(6) The request must be accompanied by the fee prescribed in § 381.405 of this chapter or by a petition for waiver pursuant to § 381.106 of this chapter.

* * * * *

[FR Doc. 84-23570 Filed 9-6-84; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 182 and 184

[Docket No. 79N-0371]

GRAS Status of Lactic Acid and Calcium Lactate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that lactic acid and calcium lactate are generally recognized as safe (GRAS) as direct human food ingredients. The safety of these ingredients has been evaluated under the comprehensive safety review conducted by the agency.

DATES: Effective October 9, 1984. The Director of the Federal Register approves the incorporation by reference of certain publications in 21 CFR 184.1061 and 184.1207 effective on October 9, 1984.

FOR FURTHER INFORMATION CONTACT: Leonard C. Gosule, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 16, 1980 (45 FR 32324), FDA published a proposal to affirm that lactic acid and calcium lactate are GRAS for use as direct human food ingredients. FDA published this proposal in accordance with its announced review of the safety of GRAS and prior-sanctioned food ingredients.

Subsequently, the agency published in the **Federal Register** of February 25, 1983 (48 FR 8086), a tentative final rule that omitted the listing of the use levels and food categories that appeared in the proposal. The tentative final rule also modified the specifications paragraph of the regulation on each substance to reference the third edition of the Food Chemicals Codex (1981). The agency made these modifications in an effort to make these regulations consistent with a proposal that the agency had issued on September 7, 1982 (47 FR 39199), to include conditions of use for substances affirmed as GRAS under 21 CFR 184.1(b)(1) only when appropriate. (FDA finalized this rule on Oct. 19, 1983 (48 FR 48457).)

The agency also modified the proposed regulations to include a method for synthesizing lactic acid in § 184.1061(a) and to include calcium hydroxide in § 184.1207(a) as a substance that could be used in the production of calcium lactate. FDA made these modifications in response to comments on the proposed rule.

In the preamble to the tentative final rule, FDA stated that it would review any comments it received within the 60-day comment period that were relevant to the omission of the use levels and food categories. The agency did not receive any comments on these issues, but it did receive two comments that addressed other issues.

1. The tentative final rule excluded the use of calcium lactate and lactic acid in infant foods and infant formulas from the uses of these ingredients that the agency proposed to affirm as GRAS. One comment requested that FDA exclude only the use of the DL and D forms of lactic acid and calcium lactate in infant foods and infant formulas from GRAS affirmation. The comment cited opinions of both the Select Committee on GRAS Substances (the Select Committee) of the Federation of American Societies for Experimental Biology and the 10th, 17th, and 18th meetings of the Joint Food and Agriculture Organization/World Health Organization (FAO/WHO) Expert Committee on Food Additives in support of its claim that use of the L-isomers of these ingredients should not be restricted on the basis of safety. The comment stated that the L-isomers of these ingredients are used in Europe in infant milk products of the acid-tasting type and reported that they are used in the United States as well.

FDA agrees that neither the Select Committee report on lactic acid and calcium lactate nor the FAO reports cited in the comment present evidence that L-lactic acid or L-calcium lactate produce toxic effects in infants. The agency also is not aware of any evidence that would raise questions about the safety of these substances for consumption by infants. Nevertheless, the agency believes that adequate evidence does not exist to affirm as GRAS the general use of these ingredients in infant foods and infant formulas. Neither the comment nor the Select Committee report contained information or safety data on the general use of these ingredients in infant foods and formulas. On the contrary, the Select Committee reported that it was not aware of any use of these ingredients in infant formulas except in products designed for special dietary or therapeutic purposes, and it did not evaluate these specialty uses. Moreover, in both Europe and the United States, the only current uses of these ingredients in infant formulas are in specialty products. Thus, no evidence exists that these ingredients are in common use in infant formulas. Based on this fact and on the current lack of safety data on the use of the L-isomers in infant foods, FDA has concluded that an appropriate basis on which to affirm that the general use of these ingredients in infant formulas and infant foods in GRAS does not exist. As the agency pointed out in the proposal on lactic acid and calcium lactate, published in the **Federal Register** of May 16, 1980, the reported use of these substances in acidified infant products in Europe and in special dietary and therapeutic infant products in the United States are outside the scope of the GRAS review. Therefore, FDA has not modified the tentative final rule in response to this comment.

2. One comment noted an error in the description of the chemical synthesis of lactic acid that appeared in the preamble to the tentative final rule (48 FR 8087). The comment noted that lactic acid may be synthesized by a process involving reaction of acetaldehyde and hydrogen cyanide, but that it is not prepared with acetonitrile and hydrogen cyanide as described in the preamble.

The agency agrees with the comment that the description of this process in the preamble was incorrect. However, the agency finds that the description of the process in paragraph (a) of § 184.1061 in the tentative final rule was correct. Therefore, the agency has not modified the tentative final rule in response to this comment.

FDA has made a minor editorial change in the regulation on lactic acid.

The agency has previously determined under 21 CFR 25.24(d)(6) (proposed Dec. 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. FDA has not received any new information or comments that would alter its previous determination.

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action.

FDA has not received any new information or comments that would alter its previous determination.

In accordance with Executive Order 12291, FDA has previously analyzed the potential economic effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as determined by the Order. The agency has not received any new information or comments that would alter its previous determination.

The agency's findings of no major economnic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assessment which may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 182

Generally recognized as safe (GRAS) food ingredients, Spices and flavorings.

21 CFR Part 184

Direct food ingredients, Food ingredients, Generally recognized as safe (GRAS) food ingredients, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 182 and 184 are amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

§ 182.1061 [Removed]

1. In Part 182:

a. By removing § 182.1061 *Lactic acid.*

§ 182.1207 [Removed]

b. By removing § 182.1207 *Calcium lactate.*

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

2. In Part 184:

a. By adding new § 184.1061 to read as follows:

§ 184.1061 Lactic acid.

(a) Lactic acid ($C_3H_6O_3$, CAS Reg. Nos.: DL mixture, 598–82–3; L-isomer, 79–33–4; D-isomer, 10326–41–7), the chemical 2-hydroxypropanoic acid, occurs naturally in several foods. It is produced commercially either by fermentation of carbohydrates such as glucose, sucrose, or lactose, or by a procedure involving formation of lactonitrile from acetaldehyde and hydrogen cyanide and subsequent hydrolysis to lactic acid.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 159, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Avenue, NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L Street NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an antimicrobial agent as defined in § 170.3(o)(2) of this chapter; a curing and pickling agent as defined in § 170.3(o)(5) of this chapter; a flavor enhancer as defined in § 170.3(o)(11) of this chapter; a flavoring agent and adjuvant as defined in § 170.3(o)(12) of this chapter; a pH control agent as defined in § 170.3(o)(23) of this chapter; and a solvent and vehicle as defined in § 170.3(o)(27) of this chapter.

(2) The ingredient is used in food, except in infant foods and infant formulas, at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

b. By adding new § 184.1207 to read as follows:

§ 184.1207 Calcium lactate.

(a) Calcium lactate ($C_6H_{10}CaO_6.xH_2O$), where x is any integer up to 5, CAS Reg. No. 814–80–2) is prepared commercially by the neutralization of lactic acid with calcium carbonate or calcium hydroxide.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 53, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Avenue NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a firming agent as defined in § 170.3(o)(10) of this chapter; a flavor enhancer as defined in § 170.3(o)(11) of this chapter; a flavoring agent or adjuvant as defined in § 170.3(o)(12) of this chapter; a leavening agent as defined in § 170.3(o)(17) of this chapter; a nutrient supplement as defined in § 170.3(o)(20) of this chapter; and a stabilizer and thickener as defined in § 170.3(o)(28) of this chapter.

(2) The ingredient is used in food, except in infant foods and infant formulas, at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

Effective date. This regulation shall be effective October 9, 1984.

(Secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a)))

Dated: August 14, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–23654 Filed 9–6–84; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

24 CFR Part 571

[Docket No. R–84–1030; FR–1612]

Community Development Block Grants for Indian Tribes and Alaskan Native Villages

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This rule makes final the regulations governing the Community Development Block Grant Program for Indian Tribes and Alaskan Native Villages. Some revisions have been made to the previously published interim rule by this final rule. These revisions are intended to continue efforts to simplify the regulations' text and the application process.

EFFECTIVE DATE: Upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, but not before further notice

of the effective date is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Marcia A.B. Brown, 7134, Office of Program Policy Development, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755-6092 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This final rule was published as an interim rule in the **Federal Register** of March 18, 1983 (48 FR 11648). The interim rule became effective on March 18, 1983, and invited public comments for a sixty-day period ending May 17, 1983. The publication of an interim rule after publication of a proposed rule (47 FR 55868) followed by the publication of an interim rule on December 13, 1982 (48 FR 55868) was to allow a more lengthy public comment period.

Public Comment

Three public comments were received on the interim rule. The first comment discussed three concerns. First was the concern that the Department was sharply reducing the consultation requirement. The commenter states that "consultation is no longer required for program or policy changes, or changes in the regulations generally." The Department disagrees with the commenter's conclusion, for the following reasons. The entire regulation process, which begins with oral or written discussions with constituents to be affected, requires that constituents' views on policy changes be gathered throughout the process. The Department continues to solicit and welcome the views of the public, and Indian Tribes in particular, before making changes, as is evident in this instance from the publication of a predecessor proposed rule (47 FR 55868) followed by the publication of an interim rule (48 FR 11648), both of which invited public comment. In addition, the Department earlier held discussions with advocates of issues that required policy changes. Accordingly, this rule's reference to the consultation process for the annual competition for funds should not be read as negating the Department's policy of consulting with affected parties before rulemaking.

The second part of this comment recommended a noncompetitive distribution of funds. The commenter states that noncompetitive distribution has apparently worked in some regions satisfactorily, and that where there is a consensus among the Tribes for such a distribution, it should be permitted. The Department knows of no instance in which a noncompetitive distribution was used. There has been one instance in one region where all the Tribes that *applied* for funds and met the threshold requirements received funding. This is considerably different from a noncompetitive distribution, which would mean that all Tribes eligible in a region, irrespective of their capabilities, would be funded. The Department rejects the recommendation because in no one region administering the program are there sufficient funds for all eligible Tribes. Moreover, the best way to ensure an equitable allocation of funds among applicants with the capacity to perform adequately is a competitive program.

The last part of the comment suggested that § 571.703 be eliminated, or that the procedural protections of § 571.704 be incorporated into it. The commenter's concern that the reduction or withdrawal provisions of § 571.703 will apply to any deficiency of performance fails to consider that § 571.703 will not be used "until at least one of the corrective or remedial actions specified in § 571.702(b) has been taken and then only if the recipient has not made an appropriate and timely response." § 571.703(a). It is not the intent under § 571.703 that a grant would be unilaterally withdrawn or reduced for minor performance problems without first exhausting all other possible remedies through cooperative effort. However, the sanctions under § 571.704 will only be invoked for more serious violations under the Housing and Community Development Act of 1974.

The second comment had no specific recommendations. Essentially, the comment expressed support for the Indian CDBG Program and appreciation for past assistance.

The last comment raised several concerns. The first addressed the revision in § 571.5, which sets the date by which a tribe must establish eligibility (as an Indian tribe under applicable law and regulations) before the tribe can qualify to apply for funding. The date was formerly 90 days before the beginning of the fiscal year (or July 1). The commenter prefers the July 1 eligibility date rather than an eligibility date of March 21—the former application submission date in the commenter's jurisdiction.

The Department rejects this comment. Neither date is applicable under the relevant section—§ 571.5. Under this section, to qualify for funding an applicant must be eligible as an Indian tribe not by 90 days before the fiscal year (the date fixed under the former regulations), but by the application submission date. The application submission date will vary from region to region, but in all cases will fall after October 1—the start of the fiscal year.

A further reason for the Department's rejection of this comment is that when the eligibility date was set as July 1 (i.e., 90 days before the start of the fiscal year), those tribes that were not eligible (i.e., not yet legally considered an Indian tribe) by that date could not qualify for funding in the immediately following fiscal year, but had to wait until the next following fiscal year. Under this rule, however, these Tribes may have a better chance of becoming eligible, and thus qualify to apply for funding by a much earlier date.

The second part of this comment asserted, in referring to § 571.302, that the determination of managerial, technical, and administrative capability is subjective when made by an outside agency. The comment argued that the Tribe has the capability of determining deficiencies in these areas that it may later report to HUD. The Department does not think that as a matter of policy it is prudent to award a grant and then assess the capacity of a tribe to undertake the grant. This determination must be made before the grant is awarded. Moreover, the Department's view is that under § 571.302 the process is sufficiently insulated from nonobjective considerations to ensure that all applicants are treated fairly.

The third part of the comment commended the Department for reducing administrative red tape through the simplification of the citizen participation requirements.

Another concern mentioned in this comment was that a distinction should be made between *needs* and *population size* in determining funding. The commenter expressed a preference for needs, rather than for population size, as a basis for determining priority in funding. Both the number and the percentage of persons in poverty and unemployment are used in the rating process. This method will minimize the incidence of those Tribes with the largest populations receiving the highest number of points solely for that reason.

The final comment objected to holding a Tribe responsible for an Indian Housing Authority's (IHA) performance even though that authority is responsible for its own actions. The Department does not intend to hold the applicant responsible for the actions of its IHA. Rather, the intent is to hold the applicant responsible for compliance with its own resolution of support for the IHA, which is required by 24 CFR Part 905 (formerly Part 805). (See Article VIII of the Model Tribal Ordinance,

published at 24 CFR Part 905, Subpart A, Appendix I.)

Revisions to the Regulations

Some nonsubstantive changes were made to these regulations to improve its clarity and to correct omissions.

Subpart A—General Provisions

In § 571.2, language has been added to make the program objective of the CDBG Program consistent with the Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98–181, approved November 30, 1983 (1983 Act). The 1983 Act amended the primary objective of the Housing and Community Development Act of 1974 to make clear that each grantee's program must have the same objective as the CDBG Program.

Section 571.3, which describes the nature of the program, now emphasizes that, in addition to having the administrative capacity to undertake the proposed community development activities, grantees must have systems of internal control to prevent fraud, waste, and mismanagement.

In § 571.4, the definition of "low- and moderate-income families/persons" has been modified to be consistent with changes required by section 102(c) of the 1983 Act. The new definition substitutes the word household for family. The terms are now defined in two separate paragraphs, § 571.4 (h) and (i), resulting in a redesignation of the existing paragraphs.

Section 571.4(m) is reproduced here in the identical language in which it was published in the final rule issued on May 7, 1984 at 49 FR 19302.

Section 571.6(a) has been revised to further clarify the subject matter areas of field office proposals on which applicants will have an opportunity to comment during the annual consultation.

"Or" has been changed to "and" in § 571.7, to be consistent with a similar provision in 24 CFR Part 570 governing the other CDBG programs.

Subpart B—Allocation of Funds

Section 571.101 reflects changes already implemented in the final rule separately published on May 7, 1984 (49 FR 19300). It is republished in this rule without change.

Subpart C—Eligible Activities

In § 571.203, a definition of technical assistance has been added.

Subpart D—Single Purpose Grant Application and Selection Process

Language has been added to § 571.300(a) to clarify that applicants should submit only one application, which may include several projects, each of which will be rated separately.

Paragraph f(4) in § 571.300 clarifies that the resolution to be submitted in the application certifying that the citizen participation requirements have been met must be "an official tribal resolution," meaning it must be properly numbered, signed, and dated.

New paragraphs (e) and (g) have been added to § 571.302, with the old paragraph (e) being redesignated as paragraph (f). The new paragraph (e) makes it clear that applicants shall have the opportunity to review the documentation pertaining to each fiscal year's competition for a period of time to be set by the Field Office (which can not be less than 30 days). Paragraph (g) provides that different criteria may govern the selection of projects to be funded from monies set aside by statute for a specific purpose.

