe dislocation		1	333.00
28636	Treat toe dislocation		3	510.00
28645	Repair toe dislocation		3	510.00
28665	Treat toe dislocation		1	333.00
28666	Treat toe dislocation		3	510.00
28675	Repair of toe dislocation		3	510.00
28705	Fusion of foot bones		4	630.00
28715	Fusion of foot bones		4	630.00
28725	Fusion of foot bones		4	630.00
28730	Fusion of foot bones		4	630.00
28735	Fusion of foot bones		4	630.00
28737	Revision of foot bones		5	717.00
28740	Fusion of foot bones		4	630.00
28750	Fusion of big toe joint		4	630.00
28755	Fusion of big toe joint		4	630.00
28760	Fusion of big toe joint		4	630.00
28810	Amputation toe & metatarsal		2	446.00
28820	Amputation of toe		2	446.00
28825	Partial amputation of toe		2	446.00
29800	Jaw arthroscopy/surgery		3	510.00
29804	Jaw arthroscopy/surgery		3	510.00
29805	Shoulder arthroscopy, dx		3	510.00
29806	Shoulder arthroscopy/surgery		3	510.00
29807	Shoulder arthroscopy/surgery		3	510.00
29819	Shoulder arthroscopy/surgery		3	510.00
29820	Shoulder arthroscopy/surgery		3	510.00
29821	Shoulder arthroscopy/surgery		3	510.00
29822	Shoulder arthroscopy/surgery		3	510.00
29823	Shoulder arthroscopy/surgery		3	510.00
29824	Shoulder arthroscopy/surgery		5	717.00
29825	Shoulder arthroscopy/surgery		3	510.00
29826	Shoulder arthroscopy/surgery		3	510.00
29827	Arthroscop rotator cuff repr		5	717.00
29830	Elbow arthroscopy		3	510.00
29834	Elbow arthroscopy/surgery		3	510.00
29835	Elbow arthroscopy/surgery		3	510.00
29836	Elbow arthroscopy/surgery		3	510.00
29837	Elbow arthroscopy/surgery		3	510.00
29838	Elbow arthroscopy/surgery		3	510.00
29840	Wrist arthroscopy		3	510.00
29843	Wrist arthroscopy/surgery		3	510.00
29844	Wrist arthroscopy/surgery		3	510.00
29845	Wrist arthroscopy/surgery		3	510.00
29846	Wrist arthroscopy/surgery		3	510.00

29847	Wrist arthroscopy/surgery		3	510.00
29848	Wrist endoscopy/surgery		9	1,339.00
29850	Knee arthroscopy/surgery		4	630.00
29851	Knee arthroscopy/surgery		4	630.00
29855	Tibial arthroscopy/surgery		4	630.00
29856	Tibial arthroscopy/surgery		4	630.00
29860	Hip arthroscopy, dx		4	630.00
29861	Hip arthroscopy/surgery		4	630.00
29862	Hip arthroscopy/surgery		9	1,339.00
29863	Hip arthroscopy/surgery		4	630.00
29870	Knee arthroscopy, dx		3	510.00
29871	Knee arthroscopy/drainage		3	510.00
29873	Knee arthroscopy/surgery	A	3	510.00
29874	Knee arthroscopy/surgery		3	510.00
29875	Knee arthroscopy/surgery		4	630.00
29876	Knee arthroscopy/surgery		4	630.00
29877	Knee arthroscopy/surgery		4	630.00
29879	Knee arthroscopy/surgery		3	510.00
29880	Knee arthroscopy/surgery		4	630.00
29881	Knee arthroscopy/surgery		4	630.00
29882	Knee arthroscopy/surgery		3	510.00
29883	Knee arthroscopy/surgery		3	510.00
29884	Knee arthroscopy/surgery		3	510.00
29885	Knee arthroscopy/surgery		3	510.00
29886	Knee arthroscopy/surgery		3	510.00
29887	Knee arthroscopy/surgery		3	510.00
29888	Knee arthroscopy/surgery		3	510.00
29889	Knee arthroscopy/surgery		3	510.00
29891	Ankle arthroscopy/surgery		3	510.00
29892	Ankle arthroscopy/surgery		3	510.00
29893	Scope, plantar fasciotomy		9	1,339.00
29894	Ankle arthroscopy/surgery		3	510.00
29895	Ankle arthroscopy/surgery		3	510.00
29897	Ankle arthroscopy/surgery		3	510.00
29898	Ankle arthroscopy/surgery		3	510.00
29899	Ankle arthroscopy/surgery		3	510.00
29900	Mcp joint arthroscopy, dx		3	510.00
29901	Mcp joint arthroscopy, surg		3	510.00
29902	Mcp joint arthroscopy, surg		3	510.00
30115	Removal of nose polyp(s)		2	446.00
30117	Removal of intranasal lesion		3	510.00
30118	Removal of intranasal lesion		3	510.00
30120	Revision of nose		1	333.00
30125	Removal of nose lesion		2	446.00
30130	Removal of turbinate bones		3	510.00

30140	Removal of turbinate bones		2	446.00
30150	Partial removal of nose		3	510.00
30160	Removal of nose		4	630.00
30220	Insert nasal septal button	A	3	510.00
30310	Remove nasal foreign body		1	333.00
30320	Remove nasal foreign body		2	446.00
30400	Reconstruction of nose		4	630.00
30410	Reconstruction of nose		5	717.00
30420	Reconstruction of nose		5	717.00
30430	Revision of nose		3	510.00
30435	Revision of nose		5	717.00
30450	Revision of nose		7	995.00
30460	Revision of nose		7	995.00
30462	Revision of nose		9	1,339.00
30465	Repair nasal stenosis		9	1,339.00
30520	Repair of nasal septum		4	630.00
30540	Repair nasal defect		5	717.00
30545	Repair nasal defect		5	717.00
30560	Release of nasal adhesions		2	446.00
30580	Repair upper jaw fistula		4	630.00
30600	Repair mouth/nose fistula		4	630.00
30620	Intranasal reconstruction		7	995.00
30630	Repair nasal septum defect		7	995.00
30801	Cauterization, inner nose	D	1	333.00
30802	Cauterization, inner nose		1	333.00
30903	Control of nosebleed		1	333.00
30905	Control of nosebleed		1	333.00
30906	Repeat control of nosebleed		1	333.00
30915	Ligation, nasal sinus artery	D	2	446.00
30920	Ligation, upper jaw artery	D	3	510.00
30930	Therapy, fracture of nose		4	630.00
31020	Exploration, maxillary sinus		2	446.00
31030	Exploration, maxillary sinus		3	510.00
31032	Explore sinus,remove polyps		4	630.00
31050	Exploration, sphenoid sinus		2	446.00
31051	Sphenoid sinus surgery		4	630.00
31070	Exploration of frontal sinus		2	446.00
31075	Exploration of frontal sinus		4	630.00
31080	Removal of frontal sinus		4	630.00
31081	Removal of frontal sinus		4	630.00
31084	Removal of frontal sinus		4	630.00
31085	Removal of frontal sinus		4	630.00
31086	Removal of frontal sinus		4	630.00
31087	Removal of frontal sinus		4	630.00
31090	Exploration of sinuses		5	717.00

31200	Removal of ethmoid sinus		2	446.00
31201	Removal of ethmoid sinus		5	717.00
31205	Removal of ethmoid sinus		3	510.00
31233	Nasal/sinus endoscopy, dx	D	2	446.00
31235	Nasal/sinus endoscopy, dx	D	1	333.00
31237	Nasal/sinus endoscopy, surg	D	2	446.00
31238	Nasal/sinus endoscopy, surg	D	1	333.00
31239	Nasal/sinus endoscopy, surg		4	630.00
31240	Nasal/sinus endoscopy, surg		2	446.00
31254	Revision of ethmoid sinus		3	510.00
31255	Removal of ethmoid sinus		5	717.00
31256	Exploration maxillary sinus		3	510.00
31267	Endoscopy, maxillary sinus		3	510.00
31276	Sinus endoscopy, surgical		3	510.00
31287	Nasal/sinus endoscopy, surg		3	510.00
31288	Nasal/sinus endoscopy, surg		3	510.00
31300	Removal of larynx lesion		5	717.00
31320	Diagnostic incision, larynx		2	446.00
31400	Revision of larynx		2	446.00
31420	Removal of epiglottis		2	446.00
31500	Insert emergency airway	A	1	333.00
31510	Laryngoscopy with biopsy		2	446.00
31511	Remove foreign body, larynx		2	446.00
31512	Removal of larynx lesion		2	446.00
31513	Injection into vocal cord		2	446.00
31515	Laryngoscopy for aspiration		1	333.00
31525	Diagnostic laryngoscopy		1	333.00
31526	Diagnostic laryngoscopy		2	446.00
31527	Laryngoscopy for treatment		1	333.00
31528	Laryngoscopy and dilation		2	446.00
31529	Laryngoscopy and dilation		2	446.00
31530	Operative laryngoscopy		2	446.00
31531	Operative laryngoscopy		3	510.00
31535	Operative laryngoscopy		2	446.00
31536	Operative laryngoscopy		3	510.00
31540	Operative laryngoscopy		3	510.00
31541	Operative laryngoscopy		4	630.00
31560	Operative laryngoscopy		5	717.00
31561	Operative laryngoscopy		5	717.00
31570	Laryngoscopy with injection		2	446.00
31571	Laryngoscopy with injection		2	446.00
31576	Laryngoscopy with biopsy		2	446.00
31577	Remove foreign body, larynx		2	446.00
31578	Removal of larynx lesion		2	446.00
31580	Revision of larynx		5	717.00

31582	Revision of larynx		5	717.00
31585	Treat larynx fracture		1	333.00
31586	Treat larynx fracture		2	446.00
31588	Revision of larynx		5	717.00
31590	Reinnervate larynx		5	717.00
31595	Larynx nerve surgery		2	446.00
31603	Incision of windpipe	A	1	333.00
31611	Surgery/speech prosthesis		3	510.00
31612	Puncture/clear windpipe		1	333.00
31613	Repair windpipe opening		2	446.00
31614	Repair windpipe opening		2	446.00
31615	Visualization of windpipe		1	333.00
31622	Dx bronchoscope/wash		1	333.00
31623	Dx bronchoscope/brush		2	446.00
31624	Dx bronchoscope/lavage		2	446.00
31625	Bronchoscopy with biopsy		2	446.00
31628	Bronchoscopy with biopsy		2	446.00
31629	Bronchoscopy with biopsy		2	446.00
31630	Bronchoscopy with repair		2	446.00
31631	Bronchoscopy with dilation		2	446.00
31635	Remove foreign body, airway		2	446.00
31640	Bronchoscopy & remove lesion		2	446.00
31641	Bronchoscopy, treat blockage		2	446.00
31643	Diag bronchoscope/catheter		2	446.00
31645	Bronchoscopy, clear airways		1	333.00
31646	Bronchoscopy, reclear airway		1	333.00
31656	Bronchoscopy, inj for xray		1	333.00
31700	Insertion of airway catheter		1	333.00
31717	Bronchial brush biopsy		1	333.00
31720	Clearance of airways		1	333.00
31730	Intro, windpipe wire/tube		1	333.00
31750	Repair of windpipe		5	717.00
31755	Repair of windpipe		2	446.00
31820	Closure of windpipe lesion		1	333.00
31825	Repair of windpipe defect		2	446.00
31830	Revise windpipe scar		2	446.00
32000	Drainage of chest		1	333.00
32400	Needle biopsy chest lining		1	333.00
32405	Biopsy, lung or mediastinum		1	333.00
32420	Puncture/clear lung		1	333.00
33010	Drainage of heart sac		2	446.00
33011	Repeat drainage of heart sac		2	446.00
33222	Revise pocket, pacemaker		2	446.00
33223	Revise pocket, pacing-defib		2	446.00
35188	Repair blood vessel lesion		4	630.00

35207	Repair blood vessel lesion		4	630.00
35475	Repair arterial blockage	A	9	1,339.00
35476	Repair venous blockage	A	9	1,339.00
35875	Removal of clot in graft		9	1,339.00
35876	Removal of clot in graft		9	1,339.00
36260	Insertion of infusion pump		3	510.00
36261	Revision of infusion pump		2	446.00
36262	Removal of infusion pump		1	333.00
36555	Insert non-tunnel cv cath		1	333.00
36556	Insert non-tunnel cv cath		1	333.00
36557	Insert tunneled cv cath		2	446.00
36558	Insert tunneled cv cath		2	446.00
36560	Insert tunneled cv cath		3	510.00
36561	Insert tunneled cv cath		3	510.00
36563	Insert tunneled cv cath		3	510.00
36565	Insert tunneled cv cath		3	510.00
36566	Insert tunneled cv cath		3	510.00
36568	Insert tunneled cv cath		1	333.00
36569	Insert tunneled cv cath		1	333.00
36570	Insert tunneled cv cath		3	510.00
36571	Insert tunneled cv cath		3	510.00
36575	Repair tunneled cv cath		2	446.00
36576	Repair tunneled cv cath		2	446.00
36578	Replace tunneled cv cath		2	446.00
36580	Replace tunneled cv cath		1	333.00
36581	Replace tunneled cv cath		2	446.00
36582	Replace tunneled cv cath		3	510.00
36583	Replace tunneled cv cath		3	510.00
36584	Replace tunneled cv cath		1	333.00
36585	Replace tunneled cv cath		3	510.00
36589	Removal tunneled cv cath		1	333.00
36590	Removal tunneled cv cath		1	333.00
36640	Insertion catheter, artery		1	333.00
36800	Insertion of cannula		3	510.00
36810	Insertion of cannula		3	510.00
36815	Insertion of cannula		3	510.00
36819	Av fusion/uppr arm vein		3	510.00
36820	Av fusion/forearm vein		3	510.00
36821	Av fusion direct any site		3	510.00
36825	Artery-vein graft		4	630.00
36830	Artery-vein graft		4	630.00
36831	Open thrombect av fistula		9	1,339.00
36832	Av fistula revision, open		4	630.00
36833	Av fistula revision		4	630.00
36834	Repair AV aneurysm	A	3	510.00

36835	Artery to vein shunt		4	630.00
36860	External cannula declotting		2	446.00
36861	Cannula declotting		3	510.00
36870	Percut thrombect av fistula		9	1,339.00
37205	Transcatheter stent	A	9	1,339.00
37206	Transcatheter stent add-on	A	9	1,339.00
37500	Endoscopy ligate perf veins	A	3	510.00
37607	Ligation of a-v fistula		3	510.00
37609	Temporal artery procedure		2	446.00
37650	Revision of major vein		2	446.00
37700	Revise leg vein		2	446.00
37720	Removal of leg vein		3	510.00
37730	Removal of leg veins		3	510.00
37735	Removal of leg veins/lesion		3	510.00
37760	Revision of leg veins		3	510.00
37780	Revision of leg vein		3	510.00
37785	Revise secondary varicosity		3	510.00
37790	Penile venous occlusion		3	510.00
38300	Drainage, lymph node lesion		1	333.00
38305	Drainage, lymph node lesion		2	446.00
38308	Incision of lymph channels		2	446.00
38500	Biopsy/removal, lymph nodes		2	446.00
38505	Needle biopsy, lymph nodes	D	1	333.00
38510	Biopsy/removal, lymph nodes		2	446.00
38520	Biopsy/removal, lymph nodes		2	446.00
38525	Biopsy/removal, lymph nodes		2	446.00
38530	Biopsy/removal, lymph nodes		2	446.00
38542	Explore deep node(s), neck		2	446.00
38550	Removal, neck/armpit lesion		3	510.00
38555	Removal, neck/armpit lesion		4	630.00
38570	Laparoscopy, lymph node biop		9	1,339.00
38571	Laparoscopy, lymphadenectomy		9	1,339.00
38572	Laparoscopy, lymphadenectomy		9	1,339.00
38740	Remove armpit lymph nodes		2	446.00
38745	Remove armpit lymph nodes		4	630.00
38760	Remove groin lymph nodes		2	446.00
40500	Partial excision of lip		2	446.00
40510	Partial excision of lip		2	446.00
40520	Partial excision of lip		2	446.00
40525	Reconstruct lip with flap		2	446.00
40527	Reconstruct lip with flap		2	446.00
40530	Partial removal of lip		2	446.00
40650	Repair lip		3	510.00
40652	Repair lip		3	510.00
40654	Repair lip		3	510.00

40700	Repair cleft lip/nasal	D	7	995.00
40701	Repair cleft lip/nasal	D	7	995.00
40720	Repair cleft lip/nasal		7	995.00
40761	Repair cleft lip/nasal		3	510.00
40801	Drainage of mouth lesion		2	446.00
40814	Excise/repair mouth lesion	D	2	446.00
40816	Excision of mouth lesion		2	446.00
40818	Excise oral mucosa for graft		1	333.00
40819	Excise lip or cheek fold		1	333.00
40831	Repair mouth laceration		1	333.00
40840	Reconstruction of mouth		2	446.00
40842	Reconstruction of mouth		3	510.00
40843	Reconstruction of mouth		3	510.00
40844	Reconstruction of mouth		5	717.00
40845	Reconstruction of mouth		5	717.00
41005	Drainage of mouth lesion		1	333.00
41006	Drainage of mouth lesion		1	333.00
41007	Drainage of mouth lesion		1	333.00
41008	Drainage of mouth lesion		1	333.00
41009	Drainage of mouth lesion	D	1	333.00
41010	Incision of tongue fold	D	1	333.00
41015	Drainage of mouth lesion		1	333.00
41016	Drainage of mouth lesion		1	333.00
41017	Drainage of mouth lesion		1	333.00
41018	Drainage of mouth lesion		1	333.00
41112	Excision of tongue lesion	D	2	446.00
41113	Excision of tongue lesion		2	446.00
41114	Excision of tongue lesion		2	446.00
41116	Excision of mouth lesion		1	333.00
41120	Partial removal of tongue		5	717.00
41250	Repair tongue laceration		2	446.00
41251	Repair tongue laceration		2	446.00
41252	Repair tongue laceration		2	446.00
41500	Fixation of tongue		1	333.00
41510	Tongue to lip surgery		1	333.00
41520	Reconstruction, tongue fold	D	2	446.00
41800	Drainage of gum lesion	D	1	333.00
41827	Excision of gum lesion	D	2	446.00
42000	Drainage mouth roof lesion	D	2	446.00
42107	Excision lesion, mouth roof	D	2	446.00
42120	Remove palate/lesion		4	630.00
42140	Excision of uvula		2	446.00
42145	Repair palate, pharynx/uvula		5	717.00
42180	Repair palate		1	333.00
42182	Repair palate		2	446.00

42200	Reconstruct cleft palate	D	5	717.00
42205	Reconstruct cleft palate	D	5	717.00
42210	Reconstruct cleft palate	D	5	717.00
42215	Reconstruct cleft palate	D	7	995.00
42220	Reconstruct cleft palate	D	5	717.00
42226	Lengthening of palate		5	717.00
42235	Repair palate		5	717.00
42260	Repair nose to lip fistula		4	630.00
42300	Drainage of salivary gland		1	333.00
42305	Drainage of salivary gland		2	446.00
42310	Drainage of salivary gland		1	333.00
42320	Drainage of salivary gland		1	333.00
42325	Create salivary cyst drain		2	446.00
42340	Removal of salivary stone		2	446.00
42405	Biopsy of salivary gland		2	446.00
42408	Excision of salivary cyst		3	510.00
42409	Drainage of salivary cyst	D	3	510.00
42410	Excise parotid gland/lesion		3	510.00
42415	Excise parotid gland/lesion		7	995.00
42420	Excise parotid gland/lesion		7	995.00
42425	Excise parotid gland/lesion	D	7	995.00
42440	Excise submaxillary gland		3	510.00
42450	Excise sublingual gland		2	446.00
42500	Repair salivary duct		3	510.00
42505	Repair salivary duct		4	630.00
42507	Parotid duct diversion		3	510.00
42508	Parotid duct diversion		4	630.00
42509	Parotid duct diversion		4	630.00
42510	Parotid duct diversion		4	630.00
42600	Closure of salivary fistula		1	333.00
42665	Ligation of salivary duct	A	7	995.00
42700	Drainage of tonsil abscess		1	333.00
42720	Drainage of throat abscess		1	333.00
42725	Drainage of throat abscess		2	446.00
42802	Biopsy of throat		1	333.00
42804	Biopsy of upper nose/throat		1	333.00
42806	Biopsy of upper nose/throat		2	446.00
42808	Excise pharynx lesion		2	446.00
42810	Excision of neck cyst		3	510.00
42815	Excision of neck cyst		5	717.00
42820	Remove tonsils and adenoids		3	510.00
42821	Remove tonsils and adenoids		5	717.00
42825	Removal of tonsils		4	630.00
42826	Removal of tonsils		4	630.00
42830	Removal of adenoids		4	630.00

42831	Removal of adenoids		4	630.00
42835	Removal of adenoids		4	630.00
42836	Removal of adenoids		4	630.00
42860	Excision of tonsil tags	D	3	510.00
42870	Excision of lingual tonsil		3	510.00
42890	Partial removal of pharynx		7	995.00
42892	Revision of pharyngeal walls	D	7	995.00
42900	Repair throat wound		1	333.00
42950	Reconstruction of throat		2	446.00
42955	Surgical opening of throat		2	446.00
42960	Control throat bleeding		1	333.00
42962	Control throat bleeding		2	446.00
42972	Control nose/throat bleeding		3	510.00
43200	Esophagus endoscopy		1	333.00
43201	Esoph scope w/submucous inj		1	333.00
43202	Esophagus endoscopy, biopsy		1	333.00
43204	Esophagus endoscopy & inject		1	333.00
43205	Esophagus endoscopy/ligation		1	333.00
43215	Esophagus endoscopy		1	333.00
43216	Esophagus endoscopy/lesion		1	333.00
43217	Esophagus endoscopy		1	333.00
43219	Esophagus endoscopy		1	333.00
43220	Esoph endoscopy, dilation		1	333.00
43226	Esoph endoscopy, dilation		1	333.00
43227	Esoph endoscopy, repair		2	446.00
43228	Esoph endoscopy, ablation		2	446.00
43231	Esoph endoscopy w/us exam		2	446.00
43232	Esoph endoscopy w/us fn bx		2	446.00
43234	Upper GI endoscopy, exam		1	333.00
43235	Uppr gi endoscopy, diagnosis		1	333.00
43236	Uppr gi scope w/submuc inj		2	446.00
43239	Upper GI endoscopy, biopsy		2	446.00
43240	Esoph endoscope w/drain cyst		2	446.00
43241	Upper GI endoscopy with tube		2	446.00
43242	Uppr gi endoscopy w/us fn bx		2	446.00
43243	Upper gi endoscopy & inject		2	446.00
43244	Upper GI endoscopy/ligation		2	446.00
43245	Operative upper GI endoscopy		2	446.00
43246	Place gastrostomy tube		2	446.00
43247	Operative upper GI endoscopy		2	446.00
43248	Uppr gi endoscopy/guide wire		2	446.00
43249	Esoph endoscopy, dilation		2	446.00
43250	Upper GI endoscopy/tumor		2	446.00
43251	Operative upper GI endoscopy		2	446.00
43255	Operative upper GI endoscopy		2	446.00

43256	Uppr gi endoscopy w stent		3	510.00
43258	Operative upper GI endoscopy		3	510.00
43259	Endoscopic ultrasound exam		3	510.00
43260	Endo cholangiopancreatograph		2	446.00
43261	Endo cholangiopancreatograph		2	446.00
43262	Endo cholangiopancreatograph		2	446.00
43263	Endo cholangiopancreatograph		2	446.00
43264	Endo cholangiopancreatograph		2	446.00
43265	Endo cholangiopancreatograph		2	446.00
43267	Endo cholangiopancreatograph		2	446.00
43268	Endo cholangiopancreatograph		2	446.00
43269	Endo cholangiopancreatograph		2	446.00
43271	Endo cholangiopancreatograph		2	446.00
43272	Endo cholangiopancreatograph		2	446.00
43450	Dilate esophagus		1	333.00
43453	Dilate esophagus		1	333.00
43456	Dilate esophagus		2	446.00
43458	Dilate esophagus		2	446.00
43600	Biopsy of stomach		1	333.00
43653	Laparoscopy, gastrostomy		9	1,339.00
43750	Place gastrostomy tube		2	446.00
43760	Change gastrostomy tube		1	333.00
43870	Repair stomach opening		1	333.00
44100	Biopsy of bowel		1	333.00
44312	Revision of ileostomy		1	333.00
44340	Revision of colostomy		3	510.00
44360	Small bowel endoscopy		2	446.00
44361	Small bowel endoscopy/biopsy		2	446.00
44363	Small bowel endoscopy		2	446.00
44364	Small bowel endoscopy		2	446.00
44365	Small bowel endoscopy		2	446.00
44366	Small bowel endoscopy		2	446.00
44369	Small bowel endoscopy		2	446.00
44370	Small bowel endoscopy/stent		9	1,339.00
44372	Small bowel endoscopy		2	446.00
44373	Small bowel endoscopy		2	446.00
44376	Small bowel endoscopy		2	446.00
44377	Small bowel endoscopy/biopsy		2	446.00
44378	Small bowel endoscopy		2	446.00
44379	S bowel endoscope w/stent		9	1,339.00
44380	Small bowel endoscopy		1	333.00
44382	Small bowel endoscopy		1	333.00
44383	Ileoscopy w/stent		9	1,339.00
44385	Endoscopy of bowel pouch		1	333.00
44386	Endoscopy, bowel pouch/biop		1	333.00

44388	Colon endoscopy		1	333.00
44389	Colonoscopy with biopsy		1	333.00
44390	Colonoscopy for foreign body		1	333.00
44391	Colonoscopy for bleeding		1	333.00
44392	Colonoscopy & polypectomy		1	333.00
44393	Colonoscopy, lesion removal		1	333.00
44394	Colonoscopy w/snare		1	333.00
44397	Colonoscopy w/stent	A	1	333.00
45000	Drainage of pelvic abscess		1	333.00
45005	Drainage of rectal abscess		2	446.00
45020	Drainage of rectal abscess		2	446.00
45100	Biopsy of rectum		1	333.00
45108	Removal of anorectal lesion		2	446.00
45150	Excision of rectal stricture		2	446.00
45160	Excision of rectal lesion		2	446.00
45170	Excision of rectal lesion		2	446.00
45190	Destruction, rectal tumor		9	1,339.00
45305	Protosigmoidoscopy w/bx		1	333.00
45307	Protosigmoidoscopy fb		1	333.00
45308	Protosigmoidoscopy removal		1	333.00
45309	Protosigmoidoscopy removal		1	333.00
45315	Protosigmoidoscopy removal		1	333.00
45317	Protosigmoidoscopy bleed		1	333.00
45320	Protosigmoidoscopy ablate		1	333.00
45321	Protosigmoidoscopy volvul		1	333.00
45327	Proctosigmoidoscopy w/stent	A	1	333.00
45331	Sigmoidoscopy and biopsy		1	333.00
45332	Sigmoidoscopy w/fb removal		1	333.00
45333	Sigmoidoscopy & polypectomy		1	333.00
45334	Sigmoidoscopy for bleeding		1	333.00
45335	Sigmoidoscope w/submub inj		1	333.00
45337	Sigmoidoscopy & decompress		1	333.00
45338	Sigmoidoscpy w/tumr remove		1	333.00
45339	Sigmoidoscopy w/ablate tumr		1	333.00
45340	Sig w/balloon dilation		1	333.00
45341	Sigmoidoscopy w/ultrasound	A	1	333.00
45342	Sigmoidoscopy w/us guide bx	A	1	333.00
45345	Sigmoidoscopy w/stent	A	1	333.00
45355	Surgical colonoscopy		1	333.00
45378	Diagnostic colonoscopy		2	446.00
45379	Colonoscopy w/fb removal		2	446.00
45380	Colonoscopy and biopsy		2	446.00
45381	Colonoscope, submucous inj		2	446.00
45382	Colonoscopy/control bleeding		2	446.00
45383	Lesion removal colonoscopy		2	446.00

45384	Lesion remove colonoscopy		2	446.00
45385	Lesion removal colonoscopy		2	446.00
45386	Colonoscope dilate stricture		2	446.00
45387	Colonoscopy w/stent	A	1	333.00
45500	Repair of rectum		2	446.00
45505	Repair of rectum		2	446.00
45560	Repair of rectocele		2	446.00
45900	Reduction of rectal prolapse		1	333.00
45905	Dilation of anal sphincter		1	333.00
45910	Dilation of rectal narrowing		1	333.00
45915	Remove rectal obstruction		1	333.00
46020	Placement of seton		3	510.00
46030	Removal of rectal marker		1	333.00
46040	Incision of rectal abscess		3	510.00
46045	Incision of rectal abscess		2	446.00
46050	Incision of anal abscess		1	333.00
46060	Incision of rectal abscess		2	446.00
46080	Incision of anal sphincter		3	510.00
46200	Removal of anal fissure		2	446.00
46210	Removal of anal crypt		2	446.00
46211	Removal of anal crypts		2	446.00
46220	Removal of anal tab		1	333.00
46250	Hemorrhoidectomy		3	510.00
46255	Hemorrhoidectomy		3	510.00
46257	Remove hemorrhoids & fissure		3	510.00
46258	Remove hemorrhoids & fistula		3	510.00
46260	Hemorrhoidectomy		3	510.00
46261	Remove hemorrhoids & fissure		4	630.00
46262	Remove hemorrhoids & fistula		4	630.00
46270	Removal of anal fistula		3	510.00
46275	Removal of anal fistula		3	510.00
46280	Removal of anal fistula		4	630.00
46285	Removal of anal fistula		1	333.00
46288	Repair anal fistula		4	630.00
46608	Anoscopy/ remove for body		1	333.00
46610	Anoscopy/remove lesion		1	333.00
46611	Anoscopy		1	333.00
46612	Anoscopy/ remove lesions		1	333.00
46615	Anoscopy		2	446.00
46700	Repair of anal stricture		3	510.00
46750	Repair of anal sphincter		3	510.00
46753	Reconstruction of anus		3	510.00
46754	Removal of suture from anus		2	446.00
46760	Repair of anal sphincter		2	446.00
46761	Repair of anal sphincter		3	510.00

46762	Implant artificial sphincter		7	995.00
46917	Laser surgery, anal lesions		1	333.00
46922	Excision of anal lesion(s)		1	333.00
46924	Destruction, anal lesion(s)		1	333.00
46937	Cryotherapy of rectal lesion		2	446.00
46938	Cryotherapy of rectal lesion		2	446.00
47000	Needle biopsy of liver		1	333.00
47510	Insert catheter, bile duct		2	446.00
47511	Insert bile duct drain		9	1,339.00
47525	Change bile duct catheter		1	333.00
47530	Revise/reinsert bile tube		1	333.00
47552	Biliary endoscopy thru skin		2	446.00
47553	Biliary endoscopy thru skin		3	510.00
47554	Biliary endoscopy thru skin		3	510.00
47555	Biliary endoscopy thru skin		3	510.00
47556	Biliary endoscopy thru skin		9	1,339.00
47560	Laparoscopy w/cholangio		3	510.00
47561	Laparo w/cholangio/biopsy		3	510.00
47630	Remove bile duct stone		3	510.00
48102	Needle biopsy, pancreas		1	333.00
49080	Puncture, peritoneal cavity		2	446.00
49081	Removal of abdominal fluid		2	446.00
49085	Remove abdomen foreign body		2	446.00
49180	Biopsy, abdominal mass		1	333.00
49250	Excision of umbilicus		4	630.00
49320	Diag laparo separate proc		3	510.00
49321	Laparoscopy, biopsy		4	630.00
49322	Laparoscopy, aspiration		4	630.00
49420	Insert abdominal drain		1	333.00
49421	Insert abdominal drain		1	333.00
49422	Remove perm cannula/catheter		1	333.00
49426	Revise abdomen-venous shunt		2	446.00
49495	Rpr ing hernia baby, reduc		4	630.00
49496	Rpr ing hernia baby, blocked		4	630.00
49500	Rpr ing hernia, init, reduce		4	630.00
49501	Rpr ing hernia, init blocked		9	1,339.00
49505	Rpr i/hern init reduc>5 yr		4	630.00
49507	Rpr i/hern init block>5 yr		9	1,339.00
49520	Rerepair ing hernia, reduce		7	995.00
49521	Rerepair ing hernia, blocked		9	1,339.00
49525	Repair ing hernia, sliding		4	630.00
49540	Repair lumbar hernia		2	446.00
49550	Rpr fem hernia, init, reduce		5	717.00
49553	Rpr fem hernia, init blocked		9	1,339.00
49555	Rerepair fem hernia, reduce		5	717.00

49557	Rerepair fem hernia, blocked		9	1,339.00
49560	Rpr ventral hern init, reduc		4	630.00
49561	Rpr ventral hern init, block		9	1,339.00
49565	Rerepair ventrl hern, reduce		4	630.00
49566	Rerepair ventrl hern, block		9	1,339.00
49568	Hernia repair w/mesh		7	995.00
49570	Rpr epigastric hern, reduce		4	630.00
49572	Rpr epigastric hern, blocked		9	1,339.00
49580	Rpr umbil hern, reduc <5 yr		4	630.00
49582	Rpr umbil hern, block < 5 yr		9	1,339.00
49585	Rpr umbil hern, reduc > 5 yr		4	630.00
49587	Rpr umbil hern, block > 5 yr		9	1,339.00
49590	Repair spigelian hernia		3	510.00
49600	Repair umbilical lesion		4	630.00
49650	Laparo hernia repair initial		4	630.00
49651	Laparo hernia repair recur		7	995.00
50200	Biopsy of kidney		1	333.00
50390	Drainage of kidney lesion		1	333.00
50392	Insert kidney drain		1	333.00
50393	Insert ureteral tube		1	333.00
50395	Create passage to kidney		1	333.00
50396	Measure kidney pressure		1	333.00
50398	Change kidney tube		1	333.00
50551	Kidney endoscopy		1	333.00
50553	Kidney endoscopy		1	333.00
50555	Kidney endoscopy & biopsy		1	333.00
50557	Kidney endoscopy & treatment		1	333.00
50559	Renal endoscopy/radiotracer		1	333.00
50561	Kidney endoscopy & treatment		1	333.00
50688	Change of ureter tube		1	333.00
50947	Laparo new ureter/bladder		9	1,339.00
50948	Laparo new ureter/bladder		9	1,339.00
50951	Endoscopy of ureter		1	333.00
50953	Endoscopy of ureter		1	333.00
50955	Ureter endoscopy & biopsy		1	333.00
50957	Ureter endoscopy & treatment		1	333.00
50959	Ureter endoscopy & tracer		1	333.00
50961	Ureter endoscopy & treatment		1	333.00
50970	Ureter endoscopy		1	333.00
50972	Ureter endoscopy & catheter		1	333.00
50974	Ureter endoscopy & biopsy		1	333.00
50976	Ureter endoscopy & treatment		1	333.00
50978	Ureter endoscopy & tracer		1	333.00
50980	Ureter endoscopy & treatment		1	333.00
51010	Drainage of bladder		1	333.00

51020	Incise & treat bladder		4	630.00
51030	Incise & treat bladder		4	630.00
51040	Incise & drain bladder		4	630.00
51045	Incise bladder/drain ureter		4	630.00
51050	Removal of bladder stone		4	630.00
51065	Remove ureter calculus		4	630.00
51080	Drainage of bladder abscess		1	333.00
51500	Removal of bladder cyst		4	630.00
51520	Removal of bladder lesion		4	630.00
51710	Change of bladder tube		1	333.00
51715	Endoscopic injection/implant		3	510.00
51726	Complex cystometrogram		1	333.00
51772	Urethra pressure profile		1	333.00
51785	Anal/urinary muscle study		1	333.00
51880	Repair of bladder opening		1	333.00
52000	Cystoscopy	D	1	333.00
52001	Cystoscopy, removal of clots		2	446.00
52005	Cystoscopy & ureter catheter		2	446.00
52007	Cystoscopy and biopsy		2	446.00
52010	Cystoscopy & duct catheter		2	446.00
52204	Cystoscopy		2	446.00
52214	Cystoscopy and treatment		2	446.00
52224	Cystoscopy and treatment		2	446.00
52234	Cystoscopy and treatment		2	446.00
52235	Cystoscopy and treatment		3	510.00
52240	Cystoscopy and treatment		3	510.00
52250	Cystoscopy and radiotracer		4	630.00
52260	Cystoscopy and treatment		2	446.00
52270	Cystoscopy & revise urethra		2	446.00
52275	Cystoscopy & revise urethra		2	446.00
52276	Cystoscopy and treatment		3	510.00
52277	Cystoscopy and treatment		2	446.00
52281	Cystoscopy and treatment	D	2	446.00
52282	Cystoscopy, implant stent		9	1,339.00
52283	Cystoscopy and treatment		2	446.00
52285	Cystoscopy and treatment		2	446.00
52290	Cystoscopy and treatment		2	446.00
52300	Cystoscopy and treatment		2	446.00
52305	Cystoscopy and treatment		2	446.00
52310	Cystoscopy and treatment		2	446.00
52315	Cystoscopy and treatment		2	446.00
52317	Remove bladder stone		1	333.00
52318	Remove bladder stone		2	446.00
52320	Cystoscopy and treatment		5	717.00
52325	Cystoscopy, stone removal		4	630.00

52327	Cystoscopy, inject material		2	446.00
52330	Cystoscopy and treatment		2	446.00
52332	Cystoscopy and treatment		2	446.00
52334	Create passage to kidney		3	510.00
52341	Cysto w/ureter stricture tx		3	510.00
52342	Cysto w/up stricture tx		3	510.00
52343	Cysto w/renal stricture tx		3	510.00
52344	Cysto/uretero, stone remove		3	510.00
52345	Cysto/uretero w/up stricture		3	510.00
52346	Cystouretero w/renal strict		3	510.00
52351	Cystouretro & or pyeloscope		3	510.00
52352	Cystouretro w/stone remove		4	630.00
52353	Cystouretero w/lithotripsy		4	630.00
52354	Cystouretero w/biopsy		4	630.00
52355	Cystouretero w/excise tumor		4	630.00
52400	Cystouretero w/congen repr		3	510.00
52450	Incision of prostate		3	510.00
52500	Revision of bladder neck		3	510.00
52510	Dilation prostatic urethra		3	510.00
52601	Prostatectomy (TURP)		4	630.00
52606	Control postop bleeding		1	333.00
52612	Prostatectomy, first stage		2	446.00
52614	Prostatectomy, second stage		1	333.00
52620	Remove residual prostate		1	333.00
52630	Remove prostate regrowth		2	446.00
52640	Relieve bladder contracture		2	446.00
52647	Laser surgery of prostate		9	1,339.00
52648	Laser surgery of prostate		9	1,339.00
52700	Drainage of prostate abscess		2	446.00
53000	Incision of urethra		1	333.00
53010	Incision of urethra		1	333.00
53020	Incision of urethra		1	333.00
53040	Drainage of urethra abscess		2	446.00
53080	Drainage of urinary leakage		3	510.00
53200	Biopsy of urethra		1	333.00
53210	Removal of urethra		5	717.00
53215	Removal of urethra		5	717.00
53220	Treatment of urethra lesion		2	446.00
53230	Removal of urethra lesion		2	446.00
53235	Removal of urethra lesion		3	510.00
53240	Surgery for urethra pouch		2	446.00
53250	Removal of urethra gland		2	446.00
53260	Treatment of urethra lesion		2	446.00
53265	Treatment of urethra lesion		2	446.00
53270	Removal of urethra gland		2	446.00

53275	Repair of urethra defect		2	446.00
53400	Revise urethra, stage 1		3	510.00
53405	Revise urethra, stage 2		2	446.00
53410	Reconstruction of urethra		2	446.00
53420	Reconstruct urethra, stage 1		3	510.00
53425	Reconstruct urethra, stage 2		2	446.00
53430	Reconstruction of urethra		2	446.00
53431	Reconstruct urethra/bladder		2	446.00
53440	Correct bladder function		2	446.00
53442	Remove perineal prosthesis		1	333.00
53444	Insert tandem cuff		2	446.00
53445	Insert uro/ves nck sphincter		1	333.00
53446	Remove uro sphincter		1	333.00
53447	Remove/replace ur sphincter		1	333.00
53449	Repair uro sphincter		1	333.00
53450	Revision of urethra		1	333.00
53460	Revision of urethra		1	333.00
53502	Repair of urethra injury		2	446.00
53505	Repair of urethra injury		2	446.00
53510	Repair of urethra injury		2	446.00
53515	Repair of urethra injury		2	446.00
53520	Repair of urethra defect		2	446.00
53605	Dilate urethra stricture		2	446.00
53665	Dilation of urethra		1	333.00
53850	Prostatic microwave thermotx	D	9	1,339.00
54000	Slitting of prepuce		2	446.00
54001	Slitting of prepuce		2	446.00
54015	Drain penis lesion		4	630.00
54057	Laser surg, penis lesion(s)		1	333.00
54060	Excision of penis lesion(s)		1	333.00
54065	Destruction, penis lesion(s)		1	333.00
54100	Biopsy of penis		1	333.00
54105	Biopsy of penis		1	333.00
54110	Treatment of penis lesion		2	446.00
54111	Treat penis lesion, graft		2	446.00
54112	Treat penis lesion, graft		2	446.00
54115	Treatment of penis lesion		1	333.00
54120	Partial removal of penis		2	446.00
54150	Circumcision		1	333.00
54152	Circumcision		1	333.00
54160	Circumcision		2	446.00
54161	Circumcision		2	446.00
54162	Lysis penil circumcis lesion		2	446.00
54163	Repair of circumcision		2	446.00
54164	Frenulotomy of penis		2	446.00

54205	Treatment of penis lesion		4	630.00
54220	Treatment of penis lesion		1	333.00
54300	Revision of penis		3	510.00
54304	Revision of penis		3	510.00
54308	Reconstruction of urethra		3	510.00
54312	Reconstruction of urethra		3	510.00
54316	Reconstruction of urethra		3	510.00
54318	Reconstruction of urethra		3	510.00
54322	Reconstruction of urethra		3	510.00
54324	Reconstruction of urethra		3	510.00
54326	Reconstruction of urethra		3	510.00
54328	Revise penis/urethra		3	510.00
54340	Secondary urethral surgery		3	510.00
54344	Secondary urethral surgery		3	510.00
54348	Secondary urethral surgery		3	510.00
54352	Reconstruct urethra/penis		3	510.00
54360	Penis plastic surgery		3	510.00
54380	Repair penis		3	510.00
54385	Repair penis		3	510.00
54400	Insert semi-rigid prosthesis		3	510.00
54401	Insert self-contd prosthesis		3	510.00
54405	Insert multi-comp penis pros		3	510.00
54406	Remove multi-comp penis pros		3	510.00
54408	Repair multi-comp penis pros		3	510.00
54410	Remove/replace penis prosth		3	510.00
54415	Remove self-contd penis pros		3	510.00
54416	Remv/repl penis contain pros		3	510.00
54420	Revision of penis		4	630.00
54435	Revision of penis		4	630.00
54440	Repair of penis		4	630.00
54450	Preputial stretching		1	333.00
54500	Biopsy of testis		1	333.00
54505	Biopsy of testis		1	333.00
54512	Excise lesion testis		2	446.00
54520	Removal of testis		3	510.00
54522	Orchiectomy, partial		3	510.00
54530	Removal of testis		4	630.00
54550	Exploration for testis		4	630.00
54600	Reduce testis torsion		4	630.00
54620	Suspension of testis		3	510.00
54640	Suspension of testis		4	630.00
54660	Revision of testis		2	446.00
54670	Repair testis injury		3	510.00
54680	Relocation of testis(es)		3	510.00
54690	Laparoscopy, orchiectomy		9	1,339.00

54700	Drainage of scrotum		2	446.00
54800	Biopsy of epididymis		1	333.00
54820	Exploration of epididymis		1	333.00
54830	Remove epididymis lesion		3	510.00
54840	Remove epididymis lesion		4	630.00
54860	Removal of epididymis		3	510.00
54861	Removal of epididymis		4	630.00
54900	Fusion of spermatic ducts		4	630.00
54901	Fusion of spermatic ducts		4	630.00
55040	Removal of hydrocele		3	510.00
55041	Removal of hydroceles		5	717.00
55060	Repair of hydrocele		4	630.00
55100	Drainage of scrotum abscess		1	333.00
55110	Explore scrotum		2	446.00
55120	Removal of scrotum lesion		2	446.00
55150	Removal of scrotum		1	333.00
55175	Revision of scrotum		1	333.00
55180	Revision of scrotum		2	446.00
55200	Incision of sperm duct		2	446.00
55250	Removal of sperm duct(s)		2	446.00
55400	Repair of sperm duct		1	333.00
55500	Removal of hydrocele		3	510.00
55520	Removal of sperm cord lesion		4	630.00
55530	Revise spermatic cord veins		4	630.00
55535	Revise spermatic cord veins		4	630.00
55540	Revise hernia & sperm veins		5	717.00
55550	Laparo ligate spermatic vein		9	1,339.00
55680	Remove sperm pouch lesion		1	333.00
55700	Biopsy of prostate	D	2	446.00
55705	Biopsy of prostate		2	446.00
55720	Drainage of prostate abscess		1	333.00
55725	Drainage of prostate abscess		2	446.00
55859	Percut/needle insert, pros		9	1,339.00
56440	Surgery for vulva lesion		2	446.00
56441	Lysis of labial lesion(s)		1	333.00
56515	Destroy vulva lesion/s compl		3	510.00
56620	Partial removal of vulva		5	717.00
56625	Complete removal of vulva		7	995.00
56700	Partial removal of hymen		1	333.00
56720	Incision of hymen		1	333.00
56740	Remove vagina gland lesion		3	510.00
56800	Repair of vagina		3	510.00
56810	Repair of perineum		5	717.00
57000	Exploration of vagina		1	333.00
57010	Drainage of pelvic abscess		2	446.00

57020	Drainage of pelvic fluid		2	446.00
57023	I & d vag hematoma, non-ob		1	333.00
57065	Destroy vag lesions, complex		1	333.00
57105	Biopsy of vagina		2	446.00
57130	Remove vagina lesion		2	446.00
57135	Remove vagina lesion		2	446.00
57180	Treat vaginal bleeding		1	333.00
57200	Repair of vagina		1	333.00
57210	Repair vagina/perineum		2	446.00
57220	Revision of urethra		3	510.00
57230	Repair of urethral lesion		3	510.00
57240	Repair bladder & vagina		5	717.00
57250	Repair rectum & vagina		5	717.00
57260	Repair of vagina		5	717.00
57265	Extensive repair of vagina		7	995.00
57268	Repair of bowel bulge		3	510.00
57288	Repair bladder defect	A	9	1,339.00
57289	Repair bladder & vagina		5	717.00
57291	Construction of vagina		5	717.00
57300	Repair rectum-vagina fistula		3	510.00
57400	Dilation of vagina		2	446.00
57410	Pelvic examination		2	446.00
57415	Remove vaginal foreign body		2	446.00
57513	Laser surgery of cervix		2	446.00
57520	Conization of cervix		2	446.00
57522	Conization of cervix		2	446.00
57530	Removal of cervix		3	510.00
57550	Removal of residual cervix		3	510.00
57556	Remove cervix, repair bowel		5	717.00
57700	Revision of cervix		1	333.00
57720	Revision of cervix		3	510.00
57820	D & c of residual cervix		3	510.00
58120	Dilation and curettage		2	446.00
58145	Removal of uterus lesion		5	717.00
58350	Reopen fallopian tube		3	510.00
58353	Endometr ablate, thermal		4	630.00
58545	Laparoscopic myomectomy		9	1,339.00
58546	Laparo-myomectomy, complex		9	1,339.00
58550	Laparo-asst vag hysterectomy		9	1,339.00
58555	Hysteroscopy, dx, sep proc		1	333.00
58558	Hysteroscopy, biopsy		3	510.00
58559	Hysteroscopy, lysis		2	446.00
58560	Hysteroscopy, resect septum		3	510.00
58561	Hysteroscopy, remove myoma		3	510.00
58562	Hysteroscopy, remove fb		3	510.00