Section 571.304 has been reworded to simplify the program amendment process. Amendments of $10,000 or more must address the rating factors of the last rating cycle, since these amendments will be rated as part of the approval process. Amendments of less than $10,000 need not address the rating factors. In approving these latter amendments, HUD Field Offices will examine grantees' capability and compliance with citizen participation and environmental requirements. Amendments of either size that address imminent threats to health and safety will be reviewed and approved in accordance with Subpart E—Imminent Threat Grants.

Paragraph (c) has been added to § 571.304 to give notice that if a program amendment fails to be approved and the original project is no longer feasible, the grant funds proposed for the amendment must be returned to HUD.

Subpart F—Grant Administration

Section 571.500 has been revised to indicate that the reference to 24 CFR Part 570, Subpart J—Grant Administration does not require Indian CDBG grantees to conform to requirements that are specifically stated as applying to the Entitlement Cities or Small Cities-HUD administered programs.

Section 571.503 contains several revisions to the Indian preference requirements to clarify that grantees, to the greatest extent feasible, shall give preference to Indian bidders when awarding contracts. The first revision is the addition of language of § 571.503(d)(1) which clarifies that the grantee must select one of three methods described in paragraphs (i) to (iii). If the selected method produces fewer than two qualified statements of intent, bids, or proposals submitted by Indian organizations, the grantee cannot award the contract, but must choose one of three options. The first option is to rebid the contract, using one of the Indian preference methods described in § 571.503(d)(1). The interim rule did not make clear that the methods of awarding Indian preference could be reused. This rule corrects that ambiguity. A grantee may select the rebid option because it knows that qualified Indian bidders are available, but circumstances may have prevented their bidding the first time, resulting in fewer than two Indian bids.

The second option is to use the open competition method of the new paragraph (d)(2) (formerly paragraph (iv) in § 571.503(d)(1) of the interim rule). This method does not provide Indian preference. By selecting this method, a grantee would have determined that Indian preference is not feasible even after providing for Indian preference in accordance with § 571.503(d)(1) i.e., no qualified Indian bidder(s) responded, or the bid(s) received from the Indian organization(s) responding was not approvable under this rule.

In the case of a grantee that receives only one Indian bid, the grantee may use a third option of awarding the contract to the single bidder, provided the grantee first submits the proposed contract and related procurement documents to the Field Office for review and approval. This provision, which is contained in OMB Circular A–102, has been added to this final rule to clarify that HUD did not intend that grantees incur additional expense to rebid a contract, when one approvable Indian bid had previously been received.

Former paragraph (2) of § 571.503(d) has been redesignated as paragraph (4) in order to add a new paragraph (3) that clarifies that the formal bid procedures of paragraph (1) or (2) do not apply to procurements of $10,000 or less. Procurements of this size are governed by the small purchase procedures of Attachment O of OMB Circular A–102. To the greatest extent feasible, small purchase procurement shall provide for Indian preference.

Redesignated paragraph (4) adds language which indicates that preferences shall be announced in the advertisement and bidding solicitation, as well as in the bidding documents.

Subpart G—Other Program Requirements

Section 571.600 has been rewritten specifically to reference the sections in 24 CFR Part 570, Subpart K—Other

Program Requirements—that apply to grantees under Part 571.

Paragraph (a) of § 571.603 has been rewritten to clarify that Section 110 (Labor Standards) of the Housing and Community Development Act of 1974 (Act) has been waived with respect to 24 CFR Part 571, including the Davis-Bacon wage requirement.

Paragraph (b) of § 571.603 has been deleted. With the waiver of Section 110 of the Act (Labor Standards) for Indian CDBG projects, the requirements of the Contract Work Hours and Safety Standards Act (Contract Work Hours), 40 U.S.C. 327–333, are not applicable on their own terms. Since the application of Contract Work Hours is not required by law, the Department believes it should not be administratively imposed. Former paragraph (c) of § 571.603 is now redesignated as paragraph (b).

Section 571.604(b) adds language to ensure that applicants know that an official tribal resolution is required to show that citizen participation requirements have been met.

Subpart H—Program Performance

In section 571.700, the status report requirement described in paragraph (c) has been shortened. Grant recipients no longer have to report on the status of environmental assessments and environmental impact statements that they have prepared, since this information is available to Field Offices from other sources.

Section 571.702 has new language added to clarify what is intended by two corrective actions specified in paragraph (b). The first action now requires the recipient to submit progress schedules for completing approved activities or for complying with the requirements of this Part. The second action has been clarified to require that the letter of warning to a recipient describe the corrective actions to be taken. This letter of warning can address housing assistance deficiencies as well as other deficiencies.

Section 571.703(b) has been revised by the deletion of the phrase "or deducted from future grants" in the last sentence. Inclusion of this phrase was an oversight, since it applies strictly to the Entitlement Cities CDBG Program.

Other Information

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule will simplify and reduce the requirements for applicants and grantees. Additionally, in making grants the program provides ample funds to cover those expenditures related to the administrative costs of the program.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Finding of No Significant Impact with respect to the environment, made in conjunction with the Interim Rule published March 17, 1983, remains applicable, and is in no way altered by this rule. It was made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, D.C. 20410.

This rule is listed at 49 FR 15949 as RIN:2506–AA09 (CPD–18–79, FR–1612) in the Department's Semiannual Agenda of Regulations published on April 19, 1984 under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance number is 14.223.

Information collection requirements contained in these regulations (§§ 571.300, 571.303, 571.502, and 571.700) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control number 2506–0043.

List of Subjects in 24 CFR Part 571

Community development block grants, Grant programs: housing and community development, Grant programs: Indians, Indians.

Accordingly, 24 CFR Part 571 is revised to read as follows:

PART 571—COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKAN NATIVE VILLAGES

Subpart A—General Provisions

Subpart B—Allocation of Funds

Subpart C—Eligible Activities

Subpart D—Single Purpose Grant Application and Selection Process

Subpart E—Imminent Threat Grants

Subpart F—Grant Administration

Subpart G—Other Program Requirements

Subpart H—Program Performance

Authority: Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.); Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General Provisions

§ 571.1 Applicability and scope.

The policies and procedures described in this Part apply only to grants to eligible Indian Tribes and Alaskan Native Villages under the Community Development Block Grant (CDBG)

Program for Indian Tribes and Alaskan Natives Villages.

§ 571.2 Program objectives.

The primary objective of the Indian CDBG Program and of the community development program of each grantee covered under this Act is the development of viable Indian and Alaskan Native communities, including decent housing, a suitable living environment, and expanding economic opportunities, principally for persons of low and moderate income. The Federal assistance provided in this Part is for the support of community development activities which further this objective. This assistance is not to be utilized to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of this assistance.

§ 571.3 Nature of program.

The Indian CDBG Program is competitive in nature. The demand for funds far exceeds the amount of funds available. Therefore, selection of eligible applicants for funding will reflect consideration of relative need among applicants, and relative adequacy of applications in addressing locally-determined need. Applicants for funding must have the administrative capacity to undertake the community development activities proposed including the systems of internal control necessary to administer these activities effectively without fraud, waste, or mismanagement.

§ 571.4 Definitions.

(a) "Act" means Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.).

(b) "Chief executive officer" means the elected official or legally-designated official who has the prime responsibility for the conduct of the affairs of an Indian Tribe or Alaskan Native Village.

(c) "Eligible Indian populations" means the most accurate and uniform population data available from reliable sources for Indian Tribes and Alaskan Native Villages eligible under this Part.

(d) "Extent of poverty" means the number of persons whose incomes are below the poverty level based on data compiled and published by the United States Bureau of the Census referable to the same point or period in time and the latest reports from the Office of Management and Budget.

(e) "Field offices" means the HUD Offices of Indian Programs or Field Office having responsibility for the Indian CDBG Program.

(f) "HUD" means the Department of Housing and Urban Development.