58563	Hysteroscopy, ablation		4	630.00
58660	Laparoscopy, lysis		5	717.00
58661	Laparoscopy, remove adnexa		5	717.00
58662	Laparoscopy, excise lesions		5	717.00
58670	Laparoscopy, tubal cautery		3	510.00
58671	Laparoscopy, tubal block		3	510.00
58672	Laparoscopy, fimbrioplasty		5	717.00
58673	Laparoscopy, salpingostomy		5	717.00
58800	Drainage of ovarian cyst(s)		3	510.00
58820	Drain ovary abscess, open	D	3	510.00
58900	Biopsy of ovary(s)		3	510.00
59160	D & c after delivery		3	510.00
59320	Revision of cervix		1	333.00
59812	Treatment of miscarriage		5	717.00
59820	Care of miscarriage		5	717.00
59821	Treatment of miscarriage		5	717.00
59840	Abortion		5	717.00
59841	Abortion		5	717.00
59870	Evacuate mole of uterus		5	717.00
59871	Remove cerclage suture		5	717.00
60000	Drain thyroid/tongue cyst	D	1	333.00
60200	Remove thyroid lesion		2	446.00
60280	Remove thyroid duct lesion		4	630.00
60281	Remove thyroid duct lesion		4	630.00
61020	Remove brain cavity fluid		1	333.00
61026	Injection into brain canal		1	333.00
61050	Remove brain canal fluid		1	333.00
61055	Injection into brain canal		1	333.00
61070	Brain canal shunt procedure		1	333.00
61215	Insert brain-fluid device		3	510.00
61790	Treat trigeminal nerve		3	510.00
61791	Treat trigeminal tract		3	510.00
61885	Implant neurostim one array		2	446.00
61886	Implant neurostim arrays		3	510.00
61888	Revise/remove neuroreceiver		1	333.00
62194	Replace/irrigate catheter		1	333.00
62225	Replace/irrigate catheter		1	333.00
62230	Replace/revise brain shunt		2	446.00
62263	Lysis epidural adhesions		1	333.00
62264	Epidural lysis on single day	A	1	333.00
62268	Drain spinal cord cyst		1	333.00
62269	Needle biopsy, spinal cord		1	333.00
62270	Spinal fluid tap, diagnostic		1	333.00
62272	Drain cerebro spinal fluid		1	333.00
62273	Treat epidural spine lesion		1	333.00

62280	Treat spinal cord lesion		1	333.00
62281	Treat spinal cord lesion		1	333.00
62282	Treat spinal canal lesion		1	333.00
62287	Percutaneous diskectomy		9	1,339.00
62294	Injection into spinal artery		3	510.00
62310	Inject spine c/t		1	333.00
62311	Inject spine l/s (cd)		1	333.00
62318	Inject spine w/cath, c/t		1	333.00
62319	Inject spine w/cath l/s (cd)		1	333.00
62350	Implant spinal canal cath		2	446.00
62355	Remove spinal canal catheter		2	446.00
62360	Insert spine infusion device		2	446.00
62361	Implant spine infusion pump		2	446.00
62362	Implant spine infusion pump		2	446.00
62365	Remove spine infusion device		2	446.00
63600	Remove spinal cord lesion		2	446.00
63610	Stimulation of spinal cord		1	333.00
63650	Implant neuroelectrodes		2	446.00
63660	Revise/remove neuroelectrode		1	333.00
63685	Implant neuroreceiver		2	446.00
63688	Revise/remove neuroreceiver		1	333.00
63744	Revision of spinal shunt		3	510.00
63746	Removal of spinal shunt		2	446.00
64410	Injection for nerve block		1	333.00
64415	Injection for nerve block		1	333.00
64417	Injection for nerve block		1	333.00
64420	Injection for nerve block	D	1	333.00
64421	Injection for nerve block		1	333.00
64430	Injection for nerve block	D	1	333.00
64470	Inj paravertebral c/t		1	333.00
64472	Inj paravertebral c/t add-on		1	333.00
64475	Inj paravertebral l/s		1	333.00
64476	Inj paravertebral l/s add-on		1	333.00
64479	Inj foramen epidural c/t		1	333.00
64480	Inj foramen epidural add-on		1	333.00
64483	Inj foramen epidural l/s		1	333.00
64484	Inj foramen epidural add-on		1	333.00
64510	Injection for nerve block		1	333.00
64520	Injection for nerve block		1	333.00
64530	Injection for nerve block		1	333.00
64553	Implant neuroelectrodes		1	333.00
64573	Implant neuroelectrodes		1	333.00
64575	Implant neuroelectrodes		1	333.00
64577	Implant neuroelectrodes		1	333.00
64580	Implant neuroelectrodes		1	333.00

64585	Revise/remove neuroelectrode		1	333.00
64590	Implant neuroreceiver		2	446.00
64595	Revise/remove neuroreceiver		1	333.00
64600	Injection treatment of nerve		1	333.00
64605	Injection treatment of nerve		1	333.00
64610	Injection treatment of nerve		1	333.00
64620	Injection treatment of nerve		1	333.00
64622	Destr paravertebrl nerve l/s		1	333.00
64623	Destr paravertebral n add-on		1	333.00
64626	Destr paravertebrl nerve c/t		1	333.00
64627	Destr paravertebral n add-on		1	333.00
64630	Injection treatment of nerve		2	446.00
64680	Injection treatment of nerve		2	446.00
64702	Revise finger/toe nerve		1	333.00
64704	Revise hand/foot nerve		1	333.00
64708	Revise arm/leg nerve		2	446.00
64712	Revision of sciatic nerve		2	446.00
64713	Revision of arm nerve(s)		2	446.00
64714	Revise low back nerve(s)		2	446.00
64716	Revision of cranial nerve		3	510.00
64718	Revise ulnar nerve at elbow		2	446.00
64719	Revise ulnar nerve at wrist		2	446.00
64721	Carpal tunnel surgery		2	446.00
64722	Relieve pressure on nerve(s)		1	333.00
64726	Release foot/toe nerve		1	333.00
64727	Internal nerve revision		1	333.00
64732	Incision of brow nerve		2	446.00
64734	Incision of cheek nerve		2	446.00
64736	Incision of chin nerve	D	2	446.00
64738	Incision of jaw nerve		2	446.00
64740	Incision of tongue nerve		2	446.00
64742	Incision of facial nerve		2	446.00
64744	Incise nerve, back of head		2	446.00
64746	Incise diaphragm nerve		2	446.00
64771	Sever cranial nerve		2	446.00
64772	Incision of spinal nerve		2	446.00
64774	Remove skin nerve lesion		2	446.00
64776	Remove digit nerve lesion		3	510.00
64778	Digit nerve surgery add-on		2	446.00
64782	Remove limb nerve lesion		3	510.00
64783	Limb nerve surgery add-on		2	446.00
64784	Remove nerve lesion		3	510.00
64786	Remove sciatic nerve lesion		3	510.00
64787	Implant nerve end		2	446.00
64788	Remove skin nerve lesion		3	510.00

64790	Removal of nerve lesion		3	510.00
64792	Removal of nerve lesion		3	510.00
64795	Biopsy of nerve		2	446.00
64802	Remove sympathetic nerves		2	446.00
64821	Remove sympathetic nerves		4	630.00
64831	Repair of digit nerve		4	630.00
64832	Repair nerve add-on		1	333.00
64834	Repair of hand or foot nerve		2	446.00
64835	Repair of hand or foot nerve		3	510.00
64836	Repair of hand or foot nerve		3	510.00
64837	Repair nerve add-on		1	333.00
64840	Repair of leg nerve		2	446.00
64856	Repair/transpose nerve		2	446.00
64857	Repair arm/leg nerve		2	446.00
64858	Repair sciatic nerve		2	446.00
64859	Nerve surgery		1	333.00
64861	Repair of arm nerves		3	510.00
64862	Repair of low back nerves		3	510.00
64864	Repair of facial nerve		3	510.00
64865	Repair of facial nerve		4	630.00
64870	Fusion of facial/other nerve		4	630.00
64872	Subsequent repair of nerve		2	446.00
64874	Repair & revise nerve add-on		3	510.00
64876	Repair nerve/shorten bone		3	510.00
64885	Nerve graft, head or neck		2	446.00
64886	Nerve graft, head or neck		2	446.00
64890	Nerve graft, hand or foot		2	446.00
64891	Nerve graft, hand or foot		2	446.00
64892	Nerve graft, arm or leg		2	446.00
64893	Nerve graft, arm or leg		2	446.00
64895	Nerve graft, hand or foot		3	510.00
64896	Nerve graft, hand or foot		3	510.00
64897	Nerve graft, arm or leg		3	510.00
64898	Nerve graft, arm or leg		3	510.00
64901	Nerve graft add-on		2	446.00
64902	Nerve graft add-on		2	446.00
64905	Nerve pedicle transfer		2	446.00
64907	Nerve pedicle transfer		1	333.00
65091	Revise eye		3	510.00
65093	Revise eye with implant		3	510.00
65101	Removal of eye		3	510.00
65103	Remove eye/insert implant		3	510.00
65105	Remove eye/attach implant		4	630.00
65110	Removal of eye		5	717.00
65112	Remove eye/revise socket		7	995.00

65114	Remove eye/revise socket		7	995.00
65130	Insert ocular implant		3	510.00
65135	Insert ocular implant		2	446.00
65140	Attach ocular implant		3	510.00
65150	Revise ocular implant		2	446.00
65155	Reinsert ocular implant		3	510.00
65175	Removal of ocular implant		1	333.00
65235	Remove foreign body from eye		2	446.00
65260	Remove foreign body from eye		3	510.00
65265	Remove foreign body from eye		4	630.00
65270	Repair of eye wound		2	446.00
65272	Repair of eye wound		2	446.00
65275	Repair of eye wound		4	630.00
65280	Repair of eye wound		4	630.00
65285	Repair of eye wound		4	630.00
65290	Repair of eye socket wound		3	510.00
65400	Removal of eye lesion		1	333.00
65410	Biopsy of cornea		2	446.00
65420	Removal of eye lesion		2	446.00
65426	Removal of eye lesion		5	717.00
65710	Corneal transplant		7	995.00
65730	Corneal transplant		7	995.00
65750	Corneal transplant		7	995.00
65755	Corneal transplant		7	995.00
65770	Revise cornea with implant		7	995.00
65772	Correction of astigmatism		4	630.00
65775	Correction of astigmatism		4	630.00
65800	Drainage of eye	D	1	333.00
65805	Drainage of eye	D	1	333.00
65810	Drainage of eye		3	510.00
65815	Drainage of eye		2	446.00
65850	Incision of eye		4	630.00
65865	Incise inner eye adhesions		1	333.00
65870	Incise inner eye adhesions		4	630.00
65875	Incise inner eye adhesions		4	630.00
65880	Incise inner eye adhesions		4	630.00
65900	Remove eye lesion		5	717.00
65920	Remove implant of eye		7	995.00
65930	Remove blood clot from eye		5	717.00
66020	Injection treatment of eye		1	333.00
66030	Injection treatment of eye		1	333.00
66130	Remove eye lesion		7	995.00
66150	Glaucoma surgery		4	630.00
66155	Glaucoma surgery		4	630.00
66160	Glaucoma surgery		2	446.00

66165	Glaucoma surgery		4	630.00
66170	Glaucoma surgery		4	630.00
66172	Incision of eye		4	630.00
66180	Implant eye shunt		5	717.00
66185	Revise eye shunt		2	446.00
66220	Repair eye lesion		3	510.00
66225	Repair/graft eye lesion		4	630.00
66250	Follow-up surgery of eye		2	446.00
66500	Incision of iris		1	333.00
66505	Incision of iris		1	333.00
66600	Remove iris and lesion		3	510.00
66605	Removal of iris		3	510.00
66625	Removal of iris		3	510.00
66630	Removal of iris		3	510.00
66635	Removal of iris		3	510.00
66680	Repair iris & ciliary body		3	510.00
66682	Repair iris & ciliary body		2	446.00
66700	Destruction, ciliary body		2	446.00
66710	Destruction, ciliary body		2	446.00
66720	Destruction, ciliary body		2	446.00
66740	Destruction, ciliary body		2	446.00
66821	After cataract laser surgery		2	446.00
66825	Reposition intraocular lens		4	630.00
66830	Removal of lens lesion		4	630.00
66840	Removal of lens material		4	630.00
66850	Removal of lens material		7	995.00
66852	Removal of lens material		4	630.00
66920	Extraction of lens		4	630.00
66930	Extraction of lens		5	717.00
66940	Extraction of lens		5	717.00
66982	Cataract surgery, complex		8	973.00
66983	Cataract surg w/iol, 1 stage		8	973.00
66984	Cataract surg w/iol, i stage		8	973.00
66985	Insert lens prosthesis		6	826.00
66986	Exchange lens prosthesis		6	826.00
67005	Partial removal of eye fluid		4	630.00
67010	Partial removal of eye fluid		4	630.00
67015	Release of eye fluid		1	333.00
67025	Replace eye fluid		1	333.00
67027	Implant eye drug system		4	630.00
67030	Incise inner eye strands		1	333.00
67031	Laser surgery, eye strands		2	446.00
67036	Removal of inner eye fluid		4	630.00
67038	Strip retinal membrane		5	717.00
67039	Laser treatment of retina		7	995.00

67040	Laser treatment of retina		7	995.00
67107	Repair detached retina		5	717.00
67108	Repair detached retina		7	995.00
67112	Rerepair detached retina		7	995.00
67115	Release encircling material		2	446.00
67120	Remove eye implant material		2	446.00
67121	Remove eye implant material		2	446.00
67141	Treatment of retina	D	2	446.00
67218	Treatment of retinal lesion		5	717.00
67227	Treatment of retinal lesion		1	333.00
67250	Reinforce eye wall		3	510.00
67255	Reinforce/graft eye wall		3	510.00
67311	Revise eye muscle		3	510.00
67312	Revise two eye muscles		4	630.00
67314	Revise eye muscle		4	630.00
67316	Revise two eye muscles		4	630.00
67318	Revise eye muscle(s)		4	630.00
67320	Revise eye muscle(s) add-on		4	630.00
67331	Eye surgery follow-up add-on		4	630.00
67332	Rerevise eye muscles add-on		4	630.00
67334	Revise eye muscle w/suture		4	630.00
67335	Eye suture during surgery		4	630.00
67340	Revise eye muscle add-on		4	630.00
67343	Release eye tissue	A	7	995.00
67350	Biopsy eye muscle		1	333.00
67400	Explore/biopsy eye socket		3	510.00
67405	Explore/drain eye socket		4	630.00
67412	Explore/treat eye socket		5	717.00
67413	Explore/treat eye socket		5	717.00
67415	Aspiration, orbital contents		1	333.00
67420	Explore/treat eye socket		5	717.00
67430	Explore/treat eye socket		5	717.00
67440	Explore/drain eye socket		5	717.00
67450	Explore/biopsy eye socket		5	717.00
67550	Insert eye socket implant		4	630.00
67560	Revise eye socket implant		2	446.00
67715	Incision of eyelid fold		1	333.00
67808	Remove eyelid lesion(s)		2	446.00
67830	Revise eyelashes		2	446.00
67835	Revise eyelashes		2	446.00
67880	Revision of eyelid		3	510.00
67882	Revision of eyelid		3	510.00
67900	Repair brow defect		4	630.00
67901	Repair eyelid defect		5	717.00
67902	Repair eyelid defect		5	717.00

67903	Repair eyelid defect		4	630.00
67904	Repair eyelid defect		4	630.00
67906	Repair eyelid defect		5	717.00
67908	Repair eyelid defect		4	630.00
67909	Revise eyelid defect		4	630.00
67911	Revise eyelid defect		3	510.00
67914	Repair eyelid defect		3	510.00
67916	Repair eyelid defect		4	630.00
67917	Repair eyelid defect		4	630.00
67921	Repair eyelid defect		3	510.00
67923	Repair eyelid defect		4	630.00
67924	Repair eyelid defect		4	630.00
67935	Repair eyelid wound		2	446.00
67950	Revision of eyelid		2	446.00
67961	Revision of eyelid		3	510.00
67966	Revision of eyelid		3	510.00
67971	Reconstruction of eyelid		3	510.00
67973	Reconstruction of eyelid		3	510.00
67974	Reconstruction of eyelid		3	510.00
67975	Reconstruction of eyelid		3	510.00
68115	Remove eyelid lining lesion		2	446.00
68130	Remove eyelid lining lesion		2	446.00
68320	Revise/graft eyelid lining		4	630.00
68325	Revise/graft eyelid lining		4	630.00
68326	Revise/graft eyelid lining		4	630.00
68328	Revise/graft eyelid lining		4	630.00
68330	Revise eyelid lining		4	630.00
68335	Revise/graft eyelid lining		4	630.00
68340	Separate eyelid adhesions	D	4	630.00
68360	Revise eyelid lining		2	446.00
68362	Revise eyelid lining		2	446.00
68500	Removal of tear gland		3	510.00
68505	Partial removal, tear gland		3	510.00
68510	Biopsy of tear gland		1	333.00
68520	Removal of tear sac		3	510.00
68525	Biopsy of tear sac		1	333.00
68540	Remove tear gland lesion		3	510.00
68550	Remove tear gland lesion		3	510.00
68700	Repair tear ducts		2	446.00
68720	Create tear sac drain		4	630.00
68745	Create tear duct drain		4	630.00
68750	Create tear duct drain		4	630.00
68770	Close tear system fistula		4	630.00
68810	Probe nasolacrimal duct	D	1	333.00
68811	Probe nasolacrimal duct		2	446.00

68815	Probe nasolacrimal duct		2	446.00
69110	Remove external ear, partial		1	333.00
69120	Removal of external ear		2	446.00
69140	Remove ear canal lesion(s)		2	446.00
69145	Remove ear canal lesion(s)	D	2	446.00
69150	Extensive ear canal surgery		3	510.00
69205	Clear outer ear canal		1	333.00
69300	Revise external ear		3	510.00
69310	Rebuild outer ear canal		3	510.00
69320	Rebuild outer ear canal		7	995.00
69421	Incision of eardrum		3	510.00
69436	Create eardrum opening		3	510.00
69440	Exploration of middle ear		3	510.00
69450	Eardrum revision	D	1	333.00
69501	Mastoidectomy		7	995.00
69502	Mastoidectomy		7	995.00
69505	Remove mastoid structures		7	995.00
69511	Extensive mastoid surgery		7	995.00
69530	Extensive mastoid surgery		7	995.00
69550	Remove ear lesion		5	717.00
69552	Remove ear lesion		7	995.00
69601	Mastoid surgery revision		7	995.00
69602	Mastoid surgery revision		7	995.00
69603	Mastoid surgery revision		7	995.00
69604	Mastoid surgery revision		7	995.00
69605	Mastoid surgery revision		7	995.00
69620	Repair of eardrum		2	446.00
69631	Repair eardrum structures		5	717.00
69632	Rebuild eardrum structures		5	717.00
69633	Rebuild eardrum structures		5	717.00
69635	Repair eardrum structures		7	995.00
69636	Rebuild eardrum structures		7	995.00
69637	Rebuild eardrum structures		7	995.00
69641	Revise middle ear & mastoid		7	995.00
69642	Revise middle ear & mastoid		7	995.00
69643	Revise middle ear & mastoid		7	995.00
69644	Revise middle ear & mastoid		7	995.00
69645	Revise middle ear & mastoid		7	995.00
69646	Revise middle ear & mastoid		7	995.00
69650	Release middle ear bone		7	995.00
69660	Revise middle ear bone		5	717.00
69661	Revise middle ear bone		5	717.00
69662	Revise middle ear bone		5	717.00
69666	Repair middle ear structures		4	630.00
69667	Repair middle ear structures		4	630.00

69670	Remove mastoid air cells		3	510.00
69676	Remove middle ear nerve		3	510.00
69700	Close mastoid fistula		3	510.00
69711	Remove/repair hearing aid		1	333.00
69714	Implant temple bone w/stimul		9	1,339.00
69715	Temple bne implnt w/stimulat		9	1,339.00
69717	Temple bone implant revision		9	1,339.00
69718	Revise temple bone implant		9	1,339.00
69720	Release facial nerve		5	717.00
69725	Release facial nerve	D	5	717.00
69740	Repair facial nerve	D	5	717.00
69745	Repair facial nerve	D	5	717.00
69801	Incise inner ear		5	717.00
69802	Incise inner ear		7	995.00
69805	Explore inner ear		7	995.00
69806	Explore inner ear		7	995.00
69820	Establish inner ear window		5	717.00
69840	Revise inner ear window	D	5	717.00
69905	Remove inner ear		7	995.00
69910	Remove inner ear & mastoid		7	995.00
69915	Incise inner ear nerve		7	995.00
69930	Implant cochlear device		7	995.00
G0105	Colorectal scrn; hi risk ind		2	446.00
G0121	Colon ca scrn; not high rsk ind		2	446.00
G0260	Inj for sacroiliac jt anesth		1	333.00

[FR Doc. 04–25968 Filed 11–19–04; 4:09 pm]

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Federal Register

Friday,
November 26, 2004

Part IV

Architectural and Transportation Barriers Compliance Board

36 CFR Part 1195

Americans With Disabilities Act (ADA) Accessibility Guidelines for Passenger Vessels; Large and Small Vessels; Proposed Rule

49 CFR Part 37

Nondiscrimination on the Basis of Disability: Passenger Vessels; Proposed Rule

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1195

[Docket No. 2004–1]

RIN 3014–AA11

Americans With Disabilities Act (ADA) Accessibility Guidelines for Passenger Vessels; Large Vessels

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Availability of draft guidelines; notice of hearing.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has placed in the docket and on its Web site for public review and comment draft guidelines which address accessibility to and in passenger vessels which are permitted to carry more than 150 passengers or more than 49 overnight passengers. Comments will be accepted on the draft guidelines and the Access Board will consider those comments prior to issuing a notice of proposed rulemaking.

DATES: Comments on the draft guidelines must be received by March 28, 2005. Late comments will be considered to the extent practicable. The Access Board will hold a hearing on January 10, 2005 from 1:30 p.m. until 4:30 p.m.

ADDRESSES: Comments should be sent to the Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111. E-mail comments should be sent to *pvag@access-board.gov*. Comments sent by e-mail will be considered only if they contain the full name and address of the sender in the text. Comments will be available for inspection at the above address from 9 a.m. to 5 p.m. on regular business days. The hearing on January 10, 2005 will be held at the Marriott at Metro Center Hotel, 775 12th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Paul Beatty, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., Suite 1000, Washington DC 20004–1111. Telephone number (202) 272–0012 (voice); (202) 272–0082 (TTY); Electronic mail address: *pvag@access-board.gov*.

SUPPLEMENTARY INFORMATION: In 1998, the Access Board established a 21-member Federal advisory committee to provide recommendations to assist the Board in developing passenger vessel accessibility guidelines. The committee included disability organizations, industry trade groups, State and local government agencies, and passenger vessel operators. The Passenger Vessel Access Advisory Committee (PVAAC) met nine times between September 1998 and September 2000 and submitted a final report ''Recommendations for Accessibility Guidelines for Passenger Vessels'' (*http://www.access-board.gov/pvaac/commrept/index.htm*) to the Board in December 2000. The PVAAC report provided recommendations on access to elements, rooms, spaces, and facilities on passenger vessels and how to provide access on and off such vessels.

The Access Board convened an ad hoc committee of Board members to review the PVAAC report. After reviewing the PVAAC report in detail, the Board's ad hoc committee prepared draft guidelines addressing accessibility to and in passenger vessels which carry more than 150 passengers or more than 49 overnight passengers. The Access Board is making the recommendations of the ad hoc committee available in the form of draft guidelines for public review and comment prior to issuing a notice of proposed rulemaking. The Board's draft guidelines along with supplementary information have been placed in the rulemaking docket and on the Board's Web site. The Board will issue a notice of proposed rulemaking (NPRM) following a review of comments received.

In addition to welcoming written comments, the Board will hold a hearing on January 10, 2005 to give the public an additional opportunity to provide input on the Board's draft guidelines. Interested members of the public are encouraged to contact the Access Board at (202) 272–0012 (voice) or (202) 272–0082 (TTY) to pre-register to attend the hearing. A second hearing may be held later in 2005. The location, date, and time of the second hearing will be announced in a subsequent **Federal Register** notice and on the Board's Web site. The hearings will be accessible to persons with disabilities. Sign language interpreters and an assistive listening system will be available. Persons attending the hearings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

The Board has also drafted a plan for conducting a regulatory assessment of the passenger vessels guidelines. The plan provides for evaluating the potential impacts of the guidelines on new construction of passenger vessels through case studies, and outlines some methods for examining the impacts of the guidelines on alterations to passenger vessels. The plan is available for public review and the Board invites comment on the plan. Also, today the Board published an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** to gather information on accessibility to and in smaller passenger vessels. This information will assist the Board in developing a proposed rule on accessibility guidelines for passenger vessels which carry 150 or fewer passengers or 49 or fewer overnight passengers.

The Department of Transportation (DOT) is conducting a separate rulemaking to adopt the Access Board's guidelines as accessibility standards for passenger vessels covered by the ADA. The DOT rulemaking will also address operational issues related to passenger vessels. DOT has issued a separate advance notice of proposed rulemaking (ANPRM) in today's **Federal Register** related to its rulemaking.

Availability of Copies and Electronic Access

Single copies of the passenger vessels rulemaking (Availability of Draft Guidelines, Draft Guidelines and Supplementary Information, Draft Plan for Regulatory Assessment, and ANPRM on Access to and in Smaller Passenger Vessels) may be obtained at no cost by calling the Access Board's automated publications order line (202) 272–0080, by pressing 2 on the telephone keypad, then 1 and requesting publication S–45. Please record your name, address, telephone number and publication code S–45. Persons using a TTY should call (202) 272–0082. Documents are available in alternate formats upon request. Persons who want a publication in an alternate format should specify the type of format (cassette tape, Braille, large print, or ASCII disk). Documents are also available on the Board's Web site (*http://www.access-board.gov*).

Emil H. Frankel,

Chair, Architectural and Transportation Barriers Compliance Board.

[FR Doc. 04–26000 Filed 11–24–04; 8:45 am]

BILLING CODE 8150–01–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1195

[Docket No. 2004–2]

RIN 3014–AA11

Americans With Disabilities Act (ADA) Accessibility Guidelines for Passenger Vessels; Small Vessels

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Advance notice of proposed rulemaking; notice of hearing.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) is considering the development of accessibility guidelines under the Americans with Disabilities Act of 1990 for newly constructed or altered passenger vessels which carry 150 or fewer passengers or 49 or fewer overnight passengers. This notice seeks comment on various issues related to the development of accessibility guidelines for these types of passenger vessels.

DATES: Comments should be received by March 28, 2005. Comments received after this date will be considered to the extent practicable. The Access Board will hold a hearing on January 10, 2005, from 1:30 p.m. until 4:30 p.m.

ADDRESSES: Comments should be sent to the Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. E-mail comments should be sent to *pvag@access-board.gov*. Comments sent by e-mail will be considered only if they contain the full name and address of the sender in the text. Comments will be available for inspection at the above address from 9 a.m. to 5 p.m. on regular business days. The hearing on January 10, 2005 will be held at the Marriott at Metro Center Hotel, 775 12th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Paul Beatty, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–0012 (Voice); (202) 272–0082 (TTY). Electronic mail address: *pvag@access-board.gov*.

SUPPLEMENTARY INFORMATION: The Architectural and Transportation Barriers Compliance Board (Access Board) is responsible for developing accessibility guidelines under the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101 *et seq.*) to ensure that facilities and vehicles covered by the law are readily accessible to and usable by individuals with disabilities. The ADA is a comprehensive civil rights law that prohibits discrimination on the basis of disability. Title II of the ADA establishes requirements for the purchase, lease, and remanufacture of vehicles operated by State and local government entities to provide designated public transportation. 42 U.S.C. 12141, 12142, 12144. For purposes of title II of the ADA, the term ''designated public transportation'' means ''transportation * * * by bus, rail, or any other conveyance * * * that provides the general public with general or special service (including charter service) on a regular and continuing basis.'' 42 U.S.C. 12141(2). Passenger vessels such as ferries operated by State and local government entities provide designated public transportation and are thus subject to the transportation vehicle requirements of title II of the ADA.

Title III of the ADA establishes requirements for the purchase and lease of vehicles operated by private entities, who are primarily engaged in the business of transporting people and whose operations affect commerce. 42 U.S.C. 12184. For purposes of title III of the ADA, the term ''specified public transportation'' means ''transportation by bus, rail, or any other conveyance * * * that provides the general public with general or special service (including charter service) on a regular basis''. Cruise ships and excursion boats operated by private entities to provide specified public transportation services are thus subject to the transportation vehicle requirements of title III of the ADA. 42 U.S.C. 12181.

Title III of the ADA also establishes requirements for the purchase and lease of vehicles by private entities who are not primarily engaged in the business of transporting people but operate a demand responsive or fixed route system. 42 U.S.C. 12182(b)(2) (B) and (C). For example, an amusement park or hotel that operates shuttle boats to transport patrons from a parking area to the main attraction or hotel itself would be subject to the transportation vehicle requirements of title III of the ADA. In addition to the transportation vehicle requirements, title III of the ADA establishes requirements for new construction and alteration of places of public accommodation operated by private entities. 42 U.S.C. 12183. There are twelve categories of places of public accommodation covered by title III of the ADA, including places of lodging, establishments serving food or drink, and places of exhibition or entertainment. 42 U.S.C. 12181(7) (A)–(L). Passenger vessels or portions of vessels that are within any of the twelve categories of places of public accommodation such as cruise ships, dinner boats, gaming boats, and sightseeing vessels are thus subject to the public accommodation requirements of title III of the ADA.

In 1998, the Access Board established a 21-member advisory committee to provide recommendations to assist the Board in developing passenger vessel accessibility guidelines. The committee included disability organizations, industry trade groups, State and local government agencies, and passenger vessel operators. The Passenger Vessel Access Advisory Committee (PVAAC) met nine times between September 1998 and September 2000 and submitted a final report ''Recommendations for Accessibility Guidelines for Passenger Vessels'' *(http://www.access-board.gov/pvaac/commrept/index.htm)* to the Board in December 2000.

The PVAAC report addresses two types of passenger vessels. Passenger vessels which are subject to U.S. Coast Guard regulations found at 46 CFR Subchapters H or K, and smaller passenger vessels subject to Subchapters C or T. Most of the PVAAC report focused on access in larger vessels, with only one chapter of the report specifically addressing smaller vessels (see option 2 below for a summary of the chapter). Determining which Subchapter of the Coast Guard regulations applies to a passenger vessel is based on the number of passengers a vessel is permitted to carry and the volume tonnage of a vessel.

Also today, the Access Board issued in the **Federal Register** a notice announcing that the Board's draft guidelines for large passenger vessels are available for public review on the Board's Web site *(http://www.access-board.gov)*. Because determining the tonnage of a passenger vessel is a complicated process and because many large foreign-flagged passenger vessels are not subject to Subchapters H or K, the Board's draft guidelines would apply to passenger vessels which are permitted to carry more than 150 passengers or more than 49 overnight passengers. These numbers were derived from Subchapter K and are used to distinguish Subchapter K passenger vessels from Subchapter T passenger vessels, which are generally smaller. It is possible for some Subchapter H

passenger vessels to have fewer than these passenger numbers.

To assist the Board in developing accessibility guidelines for the design, construction, and alteration of smaller passenger vessels, the Board seeks comment on four options. Comment is sought in the following areas for each option:

- The feasibility of each option and the rationale for selecting one option over others;
- How a selected option should be modified to correct any identified weaknesses;
- Data relating to the costs and benefits of each of the options; and
- Recommendations on other ways to address the accessible design, construction, and alteration of smaller passenger vessels.

Option 1. Require vessels which are permitted to carry fewer than 150 passengers or fewer than 49 overnight passengers to comply with the same design, construction, and alteration requirements applicable to larger vessels addressed in the Board's draft guidelines except where it is not operationally or structurally feasible. Where a provision is not operationally or structurally feasible, compliance would be to the maximum extent practicable. The Board seeks comment on which particular provisions might be considered operationally or structurally infeasible.

Option 2. Require these smaller vessels to comply with the PVAAC report. In Chapter 12 of its report (*http://www.access-board.gov/pvaac/commrept/chapter12.htm*,) PVAAC provided access recommendations for smaller vessels but applied the recommendations differently to sailing vessels and power vessels. Any Subchapter C or T sailing vessel could use the small vessel access provisions (summarized below). However, only Subchapter C or T power vessels that are within at least two of the following three measurements could use the small vessel provisions. The three measurements are:

- The length on deck of the vessel is 65 feet or less;
- The maximum beam (width) of the vessel is 16 feet or less; and
- On the vessels main deck, each of the following three areas (weather deck, major program area, and boarding deck) is 750 square feet or less in size.

Therefore, for example, a new water taxi with a length on deck of 65 feet and a beam of 16 feet could use the small vessel provisions. Other Subchapter C or T power vessels that do not meet at least two of the above three measurements would need to comply with the access provisions applicable to larger passenger vessels.

The small vessel provisions generally address access only in a few areas including vessel embarkation and debarkation points, clear decks spaces and transfer seats, toilet rooms, accessible routes and transfer systems, and means of escape. The accessible route technical provisions also addressed brow and gangway requirements but did not include recommendations regarding gangway slopes. These small vessel provisions were based on language similar to what is found in the Board's draft guidelines which address larger vessels, but were extensively modified to be compatible with smaller passenger vessels.

Option 3. Develop general performance requirements which must be met when designing, constructing or altering smaller vessels. General performance requirements list objectives, rather than detailed design requirements, which must be accomplished to determine if a vessel is accessible. For example, general performance requirements for newly constructed smaller passenger vessels could include the following:

- Passengers with disabilities must be able to get on and off a passenger vessel by a roll-on access method or by use of a transfer device;
- Within the vessel, except for spaces and areas only connected by ladders, passengers with disabilities must be able to approach, enter, maneuver within, and exit each program area;
- Within the vessel, except for spaces and areas only connected by ladders, passengers with disabilities must be able to approach, enter, maneuver within, and exit each passenger toilet facility;
- Within the vessel, provide a circulation path usable by passengers with disabilities which connects accessible spaces and areas to an accessible entry and departure point.

Option 4. The Board's draft guidelines apply to larger passenger vessels (including sailing vessels) which carry more than 150 passengers or more than 49 overnight passengers. It may be feasible to apply the draft guidelines to some sailing and power vessels which carry fewer than 150 passengers or 49 overnight passengers. The Board is interested in receiving comment to determine at what passenger count the application of the draft guidelines to smaller passenger vessels becomes infeasible or at what size vessel the application of the draft guidelines becomes infeasible.

In addition to welcoming written comments, the Board will hold a hearing on January 10, 2005 to give the public an additional opportunity to provide input on the Board's draft guidelines. Interested members of the public are encouraged to contact the Access Board at (202) 272–0012 (voice) or (202) 272–0082 (TTY) to pre-register to attend the hearing. A second hearing may be held later in 2005. The location, date, and time of the second hearing will be announced in a subsequent **Federal Register** notice and on the Board's Web site. The hearings will be accessible to persons with disabilities. Sign language interpreters and an assistive listening system will be available. Persons attending the hearings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

Availability of Copies and Electronic Access

Single copies of the passenger vessels rulemaking (ANPRM on Access to and in Smaller Passenger Vessels, Availability of Draft Guidelines, Draft Guidelines and Supplementary Information, and Draft Plan for Regulatory Assessment) may be obtained at no cost by calling the Access Board's automated publications order line (202) 272–0080, by pressing 2 on the telephone keypad, then 1 and requesting publication S–45. Please record your name, address, telephone number and publication code S–45. Persons using a TTY should call (202) 272–0082. Documents are available in alternate formats upon request. Persons who want a publication in an alternate format should specify the type of format (cassette tape, Braille, large print, or ASCII disk). Documents are also available on the Board's Web site *(http://www.access-board.gov).*

Emil H. Frankel,

Chair, Architectural and Transportation Barriers Compliance Board.

[FR Doc. 04–25999 Filed 11–24–04; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 37

[Docket No. OST–2004–19700]

RIN 2105–AB87

Nondiscrimination on the Basis of Disability: Passenger Vessels

AGENCY: Office of the Secretary of Transportation (OST), DOT.

ACTION: Advance Notice of Proposed Rulemaking (ANPRM).

SUMMARY: The Department of Transportation is seeking comments on a number of issues concerning the accessibility of passenger vessels to individuals with disabilities. The Department is considering proposing rules on this subject under the Americans with Disabilities Act. This action is related to the issuance of a notice of availability and ANPRM being issued by the Access Board concerning accessibility guidelines for passenger vessels.

DATES: Comments must be received on or before March 28, 2005. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments on this advance notice of proposed rulemaking should be filed with: the Docket Management System, U.S. Department of Transportation. Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Please identify the docket number OST–2004–19700 at the beginning of your comments. You may also submit comments through the internet to *http://dms.dot.gov*. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review comments to the docket on the Internet at *http://dms.dot.gov*. Search by using the last set of digits in the docket number (omitting the ''OST–2004'').

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th St., SW., Room 10424, Washington, DC 20590–0001. Telephone (202) 366–9310 (voice); (202) 755–7687 (TDD). E-mail *bob.ashby@ost.dot.gov*

SUPPLEMENTARY INFORMATION:

Background

The Department of Transportation has long recognized that passenger vessels and the services they provide are a form of transportation that must be accessible to persons with disabilities if the purpose of the Americans with Disabilities Act (ADA) is to be fulfilled. In the notice of proposed rulemaking (NPRM) for the Department's initial ADA rule in 1991, the Department noted that vessels were subject to the ADA but said that it would not proceed to rulemaking at that time because it lacked sufficient information (56 FR 13866–87; April 4, 1991). The Department understood that the marine industry's unique missions and operating environment made implementing ADA nondiscrimination requirements particularly challenging. The Department confirmed this position in its final rule, noting that it would work with the Access Board and Department of Justice (DOJ) toward future rulemaking (56 FR 45599–45600; September 6, 1991).

In this preamble discussion, the Department also stated its view that the ADA applies to private and public passenger vessels, including ferries, excursion and sightseeing vessels, floating restaurants, cruise ships, and others. With respect to cruise ships, which the Department viewed as both a type of ''specified public transportation'' and a place of public accommodation, the Department stated its position that the ADA applies to foreign-flag cruise ships that call at U.S. ports (id.). Privately-operated vessels would be covered under Title III of the ADA, while publicly-operated vessels would be subject to Title II. Publicly-operated vessels that receive Federal financial assistance (*e.g.*, public ferry systems that receive funds from the Federal Transit Administration) would also be subject to section 504 of the Rehabilitation Act of 1973.

In the intervening years, the Department and the Access Board have worked to lay a foundation for rulemaking. In 1995–96, the Department, working through the Volpe National Transportation Systems Center (Volpe Center), conducted a preliminary regulatory assessment and provided a report assessing the feasibility of implementing the ADA in the passenger vessel industry. This study resulted in an assessment of technical feasibility and a set of cost data based on assumed access solutions. The Department has posted a copy of this study in the docket for this ANPRM. The Department realizes that this data is now several years old, and the Department and the Access Board are planning a new regulatory assessment. However, the Volpe Center study is the only existing study regarding the costs of vessel accessibility, and we believe that it may be useful to interested persons as they work on formulating comments on the ANPRM.

The Access Board, after an extensive period of study and public consultation, developed draft accessibility guidelines for large passenger vessels (*i.e.*, those with a capacity of more than 150 passengers or more than 49 overnight passengers) and has just issued a Notice of Availability concerning this draft. The Access Board also issued an ANPRM regarding the accessibility of smaller passenger vessels. They can be found elsewhere in this issue of the **Federal Register**.

We should say a word about the relationship between the Access Board and DOT rulemakings. Under the Americans with Disabilities Act, the Access Board adopts, through a rulemaking process, guidelines for the accessibility of facilities and vehicles. The Department of Transportation and the Department of Justice must then adopt, in their regulations, minimum standards that are consistent with the Access Board's guidelines. For example, the Access Board has adopted the Americans with Disabilities Act Accessibility Guidelines (ADAAGs), codified at 36 CFR Part 1191. In turn, the Department of Transportation adopted these guidelines in its ADA regulations, as Appendix A to 49 CFR Part 37, the Department's ADA rules. The Department's rules require accessibility in certain situations; the Access Board guidelines that the Department has adopted define accessibility in considerable detail.

With respect to passenger vessels, the draft Access Board guidelines will lead, after the conclusion of the Access Board's rulemaking process, to final guidelines for accessible passenger vessels. The Department's ANPRM will lead, following the conclusion of the Department's rulemaking process, to a regulation requiring nondiscrimination and accessibility in passenger vessel service. The Department's final rule will adopt minimum standards consistent with the final Access Board passenger vessel guidelines. Because the two agencies' rulemakings are so closely intertwined, and because they must result in regulations that are consistent with one another, the two agencies intend to work together closely together throughout this project.

The Department will also coordinate its proposed regulation with the Department of Justice (DOJ), which has responsibility for enforcing the Department of Transportation's ADA rules with respect to private entities (and most passenger vessel operators potentially covered by the Department of Transportation's rules are likely to be private entities). We will also coordinate closely with the Coast Guard, which is now part of the Department of Homeland Security. The Coast Guard has extensive expertise in passenger vessel matters that will be invaluable in this rulemaking, and the Department must also ensure that its rules are

compatible with Coast Guard safety rules for vessels.

Areas for Comment

In this ANPRM, DOT is interested in gathering up-to-date information on how it could best implement regulations ensuring that passenger vessels are accessible as required by the ADA. We would appreciate additional information on the following subjects to help us frame our forthcoming NPRM. Please note that there are important differences between large and small vessels and that, in some cases, it may be appropriate to respond to questions and requests for comment differently depending on the size of the vessel.

1. Vessel Sizes

As noted above, the Access Board materials distinguish between large and small vessels on the basis of passenger capacity. However, there are other ways in which this distinction might be made. For example, there could be a vessel size distinction based on applicable U.S. Coast Guard regulations (large vessels are subject to 46 CFR subchapters H or K and small vessels are subject to 46 CFR subchapter C or T). DOT invites comment on this and other potential approaches, and the basis for such approaches, to identify and categorize vessels subject to the regulations. These may include vessel length, displacement or other pertinent vessel design and operation characteristics. *See* V201.1 Scope.

2. Access Board Draft Guidelines

DOT plans to incorporate the Access Board's guidelines into a future rulemaking, and the Department will carefully review comments to the Access Board docket, so it is not necessary for commenters to send comments specifically referencing the Access Board draft to DOT as well. DOT also requests ideas for other means of achieving accessibility and any information that may be available to update the costs of industry implementation.

DOT also requests comments on the general applicability of the Access Board's guidelines. What should be considered a new vessel, triggering the requirement that the vessel be built to fully comply with the Access Board's guidelines? What date, design or construction should be used for determining the vessel's status with respect to new or old vessel? What lead time is necessary to ensure that new vessels are designed with the Access Board's guidelines in mind?

The DOT believes that access onboard passenger vessels involves issues similar to those in other modes but that this mode also has unique issues due to the fact that vessels operate in a dynamic, waterborne environment. For example, accessibility in other modes does not need to contend with transitions from dock or gangway to vessel, transitions between decks, or the variable motion of passenger vessels. Many of these issues are likely to become increasingly difficult with smaller vessels. Moreover, the unique environment in which passenger vessels operate imposes several constraints on access solutions. For example, the safety of crew and passengers depends upon a stable and watertight platform and a structure capable of responding to dynamic loads and sustaining damage from collisions and groundings. Perhaps the classic example is that of coamings in doorways that increase the watertight integrity of vessels but present barriers to wheelchair users.

Coast Guard safety regulations affect all aspects of vessel construction and operation. Consequently, both the Access Board and DOT regulations must be consistent with Coast Guard requirements. The Department seeks comment on the interaction of the draft Access Board provisions and existing Coast Guard rules with future DOT ADA rules.

3. Barrier Removal and Program Accessibility

Typically in ADA regulations, physical accessibility standards apply only to new facilities or vehicles or to alterations to those vehicles and facilities. Title III entities must make readily achievable changes to existing facilities to accommodate persons with disabilities, and Title II entities must ensure program accessibility by making modifications to existing facilities that are not unduly burdensome. DOT and DOJ rules in the context of other transportation modes make use of these concepts. Should these concepts apply unaltered to passenger vessels? Does the fact that passenger vessels may remain in service longer than many other types of facilities and vehicles suggest that a greater degree of retrofitting may be appropriate for vessels?

4. Shore to Vessel Transition

Getting on and off vessels can be difficult for passengers with disabilities, particularly those with mobility impairments, and challenging for vessel and dock/gangway operators. There must be a means by which a person with a disability can embark and disembark a vessel at all ports of call. Ramp slopes can vary with tidal fluctuations, and space constraints in some dock or gangway areas may make accessible loading difficult.

One of the most important questions with respect to boarding concerns the allocation of responsibility between vessel operators and operators of docks, terminals, and other shore-based facilities. Some vessels may be based exclusively at one facility, which they own. Other vessels may call at a variety of ports, none of which they own. Vessels and shore based facilities can be privately or publicly owned, and thus subject to Title III or Title II of the ADA. The Department seeks comment on how accessibility responsibilities should be allocated, and on whether there should be the same or different requirements for public or private entities.

In this regard, we call to commenters' attention to at least somewhat analogous situation in the air travel industry. Under the Department's Air Carrier Access Act regulations (ACAA; 14 CFR §§ 382.40 and 382.40a) and section 504 rules (49 CFR §§ 27.70 and 27.71), airlines and airports have joint responsibility for providing boarding lifts for situations in which aircraft load from the tarmac rather than via level-entry loading bridges. The Department seeks comment on whether this concept can be adapted to at least some situations concerning boarding of passenger vessels. Also, see the Access Board's Large Passenger Vessels—Notice of Availability Summary Material at V208, which includes a requirement for a boarding system on the vessel and a similar requirement on the landside.

As noted above, boarding issues can become more difficult as vessels become smaller. Particularly for smaller passenger vessels, should vessel operators have greater discretion to use crew assistance as a means of access? What other special provisions, if any, should there be for smaller vessels, and in what size categories should they apply?

Is it feasible for vessels making multiple ports of call to provide a gangway that will allow people with disabilities to embark and disembark at each port of call? Do shore facilities need to standardize their facilities to ensure that a vessel's gangway will provide sufficient access? What additional barriers do smaller vessels face in providing accessible boarding at all ports of call?