(g) "Identified service area" means (1) a geographic location within the jurisdiction of a Tribe (but not the entire jurisdiction) designated in comprehensive plans, ordinances, or other local documents as a service area; (2) the BIA service area, including residents of areas outside the geographical jurisdiction of the Tribe; or (3) the entire area under the jurisdiction of a Tribe which has a population of members under 10,000.

(h) "Low and moderate-income household" or "lower income household" means a household whose income does not exceed 80 percent of the median family income for the area, as determined by HUD with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

(i) "Low and moderate income person" or "lower income person" means a member of a family having a family income within the limits determined in accordance with paragraph (h) of this section or any unrelated individual whose income does not exceed the one-person limit determined in accordance with paragraph (h).

(j) "Secretary" means the Secretary of HUD.

(k) "Tribal Government," "Tribal governing body" or "Tribal Council" means the recognized governing body of an Indian Tribe or Alaskan Native Village.

(l) "Tribal resolution" means the formal manner in which the Tribal government expresses its legislative will in accordance with its organic documents. In the absence of such organic documents, a written expression adopted pursuant to Tribal practices will be acceptable.

(m) "Extent of overcrowded housing" means the number of housing units with 1.01 or more persons per room based on data compiled and published by the United States Bureau of the Census available from the latest census referrable to the same point or period of time.

(n) "Unemployment" means the number of persons 16 years old and over who are out of work, but are willing and able to work.

§ 571.5 Eligible applicants.

(a) Eligible applicants are any Indian Tribe, band, group, or nation, including Alaskan Indians, Aleuts, and Eskimos, and any Alaskan Native Village of the United States which is considered an eligible recipient under Title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221). Eligible recipients under the Indian Self-Determination and Education Assistance Act will be determined by the Bureau of Indian Affairs and eligible recipients under the State and Local Fiscal Assistance Act of 1972 will be determined by the Department of Treasury, Office of Revenue Sharing.

(b) Tribal organizations which are eligible under Title I of the Indian Self-Determination and Education Assistance Act may apply on behalf of any Indian Tribe, band, group, nation, or Alaskan Native Village eligible under that Act for funds under this Part when one or more of these entities have authorized the tribal organization to do so through concurring resolutions. Such resolutions must accompany the application for funding. Eligible tribal organizations under Title I of the Indian Self-Determination and Education Assistance Act will be determined by the Bureau of Indian Affairs.

(c) Only eligible applicants shall receive grants. However, eligible applicants may contract or otherwise agree with non-eligible entities such as States, cities, counties, or organizations to assist in the preparation of applications and to help implement assisted activities.

(d) To apply for funding in a given fiscal year an applicant must be eligible as an Indian tribe or Alaskan Native Village, as provided in paragraph (a) of this section, or as a tribal organization, as provided in paragraph (b) of this section by the application submission date.

§ 571.6 Consultations.

On an annual basis, written or oral consultations will be held with eligible applicants by each Field Office, for these purposes:

(a) To allow eligible applicants an opportunity to comment on Field Office proposals affecting that fiscal year's rating process, including the determination of grant ceilings, competitions by tribal size, and definitions of rating factors;

(b) To provide eligible applicants with information on how to apply for funds and how grants will be selected and awarded; and

(c) To inform eligible applicants of changes in the program.

§ 571.7 Waivers.

The Secretary may waive any requirement of this Part not required by law whenever it is determined that undue hardship will result from applying the requirement, and where application of the requirement would adversely affect the purposes of the Act.

Subpart B—Allocation of Funds

§ 571.100 General.

(a) Types of grants. Two types of grants are available under the Indian CDBG Program.

(1) *Single Purpose grants* provide funds for one or more single purpose projects each consisting of an activity or set of activities designed to meet a specific community development need. This type of grant is awarded through competition with other single purpose projects.

(2) *Imminent Threat grants* alleviate an imminent threat to public health or safety that requires immediate resolution. This type of grant is awarded only after a Field Office determines that such conditions exist and if funds are available for such grants.

(b) Size of Grants.

(1) *Ceilings.* Each Field Office may establish grant ceilings for Single Purpose and Imminent Threat Grant applications

(2) *Individual grant amounts.* In determining appropriate grant amounts to be awarded, the Field Office may take into account the size of the applicant, the level of demand, the scale of the activity proposed relative to need and operational capacity, the number of persons to be served, and the administrative capacity of the applicant to complete the activities in a timely manner.

§ 571.101 Regional allocation of funds.

(a) Except as provided in paragraph (b) of this section, funds will be allocated to the Field Offices responsible for the program on the following basis:

(1) Each Field Office will be allocated $500,000 as a base amount, to which will be added a formula share of the balance of the Indian CDBG Program funds, as provided in paragraph (a)(2) of this section.

(2) The amount remaining after the base amount is allocated will be allocated to each Field Office based on the most recent data available from reliable sources referrable to the same point or period in time, as follows:

(i) Forty percent (40%) of the funds will be allocated based upon each Field Office's share of the total eligible Indian population;

(ii) Forty percent (40%) of the funds will be allocated based upon each Field Office's share of the total extent of poverty among the eligible Indian population; and

(iii) Twenty percent (20%) of the funds will be allocated based upon each Field Office's share of the total extent of overcrowded housing among the eligible Indian population.

(b) If funds are set aside by statute for a specific purpose in any fiscal year, the formula in paragraph (a) of this section will apply unless otherwise specified in the law, or unless it is determined that the formula is inappropriate to accomplish the purpose, in which case other criteria may be established by the Secretary in determining an allocation formula to be used to distribute funds to the Field Offices.

(c) Data used for the allocation of funds will be based upon the eligible Indian population of those Tribes and Villages that are determined to be eligible ninety (90) days before the beginning of each fiscal year.

Subpart C—Eligible Activities

§ 571.200 General.

The eligibility requirements of Part 570, Subpart C of this title—Eligible Activities—apply to grants under this part except for those provisions which are specifically stated as applying to the Entitlement Cities or Small Cities-HUD administered programs, and with the modifications stated in this subpart.

§ 571.201 Facilities.

(a) Neighborhood facilities are synonomous with tribal or village facilities.

(b) Fire protection facilities, solid waste disposal facilities and parking facilities defined in 24 CFR 570, Subpart C must be located in or serve identified service areas.

§ 571.202 Non-profit organizations.

Tribal-based non-profit organizations replace neighborhood-based non-profit organizations under 24 CFR Part 570, Subpart C. A Tribal-based Non-profit Organization is an association or corporation duly organized to promote and undertake community development activities on a not-for-profit basis within an identified service area.

§ 571.203 Administrative costs.

(a) For purposes of this Part, technical assistance costs associated with the development of a capacity to undertake a specific funded program activity are not considered administrative costs. Therefore, these costs are not included in the twenty percent limitation on planning and administration stated in Part 570, Subpart C.

(b) Technical assistance costs cannot exceed ten percent of the total grant award.

(c) Technical assistance is defined as the transfer of skills and knowledge in planning, developing, and administering the CDBG program to eligible Indian CDBG recipients who need them in order to undertake a specific funded program activity.

Subpart D—Single Purpose Grant Application and Selection Process

§ 571.300 Application requirements.

(a) *General.* Applications are required for assistance under this Part. An applicant shall submit only one application, which may include any number of eligible projects. Single Purpose grant applications will have each project rated separately. Applications shall include projects which can be completed within a reasonable period of time, generally not more than two years.

(b) *Submission dates.* Each Field Office will establish deadlines for the submission of applications. Submission dates will be published by HUD as a notice in the **Federal Register.**

(c) *Demographic data.* Applicants may submit data that are unpublished and not generally available in order to meet the requirements of this section. The applicant must certify that:

(1) Generally available, published data are substantially inaccurate or incomplete;

(2) Data provided have been collected systematically;

(3) Data are, to the greatest extent feasible, independently verifiable; and

(4) Data differentiate between reservation and BIA service area populations when applicable.

(d) *Costs incurred by applicant.* (1) Notwithstanding any provision in Part 570 of this title, HUD will not reimburse or recognize any costs incurred before submission of the Single Purpose grant application to HUD.