In addition, the Department recognizes its lack of authority to regulate shore based facilities in foreign ports of call. However, many passenger vessels owned or operated in the United States make foreign ports of call. Is it feasible to require that these vessels provide an accessible means of

embarking and disembarking passengers with disabilities at all foreign ports of call despite the allocation of responsibility for providing such services in the U.S.? What additional considerations should be made in addressing foreign ports of call?

5. Accessible Paths

On vehicle ferries, passengers with disabilities may need access from their vehicles to an elevator to reach a passenger deck and the related amenities. How can access to the elevator be accomplished? Does it require a separate lane to allow the car of a passenger with a disability to be placed in position as necessary to ensure elevator access? Does it require a passenger with a disability to arrive earlier than other passengers to ensure that the space is reserved? The Access Board has considered some of these issues in its draft guidelines (*see* V201.4; V404.2.9; V404.2.5; V403.5; V404.2.3; V206.2.1; V206.2.2) as well as in its summary (V208) and we refer readers to that material for more detailed information.

6. Access to On-Board Facilities

The features of many passenger vessels—especially larger ones—are similar to those of land-based facilities. There are restaurants, snack bars, bathrooms, retail stores, entertainment venues, recreational facilities, places of public assembly, hotel-like rooms etc. Like places of public accommodation elsewhere, these facilities need to be accessible. Are there reasons to treat accessibility requirements for on-board amenities any differently on vessels than elsewhere? In particular, how can accessibility be accomplished on smaller vessels on which space is a premium? We would refer the reader to V201.4 of the Draft Access Board guidelines for more detailed information on these issues.

A. Securement

Although the Access Board's guidelines would not require deck fittings on larger vessels and would require only some securement on smaller vessels, (*see* Option 2 in the Access Board's ANPRM), DOT requests comments on several general issues related to securing wheelchairs in a moving environment. Is it necessary to provide deck fittings to secure wheelchairs? Will such fittings be necessary in passenger rooms, dining areas, and other common areas? If so, will they be necessary whenever the person in a wheelchair stops? How should the deck fitting locations be determined? How will a person in a wheelchair secure the wheelchair to the deck or will this require crew assistance? If crew assistance will be necessary, how will a passenger summon such assistance?

B. Accessible Cabins

Can cabins for passengers with wheelchairs be made available in all classes of service? What modifications must be made to passenger cabins? How many accessible cabins should there be on vessels of various size that have overnight accommodations? Generally, the Department believes it would be reasonable to follow the lead of the Department of Justice concerning requirements for accessible lodging and its availability and pricing to people with disabilities. We seek comment on whether the Department of Justice's approach is appropriate in the context of passenger vessels and whether, if at all, it should be modified. We refer the reader to V224.2 and V224.5 of the draft Access Board guidelines for more detailed information on these matters.

C. Vision and Hearing Impairments

What accommodations should be made for passengers with vision and hearing impairments to ensure that they are alerted to emergencies, informed of passenger announcements and events, and capable of enjoying passenger entertainment and functions? Could passengers with hearing impairments be issued a paging device for their stay on board to alert them to emergencies and inform them of passenger announcements? What type of accommodation should be provided to ensure that passengers with hearing impairments can enjoy passenger entertainment? What accommodations are necessary for ports of call, including cruise ship arranged tours or activities? What other accommodations are appropriate (*e.g.*, relay or interpretive services, methods of communicating public announcements)?

7. Service Policies

Not only physical accommodations but vessel operator policies may create barriers to persons with disabilities. If vessel operators impose restrictions on the use of vessels by passengers with disabilities, then the passengers' ability to have nondiscriminatory access is impaired. The Department's Air Carrier Access Act regulations have a variety of requirements to ensure that air carrier policies do not discriminate on the basis of disability. For example, the rules prohibit denials of service (except where a direct threat is shown), requirements for attendants (except if the passenger is unable to assist in his or her own evacuation), limits on the number of passengers, and extra charges for accommodations. The rules also require such things as on-board stowage for mobility aids, assistance with carry-on luggage and transfers among gates, boarding assistance, and seating accommodations for passengers with disabilities. The Department seeks comment on whether similar provisions should apply to passenger vessels and the extent, if any, to which they should be modified, especially in the case of smaller vessels.

Should DOT rules prohibit limits on the size or number of mobility aids a passenger may bring on board, including power wheelchairs or scooters permitted on board? Is it possible to charge batteries for power wheelchairs or scooters while on board? Under what circumstances, if any, should a vessel operator be permitted to require an attendant?

The Department uses the concept of ''direct threat'' as a standard for evaluating claims that safety-based restrictions on the activities of persons with disabilities should be permitted. The Department seeks comment on whether there is any direct threat-based rationale for any restrictions on passengers with disabilities in the vessel context.

DOT has recently provided detailed policy guidance concerning service animals in air transportation, which can be found at 68 FR 24874 (2003) and at *http://airconsumer.ost.dot.gov/rules/20030509.pdf.* DOT requests comments on what changes, if any, need to be made in this guidance to make it applicable to passenger vessels. What accommodations are necessary on board passenger vessels for service animal relief?

8. Foreign-Flag Vessels

Cruise ships clearly fall into the categories of public transportation and public accommodation and, thus, are subject to the requirements of the ADA. It is the position of the United States that the ADA applies to foreign-flag vessels operating within the internal waters of the United States. In its 1991 final rule, the Department announced that it had jurisdiction over foreign-flag vessels that call at U.S. ports, consistent with any applicable treaty obligations. The Department of Justice has taken the same position in its title III regulation and technical assistance materials, and has successfully articulated this position in numerous amicus briefs at the district and appellate court levels. *See, e.g., Stevens* v. *Premier Cruise Lines,* 215 F.3d 1237 (11th Cir. 2000). In a recent decision, *Spector* v. *Norwegian*

Cruise Line, 356 F.3d 641 (5th Cir. 2004), petition for cert. filed, 72 U.S.L.W. 3644 (U.S. April 1, 2004) (No. 03–1388), the Fifth Circuit reached the opposite conclusion. The Supreme Court has agreed to consider the case in its 2004–2005 term. Meanwhile, the United States continues to believe that its position is correct as a matter of law. Consistent with the government's position on this issue, the Department intends to draft its proposed regulation to apply the ADA to foreign-flag vessels operating within the internal waters of the United States.

9. Economic Considerations

The Volpe Center study mentioned above determined the costs of implementation, including capital and operating expenses and revenue impacts, based on an assumed set of regulations and solutions.

After determining the costs associated with the assumed set of regulations and solutions, Volpe Center determined the unit costs which reflect the increased cost of providing access relative to current practice. Volpe Center further determined the affected vessel population, including the numbers of new construction vessels, vessels requiring alteration and vessels expected to be decommissioned prior to being retrofit and calculated the industry implementation costs based upon analysis of fleet growth and replacement rates of 25 to 40 years. This cost analysis suggested that the total fleet cost, including new construction and alterations spread over 20 years and operating costs and lost revenue for 25 to 40 years depending on the class of vessel, would be $888.9 million in 1996 dollars.

After determining the costs associated with the assumed set of regulations and solutions, Volpe Center also determined the unit costs which reflect the increased cost of providing access to shore facilities relative to current practice. Volpe Center based the industry implementation upon an assumed replacement/upgrade of existing dock and pier population within 40 years. Volpe Center projected that the industry implementation for shore facilities would be between $79.5 million and $263.8 million in 1996 dollars.

The Department seeks information and comment on the potential costs of vessel accessibility requirements, including smaller vessels. To assist commenters, we have placed a copy of the Volpe study in the docket, where interested persons can review it on line or download it. The Department also seeks comment on the potential benefits of accessibility requirements. Often, people assume that the benefits of civil rights regulations are limited to nonquantifiable benefits to members of a protected class. However, it is possible that there can be some level of economic benefits to transportation providers as well, as the result of increased business from passengers who would otherwise be deterred or prevented from traveling.

In addition, the Department recognizes that the Volpe study is ten years old and, therefore, the Department and the Access Board will be conducting a new regulatory assessment. The Access Board has included a Draft Plan for Regulatory Assessment in its Large Passenger Vessels—Notice of Availability. While the Department encourages comments on the Access Board's Draft Plan, it is not necessary for commenters to send comments to the Department because the Department will carefully review comments to the Access Board docket.

Regulatory Analyses and Notices

This ANPRM is a significant rule under Executive order 12886, because it affects a wide variety of vessel operators and passengers and because passenger vessel accessibility requirements could impose considerable costs. The ANPRM has been reviewed by the Office of Management and Budget (OMB). The Department and the Access Board intend to work together on a regulatory assessment of accessibility requirements for passenger vessels in connection with the next stage of their rulemakings. The assessment would examine the costs and benefits of provisions the agencies propose in forthcoming NPRMs.

Depending on the scope and provisions of an NPRM that may follow this ANPRM, this rulemaking could have a significant economic impact on a substantial number of small entities, since many vessel operators are small entities. At the time of the NPRM, the Department will determine whether it is necessary to conduct a Regulatory Flexibility Analysis. This ANPRM does not include information collection requirements. The Department does not anticipate effects on state and local governments sufficient to invoke requirements under the Federalism Executive Order. Because it is based on civil rights statutes, this rule is not subject to the Unfunded Mandates Act.

The Department seeks comment on any issues related to the application of these or other cross-cutting regulatory process requirements to rulemaking on passenger vessel accessibility.

Issued this 16th Day of November 2004, at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 04–26093 Filed 11–24–04; 8:45 am]

BILLING CODE 4910–62–P

Federal Register

Friday,
November 26, 2004

Part V

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 405 and 489

Medicare Program; Expedited Determination Procedures for Provider Service Terminations; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405 and 489

[CMS–4004–FC]

RIN 0938–AL67

Medicare Program; Expedited Determination Procedures for Provider Service Terminations

AGENCY: The Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule with comment period responds to comments on one discrete aspect of the proposed rule published in the **Federal Register** on November 15, 2002. The portion of that proposed rule addressed here involves the expedited determination and reconsideration procedures available to beneficiaries when a provider informs them of a decision that Medicare coverage of their provider services is about to end.

DATES: *Effective date:* This final rule with comment period is effective on July 1, 2005.

Comment date: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on January 25, 2005.

ADDRESSES: In commenting, please refer to file code CMS–4004–FC. Because of staff and resource limitations, we cannot accept comments by facsimile (fax) transmission. Submit electronic comments to *http://www.cms.hhs.gov/regulations/ecomments* or to *http://www.regulations.gov.* Mail written comments (one original and three copies) to the following address only: Centers for Medicare & Medicaid Services, Attention: CMS–4004–FC, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver, by hand or courier, your written comments (one original and two copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of comments being filed.) Comments mailed to the addresses used for hand or courier delivery may be delayed and could be considered late.

All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. After the close of the comment period, CMS posts all electronic comments received before the close of the comment period on its public Web site.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Janet Miller, (410) 786–1588.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS 4004–FC and the specific ''issue identifier'' that precedes the section on which you choose to comment.

Inspection of Public Comments: Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Blvd., Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–7197.

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I. Overview of the Statutory Changes to the Appeals Process

[If you choose to comment on issues in this section, please include the caption ''Overview—Statutory Changes'' at the beginning of your comments.]

Section 521 of the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), Public Law 106–554, amended section 1869 of the Social Security Act (the Act) to require significant changes to the Medicare appeals procedures. Among these changes is a new requirement under section 1869(b)(1)(F) of the Act that the Secretary establish a process by which a beneficiary may obtain an expedited determination in response to the termination of provider services. (Note that other aspects of the changes required under BIPA 2000 were discussed in detail in our November 15, 2002 proposed rule (67 FR 69312), and will be addressed in a forthcoming final rule.) Currently this right to an expedited review exists only with respect to inpatient hospital discharges (under sections 1154 and 1155 of the Act). Specifically, section 1869(b)(1)(F)(i) of the Act provides for an expedited determination process when a beneficiary receives notice from a provider of services that the provider plans to: (1) Terminate services provided to the individual and a physician certifies that failure to continue services is likely to place the beneficiary's health at significant risk; or (2) discharge the beneficiary from the provider of services. The statute mandates that a beneficiary who receives notice may request an expedited determination on whether these services should end. If a beneficiary is dissatisfied with this determination, the beneficiary may request an expedited reconsideration of this determination. The statute does not specify what entity must carry out the expedited determination process, but we intend to contract with the Quality Improvement Organizations (QIOs) in each State for this purpose. QIOs currently conduct similar expedited reviews for inpatient hospital discharges.

Section 1869(c)(3)(C)(iii) of the Act sets forth the requirements for expedited reconsiderations. It specifies that Qualified Independent Contractors (QICs) conduct expedited

reconsiderations. This section also states that the QICs must provide their reconsideration decisions no later than 72 hours after receiving the appeal request and related medical records. The decisions must be provided by telephone and in writing to the provider of services, the beneficiary requesting the appeal, and the attending physician of the beneficiary. Further, the QIC must solicit the views of the beneficiary requesting the appeal.

II. Provisions of the Proposed Rule

[If you choose to comment on issues in this section, please include the caption ''Provisions of Proposed Rule'' at the beginning of your comments.]

On November 15, 2002, we published a proposed rule in the **Federal Register** (67 FR 69312) that set forth proposed regulations for implementing the changes to the Medicare appeals process required by BIPA, including both new claims appeal procedures and procedures for expedited determinations and reconsiderations associated with provider discharges and terminations of services. This final rule codifies only those portions (§§ 405.1200 *et seq.*) of the proposed rule that dealt with expedited determinations and reconsiderations. Thus, this final rule sets forth the provisions addressing the rights of a beneficiary who is dissatisfied with a provider termination or discharge to an expedited determination and reconsideration. The proposed rule provisions are summarized below, followed by a discussion of the comments we received on the proposed rule and the changes made based on those comments.

A. Expedited Determinations (Proposed § 405.1200)

[If you choose to comment on issues in this section, please include the caption ''Expedited Determinations'' at the beginning of your comments.]

Under § 405.1200(a), we proposed that the new expedited determination procedures be applicable to providers listed in section 1861(u) of the Act. We proposed under § 405.1200(b) that in order for a beneficiary to request an expedited review, the beneficiary must have received notice that: (1) A provider intends to terminate services and a physician must certify that termination of services is likely to place the beneficiary's health at significant risk; or (2) the provider intends to discharge the beneficiary from an inpatient provider setting. Rather than establish a notice specifically for this purpose, we explained that we intended to use advance beneficiary notices (ABNs) to serve as the appropriate triggers for expedited determinations under section 1869 of the Act. We stated that we would revisit the content of the existing ABNs to ensure that they conformed to the requirements of the proposed rule. (See section III of this preamble for a discussion of this issue.) We proposed that if a beneficiary does not file a timely request for an expedited determination, the beneficiary may not later access this expedited review process.

Under § 405.1200(c), we identified Quality Improvement Organizations (QIOs) as the appropriate entities to conduct these expedited determinations of provider terminations. We then proposed the procedures a beneficiary must follow in order to make a valid request to a QIO. We specified that beneficiaries may make their request either in writing or by telephone no later than noon of the day following the beneficiary's receipt of the provider's notice. Beneficiaries or their representatives must be available to answer questions by the QIO, upon request.

Proposed § 405.1200(d) and (e) set forth the procedures that the QIO must follow when it receives a beneficiary's request for an expedited determination. The QIO must: (1) Notify the provider of the disputed services that an expedited determination request has been made; (2) request the medical record and if necessary, other pertinent records from the provider; (3) examine the requested necessary medical information; (4) solicit the views of the provider and the beneficiary; and (5) make a decision within 72 hours after receipt of the request for the QIO expedited review. We proposed that the provider be required to submit the information needed for a QIO determination no later than close of business on the day after the beneficiary requested an expedited determination. The QIO must immediately notify the beneficiary, physician and provider of its expedited determination, first by telephone and then following up with a written notice that would explain the decision and inform the beneficiary of his or her right to an expedited reconsideration.

We proposed under § 405.1200(f) that the QIO's expedited determination would be binding upon the beneficiary and the provider of the disputed services or stay, absent a beneficiary's request for a QIC reconsideration. Proposed § 405.1200(g) discussed the financial liability aspects of the QIO expedited review process. We proposed that a provider cannot bill a beneficiary for the disputed stay or services until the beneficiary has received either an expedited QIO determination or an expedited QIC reconsideration determination, if requested. In this situation, if the QIO determines that the services or stay in dispute were medically necessary, the beneficiary is not responsible for the services or stay, as stipulated by the QIO. However, if the QIO determines that the services or stay in dispute were not medically necessary, the beneficiary is responsible for services that extend beyond the appropriate covered services or stay, or as otherwise stated by the QIO.

B. Expedited QIC Reconsiderations (Proposed § 405.1202)

[If you choose to comment on issues in this section, please include the caption ''Expedited QIC Reconsiderations'' at the beginning of your comments.]

Consistent with the statute, we proposed that upon receipt of an expedited determination from a QIO, a beneficiary who is dissatisfied with that determination may request an expedited QIC reconsideration. A beneficiary who desires an expedited QIC reconsideration must make that request no later than noon of the next calendar day following receipt of the QIO expedited determination. A beneficiary or authorized representative must be available to talk with the QIC about his or her case if the QIC solicits the beneficiary's views.

Proposed § 405.1202(c) set forth the procedures that the QIC must follow in conducting its expedited reconsideration. These are generally identical to those followed by the QIO except as noted below. Thus, consistent with section 1869(c)(3)(C)(iii) of the Act, we proposed that the QIC must make a decision within 72 hours from receipt of the request for an expedited reconsideration and the requested information. Unlike for a QIO determination, however, if a QIC does not render its decision 72 hours from receipt of the request and information, a beneficiary has the right to have the case escalated to an Administrative Law Judge (ALJ). Therefore, we proposed that a QIC must inform the beneficiary of this right, assuming that the amount remaining in controversy after the QIO's expedited determination was at least $100.

We proposed under § 405.1202(d) that the QIC's notice of its expedited reconsideration determination must be issued first by telephone and then followed up with a written notice to the beneficiary, provider, and physician responsible for the beneficiary's care. The written notice would include the detailed rationale for the decision, a

statement that explains the beneficiary's subsequent appeal rights (an ALJ Hearing), and the timeframe for filing for the ALJ hearing request. The notice should also include a statement explaining the Medicare payment consequences of the reconsidered determination and the beneficiary's date of liability. A QIC reconsideration determination is binding on the beneficiary, subject to an ALJ hearing if the beneficiary is dissatisfied with the QIC's decision.

We proposed under § 405.1200(f) that a beneficiary may not be billed for the disputed services or stay until that beneficiary receives the expedited reconsideration decision from the QIC. (As we discuss further below, we expect that QICs will be in place at the time the expedited reviews are available under these regulations. However, in the event QICs have not been established at the time of implementation, we believe it would be in the public's interest to provide for expedited reconsiderations through some other means. Therefore, if QICs are not in place at time of implementation, QIOs will carry out this reconsideration function as they do now for expedited reviews of disputed discharges from inpatient hospitals. As discussed below, we believe that we have the administrative authority, for a short period of time, to allow for a reconsideration process that differs slightly from that imposed under section 1869(c)(3)(C)(iii).)

C. Special Rules for Inpatient Hospital Discharges (Proposed §§ 405.1204 and 405.1206)

[If you choose to comment on issues in this section, please include the caption ''Inpatient Hospital Discharges'' at the beginning of your comments.]

The proposed regulations for these sections essentially mirrored the longstanding existing procedures under which QIOs conduct reviews of disputed discharges from inpatient hospitals. We believe it is appropriate and convenient to consolidate the procedures for expedited reviews of all provider service terminations and discharges in one location in the regulations. The proposed provisions were drawn from the following sources: section 1154(e) of the Act, § 412.42(c) and (g), Chapter 414 of the Medicare hospital manual and section 7000 *et seq.* of the QIO manual. In proposing to consolidate these provisions, we made no changes to the substance of existing rules for expedited initial determinations. We did, however, propose that when a beneficiary remains an inpatient in the hospital, the expedited reconsideration process would parallel the process for other types of provider discharges. See proposed 42 CFR 405.1204(g)(1). This was in keeping with section 1869(c)(3)(C)(iii), which would now require the QIC to conduct the reconsideration of hospital discharge determinations. We recognize that section 1155 of the Act continues to require QIO reconsiderations of QIO initial determinations. However, Congress's passage of 1869(c)(3)(C)(iii) supersedes that provision, as the provisions are inconsistent, and later-enacted provisions are generally viewed as taking precedence over earlier-enacted provisions. We do not believe it would be possible for both QIOs and QICs to simultaneously provide reconsiderations of hospital discharge determinations. Moreover, section 1869(c)(2) defines a QIC as an organization ''independent of any organization under contract with the Secretary that makes initial determinations [under section 1869(a)(1)].'' We therefore believe Congress intended to provide that reconsiderations of hospital discharges be performed in a similar manner to other provider discharges, that is by the QIC.

III. Analysis of and Responses to Public Comments on the November 15, 2002 Proposed Rule

[If you choose to comment on issues in this section, please include the caption ''Analysis and Response to Public Comments'' at the beginning of your comments.]

We received 39 timely comments on the November 15, 2002 proposed rule, 6 of which addressed the expedited determination procedures. These commenters included representatives of provider organizations and beneficiary advocacy groups. These comments and our responses are discussed below.

A. Comments on the Expedited Determination Procedures Required by Section 1869 of the Act

Comment: Several commenters questioned whether ABNs were the appropriate vehicle for notifying beneficiaries of their statutory right to an expedited determination. They stated that we would need to carefully review the existing ABNs to ensure that they provide clear, adequate notice of this right. One commenter recommended that the regulations include a specific requirement for providers to provide a written discharge or termination notice to beneficiaries before services end. This commenter also noted that a beneficiary should be entitled to an expedited determination even if he or she does not receive such a discharge notice. Another commenter noted that there are significant potential liability implications associated with tying the expedited determination process to the delivery of the ABN; they pointed out that shielding beneficiaries from liability during the review process would require that the ABN be issued up to 5 days before the scheduled termination of service.

Response: We have carefully reexamined the proposed provisions in light of these comments, particularly with respect to whether existing ABNs are the appropriate vehicle for notifying beneficiaries of the right to an expedited determination when their services are about to end. As commenters suggested, we have conducted a thorough review of the existing ABNs that are used in the provider settings and how they would need to be revised to accommodate the statutory expedited determination requirements. In addition, we have taken into account the procedures set forth in our April 4, 2003 (67 FR 16652) final rule that established a similar expedited review process for Medicare Advantage (MA) enrollees whose provider services are about to end. The provisions of the April 4, 2003 final rule were the product of extended litigation, followed by notice and comment rulemaking, and produced a largely parallel expedited review process that went into effect for MA enrollees on January 1, 2004.

Based on this review, we determined that extensive revisions to several different ABNs, and to the timing of ABN delivery, would be required if ABNs were to serve as the notice contemplated by the statute for initiating the expedited determination process. The primary purpose of all existing provider ABNs is to enable beneficiaries to make informed decisions as to whether they wish to receive continuing medical services when a provider believes that the services are unlikely to be covered by Medicare. Providers may deliver ABNs at any time before the planned termination of covered services. A beneficiary who chooses to continue receiving provider services following delivery of an ABN acknowledges that he or she may be financially liable for the services. If a beneficiary chooses to accept this potential liability and continue receiving the services in question, the provider submits a ''demand bill'' to its Medicare claims contractor. Contractors then process demand bill claims in the same manner that they would process other manual claims. Also, currently ABNs are not required in every termination situation

where a beneficiary may request an expedited determination (for example, a service termination that is in accordance with an approved plan of care); conversely, the existing ABN is designed to be delivered in some situations where expedited determinations are not available (such as at the outset of services). Thus, we believe that it would not serve the best interests of either beneficiaries or providers to attempt to adapt the ABN to meet both its existing purpose and the purposes of the expedited review process.