(2) Also, HUD will not normally reimburse or recognize costs incurred before HUD approval of the application for funding. However, under unusual circumstances the Field Office may consider and approve written requests to recognize and reimburse costs incurred after submission of the application where failure to do so would impose undue or unreasonable hardship on the applicant. Such authorization will be made only before the costs are incurred and where the requirements for reimbursement have been met in

accordance with 24 CFR 58.22, and with the understanding that HUD has no obligation whatsoever to approve the application or to reimburse the applicant should the application be disapproved.

(e) *Publication of community development statement.* Applicants for Single Purpose grants shall prepare and publish or post the community development statement portion of their application according to the citizen participation requirements of § 571.604.

(f) *Application components.* Applicants for Single Purpose grants shall submit an application to the appropriate Field Office in a form prescribed by HUD. Components of the application shall include the following:

(1) Standard form 424;

(2) Community development statement, which includes:

(i) Brief description of community development needs;

(ii) Brief description of proposed projects to address needs, including scope, magnitude, and method of implementing project; and

(iii) Cost information by project, including specific activity costs, administration, planning, and technical assistance, total HUD share, and amount of other funds by source.

(3) Map showing project location, if appropriate; and

(4) Certification in the form of an official tribal resolution that citizen participation requirements of § 571.604 have been met.

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§ 571.301 Screening and review of applications.

(a) *Criteria for acceptance.* Applications for Single Purpose grants will be initially screened by each Field Office and accepted if:

(1) They have been received or postmarked on or before the submission date;

(2) The applicant is eligible;

(3) The proposed activities are eligible; and

(4) They contain substantially all the components specified in § 571.300(f). Applications failing this initial screening shall be rejected and returned to the applicants unrated.

(b) *Demographic data.* HUD will review and accept demographic data provided by an applicant if in HUD's determination the data are of the quality described in § 571.300(c). Where demographic data provided by an applicant are unacceptable, HUD will use the best available data at HUD's disposal.

(c) *Grant ceiling.* Where Field Offices have established grant ceilings, applications will be reviewed for compliance.

§ 571.302 Selection process.

(a) *Threshold requirements.* In order for applications that have passed the initial screening tests of § 571.301 to be rated and ranked, Field Offices must determine that the following threshold requirements have been met:

(1) *Community development need and appropriateness:*

(i) The applicant's project(s) directly impacts on its community development needs;

(ii) The costs are reasonable;

(iii) The project(s) is appropriate for the intended use; and

(iv) The project(s) is usable or achievable generally within a two year period. If available data, in the judgment of the Field Office, indicate that the proposed project(s) is inconsistent with the applicant's community development needs, its costs are unreasonable, it is inappropriate for the intended use, or not usable generally within two years, the Field Office shall determine that the applicant has not met this threshold requirement, and reject the application from further consideration.

(2) *Capacity and performance.* The applicant has the capacity to undertake the proposed program. Additionally, applicants that have previously participated in the Indian CDBG Program must have performed adequately or, in cases of previously documented deficient performance, the applicant must have taken appropriate corrective action to improve its performance.

(i) *Capacity.* The applicant possesses, or will acquire, the managerial, technical, or administrative staff necessary to carry out the proposed projects. If the Field Office determines that the applicant does not have or cannot obtain the capacity to undertake the grant, the application will be rejected from further consideration.

(ii) *Performance.*

(A) *Community development.* Performance determinations are made through the Field Office's normal monitoring process. Applicants that have been advised in writing of negative findings on previous grants, for which a schedule of corrective actions has been established, will not be considered for funding if they are behind schedule as of the deadline date for filing applications.

(B) *Housing assistance.* Actions have been taken by the applicant within its control to facilitate the provision of housing assistance for low- and moderate-income members of the Tribe or Alaskan Village. Any action to prevent the provision or operation of assisted housing for low- and moderate-income persons shall also be evaluated in terms of whether it constitutes inadequate performance by the applicant. If inadequate performance is found, the applicant shall be rejected from further consideration. Subsequent applications will also be similarly disqualified in subsequent competitions unless the applicant has taken corrective actions within its control.

(C) *Previous audit finding and outstanding monetary obligations.* An applicant that has an outstanding Community Development Block Grant obligation to HUD that is in arrears, or for which a repayment schedule has not been agreed to, will be disqualified from the current and subsequent competitions until the obligations are current. An applicant whose response to an audit finding(s) is overdue or unsatisfactory will be disqualified from the current and subsequent competitions until the applicant has taken final action necessary to close the audit finding(s). The Field Office Director may provide waivers of this disqualification in those cases where the applicant has made a good faith effort to clear the audit finding(s). In no instance, however, shall a waiver be provided when funds are due HUD, unless a satisfactory arrangement for repayment of the debt has been made, and payments are current.

(b) *Information submitted on request.* A Field Office may, in its discretion, request that an applicant submit information that may help to clarify an application that in the Field Office's view contains information that is inconsistent with known facts or data; or inadequate in substance to make a threshold or rating determination, or a determination of compliance with the requirements of this part. Applicants shall only submit the information in response to inquiries made by HUD. A new project(s) may not be substituted for one(s) proposed in the original application. Applicants failing to meet the information request shall be disqualified from the competition if the Field Office determines that the applicant fails to meet the threshold requirements; or that information is lacking to make rating determinations, or to show compliance with requirements of this part.

(c) *Rating factors and criteria.* Applications which meet the threshold requirements established in paragraph (a) of this section will be rated competitively. Each project proposed in the application will be rated separately

against others addressing the same impact factor.

(1) All projects will be rated against these specific factors:

(i) Relative needs of the applicant as measured by the extent of poverty or unemployment as represented by both numbers and percentages of persons living in this condition; and

(ii) Degree of benefit of the proposed projects as measured by the number and percentage of low- and moderate-income persons to be served by the project.

(2) Additional rating factors will be developed by each Field Office to address these rating criteria:

(i) The impact of the proposed project on the applicant's community development need as measured by factors which may include, but are not limited to the following:

(A) The degree of impact of the proposed project on the provision of basic community facilities and services;

(B) The importance of the project to the provision of more or better housing for low- and moderate-income households;

(C) The direct impact of the project on the economic development of the applicant's community; or

(D) The degree to which the project will alleviate or remove a serious threat to health or safety; and/or

(E) The degree to which the project develops renewable energy resource systems and/or promotes energy efficiency.

(ii) The quality of the proposed project as measured by factors which may include, but are not limited to the following:

(A) Per capita cost when compared to other similar projects by similar size applicants;

(B) Cost effectiveness through joint tribal or Tribal/community facilities;

(C) Maximum use of existing services, facilities, and resources; or

(D) Retention, expansion, or creation of job opportunities; and/or

(E) Use of national or comparable tribal standards appropriate for the locale.

(3) Rating factors developed in accordance with paragraph (c)(2) of this section shall not result in additional information beyond what is required in the application.

(d) *Final ranking.* The points received for each rating factor by a project are totaled and the projects ranked according to the point totals. Projects are selected for funding based on this final ranking to the extent that funds are available. HUD may select additional projects for funding should one of the higher ranking projects not be funded, or if additional funds become available.

(e) *Competition documentation.* Documentation pertaining to each fiscal year's competition shall be available at each Field Office for applicant review for a period of time to be set by the Field Office (which cannot be less than 30 days).

(f) *Procedural error.* If a Field Office makes a procedural error in the application and selection process that, when corrected, will result in awarding sufficient points to warrant funding of an otherwise eligible applicant, HUD may fund that applicant in the next fiscal year without further competition.

(g) *Set aside selection of projects.* If funds have been set aside by statute for a specific purpose in any fiscal year, other criteria pertinent to the set aside may be used to select projects for funding from the set aside. The selection of projects for set aside funding may be competitive or non-competitive.

§ 571.303 Funding process.

(a) *Notification.* Field Offices will notify applicants of the actions taken regarding their applications. Grant amounts offered may reflect adjustments made by the Field Offices in accordance with § 571.100(b).