Instead, we concluded that that using ABNs to implement the expedited determinations for original Medicare beneficiaries is impractical, and that, as a result, several changes are needed to the proposed regulations. The primary change involves the establishment of a requirement for a simple, standardized, largely generic notice to each beneficiary before a discharge or service termination. We believe that this termination notice will ensure that all beneficiaries know that Medicare coverage of their provider services is about to end and are aware of their associated appeal rights. In situations where a beneficiary chooses to exercise the right to an expedited determination, a detailed notice similar to the existing ABN will still be furnished before the termination of services. The detailed notice will explain how Medicare coverage rules apply in individual situations, address liability issues, and facilitate the expedited review process by providing the patient-specific information needed by both a beneficiary and the QIO conducting the process. Consistent with the MA program requirements, this two-step notification process should best meet the needs of the large majority of beneficiaries who need to know only when coverage of their services will end and what their appeal rights are, as well as the small minority of beneficiaries who want more specific information about why their services are ending.

We believe that this approach will alleviate potential beneficiary and provider confusion and ensure that providers are not faced with unnecessary administrative burdens. All beneficiaries will receive a clear, simple notice of the impending end of Medicare coverage of their provider services and their right to an expedited review of this decision. Then, as under the existing ABN process, any beneficiary who objects to the service termination will receive a detailed notice of the reason for this decision before being deprived of the services in question. Beneficiaries will receive a binding expedited initial determination on the coverage of their services no later than 1 day after the date the services were scheduled to end. This will reduce the beneficiary's potential liability for any services that are denied on appeal.

Section 405.1200(b) establishes the requirement for an advance written notice of termination of Medicare coverage of services in an HHA, SNF, CORF, or hospice. This section also addresses the timing of the notice, the required content, and the financial liability implications. Like in the MA context, providers will be required under § 405.1200(b)(1) to deliver the termination notice no later than 2 days before the proposed end of covered services. If, in a non-residential setting, the span of time between services exceeds 2 days, the provider must notify the beneficiary no later than the next to last time services are delivered. Also consistent with the parallel MA regulations, we are including a cross-reference to this notification requirement in § 489.27(b), the section of the Medicare provider agreement regulations that sets forth provider notification requirements.

As a commenter pointed out, the only way to fully ameliorate financial liability concerns associated with the expedited determination would be to require a termination notice as much as 5 days before services were to end, and then conduct the review process during the time span between the notice and the service termination. However, as we learned in the process of establishing the parallel MA process, requiring providers to furnish termination notices that far in advance generally is not practical from a medical decision-making standpoint. On the other hand, employing the existing ABN process, which permits ABN delivery at any time before service termination, would mean that the expedited determination procedures generally would not even begin until after services had ended. Thus, as discussed in detail in our April 4, 2003 final rule on expedited determinations under the MA program (68 FR 16655), we believe that the 2-day advance notice requirement strikes an appropriate balance between the realities of medical decision-making practices and the need to ensure that a beneficiary has an opportunity to an expedited determination while minimizing financial exposure for either the individual or the provider.

Section 405.1200(b)(2) describes the required content of the notice. Unlike an ABN, the initial discharge notice will not include detailed information about Medicare coverage policies or how they relate to the individual's particular health needs or conditions. We recognize that in the vast majority of cases, beneficiaries are in agreement with their care providers' determinations that Medicare-covered services should end and that the service termination is consistent with the plan of care; thus, a more detailed explanation of the underlying reasons for the termination would serve no purpose and impose an unnecessary burden on providers. Instead, the only patient-specific elements of the termination notice will be the beneficiary's name and the date that coverage of services will end. Other required elements of the notice, such as a description of the beneficiary's right to an expedited determination and how to exercise that right, will constitute entirely standardized information. When a beneficiary does not object to the termination decision, no further notice is required. Again, however, if a beneficiary disputes the discharge or termination of services, the subsequent detailed notice will provide the critical, patient-specific information relevant to the individual coverage termination decision. We will develop both of these pre-termination notices through the Office of Management and Budget's Paperwork Reduction Act Process.

Section 405.1200(c) establishes that valid delivery of a termination notice requires that a beneficiary sign the notice. This requirement codifies longstanding policy for valid ABN delivery and is consistent with § 422.624(c) of the parallel MA regulations. We note that the associated provider manual provisions for ABNs and the MA program permit exceptions to this rule in situations where a beneficiary refuses to sign a properly delivered notice, and we incorporate a similar policy into 405.1200(b)(4). As explained in the April 4, 2003 final rule with comment period (68 FR 16658), if a beneficiary refuses to sign the notice, the provider may annotate its notice to indicate the refusal, and the date of refusal is considered the date of receipt of the notice.

Section 405.1200(d) explains that a provider is financially liable for continued services until 2 days after valid delivery of the termination notice or until the service termination date specified on the notice, whichever is later. This provision serves two purposes. First, it ensures that a beneficiary has at least 2 days after receiving a notice before he or she can be liable for additional services, thus limiting beneficiary liability as the expedited determination process plays out. In addition, it accommodates situations where a provider is able to

identify the service termination date and deliver notice more than 2 days in advance. Under those circumstances, it is possible that the expedited determination process (and a subsequent discharge, if applicable) could take place entirely during the period between notification and the planned service termination date, permitting a beneficiary to incur no additional liability despite an unfavorable decision from a QIO.

As noted above, the new process will still rely on a detailed notice similar to the existing ABN, but only in those instances where a beneficiary requests an expedited determination. The circumstances in which this more detailed notice will be required, and the contents of that notice, are set forth under § 405.1202(f), ''Responsibilities of Providers.'' The content requirements are very similar to those of the existing ABN, including a specific and detailed explanation of why services are no longer considered reasonable and necessary or otherwise covered by Medicare, a description of applicable Medicare coverage rules, and any applicable beneficiary-specific information that is relevant to the coverage determination. As under the MA expedited review process, this notice will be furnished to both the QIO and the beneficiary who requested the expedited review since the QIO will need the information to make its determination and the beneficiary will need it in order to make an informed decision on whether to introduce any evidence into the expedited proceedings.

Finally, as explained in the November 15, 2002 proposed rule (67 FR 69337), we agree that if a provider fails to deliver a notice to a beneficiary, a beneficiary retains the right to an expedited determination with respect to the discharge. We have made minor changes to the regulation text that addresses the beneficiary's right to an expedited determination, to ensure that the right to a determination is not premised strictly on the delivery of a termination notice, although we anticipate that this will be the situation in most cases.

As noted at the beginning of this final rule, the effective date for these new provisions is July 1, 2005. In the interim, we will obtain public comment on the new provider notices and work closely with the provider community to make sure that they are aware of their notice delivery obligations. We also intend to review CMS beneficiary education materials and conduct beneficiary outreach to inform Medicare beneficiaries of the right to a review. Finally, we are reviewing both CMS surveying protocols and QIO review protocols to identify changes that may be needed to facilitate effective implementation, monitoring, and enforcement of these requirements.

Comment: Commenters indicated that the organization of the proposed provisions was confusing and asked for further clarification in the provisions describing notification to beneficiaries, the procedure for requesting a determination, and the responsibilities of providers under the new process.

Response: As explained in the previous response, we have revised the proposed regulations to incorporate a requirement that providers routinely notify beneficiaries before discharging them or terminating covered services. This change necessitated several structural changes to the proposed provisions, and results in a process that is in most ways the same as that set forth in the April 4, 2003 final rule on expedited reviews of provider service terminations (68 FR 16652). Given these similarities, as well as the comments concerning the lack of clarity in the proposed rules, we have reorganized the proposed regulations to address these concerns. We have clarified that the rules in 405.1200 through 405.1204 apply only to non-hospital providers, since hospitals have their own special set of rules that apply to them through the application of section 1869(c)(3)(C)(iii)(III) of the Act, as well as section 1154(e). Wherever possible, we have adopted the wording and structure of the parallel MA regulations that describe the expedited review procedures (§§ 422.624 and 422.626), unless there is a substantive reason to vary from those regulations.

Thus, § 405.1200 describes how and when beneficiaries must be notified of impending service terminations. Section 405.1202 then details a beneficiary's right to an expedited determination (paragraph (a)), how to request a determination (paragraph (b)), rules on when coverage of provider services ends (paragraph (c)), and on the ''burden of proof'' for an expedited determination (paragraph (d)), the procedures a QIO follows (paragraph (e)), a provider's responsibilities during the review process (paragraph (f)), and the billing limitation during the review process (paragraph (g)). We believe that this organizational approach, in combination with the substantive changes explained above, will produce a clear understanding of the procedural requirements associated with these provisions.

We note that § 405.1202(d), concerning the ''burden of proof'' during an expedited determination largely consolidates proposed requirements regarding the information a QIO considers in making its determination. For example, this section restates the proposed requirement (previously under proposed § 405.1200(d)(2)) that a provider must supply the information a QIO needs to makes its determination, and explicitly acknowledges a beneficiary's potential role in the process. It is also intended to clarify that it is the responsibility of a provider, who has an obligation to be familiar with Medicare coverage rules, to explain its decision that Medicare coverage is no longer warranted. This is a necessary procedural rule that reflects the reality that a provider who intends to discharge a beneficiary or terminate a beneficiary's services must be able to establish for the record the reasoning behind the discharge or termination decision. The QIO will then make its determination on the basis of this record. This provision is not intended to limit the QIO's discretion in making its determination, nor does it materially change the provider's role. The provision does not impact the substantive standards for QIO review and does not imply a working assumption by a QIO that coverage of care must continue.

In concert with this clarification of the QIO review process, we have also specified under § 405.1202(e) that the deadline for the QIO's expedited determination is 72 hours from the receipt of the request for a review, rather than from the ''receipt of the request for an expedited determination and the requested information.'' This change lends a greater degree of certainty to the timing of the process and thus benefits both providers and beneficiaries. A QIO may delay its decision if it has not yet received necessary information, but the provider may be held financially liable for continued services resulting from the delay. Again, these refinements parallel the requirements for expedited reviews under the MA program.

Comment: One commenter suggested that the ''timely manner'' requirement (that is, the provision at proposed § 405.1200(b)(2) that prohibited use of the expedited review process absent a timely request for review) for beneficiary appeals be more specific. The commenter also recommended that additional time be available in special circumstances.

Response: We agree that the provision in question (under proposed § 405.1200(b)(2)) was unclear. As part of the changes in the organization of the regulation, we have eliminated the proposed ''timely manner'' reference

and simply specified under § 405.1202(b)(1) that a beneficiary must request an expedited determination by noon of the calendar day following receipt of the discharge notice. We believe that this deadline allows a beneficiary adequate time to request an expedited determination, given that a beneficiary need only make a telephone call to initiate the review process, and there are no financial or documentation obligations on the part of the beneficiary. The notice requirements set forth at § 405.1200(b)(2) will ensure that that each beneficiary will receive a simple discharge notice that will contain clear, consistent information on their rights and how they may contact the QIO to request an expedited determination.

We have added a provision to § 405.1202(b)(1) specifying that if for some reason a QIO is unavailable to receive a beneficiary's request for an expedited determination, he or she has until noon of the next day the QIO is available to accept the request to submit the request for a review. In other situations where a beneficiary fails to meet the noon deadline for requesting an expedited determination, we will instruct QIOs, consistent with § 405.1202(b)(4), to accept the request and notify the beneficiary and the provider of its determination as soon as possible following receipt of the request. This is similar to the process now in effect for untimely requests for a hospital review. However, note that the financial liability protections of § 405.1202(g) (prohibiting billing during the expedited appeal process) would not apply. Finally, beneficiaries will retain the option of receiving services after their scheduled discharge date, and then accessing the standard claims appeal process for billed services.

Comment: One commenter questioned whether providers would still be required to submit bills for appealed services. The commenter noted the example of a demand bill.

Response: In general, these regulations do not affect a provider's responsibility to submit bills for beneficiary services, and the usual requirements for claim submission would continue to apply. However, a QIO's expedited determination constitutes a binding Medicare determination as to whether an individual's provider services are covered. Medicare contractors will be informed of the expedited QIO determinations in all these situations, and contractors' payment determinations will reflect the results of the QIO's review, absent very unusual circumstances (such as an eligibility error). An individual would retain the right to appeal the contractor's payment determination through the claims appeal process.

In addition, the ''demand bill'' process will continue to be available for determinations that are not subject to these procedures, such as when a provider informs an individual before initiating services (through an ABN) that the provider does not believe the services are covered by Medicare.

Comment: Commenters questioned which discharge situations would provide a beneficiary the right to appeal. Specifically, the commenter asked if beneficiaries could appeal if their rehabilitation was discontinued, even as their Part A coverage continued. Another commenter recommended that we clarify whether reductions in service are subject to the expedited determination process.

Response: Section 1869(b)(1)(F) of the Act specifies that the right to expedited proceedings applies to individuals whose services are terminated by a provider or who are discharged from a provider of services. We believe it was the intent of Congress to apply these rights to the traditional provider service settings of SNFs, CORFs, HHAs, and hospice, rather than to apply these rights more broadly, such as to stand-alone rehabilitation services furnished by an outpatient department of a hospital. We note that the proposed rule erroneously included hospitals in the definition of the providers for which these expedited determination procedures would apply, although inpatient hospitals continue to be subject to the existing expedited review procedures established under section 1154(e) of the Act (and incorporated into BIPA under the ''Special Rule for Hospitals'' at section 1869(c)(3)(C)(iii)(III) of the Act), as discussed in the next section of this preamble.

To clarify these points, we have revised § 405.1200(a) regarding applicability of the expedited determination procedures to specify that the new notice and appeal provision apply only to SNFs, HHAs, CORFs, and hospices, and that they do not include reductions in services, as discussed below. If a beneficiary continues to receive Part A services in a skilled nursing facility provider, but some Part B services have been discontinued, we will consider this to be a reduction and not a termination of services.

As discussed in the proposed rule, the BIPA requirements concerning provider notice and expedited determination procedures are not applicable to reductions in service. The statute specifically refers only to service termination and discharges, and we do not believe the authority exists to extend these provisions further. In most settings, care reductions are a continuing, expected, and generally positive part of the care delivery continuum. We believe that providing an expedited appeal right for service reductions would be unwieldy and inappropriate. However, in no way does this final rule reduce a beneficiary's existing appeal rights for reduction in care situations. For example, home health agencies will continue to provide ABNs for reductions in services that are not consistent with the original plan of care, and these types of situations will still be subject to the existing notice and appeal procedures.

Comment: One commenter pointed out an inconsistency between the summary section of the proposed rule and the proposed regulation text. Specifically, the commenter noted that hospice providers were not included in the discussion of those providers affected by the expedited appeal provisions, but were included in the text of the proposed rule.

Response: In this final rule, we have corrected the inconsistency regarding hospice providers. Thus, we have continued to specify under § 405.1200(a) that hospices are considered providers for purposes of the expedited proceedings provisions. Although we expect situations where beneficiaries object to their discharge from a hospice to be rare, these individuals may exercise the right to an expedited determination. We have also clarified under § 405.1202(a) that, like beneficiaries who request an expedited determination for discharges from residential providers, beneficiaries who request an expedited determination for hospice coverage terminations are not required to obtain a physician certification that failure to continue provision of the services will place the individual's health at significant risk. We believe that the all-inclusive nature of hospice care is generally akin to a residential setting.

Comment: Two commenters raised questions regarding what triggers a beneficiary's right to an expedited determination in response to a provider termination or discharge. They asked for additional clarification in situations where services are being terminated because there are no physician's orders or appropriate certifications to continue care. One commenter suggested that ''technical'' requirements, such as certification of homebound status for home health patients, be established before the right to an expedited

determination can be exercised. The commenter noted that although a strict reading of the proposed regulations would permit an expedited determination without these requirements being met, allowing an expedited review under these circumstances raises important questions about the provider's authority to continue to deliver care and to be reimbursed for that care by the Medicare program. Another commenter recommended that a beneficiary be able to appeal a denied request for an expedited review.

Response: These comments raise two key issues with respect to both the availability of the statutory right to an expedited determination and the appropriate remedy available to a beneficiary who exercises that right. Section 1869(b)(1)(F) of the Act provides only limited direction on these issues, specifying that the Secretary must provide an expedited determination at a beneficiary's written or oral request, providing that an individual may request an expedited determination when he or she has received notice that a provider plans: (1) To terminate services provided to an individual, and a physician certifies that failure to continue provision of such services is likely to place the individual's health at significant risk; or (2) to discharge the individual from the provider of services. Given this construction, we do not believe it was the intent of Congress to prohibit a beneficiary from requesting an expedited determination in situations where Medicare coverage requirements are not met. Thus, § 405.1202(a) of this final rule essentially establishes that any individual whose Medicare-covered provider services are being terminated may request an expedited determination.

We generally do not intend to place restrictions on a beneficiary's right to request an expedited review when coverage of their provider services is about to end. In all termination situations where Medicare coverage requirements are at issue, beneficiaries must receive notice of the provider's decision to terminate Medicare-covered services and have an opportunity to dispute the decision if they so choose. The QIO will then have an obligation to deal with these requests in an appropriate manner.

A provider cannot be reimbursed for Medicare services unless the customary Medicare-required elements are in place. These include both technical requirements (such as the existence of a physician's order for the services or the requirement that an HHA patient be homebound), as well as the medical necessity requirement that the services in question be reasonable and necessary for the given beneficiary under the given set of circumstances. Even under the existing claims appeals process a beneficiary typically has the right to appeal a determination by a contractor that the technical requirements are not in place, and the beneficiary may prevail in this appeal if he or she can demonstrate that these requirements were in fact met.

Similarly, we believe that Congress intended that the expedited determination process offer beneficiaries an opportunity for an independent review of the provider's decision on the impending coverage termination. The absence of a physician's order for additional services, or of a plan of care establishing that a patient is confined to the home, cannot be used to prove that a patient does not need care. Instead, the provider must explain to the QIO the reasoning behind the lack of the Medicare-required elements.

The QIO will consider this and other relevant information in making its determination, including, where applicable, the physician certification that failure to continue providing services may place the individual's health at significant risk. The QIO will be fully aware of the necessary ''technical'' requirements for coverage and will have the authority to make a determination both for these threshold coverage requirements and for whether continued services are reasonable and necessary for the individual. When a QIO determines that coverage of care should continue, a provider may rely on the QIO's determination as dispositive evidence that all needed elements of Medicare coverage are met and that the care will be reimbursed appropriately by Medicare. No matter what a QIO's decision on a case, however, an individual will have an opportunity to request an expedited reconsideration from a QIC.

Comment: One commenter expressed concern about the use of ''calendar days'' in establishing the deadline for a beneficiary to request an expedited determination. (see proposed § 405.1202(b)(1)). The commenter noted that beneficiaries informed of a service termination on a Friday or Saturday could encounter difficulties and would have little access to assistance to make their request. They asserted that using a next ''working day'' requirement would be more realistic for the use of QIO resources.

Response: Our experience with deadlines tied to ''working days'' is that they are often interpreted differently by different entities involved in the appeals process and consequently tend to add ambiguity and uncertainty to the process. Our general regulatory approach in recent years has been to eliminate deadlines based on ''working days'' whenever possible and instead rely on a ''calendar day'' approach. We believe this measure provides greater clarity and reduces delays and potential additional liability risks generally associated with extending deadlines to accommodate the working day approach.

At the same time though, we recognize that there are also problems associated with the use of calendar days. Although QIOs are expected to be available to receive requests, notify providers of the requests, and conduct reviews on a daily basis, providers may have difficulty in furnishing the necessary records on weekends. Thus, we agree that this is a valid concern: This is why we have tried to build as much flexibility as possible into these regulations to help ameliorate potential problems. For example, these regulations give providers the flexibility to notify beneficiaries of a planned termination more than 2 days in advance, which can serve both to avoid the need for weekend notifications and to ensure that the ensuing parts of the expedited review process (such as providing documentation to QIOs) can be accomplished during normal working hours. We intend to work with provider and consumer organization representatives and with the QIOs to identify ways to reduce the need for a beneficiary to be given notice on a weekend, as well as to develop uniform procedures to deal with those relatively infrequent situations where this is unavoidable.

We use ''working days'' in the context of inpatient hospital discharges because this standard is required by section 1154(e) of the Act. This section specifically uses the phrase ''working days'' when establishing deadlines for parties involved in expedited appeals of hospital discharges.

Comment: One commenter expressed concern with the provider requirements for submitting medical records during an expedited appeal. The commenter asked whether the timeframe was realistic, and questioned how weekends would affect the timeframe.

Response: Under § 405.1202(f)(2), providers are required to submit records to the QIO by close of business of the day they are informed by the QIO of the beneficiary's request for an expedited review. Although we recognize that this is a rigorous standard, we believe that

this deadline for provider submission of necessary information is necessary to carry out Congressional intent for an expedited determination process without subjecting beneficiaries to unneeded liability. Therefore, in both our April 4, 2003 final rule and this regulation, we have revised the appeals process (by adjusting the time frame for records to be sent to the QIO) to ensure that the process is completed within 3 days of the notice of termination. The effect of these changes is that a Medicare beneficiary should face a maximum of 1 day of financial liability if a QIO rules that the disputed discharge date is appropriate.

We strongly encourage providers to distribute termination notices as early as possible (that is, as soon as the service termination date is known) to ameliorate difficulties associated with the need to furnish records promptly. Similarly, QIOs need to exercise discretion and good judgment in obtaining needed documentation from providers, and, as made explicit in the regulations, we anticipate that in some circumstances QIOs will rely on telephone evidence that can be followed up with written confirmation. Because we recognize that weekend discharges may cause difficulties in meeting the record submission deadlines, we intend to issue further guidance on this issue. Finally, we note that this documentation deadline is the same as the one established by section 1154(e) of the Act for QIO reviews of hospital discharges, and as the deadline established by regulation for expedited proceedings under the MA program (§ 422.626(e)).

Comment: One commenter questioned the consequences of a provider not submitting requested documentation on time. The commenter questioned who would be responsible for payment in these instances.

Response: As discussed above, a provider is responsible for submitting needed documentation to support the termination decision by close of business of the day following the day it is notified by the QIO of the request for an expedited determination. If the QIO does not receive the information needed to sustain a provider's decision to terminate services, it may make its determination based on the evidence available, or it may defer a decision until it receives the necessary information. If a provider does not fulfill this obligation, it may be liable for any excess continued Medicare coverage of the individual's provider services due to the provider's delay, as determined by the QIO. To address this issue, we have set forth these principles in § 405.1202(e)(7), under the procedures the QIO follows in making its determination.

Comment: One commenter raised the issue of beneficiaries' access to their own case information. The commenter recommended that the QIO and provider be required to ensure that all necessary medical and social service information be available to beneficiaries.

Response: In this final rule, under § 405.1202(f), if a beneficiary requests an appeal, a provider must present a beneficiary with a detailed notice that will include an explanation of why services are no longer needed. This detailed notice will include the specific information from the beneficiary's situation used to make the discharge decision. Section 405.1202(f)(3) explicitly establishes that a beneficiary has the right to request a copy of the information sent by the provider to the QIO and that the information should be made available by no later than close of business of the day after the material is requested. We do not believe this final rule is the appropriate vehicle to address the availability of social service information to beneficiaries; these requirements are traditionally included in the discharge planning conditions of participation for the appropriate provider.

Comment: Two commenters expressed concern about when beneficiary liability begins and how beneficiaries will be informed of their financial liability. They questioned whether QIO notification marks the beginning of beneficiary liability. They also suggested that beneficiaries be informed of financial liability through the ''initial determination''.

Response: Although we are somewhat unclear as to the commenter's reference to an ''initial determination'' in this context, we fully agree that a beneficiary must be informed of potential liability as soon as possible. Therefore, we have required under § 405.1200(b) that each beneficiary receive a standardized termination notice that specifies the date on which beneficiary liability begins. This notice also will inform beneficiaries that financial liability for noncovered care will exist in unsuccessful expedited review requests. Also, under § 405.1202(e)(8), the QIO's notice of its determination decision must inform beneficiaries of the consequences of the QIO decision, such as the potential liability if they continue services after their discharge date. We believe these provisions will ensure that all beneficiaries are fully apprised of their potential financial liability before and during the expedited determination process.

Comment: One commenter raised issue with the reimbursement rates for providers whose beneficiaries appeal discharges. The commenter was concerned that providers were at financial risk because they would be unable to bill beneficiaries until the expedited QIO determination was completed. The commenter was also concerned about providers incurring bad debts from unsuccessful appeals. The commenter suggested that payment rates to providers with bad debts resulting from unfavorable QIO decisions be adjusted.

Response: Under § 405.1202(g) and § 405.1204(f), providers are precluded from billing beneficiaries for disputed services only during the brief expedited process. Even for expedited proceedings that include an expedited reconsideration, the entire decision making process will encompass less than one week from the originally scheduled discharge. Thus, we do not believe that this final rule will have a significant effect on providers' financial risk. If providers can furnish evidence of a pattern of beneficiary failure to pay money due after an unsuccessful expedited determination request, we will assess such evidence and related information to determine the appropriateness of proposing policy changes consistent with existing statutory authority or seeking legislative changes.

We note that the preclusion on billing pending the expedited determination is consistent with current procedures for SNFs, under *Sarrassat* v. *Sullivan*, 1989 WL 208444 (N.D. Cal. 1989), *aff'd* 961 F.2d 217 (9th Cir. 1992). In *Sarrassat,* the plaintiffs asserted that SNF beneficiaries were not adequately notified that the SNF believed Medicare would not cover care, and that beneficiaries were not permitted to appeal the SNF's assertion to the fiscal intermediary. The court affirmed a settlement agreement providing that SNFs would be unable to bill beneficiaries until their initial determination was complete, a process that is much longer than the expedited proceedings established under this final rule. Thus, we believe that building this type of temporary protection from billing into the new expedited appeals process is an appropriate step, particularly given the short time periods involved.

Comment: One commenter questioned whether QIO appeal rights would be included on the Notice of Discharges required by Nursing Home Reform Law. The commenter also questioned

whether QIO review is a mandatory or permissive alternative to State review.

Response: Information about an individual's expedited review rights will be part of the standardized portion of the provider termination notice required under this final rule. Although this information may be furnished through other vehicles as well, we will not deem the inclusion of the appeal right information on any other notice to satisfy this regulatory requirement. The QIO expedited review process implements a Medicare statutory requirement, and we cannot determine whether States will consider this process an acceptable alternative to an existing State review requirement.

Comment: One commenter stated that the proposed rule was not clear with regard to whether particular QIO initial determinations are subject to redeterminations. They questioned whether the new expedited determinations were subject to the redetermination rights set forth in § 405.940 of the proposed rule of November 15, 2002.

Response: QIO expedited determinations are not subject to the redetermination rights set forth under BIPA and addressed at proposed § 405.940 of our November 15, 2002 proposed rule. (We note that section 1869(a)(3)(A) of the Act states that redeterminations must exist for fiscal intermediary and carrier initial determinations, but does not discuss QIO initial determinations.) Instead, a beneficiary may request an expedited reconsideration of that expedited determination. A beneficiary who misses the deadline for an expedited reconsideration would retain access to the standard claims appeal procedures.

Comment: One commenter raised concerns with a cost to the Medicare program not discussed in the proposed rule. The commenter suggested that there would be a necessary cost of educating beneficiaries and providers about their rights and obligations. In particular, the commenter stated that beneficiaries would need education regarding the use of ABNs as a part of the appeals system.

Response: We agree that these expedited provisions, as well as all other aspects of the implementation of BIPA, will require extensive provider and beneficiary education. We will work to achieve that end. In addition, as discussed in detail above, a new notice will be used instead of ABNs to inform beneficiaries of their expedited appeal rights. We believe that the use of a distinct and standardized notice will simplify the notification process and promote understanding by beneficiaries.

Comment: One commenter requested clarification regarding beneficiary costs for access to medical and other information. They wanted copying and associated charges to reflect actual expenses.

Response: We agree with the commenter that clarification of beneficiary charges for documentation is needed and have changed the regulation text accordingly. Section 405.1202(f)(3) states that a provider may charge the beneficiary a reasonable amount to cover the costs of duplicating such documentation or delivering it to the beneficiary. We note that this requirement is consistent with our policy for managed care enrollees as contained in our April 4, 2003 final rule (68 FR 16660).

B. Comments on Procedures for Expedited Reviews of Inpatient Hospital Discharges

As noted above, the proposed rule did not include substantive changes to the procedures used by QIOs to conduct expedited initial determinations of disputed hospital discharges, although it did specify that reconsiderations will be performed by QICs, rather than QIOs. We continue to believe that incorporating the relevant procedures into the same regulatory subpart that will contain the expedited determination procedures for other providers (as well as the new appeals procedures required under BIPA when they are made final) will prove convenient for all parties. As a result of the organizational changes to the requirements for other provider services terminations, the hospital-related requirements are now set forth at §§ 405.1206 and 405.1208. Section 405.1206 sets forth the expedited review procedures for beneficiary-initiated appeals, and § 405.1208 covers hospital-initiated appeals. We note that, in keeping with our current policies, QIO determinations are binding on hospitals, without further appeal, but beneficiaries may request reconsiderations of unfavorable QIO decisions. Under our current policies, and consistent with section 1155 of the Act, QIOs, rather than QICs, conduct reconsiderations of expedited determinations concerning inpatient hospital discharges. As stated above, we recognize that section 1869(c)(3)(C)(iii)(III) requires QICs to now perform expedited reconsiderations of expedited determinations, and we expect that QICs will be fully established by the date of implementation. However, in the event QICs have not yet been established at the implementation date, our plan is to have the QIOs continue to perform the reconsiderations. Since section 1155 already authorizes QIOs to perform reconsiderations, but does not otherwise govern the process for such reconsiderations, we believe we will have the authority, until QICs are operational, to allow QIOs to hear the reconsiderations in accordance with the QIC procedures.

In §§ 405.1206 and 405.1208 we continue to cross-reference the expedited reconsideration process for non-hospital providers. We believe that Congress' intent in incorporating section 1154(e)(2) through (4) into section 1869(c)(3)(C)(iii)(III) was to ensure that statutory time frames and financial liability protections applicable to QIO reviews of hospital discharges continue to apply. Therefore, we have continued to apply those financial protections and time frames to the QIO initial determinations, while creating a uniform process at the QIC reconsideration stage.

We also recognize that the new QIC reconsideration process for hospital discharges may now conflict with some of the provisions governing reconsiderations under 42 CFR part 478. For example, 42 CFR 478.40 requires a $200 amount in controversy for an ALJ hearing, whereas the QIC reconsideration procedures would require only a $100 amount in controversy. We plan to issue conforming amendments to part 478 in the future to take into account the changes made by BIPA. However, to the extent there is a direct inconsistency between the part 478 regulations and either the statute or the regulations announced in this final rule, the statute and the regulations announced by the final rule would govern.

Only one commenter addressed these provisions.

Comment: One commenter suggested that the hospital discharge review provisions at proposed § 405.1204(a) define ''inpatient hospital discharge'', as it applies to these reviews. The commenter asked for a reference to the Code of Federal Regulation (CFR) or statutory provision for the definition. The commenter also questioned how physician concurrence is to be documented and included in the patient record.

Response: Consistent with § 412.4(a) of the regulations concerning the inpatient hospital prospective payment system, a hospital inpatient is considered to be discharged when the patient is formally released from the hospital. For expedited review purposes, a discharge does not include a death or a transfer to another hospital. Hospitals must continue to comply with

the relevant Medicare conditions of participation under part 482 of the CFR concerning documentation requirements. We view physician concurrence as a routine element of the hospital discharge process, and do not believe any change to the medical records and discharge planning procedures are warranted.

Comment: The commenter requested specification of how beneficiaries would receive the notice of non-coverage required under proposed § 405.1204(a). The commenter expressed concern that beneficiaries in hospitals may be unable to exercise their right to appeal due to their health condition. The commenter recommended that the regulations regarding hospital discharge appeals reflect this concern.

Response: The requirements for providing beneficiaries with the Hospital Issued Notice of Non-coverage (HINN) continue long-standing practice under the original Medicare program, as discussed in detail in our April 4, 2003 final rule (68 FR 16660). In brief, hospitals must issue the ''Important Message from Medicare'' upon admission to all Medicare inpatients. Hospitals issue HINNs to any beneficiary that expresses dissatisfaction with an impending discharge, and a hospital may not bill the beneficiary or his/her representative without issuance of the HINN. We have added under § 405.1206(b) the requirement that delivery of a notice of non-coverage is valid only if a beneficiary has signed and dated the notice to indicate that he or she both received the notice and understood its contents. This policy is consistent with our other CMS requirements governing the delivery of similar notices, such as those set forth in CMS program memoranda A–99–52 and A–99–54 for advanced beneficiary notices under original Medicare. We have no indication that this standard has proven problematic. Note that this requirement for successful delivery does not permit a beneficiary to extend coverage indefinitely by refusing to sign a notice of termination. If a beneficiary refuses to sign a notice, the provider can annotate its copy of the notice to indicate the refusal, and the date of the refusal will be considered the date of receipt of the notice. This standard has already been articulated in our hospital manual provisions at section 414.5.

By the time that termination notices are issued, providers will have already needed to assess a beneficiary's ability to accept delivery of a notice, based on typical admission assessments, care planning evaluations and discharge planning activities that have taken place during the course of treatment. In the event a provider believes that a beneficiary is not capable to receive the notice, providers must be well acquainted enough with the beneficiary's particular situation to make alternative arrangements, if necessary, to deliver a valid notice. For example, an incapacitated beneficiary is not able to act on his or her rights and, therefore, cannot validly receive the notice. This situation can be remedied through the use of an authorized representative under Federal or State law. This issue is also discussed in section 414.5 of the Hospital Manual.

Comment: The commenter raised several issues regarding coverage during review. In particular, the commenter expressed concern with coverage with the use of calendar days as the standard, and wanted more specificity for when the beneficiary failed to file timely and continued their hospital stay.

Response: The provisions at § 405.1206(f), which specify that a beneficiary is responsible for services furnished after noon of the calendar day after the beneficiary receives the QIO determination, are consistent with section 1154(e)(4) of the Act regarding expedited reviews of inpatient hospital stays. Although the statute refers to ''working days'' for most aspects of this process, it does not use that terminology in establishing liability; therefore, we believe it is reasonable to conclude that the calendar days, and not working days, should be used.

We believe that § 405.1206(e)(3) clearly explains that if a beneficiary does not make a timely request for an expedited review, the beneficiary may bear financial liability. That is, the beneficiary may be responsible for charges beyond the date on the hospital issued notice of non-coverage (HINN). Again, beneficiaries generally receive a HINN only when they express dissatisfaction with a hospital's decision to discharge them from inpatient care.

Comment: The commenter asked whether beneficiaries could face charges from hospitals for providing medical record data, and what documentation procedures are associated with notice requirements.

Response: We agree, particularly where notification takes place by telephone. Hospitals may charge beneficiaries a reasonable amount for providing them with copies of their medical records. Hospitals may not, however, charge beneficiaries for providing the medical records to the QIO or QIC.

IV. Provisions of this Final Rule With Comment Period

A. Summary of Provisions

For the convenience of the reader, listed below are the major elements of the regulations concerning the new expedited proceedings that are set forth in this final rule with comment period. This listing is intended solely as a reference aid rather than as a comprehensive statement of the policies set forth in the regulation text.

Section 405.1200 describes the applicability of the expedited determination and reconsideration provisions and establishes an advance notification requirement for all provider service terminations and discharges. Section 405.1200(a) specifies that for purposes of these provisions in 405.1200 through 405.1204, the term provider includes the non-hospital providers of SNFs, HHAs, CORFs, and hospices. Hospitals have their own special rules that apply by virtue of section 1154(e) of the Act, which was incorporated into section 1869(c)(3)(C)(iii)(III) of the Act.

Section 405.1200(b) sets forth the notification requirement that applies when a beneficiary's SNF, HHA, CORF, or hospice services are being terminated. These procedures require that the provider deliver, generally no later than 2 days before the termination of services, a standardized notice that informs the beneficiary of the date of discharge and how to file an appeal.

Section 405.1202(a) describes a beneficiary's right to an expedited determination of a non-hospital provider's decision to terminate services.

Section 405.1202(b) explains how a beneficiary must request an expedited determination: A beneficiary must make a request to the QIO by no later than noon of the next calendar day following receipt of the notice of termination. The beneficiary must be available to answer questions by the QIO and may submit evidence to be used in the decision-making process.

Section 405.1202(c) and (d) sets forth the coverage rules associated with the expedited determination process and the procedural burden of proof rules.

Section 405.1202(e) describes the procedures a QIO must follow from the time it receives a beneficiary's request for an expedited determination through the issuance of its decision. These include immediately informing a provider of a beneficiary's request for an expedited determination, assessing the validity of the discharge notice, examining pertinent medical records, offering the beneficiary, provider, and

physician an opportunity to present their views, and reaching a decision and informing the appropriate parties of its decision. All of these activities must be carried out within 72 hours of the beneficiary's request for an expedited determination.

Section 405.1202(f) and (g) detail the responsibilities of providers. Upon learning that a beneficiary has requested an expedited determination, the provider, by close of business of the day of the QIO's notification, must send a detailed notice to the beneficiary containing the reasons why the services are no longer covered and applicable Medicare coverage rules or policy. Providers may not bill a beneficiary who has requested an expedited determination for any disputed services until the expedited appeals process is complete (including an expedited reconsideration, if applicable).

Section 405.1204 sets forth a beneficiary's right to an expedited reconsideration by a QIC regarding a QIO expedited determination. This right is established under § 405.1204(a), and the procedures to be followed by beneficiaries, the QIC, the QIO, and the provider are described in the following sections. We believe that QICs will be operational at the time we implement the reconsiderations established in this final rule. However, in the event the QICs are not yet operational at the time of implementation, QIOs will perform expedited reconsiderations. We believe it would be contrary to the public interest to delay implementation of these expedited review procedures until the QICs have been fully established. QIOs are well suited to administer expedited reconsiderations and currently perform this function for expedited appeals of inpatient hospital discharges. In addition, we believe that even had BIPA not been passed, we would have had the administrative authority to create a procedural rule establishing a pretermination review process, to be conducted by the QIOs under sections 1102 and 1154(a) of the Act. If QIOs do perform the expedited reconsiderations until QICs are established, they will use the same procedures to be used by QICs, although we would formally view the process as a process separate from the process fully implementing BIPA expedited reviews using QICs to process reconsiderations.

Section 405.1206 outlines longstanding procedures regarding a beneficiary's right to an expedited determination in response to an inpatient hospital discharge. Consistent with § 1154(e)(4) of the Act, if a beneficiary files a timely request for such a determination, the beneficiary is not financially responsible for inpatient hospital services before noon of the calendar day after receiving the written expedited QIO determination. Consistent with the statute, we note that 412.42(c)(3) specifies that a hospital cannot charge a beneficiary until and unless the hospital provides the beneficiary with a notice of noncoverage.

Section 405.1208 outlines longstanding rules concerning the right of a hospital to request an expedited QIO review. In short, a hospital may request QIO review if it believes the beneficiary does not need further inpatient care but is unable to obtain physician agreement.

B. Decision To Issue a Final Rule With Comment Period

Section 1869(b)(1)(F) of the Act, as revised by section 521 of BIPA, requires that the Secretary establish a process by which a beneficiary may obtain an independent, expedited determination if he or she receives a notice from a provider of services that the provider plans to terminate the services or discharge the individual from the provider. Currently, this right to an expedited review exists only with respect to hospital discharges (under sections 1154 and 1155 of the Act). In the November 15, 2002 proposed rule we set forth the procedures needed to implement this statutory directive.

As discussed above, the new expedited review process set forth in this final rule is closely modeled on the process now in effect for MA enrollees under our April 4, 2003 final rule. Some commenters on the November 15 proposed rule recognized the close relationship between the two processes, and thus, they recommended changes to the proposed rule notice and appeal procedures that would make the procedures largely parallel. We strongly agree that making the notice and appeal procedures available to MA enrollees and original Medicare beneficiaries as similar as possible is prudent public policy, and will minimize confusion among beneficiaries and providers as we implement the new expedited appeal rights for provider service terminations. However, although the provisions implemented here are clearly a logical outgrowth of the proposed provisions and the comments on them, some of the changes are fairly significant, such as the introduction of a standard coverage termination notice, rather than use of the existing ABN. Moreover, the public's familiarity with the issues involved here has now been informed both by this final rule and our April 4, 2003 final rule on the MA process, as well as with actual experience with the MA process (which began on January 1, 2004). Thus we believe it would be in the public interest to welcome further comments on the changes set forth in this final rule. If these comments warrant changes to these requirements, we will carry out further rulemaking.

V. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to the document.

VI. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

The PRA exempts the majority of the information collection activities referenced in this Final Rule with Comment, including collections associated with SNFs. In addition, 5 CFR 1320.4 excludes collection activities during the conduct of redeterminations, reconsiderations, appeals, and other administrative actions. However, the information collection requirement associated with the initial request to seek an expedited determination, in a non-SNF setting, is subject to the PRA.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements:

Section 405.1200 Notifying Beneficiaries of Provider Service Terminations

[If you choose to comment on issues in this section, please include the caption ''Notifying Beneficiaries of Provider Service Terminations'' at the beginning of your comments.]

For any termination of Medicare-covered services, the provider of the service must notify the beneficiary in writing of its decision to terminate services. The provider must use a standardized notice, required by the Secretary, in accordance with the requirements and procedures set forth in this section.

Given that CMS has developed standardized formats for these notices, and notices will be disseminated during the normal course of related business activities, we estimate that it will take providers (HHAs, CORFs, and Hospices) 5 minutes to deliver each notice. In 2002, there were approximately 4.2 million Medicare HHA discharges. (Note that the amount of Medicare business with CORFs is so small that Medicare statistical summaries do not include a separate line item for patient encounters with these facilities. Similarly, while we do not have precise estimates of hospice discharges, the number is considered to be an extremely small percentage of the 0.5 million number of annual hospice patients. Thus, our analysis is necessarily limited to HHA services.) We estimate that HHA providers will be required to give an estimated 4.2 million notices to beneficiaries. The total annual burden associated with this requirement is 350,000 hours.

If you wish to view the proposed standardized notices and the supporting documentation, you can download a copy from the CMS Web site at *http://www.cms.hhs.gov/regulations/pra/*.

Section 405.1202 Expedited Determination Procedures

[If you choose to comment on issues in this section, please include the caption ''Expedited Determination Procedures'' at the beginning of your comments.]

A beneficiary who desires an expedited determination must submit a request for an appeal to the QIO, in writing or by telephone, by no later than noon of the effective date of the written termination notice. If, due to an emergency the QIO is closed on the day the beneficiary requests an expedited determination, the beneficiary must file a request by noon of the next day that the QIO is open for business.

The right to an expedited review of the termination of HHA/CORF/hospice services has never been available to Medicare beneficiaries. Consistent with our estimate of the proportion of MA enrollees who are likely to request QIO reviews of HHA/CORF/hospice services, we are estimating that approximately 1–2 percent of Medicare fee-for-service beneficiaries who receive termination notices will request an expedited review. We believe this is a reasonable estimate of the maximum number of HHA/CORF/hospice enrollees who are likely to file appeals with the IRE. Thus, we estimate the annual number of fee-for-service reviews at no more than 2 percent of the approximately 4.2 million HHA/CORF/hospice discharges (FY 2002 data), meaning that the maximum number of beneficiaries that are likely to request an expedited determination by the QIO is about 84,000 annually. It is estimated that it will take 84,000 beneficiaries 15 minutes to file an appeal on an annual basis. The total annual burden associated with this requirement is 21,000 hours.

The beneficiary may submit evidence to be considered by the QIO in making its decision and may be required by the QIO to authorize access to his or her medical records in order to pursue the appeal. It is likely that no more than 10 percent of the 84,000 beneficiaries who file appeals will also submit additional evidence. It is estimated that it will take 8,400 beneficiaries 60 minutes to submit evidence on an annual basis. That is, since beneficiaries may not be functioning at their maximum capacity, they may need to contact family members, friends, or their personal physicians who might provide assistance in gathering additional evidence. The total annual burden associated with this requirement is 8,400 hours.

It should be noted that requirements are currently captured and accounted for in currently approved information collection under OMB numbers 0938–0045 ''Requirements for Reconsideration for Part A Health Insurance Benefits''.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Regulations Development and Issuances Group, Attn: Dawn Willinghan, CMS–4004–FC, Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850 and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn.: Christopher Martin, CMS Desk Officer.

Comments submitted to OMB may also be e-mailed to the following address: e-mail: *Christopher_Martin@omb.eop.gov;* or faxed to OMB at (202) 395–6974.

VII. Regulatory Impact Statement

[If you choose to comment on issues in this section, please include the caption ''Regulatory Impact Statement'' at the beginning of your comments.]

A. Introduction

We have examined the impact of this rule under the criteria of Executive Order 12866 (September 1993, Regulatory Planning and Review), section 1102(b) of the Social Security Act, the Regulatory Flexibility Act (RFA), Public Law No. 96–354, the Unfunded Mandates Reform Act of 1995, Public Law 104–4, and Executive Order 13132. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). This rule would not meet the $100 million threshold and therefore is not a major rule. In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

The RFA requires agencies, in issuing certain rules, to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations and government agencies. Most SNFs and HHAs are small entities, either by nonprofit status or by having revenues of $25 million or less annually. For purposes of the RFA, all providers affected by this regulation are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis for a final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan

Statistical Area and has fewer than 100 beds.

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals, since as we explain in C., below, we estimate a cost of about $200 a provider. Although a regulatory impact analysis is not mandatory for this final rule, we believe it is appropriate to discuss the possible impacts of the new appeals procedures on beneficiaries and providers, regardless of the monetary threshold of that impact. Therefore, a brief voluntary discussion of the anticipated impact of this rule is presented below.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that would include any Federal mandate that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This rule would not have such an effect on State, local, or tribal governments, or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that would impose substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This rule does not have a substantial effect on State and local governments.

B. Overview of the Changes

This final rule implements the requirement under section 1869(b)(1)(F) of the Act that a beneficiary has a right to an expedited determination upon notification by a provider of the provider's decision to discharge the beneficiary or to terminate services. This rule specifies that providers (that is, SNFs, HHAs, CORFs and hospices) must issue a standardized termination notice before all discharges or service terminations to inform beneficiaries of these new appeal rights. In general, we believe that these changes will enhance the rights of Medicare beneficiaries, without imposing any significant financial burden on these individuals. Most notably, the new requirements will significantly reduce a beneficiary's potential liability in situations where disputed provider services are denied on appeal.

C. Expedited Determination and Reconsideration Procedures for Provider Terminations (§ 405.1200 Through § 405.1204)

We project that providers will be responsible for delivering short standardized termination notices to approximately 5.3 million beneficiaries a year. This includes about 1.1 million SNF discharges and 4.2 million HHA discharges. The required termination notices will be largely standardized, requiring only the insertion of the beneficiary's name and discharge date. We estimate that it will take no more than 5 minutes to deliver a notice, at a per-notice cost of no more than $2.50 (based on a $30 per hour rate if the notice is delivered by health care personnel). Based on an estimated 5.3 million notices annually, we estimate the aggregate cost of delivering these notices to be roughly $13 million. Given that there are roughly 24,000 affected providers, the average costs associated with this provision will be less than $600 per provider.