(b) *Pre-award requirements.*

(1) Upon notification by HUD of successfully competing for a grant, the applicant shall submit on forms prescribed by HUD the following:

(i) Implementation schedule;

(ii) Certification; and

(iii) Cost information, if changes have occurred or if the Field Office has adjusted the original grant request.

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(2) Successful applicants may also be required to provide supporting documentation concerning the management, maintenance, operation or financing of proposed projects before a grant agreement can be executed. Applicants will be given at least thirty (30) days to respond to such requirements. In the event that no response or an insufficient response is made within the prescribed time period, the Field Office shall determine that the applicant has not met the requirements and the grant offer will be withdrawn. The Field Offices shall require supporting documentation in those instances where:

(i) Specific questions remain concerning the scope, magnitude, timing, or method of implementing the project; and/or

(ii) The applicant has not provided information verifying the commitment of other resources required to complete, operate or maintain the proposed project.

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(3) Grant amounts allocated for applicants unable to meet preaward requirements will be offered to the next highest ranking unfunded project.

(4) New projects may not be substituted for those originally proposed in the application.

(c) *Grant award.*

(1) As soon as HUD determines that the applicant has complied with the preaward requirements and nothing has come to the attention of the Field Office which would alter the threshold determinations under § 571.302, the grant will be awarded. These regulations, 24 CFR Part 571, become part of the grant agreement.

(2) All grants shall be conditioned upon the completion of all environmental obligations and approval of release of funds by HUD in accordance with the requirements of Part 58 of this title and, in particular, Subpart J; except as otherwise provided in:

(i) Section 58.33 Emergencies;

(ii) Section 58.34 Exempt activities; or

(iii) Section 58.22 Activities excepted from limitations on the commitment of funds and which are reimbursable under Subpart C of Part 570.

(3) HUD may place other conditions on a grant in which case the grant agreement will be approved, but the obligation and utilization of funds may be restricted in whole or in part. The reasons for the conditional approval and the actions necessary to remove the conditions shall be specified in the grant agreement. Failure to satisfy the conditions may result in a termination of the grant. Conditional approval may be made:

(i) Where the requirements of Part 570, Subpart C, of this title regarding the provision of public services and flood or drainage facilities have not yet been satisfied;

(ii) Pending site and neighborhood standards approval for a proposed housing project, if applicable;

(iii) Pending HUD's approval of the use of Tribal work forces for construction or renovation activities in accordance with § 571.502; or

(iv) Pending resolution of problems with specific projects or of the capability of the grantee to obtain resources needed to carry out, operate or maintain the project.

§ 571.304 Program amendments.

(a) Grantees shall request prior HUD approval for all program amendments involving the alteration of existing activities that will significantly change the scope, location, objective, or class of beneficiaries of the approved activities, as originally described in the application.

(b) Amendment requests shall include the information required under §§ 571.300(f) and 571.303)(b)(1).

(1) Amendments of $10,000 or more shall address all the rating factors of the last rating cycle. Approval is subject to the following:

(i) A rating equal to or greater than the lowest rating received by a funded project during the last rating cycle;

(ii) Capability to promptly complete the modified or new activities;

(iii) Compliance with the requirements of § 571.604 of this title for citizen participation; and

(iv) The preparation of an amended or new environmental review in accordance with Part 58 of this title, if there is a significant change in the scope or location of approved activities.

(2) Amendments of less than $10,000 shall be approved subject to meeting the requirements of paragraphs (b)(1)(ii), (iii), and (iv) of this section.

(3) Amendments which address imminent threats to health and safety shall be reviewed and approved in accordance with the requirements of Subpart E of this Part.

(c) If a program amendment fails to be approved and the original project is no longer feasible, the grant funds proposed for the amendment shall be returned to HUD.

Subpart E—Imminent Threat Grants

§ 571.400 Criteria for funding.

The following criteria apply to requests for assistance under this Subpart:

(a) In response to requests for assistance, the Field Office may make funds available under this Subpart to applicants to alleviate or remove imminent threats to health or safety that require an immediate solution. The urgency and immediacy of the threat shall be independently verified prior to the acceptance of an application. Funds to alleviate imminent threats to health and safety may only be used to deal with threats that are not of a recurring nature, which represent a unique and unusual circumstance, and which impact on an entire service area.

(b) Funds to alleviate imminent threats may be granted only if the applicant can demonstrate to the satisfaction of HUD that other local or federal funding sources cannot be made available to alleviate the threat.

§ 571.401 Application process.

(a) *Letter to proceed.* The Field Office may only issue the applicant a letter to proceed to incur costs to alleviate imminent threats to health and safety if the assisted activities do not alter environmental conditions and are for temporary or permanent improvements limited to protection, repair, or restoration actions necessary only to control or arrest the effects of imminent threats or physical deterioration. Reimbursement of such costs is dependent upon HUD approval of the application.

(b) *Applications.* Applications shall be submitted in accordance with § 571.300(f) and § 571.303(b). Applications which meet the requirements of these sections may be approved by the Field Office without competition.

§ 571.402 Environmental review.

Pursuant to § 58.34(a)(8) of this title, grants for imminent threats to health or safety are exempt from some or all of the environmental review requirements of Part 58 to the extent provided therein.

§ 571.403 Availability of funds.

Field Offices may set aside up to 15 percent of their allocation of funds under this Part for imminent threat grants. The only funds reserved for imminent threat are those set aside by the Field Office each year. Imminent threat funds which are not awarded before the award of the last Single Purpose grant shall be used for the next highest ranking Single Purpose project. After these funds are depleted, HUD shall not consider further requests for imminent threat grants during that fiscal year.

Subpart F—Grant Administration

§ 571.500 General.

The requirements of Part 570, Subpart J of this title—Grant Administration—apply to grants under this Part except for those provisions that are specifically stated as applying to the Entitlement Cities or Small Cities-HUD administered programs, and with the modifications stated in this subpart.

§ 571.501 Designation of public agency.

One or more Tribal departments or authorities may be designated by the chief executive officer of an Indian Tribe or Alaskan Native Village as the operating agency to undertake activities assisted under this Part. The Indian Tribe or Alaskan Native Village itself, however, shall be the applicant. Designation of an operating agency does not relieve the Indian Tribe or Alaskan Native Village of its responsibility in assuring that the program will be administered in accordance with all HUD requirements, including these regulations.

§ 571.502 Force account construction.

(a) The utilization of Tribal work forces for construction or renovation activities performed as part of the activities funded under this Part shall be approved by HUD before the start of project implementation. In reviewing requests for an approval of force account construction or renovation, HUD may require that the grantee provide the following:

(1) Documentation to indicate that it has carried out or can carry out successfully a project of the size and scope of the proposal;

(2) Documentation to indicate that it has obtained or can obtain adequate supervision for the workers to be utilized;

(3) Information showing that the workers to be utilized are, or will be, listed on the Tribal payroll and are employed directly by an arm, department or other governmental instrumentality of the Tribe or Alaskan Native Village. (Approved by the Office of Management and Budget under OMB control number 2506–0043).

(b) Any and all excess funds derived from the force account construction or renovation activities shall accrue to the grantee and shall be reprogrammed for other activities eligible under this Part in accordance with § 571.304 or returned to HUD promptly.

(c) Insurance coverage for force account workers and activities shall, where applicable, include workman's compensation, public liability, property damage, builder's risk, and vehicular liability.

(d) The grantee shall specify and apply reasonable labor performance, construction or renovation standards to work performed under the force account.

(e) The contracting and procurement standards set forth in OMB Circular A-102 apply to material, equipment, and supply procurements from outside vendors under this section, but not to other activities undertaken by force account.

§ 571.503 Indian preference requirements.