At most, we believe that 2 percent of affected individuals (that is, 106,000 beneficiaries) will request an expedited determination. For these 106,000 cases, providers will be required under this final rule to deliver a detailed termination notice to the beneficiary and to make a copy of that notice and any necessary supporting documentation available to the QIO (and to the beneficiary upon request). We estimate that it will take providers 60 to 90 minutes to prepare the detailed termination notice and to prepare a case file for the QIO. At an estimated cost of $30 per hour, we project an aggregate cost of $3.2 million to $4.8 million to approximately 24,000 providers, or about $200 per provider.

Thus, we believe that the total financial impact of the new notice and expedited determination requirements is less than $20 million annually. We do not anticipate that the provisions of this final rule will have a significant financial impact on individual providers. We note that both the advance termination notice and the detailed termination notice will be developed through OMB's Paperwork Reduction Act process and thus will be the subject of further opportunity for public comment. The only other significant costs associated with this provision will result from the Secretary's commitment to contract with QIOs and QICs to conduct these expedited reviews. We are projecting first year costs, including training and start costs for QIOs, to the Medicare Trust Fund of about $32 million to carry out this function.

List of Subjects in 42 CFR Parts 405 and 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

■ 1. The authority citation for part 405 continues to read as follows:

Authority: Secs. 1102, 1861, 1862(a), 1869, 1871, 1874, 1881, and 1886(k) of the Social Security Act (42 U.S.C. 1302, 1395x, 1395y(a), 1395ff, 1395hh, 1395kk, 1395rr and 1395ww(k)), and sec. 353 of the Public Health Service Act (42 U.S.C. 263a).

■ 2. Add a new subpart J to read as follows:

Subpart J—Expedited Determinations and Reconsiderations of Provider Service Terminations, and Procedures for Inpatient Hospital Discharges

§ 405.1200 Notifying beneficiaries of provider service terminations.

(a) *Applicability and scope.* (1) For purposes of §§ 405.1200 through 405.1204, the term, provider, is defined as a home health agency (HHA), skilled nursing facility (SNF), comprehensive outpatient rehabilitation facility (CORF), or hospice.

(2) For purposes of §§ 405.1200 through 405.1204, a termination of Medicare-covered service is a discharge of a beneficiary from a residential provider of services, or a complete cessation of coverage at the end of a course of treatment prescribed in a discrete increment, regardless of whether the beneficiary agrees that the services should end. A termination does not include a reduction in services. A termination also does not include the termination of one type of service by the provider if the beneficiary continues to receive other Medicare-covered services from the provider.

(b) *Advance written notice of service terminations.* Before any termination of services, the provider of the service must deliver valid written notice to the beneficiary of the provider's decision to terminate services. The provider must use a standardized notice, as specified by CMS, in accordance with the following procedures:

(1) *Timing of notice.* A provider must notify the beneficiary of the decision to terminate covered services no later than

2 days before the proposed end of the services. If the beneficiary's services are expected to be fewer than 2 days in duration, the provider must notify the beneficiary at the time of admission to the provider. If, in a non-residential setting, the span of time between services exceeds 2 days, the notice must be given no later than the next to last time services are furnished.

(2) *Content of the notice.* The standardized termination notice must include the following information:

(i) The date that coverage of services ends;

(ii) The date that the beneficiary's financial liability for continued services begins;

(iii) A description of the beneficiary's right to an expedited determination under § 405.1202, including information about how to request an expedited determination and about a beneficiary's right to submit evidence showing that services must continue;

(iv) A beneficiary's right to receive the detailed information specified under § 405.1202(f); and

(v) Any other information required by CMS.

(3) *When delivery of the notice is valid.* Delivery of the termination notice is valid if—

(i) The beneficiary (or the beneficiary's authorized representative) has signed and dated the notice to indicate that he or she has received the notice and can comprehend its contents; and

(ii) The notice is delivered in accordance with paragraph (b)(1) of this section and contains all the elements described in paragraph (b)(2) of this section.

(4) *If a beneficiary refuses to sign the notice.* The provider may annotate its notice to indicate the refusal, and the date of refusal is considered the date of receipt of the notice.

(5) *Financial liability for failure to deliver valid notice.* A provider is financially liable for continued services until 2 days after the beneficiary receives valid notice as specified under paragraph (b)(3) of this section, or until the service termination date specified on the notice, whichever is later. A beneficiary may waive continuation of services if he or she agrees with being discharged sooner than the planned service termination date.

§ 405.1202 Expedited determination procedures.

(a) *Beneficiary's right to an expedited determination by the QIO.* A beneficiary has a right to an expedited determination by a QIO under the following circumstances:

(1) For services furnished by a non-residential provider, the beneficiary disagrees with the provider of those services that services should be terminated, and a physician certifies that failure to continue the provision of the service(s) may place the beneficiary's health at significant risk.

(2) For services furnished by a residential provider or a hospice, the beneficiary disagrees with the provider's decision to discharge the beneficiary.

(b) *Requesting an expedited determination.* (1) A beneficiary who wishes to exercise the right to an expedited determination must submit a request for a determination to the QIO in the State in which the beneficiary is receiving those provider services, in writing or by telephone, by no later than noon of the calendar day following receipt of the provider's notice of termination. If the QIO is unable to accept the beneficiary's request, the beneficiary must submit the request by noon of the next day the QIO is available to accept a request.

(2) The beneficiary, or his or her representative, must be available to answer questions or to supply information that the QIO may request to conduct its review.

(3) The beneficiary may, but is not required to, submit evidence to be considered by a QIO in making its decision.

(4) If a beneficiary makes an untimely request for an expedited determination by a QIO, the QIO will accept the request and make a determination as soon as possible, but the 72-hour time frame under paragraph (e)(6) and the financial liability protection under paragraph (g) of this section do not apply.

(c) *Coverage of provider services.* Coverage of provider services continues until the date and time designated on the termination notice, unless the QIO reverses the provider's service termination decision. If the QIO's decision is delayed because the provider did not timely supply necessary information or records, the provider may be liable for the costs of any additional coverage, as determined by the QIO in accordance with paragraph (e)(7) of this section. If the QIO finds that the beneficiary did not receive valid notice, coverage of provider services continues until at least 2 days after valid notice has been received. Continuation of coverage is not required if the QIO determines that coverage could pose a threat to the beneficiary's health or safety.

(d) *Burden of proof.* When a beneficiary requests an expedited determination by a QIO, the burden of proof rests with the provider to demonstrate that termination of coverage is the correct decision, either on the basis of medical necessity, or based on other Medicare coverage policies.

(1) In order for the QIO to determine whether the provider has met the burden of proof, the provider should supply any and all information that a QIO requires to sustain the provider's termination decision, consistent with paragraph (f) of this section.

(2) The beneficiary may submit evidence to be considered by a QIO in making its decision.

(e) *Procedures the QIO must follow.* (1) On the day the QIO receives the request for an expedited determination under paragraph (b) of this section, it must immediately notify the provider of those services that a request for an expedited determination has been made.

(2) The QIO determines whether the provider delivered valid notice of the termination decision consistent with § 405.1200(b) and paragraph (f) of this section.

(3) The QIO examines the medical and other records that pertain to the services in dispute. If applicable, the QIO determines whether a physician has certified that failure to continue the provision of services may place the beneficiary's health at significant risk.

(4) The QIO must solicit the views of the beneficiary who requested the expedited determination.

(5) The QIO must provide an opportunity for the provider/practitioner to explain why the termination or discharge is appropriate.

(6) No later than 72 hours after receipt of the request for an expedited determination, the QIO must notify the beneficiary, beneficiary's physician, and the provider of services of its determination whether termination of Medicare coverage is the correct decision, either on the basis of medical necessity or based on other Medicare coverage policies.

(7) If the QIO does not receive the information needed to sustain a provider's decision to terminate services, it may make its determination based on the evidence at hand, or it may defer a decision until it receives the necessary information. If this delay results in extended Medicare coverage of an individual's provider services, the provider may be held financially liable for these services, as determined by the QIO.

(8) The QIO's initial notification may be by telephone, followed by a written notice including the following information:

(i) The rationale for the determination;

(ii) An explanation of the Medicare payment consequences of the determination and the date a beneficiary becomes fully liable for the services; and

(iii) Information about the beneficiary's right to a reconsideration of the QIO's determination, including how to request a reconsideration and the time period for doing so.

(f) *Responsibilities of providers.* (1) When a QIO notifies a provider that a beneficiary has requested an expedited determination, the provider must send a detailed notice to the beneficiary by close of business of the day of the QIO's notification. The detailed termination notice must include the following information:

(i) A specific and detailed explanation why services are either no longer reasonable and necessary or are no longer covered;

(ii) A description of any applicable Medicare coverage rule, instruction, or other Medicare policy, including citations to the applicable Medicare policy rules or information about how the beneficiary may obtain a copy of the Medicare policy;

(iii) Facts specific to the beneficiary and relevant to the coverage determination that are sufficient to advise the beneficiary of the applicability of the coverage rule or policy to the beneficiary's case; and

(iv) Any other information required by CMS.

(2) Upon notification by the QIO of the request for an expedited determination, the provider must supply all information that the QIO needs to make its expedited determination, including a copy of the notices required under § 405.1200(b) and under paragraph (f)(1) of this section. The provider must furnish this information as soon as possible, but no later than by close of business of the day the QIO notifies the provider of the request for an expedited determination. At the discretion of the QIO, the provider may make the information available by phone or in writing (with a written record of any information not transmitted initially in writing).

(3) At a beneficiary's request, the provider must furnish the beneficiary with a copy of, or access to, any documentation that it sends to the QIO including records of any information provided by telephone. The provider may charge the beneficiary a reasonable amount to cover the costs of duplicating the documentation and/or delivering it to the beneficiary. The provider must accommodate such a request by no later than close of business of the first day after the material is requested.

(g) *Coverage during QIO review.* When a beneficiary requests an expedited determination in accordance with the procedures required by this section, the provider may not bill the beneficiary for any disputed services until the expedited determination process (and reconsideration process, if applicable) has been completed.

§ 405.1204 Expedited reconsiderations.

(a) *Beneficiary's right to an expedited reconsideration.* A beneficiary who is dissatisfied with a QIO's expedited determination may request an expedited reconsideration by the appropriate QIC.

(b) *Requesting an expedited reconsideration.* (1) A beneficiary who wishes to obtain an expedited reconsideration must submit a request for the reconsideration to the appropriate QIC, in writing or by telephone, by no later than noon of the calendar day following initial notification (whether by telephone or in writing) receipt of the QIO's determination. If the QIC is unable to accept the beneficiary's request, the beneficiary must submit the request by noon of the next day the QIC is available to accept a request.

(2) The beneficiary, or his or her representative, must be available to answer questions or supply information that the QIC may request to conduct its reconsideration.

(3) The beneficiary may, but is not required to, submit evidence to be considered by a QIC in making its decision.

(4) A beneficiary who does not file a timely request for an expedited QIC reconsideration subsequently may request a reconsideration under the standard claims appeal process, but the coverage protections described in paragraph (f) of this section would not extend through this reconsideration, nor would the timeframes or the escalation process described in paragraphs (c)(3) and (c)(5) of this section, respectively.

(c) *Procedures the QIC must follow.* (1) On the day the QIC receives the request for an expedited determination under paragraph (b) of this section, the QIC must immediately notify the QIO that made the expedited determination and the provider of services of the request for an expedited reconsideration.

(2) The QIC must offer the beneficiary and the provider an opportunity to provide further information.

(3) Unless the beneficiary requests an extension in accordance with paragraph (c)(6) of this section, no later than 72 hours after receipt of the request for an expedited reconsideration, and any medical or other records needed for such reconsideration, the QIC must notify the QIO, the beneficiary, the beneficiary's physician, and the provider of services, of its decision on the reconsideration request.

(4) The QIC's initial notification may be done by telephone, followed by a written notice including:

(i) The rationale for the reconsideration decision;

(ii) An explanation of the Medicare payment consequences of the determination and the beneficiary's date of liability; and

(iii) Information about the beneficiary's right to appeal the QIC's reconsideration decision to an ALJ, including how to request an appeal and the time period for doing so.

(5) Unless the beneficiary requests an extension in accordance with paragraph (c)(6) of this section, if the QIC does not issue a decision within 72 hours of receipt of the request, the QIC must notify the beneficiary of his or her right to have the case escalated to the ALJ hearing level if the amount remaining in controversy after the QIO determination is $100 or more.

(6) A beneficiary requesting an expedited reconsideration under this section may request (either in writing or orally) that the QIC grant such additional time as the beneficiary specifies (not to exceed 14 days) for the reconsideration. If an extension is granted, the deadlines in paragraph (c)(3) of this section do not apply.

(d) *Responsibilities of the QIO.* (1) When a QIC notifies a QIO that a beneficiary has requested an expedited reconsideration, the QIO must supply all information that the QIC needs to make its expedited reconsideration as soon as possible, but no later than by close of business of the day that the QIC notifies the QIO of the request for an expedited reconsideration.

(2) At a beneficiary's request, the QIO must furnish the beneficiary with a copy of, or access to, any documentation that it sends to the QIC. The QIO may charge the beneficiary a reasonable amount to cover the costs of duplicating the documentation and/or delivering it to the beneficiary. The QIO must accommodate the request by no later than close of business of the first day after the material is requested.

(e) *Responsibilities of the provider.* A provider may, but is not required to, submit evidence to be considered by a QIC in making its decision. If a provider fails to comply with a QIC's request for additional information beyond that furnished to the QIO for purposes of the expedited determination, the QIC makes

its reconsideration decision based on the information available.

(f) *Coverage during QIC reconsideration process.* When a beneficiary requests an expedited reconsideration in accordance with the deadline specified in (b)(1) of this section, the provider may not bill the beneficiary for any disputed services until the QIC makes its determination.

§ 405.1206 Expedited determinations for inpatient hospital discharges.

(a) *Beneficiary's right to an expedited determination for an inpatient hospital discharge.* A beneficiary who has received a notice of noncoverage under section 1154(e)(1) of the Act and 42 CFR 412.42(c)(3) may request an expedited determination by the QIO when a hospital (acting directly or through its utilization review committee), with physician concurrence, determines that inpatient care is no longer necessary. A beneficiary who timely requests an expedited QIO review in accordance with paragraph (d)(1) of this section and who meets the conditions of section 1879(a)(2) of the Social Security Act (that is, the individual did not know, and could not reasonably have been expected to know, that payment would not be made for such items or services under part A or part B) may remain in the hospital with no additional financial liability until the QIO makes its determination.

(b) *When delivery of the notice is valid.* (1) Except as provided in paragraph (b)(2) of this section, valid delivery of the notice of non-coverage requires that the beneficiary (or the beneficiary's authorized representative) has signed and dated the notice to indicate that he or she has received the notice and can comprehend its contents.

(2) If a beneficiary refuses to sign the notice, the provider may annotate its notice to indicate the refusal, and the date of refusal is considered the date of receipt of the notice.

(c) *Beneficiary's right to other review.* (1) A beneficiary who fails to request an expedited determination in accordance with paragraph (d)(1) of this section, and remains in the hospital, may request an expedited review at any time during the course of his or her inpatient hospital stay. The QIO will issue a decision in accordance with paragraph (e)(5)(ii) of this section. The escalation procedures described in § 405.1204(c)(5) and the financial liability rules of paragraph (f)(2) of this section do not apply.

(2) A beneficiary who fails to request an expedited determination in accordance with paragraph (d)(1) of this section, and who is no longer an inpatient in the hospital, may request QIO review within 30 calendar days after receipt of the notice of noncoverage as provided under section 1154(e)(1) or at any time for good cause. The QIO will issue a decision in accordance with paragraph (e)(5)(iii) of this section. The escalation procedures described in § 405.1204(c)(5) and the financial liability rules of paragraph (f)(2) of this section do not apply.

(d) *Procedures the beneficiary must follow.* For the expedited appeal process, the following rules apply:

(1) The beneficiary must submit the request for an expedited determination—

(i) To the QIO that has an agreement with the hospital under part 475 of this chapter;

(ii) In writing or by telephone; and

(iii) By noon of the first working day after he or she receives written notice that the hospital has determined that the hospital stay is no longer necessary.

(2) The beneficiary (or his or her authorized representative), upon request by the QIO, must be prepared to discuss the case with the QIO.

(e) *Procedures the QIO must follow.* On the date that the QIO receives the beneficiary's request:

(1) The QIO must notify the hospital that the beneficiary has filed a request for immediate review.

(2) The hospital must supply any information, including medical records, that the QIO requires to conduct its review and must make it available, by phone or in writing, by the close of business of the first full working day after the day the beneficiary receives notice of the planned discharge.

(3) The QIO must examine the pertinent records pertaining to the services.

(4) The QIO must solicit the views of the beneficiary (or the beneficiary's authorized representative) who requested the expedited determination.

(5)(i) When the beneficiary requests an expedited determination in accordance with paragraph (d)(1) of this section, the QIO must make a determination and notify the beneficiary, the hospital, and physician of its determination by close of business of the first working day after it receives all requested pertinent information.

(ii) When the beneficiary does not request an expedited determination in accordance with paragraph (d)(1) of this section, and remains an inpatient in the hospital, the QIO will make a determination and notify the beneficiary, the hospital, and physician of its determination within 2 working days following receipt of the request and pertinent information.

(iii) When the beneficiary does not request an expedited initial determination in accordance with paragraph (d)(1) of this section, and is no longer an inpatient in the hospital, the QIO will make a determination and notify the beneficiary, the hospital, and physician of its determination within 30 calendar days after receipt of the request and pertinent information.

(f) *Coverage during QIO expedited review.* (1) In general, if the beneficiary remains in the hospital after receiving the hospital issued notice of noncoverage, and the hospital, the physician who concurred in the hospital's determination on which the advanced written notice of termination was based, or the QIO subsequently finds that the beneficiary requires an acute level of inpatient hospital care, the beneficiary is not financially responsible for continued care until the hospital once again determines that the beneficiary no longer requires inpatient care, secures concurrence from the physician responsible for the beneficiary's care or the QIO and notifies the beneficiary.

(2) *Timely filing and limitation on liability.* If a beneficiary both files a request for an expedited determination by the QIO in accordance with paragraph (d)(1) of this section, and meets the conditions of section 1879(a)(2) of the Social Security Act (that is, the individual did not know, and could not reasonably have been expected to know, that payment would not be made for such items or services under part A or part B), the beneficiary is not financially responsible for inpatient hospital services furnished before noon of the calendar day after the date the beneficiary (or his or her representative) receives notification (either orally or in writing) of the expedited determination by the QIO.

(3) *Untimely filing.* When a beneficiary does not file a request for an expedited determination by the QIO in accordance with paragraph (d)(1) of this section, that beneficiary may be responsible for charges that extend beyond the date specified on the hospital's advance written notice of termination or as otherwise stated by the QIO.

(4) *Hospital requests expedited review.* When the hospital requests review in accordance with §405.1208, and the QIO concurs with the hospital's decision, a hospital may not charge a beneficiary until the date specified by the QIO.

(g) *Notice of an expedited determination.* (1) When a QIO issues an expedited determination in accordance with paragraph (e)(5) of this section, the

QIO must notify the beneficiary, physician, and hospital of its decision, by telephone and subsequently in writing.

(2) A written notice of the expedited determination must contain the following:

(i) The basis for the determination;

(ii) A detailed rationale for the determination;.

(iii) A statement explaining the Medicare payment consequences of the expedited determination and date of liability, if any;

(iv) A statement informing the beneficiary of his or her subsequent appeal rights, and the timeframe for requesting a reconsideration by the QIC.

(h) *Effect of an expedited QIO determination.* The QIO determination is binding upon the beneficiary, physician, and hospital, except in the following circumstances:

(1) *When beneficiary remains in the hospital.* If the beneficiary is still an inpatient in the hospital and is dissatisfied with the determination, he or she may request a reconsideration according to the procedures described in § 405.1204. If the beneficiary does not make a request in accordance with paragraph (d)(1) of this section, the timeframes described in § 405.1204(c)(3), the escalation procedures described in § 405.1204(c)(5), and the coverage rule described in § 405.1204(f) will not apply.

(2) *When beneficiary is no longer an inpatient in the hospital.* If the beneficiary is no longer an inpatient in the hospital and is dissatisfied with this determination, the determination is subject to the general claims appeal process.

§ 405.1208 Hospital requests expedited QIO review.

(a) *General rule.* If the hospital (acting directly or through its utilization review committee) believes that the beneficiary does not require further inpatient hospital care but is unable to obtain the agreement of the physician, it may request an expedited determination by the QIO.

(b) *Procedures hospital must follow.* (1) The hospital must (acting directly or through its utilization review committee) notify the beneficiary (or his or her representative) that it has requested that review.

(2) The hospital must supply any pertinent information the QIO requires to conduct its review and must make it available by phone or in writing, by close of business of the first full working day immediately following the day the hospital submits the request for review.

(c) *Procedures the QIO must follow.* (1) The QIO must notify the hospital that it has received the request for review and must notify the hospital if it has not received all pertinent records.

(2) The QIO must examine the pertinent records pertaining to the services.

(3) The QIO must solicit the views of the beneficiary in question.

(4) The QIO must make a determination and notify the beneficiary, the hospital, and physician within 2 working days of the hospital's request and receipt of any pertinent information submitted by the hospital.

(d) *Notice of an expedited determination.* (1) When a QIO issues an expedited determination as stated in paragraph (c)(4) of this section, it must notify the beneficiary, physician, and hospital of its decision, by telephone and subsequently in writing.

(2) A written notice of the expedited initial determination must contain the following:

(i) The basis for the determination;.

(ii) A detailed rationale for the determination;

(iii) A statement explaining the Medicare payment consequences of the expedited determination and date of liability, if any; and

(iv) A statement informing the beneficiary of his or her appeal rights and the timeframe for requesting an appeal.

(e) *Effect of an expedited determination.* The expedited determination under this section is binding upon the beneficiary, physician, and hospital, except in the following circumstances:

(1) *When a beneficiary remains in the hospital.* If the beneficiary is still an inpatient in the hospital and is dissatisfied with this determination, he or she may request a reconsideration according to the procedures described in § 405.1204. The procedures described in § 405.1204 will apply to reconsiderations requested under this section. If the beneficiary does not make a request in accordance with paragraph (d)(1) of this section, the timeframes described in § 405.1204(c)(3), the escalation procedures described in § 405.1204(c)(5), and the coverage rule described in § 405.1204(f) will not apply.

(2) *When a beneficiary is no longer an inpatient in the hospital.* If the beneficiary is no longer an inpatient in the hospital and is dissatisfied with this determination, this determination is subject to the general claims appeal process.

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

■ Part 489 is amended as set forth below:

■ 1. The authority citation for part 489 is revised to read as follows:

Authority: Secs. 1102, 1819, 1861, 1864(m), 1866, 1869, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395i–3, 1395x, 1395aa(m), 1395cc, 1395ff, and 1395hh).

■ 2. Section 489.27(b) is revised as follows:

§ 489.27 Beneficiary notice of discharge rights.

* * * * *

(b) *Notification by other providers.* Other providers that participate in the Medicare program must furnish each Medicare beneficiary, or authorized representative, applicable CMS notices in advance of the termination of Medicare services, including the notices required under §§ 405.1202 and 422.624 of this chapter.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 23, 2003.

Dennis G. Smith,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: July 12, 2004.

Tommy G. Thompson,

Secretary.

Editorial note: The Office of the Federal Register received this document on November 19, 2004.

[FR Doc. 04–26133 Filed 11–24–04; 8:45 am]

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