(a) *Applicability.* HUD has determined that grants under this Part are subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)), which requires that to the greatest

extent feasible: (1) Preference and opportunities for training and employment shall be given to Indians, and (2) Preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

(b) *Definitions.* Indian organizations and Indian-owned economic enterprises include both:

(1) Any "economic enterprise" as defined in Section 3(e) of the Indian Financing Act of 1974 (Pub. L. 93–262); that is, "any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit provided that such Indian ownership and control shall constitute not less than 51 percent of the enterprise"; and

(2) Any "tribal organizations" as defined in Section 4(c) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638); that is, "the recognized governing body of any Indian Tribe; any legally established organization of Indians which is controlled, sanctioned or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organizations and which includes the maximum participation of Indians in all phases of its activities."

(c) *Preference in administration of grant.* To the greatest extent feasible, preference and opportunities for training and employment in connection with the administration of grants awarded under this Part shall be given to Indians and Alaskan Natives.

(d) *Preference in contracting.* To the greatest extent feasible, grantees shall give preference in the award of contracts for projects funded under this Part to Indian organizations and Indian-owned economic enterprises.

(1) Each grantee shall:

(i) Advertise for bids or proposals limited to qualified Indian organizations and Indian-owned enterprises; or

(ii) Use a two-stage preference procedure, as follows:

(A) Stage 1: Invite or otherwise solicit Indian-owned economic enterprises to submit a statement of intent to respond to a bid announcement limited to Indian-owned firms.

(B) Stage 2: If responses are received from more than one Indian enterprise found to be qualified, advertise for bids or proposals limited to Indian organizations and Indian-owned economic enterprises; or

(iii) Develop, subject to HUD Field Office one-time approval, the grantee's own method of providing preference.

(2) If the method of providing preference selected by the grantee results in fewer than two qualified Indian organizations or Indian-owned enterprises submitting a statement of intent, bid or proposal, then the grantee shall:

(i) rebid the contract, using any of the methods described in paragraph (1) above; or

(ii) rebid the contract without limiting the advertisement for bids or proposals to Indian organizations and Indian-owned economic enterprises; or

(iii) if one approvable bid is received, request Field Office review and approval of the proposed contract and related procurement documents, in accordance with Attachment O of OMB Circular A–102, in order to award the contract to the single bidder.

(3) Procurements that are within the dollar limitations established for small purchases under Attachment O of OMB Circular A–102 need not follow the formal bid procedures of paragraph (d) of this section, since these procurements are governed by the small purchase procedures of Attachment O. However, a grantee's small purchase procurements shall, to the greatest extent feasible, provide Indian preference in the award of contracts.

(4) All preferences shall be publicly announced in the advertisement and bidding solicitation and the bidding documents.

(5) A grantee, at its discretion, may require information of prospective contractors seeking to qualify as Indian organizations or Indian-owned economic enterprises; however, this information need not be submitted to HUD. Thus, prospective contractors may be required by grantees to submit with or prior to submission of a bid or proposal:

(i) Evidence showing fully the extent of Indian ownership, control, and interest;

(ii) Evidence of structure, management and financing affecting the Indian character of the enterprise, including major subcontracts and purchase agreements; materials or equipment supply arrangements; and management salary or profit-sharing arrangements; and evidence showing the effect of these on the extent of Indian ownership and interest; and

(iii) Evidence sufficient to demonstrate to the satisfaction of the grantee that the prospective contractor has the technical, administrative, and financial capability to perform contract work of the size and type involved.

(6) The grantee shall incorporate the following clause (referred to as a section 7(b) clause) in each contract awarded in connection with a project funded under this part:

(i) The work to be performed under this contract is on a project subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) (Indian Act). Section 7(b) requires that to the greatest extent feasible (A) preferences and opportunities for training and employment shall be given to Indians and (B) preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

(ii) The parties to this contract shall comply with the provisions of section 7(b) of the Indian Act.

(iii) In connection with this contract, the contractor shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned economic enterprises, and preferences and opportunities for training and employment to Indians and Alaskan Natives.

(iv) The contractor shall include this section 7(b) clause in every subcontract in connection with the project, and shall, at the direction of the grantee, take appropriate action pursuant to the subcontract upon a finding by the grantee or HUD that the subcontractor has violated the section 7(b) clause of the Indian Act.

(e) *Additional Indian preference requirements.* A grantee may, with prior HUD approval, provide for additional Indian preference requirements as conditions for the award of, or in the terms of, any contract in connection with a project funded under this Part. The additional Indian preference requirements shall be consistent with the objectives of the section 7(b) clause of the Indian Act and shall not result in a significantly higher cost or greater risk of non-performance or longer period of performance.

Subpart G—Other Program Requirements

§ 571.600 General.

The following requirements of Part 570, Subpart K, of this title—Other Program Requirements—apply to grants under this Part.

(a) Section 570.605 National Flood Insurance Program.

(b) Section 570.608 Lead-based paint.

(c) Section 570.609 Use of debarred, suspended, or ineligible contractors or subrecipients.

(d) Section 570.610 Uniform administrative requirements and cost principles.

(e) Section 570.611 Conflict of interest.

§ 571.601 Nondiscrimination.

(a) Under the authority of section 107(a)(2) of the Act, the Secretary waives the requirement that recipients comply with Section 109 of the Act except with respect to the prohibition of discrimination based on age or against an otherwise qualified handicapped individual.

(b) A recipient shall comply with the provisions of Title II of Pub. L. 90–284 (24 U.S.C. 1301—the Indian Civil Rights Act) in the administration of a program or activity funded in whole or in part with funds made available under this Part. For purposes of this section, "program or activity" is defined as any function conducted by an identifiable administrative unit of the recipient; and "Funded in whole or in part with funds made available under this Part" means that community development funds in any amount have been transferred by the recipient to an identifiable administrative unit and disbursed in a program or activity.

§ 571.602 Relocation and acquisition.

(a) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601), hereinafter referred to as the Uniform Act, and HUD implementing regulations at Part 42 of this title apply to any acquisition of real property by a State agency (defined at 24 CFR 42.85) that is carried out for an activity assisted under this Part and to the displacement of any family, individual, business, non-profit organization, or farm that results from such acquisition.

(b)(1) Any acquisition of real property by a "State agency" and any displacement resulting from such acquisition of real property shall be considered to be an activity assisted under the Community Development Block Grant program and be subject to the regulations at Part 42 of this title if the acquisition occurs on or after the date of the submission of the application requesting federal financial assistance which is granted. However, if the grantee determines that an acquisition or displacement was not carried out for an assisted activity, and the Field Office concurs in the determination, such acquisition or displacement shall not be subject to these regulations. The grantee's request for HUD concurrence shall include its certification that at the time of the acquisition it did not intend to use the property for an assisted activity along with appropriate documentation to establish that fact.

(2) With respect to acquisitions for projects assisted under this Part that are not within the purview of the Uniform Act, the grantee shall:

(i) Provide each property owner a written offer of the amount determined to be just compensation for the property. Just compensation shall be based upon one or more appraisals of the fair market value of the property as prepared by a qualified appraiser. However, this provision shall not prevent a person from donating real property if, prior to the donation, he/she has been fully informed of his/her right to receive just compensation;

(ii) Provide HUD the opportunity to review any acquisition price established pursuant to Paragraph (b)(2)(i) of this section prior to compensation being paid to the seller;

(iii) Include in the applicable case file a justification for the acquisition payment in any case in which such payment exceeds the fair market value of the property.

(c)(1) The cost of relocation payments and assistance under Title II of the Uniform Act shall be paid from funds provided by this Part and/or such other funds as may be available to the grantee from any other source.

(2) With respect to other displacement-causing activities that are assisted under this Part but are not within the purview of the Uniform Act, the grantee shall adopt a uniform written policy for providing relocation payments and other assistance to ensure that displaced families and individuals obtain a safe and habitable replacement dwelling and that all persons, including families, individuals, business, nonprofit organizations and farm operations, are reimbursed for all moving and related expenses, including utility hook-up and storage costs. That policy shall also provide that:

(i) No occupant of a dwelling shall be required to move permanently from the dwelling, unless first given reasonable opportunity to relocate to a safe and habitable replacement dwelling at a monthly housing cost, including utilities, that does not exceed 30 percent of his/her gross income;

(ii) All families, individuals, business, nonprofit organizations, and farm operations to be displaced shall be provided advance information sufficient to enable them to fully understand the reason for their displacement and the relocation payments and other assistance to which they are entitled under these regulations;

(iii) In any case in which the occupant of a dwelling is required to relocate for a temporary period in order to permit rehabilitation or demolition, the temporary relocation shall not exceed 12 months in duration, a safe and habitable dwelling shall be available to the person for the period of the temporary relocation, and the grantee shall pay actual reasonable out-of-pocket expenses, including any moving costs or increase in monthly housing costs, incurred by the person in connection with the temporary relocation.

§ 571.603 Labor standards.

(a) In accordance with the authority under section 107(d)(2) of the Act, the Secretary waives the provisions of section 110 of the Act (Labor Standards) with respect to this Part, including the requirement that laborers and mechanics employed by the contractor or subcontractors in the performance of construction work financed in whole or in part with assistance received under this Part be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act.

(b) This waiver does not permit the grantee to set wage rates for projects funded under this part which would be considered excessive for other similar projects funded by the Tribe or another federal entity. HUD will periodically review wage rates and take appropriate corrective action should wage rates be found to be excessive.

§ 571.604 Citizen participation.

(a) In order to permit members of Indian Tribes and Alaskan Native Villages to examine and appraise the applicant's application for funds under this Part, the applicant shall follow traditional means of citizen involvement which, at the least, include the following:

(1) Furnishing members information concerning amounts of funds available for proposed community development and housing activities and the range of activities that may be undertaken;

(2) Holding one or more meetings to obtain the views of members on community development and housing needs. Meetings shall be scheduled in ways and at times that will allow participation by members.

(3) Developing and publishing or posting the community development statement in such a manner as to afford affected members an opportunity to examine its contents and to submit comments;

(4) Affording members an opportunity to review and comment on the applicant's performance under any active community development block grant.

(b) Prior to submission of the application to HUD, the applicant shall

certify by an official tribal resolution that it has met the requirements of paragraph (a) of this section, and

(1) Considered any comments and views expressed by members and, if it deems appropriate, modified the application accordingly.

(2) Made the modified application available to members.

(c) No part of this requirement shall be construed to restrict the responsibility and authority of the applicant for the development of the application and the execution of the grant. Accordingly, the citizen participation requirements of this paragraph do not include concurrence by any person or group in making final determinations on the contents of the application.

§ 571.605 Environment.

In order to assure that the policies of the National Environmental Policy Act of 1969 and other provisions of Federal law which further the purposes of such Act (as specified in 24 CFR 58.5) are most effectively implemented in connection with the expenditure of block grant funds, the recipient shall comply with the Environment Review Procedures for the Community Development Block Grant Program (24 CFR Part 58). Upon completion of the environmental review, the recipient shall submit a certification and request for release of funds for particular projects in accordance with 24 CFR Part 58.

§ 571.606 Housing assistance.

In those instances where a Tribe has established an Indian Housing Authority and has obtained housing assistance from HUD, its compliance with the resolution set out in 24 CFR 805, Subpart A, Appendix I, Article VIII will be a performance consideration under the Indian CDBG program.

Subpart H—Program Performance

§ 571.700 Reports to be submitted by grantee.

Grant recipients shall submit an annual status report of progress made on previously funded open grants at a time determined by the Field Office. The status report shall be in narrative form addressing three areas:

(a) *Progress.* The progress in completing activities, the work remaining, changes in the implementation schedule and a breakdown of funds expended on each approved project;

(b) *Grantee assessment.* Description of the effectiveness of funded activities in meeting the recipient's community development need; and

(c) *Environment.*

(1) Compliance with the conditions under § 58.34 of this title for exempt projects; and

(2) If appropriate, environmental reviews of emergency projects under § 58.33 of this title.

(Approved by the Office of Management and Budget under OMB control number 2506-0043)

§ 571.701 Review of recipient's performance.

(a) *Objective.* HUD will review each recipient's performance to determine whether the recipient has achieved the following:

(1) Complied with the requirements of the Act, this Part, and other applicable laws and regulations;

(2) Carried out its activities substantially as described in its application;

(3) Made substantial progress in carrying out its approved program;

(4) A continuing capacity to carry out the approved activities in a timely manner; and

(5) The capacity to undertake additional activities funded under this Part.

(b) *Basis for review.* In reviewing each recipient's performance, HUD will consider all available evidence which may include, but not be limited to, the following:

(1) The approved application and any amendments thereto;

(2) Reports prepared by the recipient;

(3) Records maintained by the recipient;

(4) Results of HUD's monitoring of the recipient's performance, including field evaluation of the quality of the work performed;

(5) Audit reports;

(6) Records of drawdowns on the Letter of Credit;

(7) Records of comments and complaints by citizens and organizations; and

(8) Litigation.

§ 571.702 Corrective and remedial actions.

(a) *General.* One or more corrective or remedial actions will be taken by HUD when, one the basis of the performance review, HUD determines that the recipient has not achieved the following:

(1) Complied with the requirements of the Act, this Part, and other applicable laws and regulations, including the environmental responsibilities assumed under Section 104(f) of Title I of the Act;

(2) Carried out its activities substantially as described in its applications;

(3) Made substantial progress in carrying out its approved program; or

(4) Shown the continuing capacity to carry out its approved activities in a timely manner.

(b) *Action.* The action taken by HUD will be designed, first, to prevent the continuance of the deficiency; second, to mitigate any adverse effects or consequences of the deficiency; and third, to prevent a recurrence of the same or similar deficiencies. The following actions may be taken singly or in combination, as appropriate for the circumstances:

(1) Request the recipient to submit progress schedules for completing approved activities or for complying with the requirements of this part;

(2) Issue a letter of warning advising the recipient of the deficiency (including environmental review deficiencies and housing assistance deficiencies), describing the corrective actions to be taken, establishing a date for corrective actions, and putting the recipient on notice that more serious actions will be taken if the deficiency is not corrected or is repeated;

(3) Advise the recipient that a certification of compliance will no longer be acceptable and that additional information or assurances will be required;

(4) Advise the recipient to suspend, discontinue, or not incur costs for the affected activity;

(5) Advise the recipient to reprogram funds from affected activities to other eligible activities, provided that such action shall not be taken in connection with any substantial violation of Part 58 and provided that such reprogramming is subjected to the environmental review procedures of Part 58 of this title;

(6) Advise the recipient to reimburse the recipient's program account or Letter of Credit in any amounts improperly expended;

(7) Change the method of payment from a Letter of Credit basis to a reimbursement basis; and/or

(8) Suspend the Letter of Credit until corrective actions are taken.

§ 571.703 Reduction or withdrawal of grant.

(a) *General.* A reduction or withdrawal of a grant under paragraph (b) of this section will not be made until at least one of the corrective or remedial actions specified in § 571.702(b) has been taken and only then if the recipient has not made an appropriate and timely response. Prior to making such grant reduction or withdrawal, the recipient shall also be notified and given an opportunity within a prescribed time for an informal consultation regarding the proposed action.

(b) *Reduction or withdrawal.* When the Field Office determines, on the basis of a review of the grant recipient's performance that the objectives set forth in § 571.701(a) have not been met, the Field Office may reduce or withdraw the grant, except that funds already expended on eligible approved activities shall not be recaptured.

§ 571.704 Other remedies for noncompliance.

(a) *Secretarial actions.* If the Secretary finds a recipient has failed to comply substantially with any provision of this Part even after corrective actions authorized under § 571.702 have been applied, the following actions may be taken provided that reasonable notice and opportunity for hearing is made to the recipient. (The Administrative Procedure Act (5 U.S.C. § 551. et seq.), where applicable, shall be a guide in any situation involving adjudications where the Secretary desires to take actions requiring reasonable notice and opportunity for hearing.)

(1) Terminate the grant to the recipient;

(2) Reduce the grant to the recipient by an amount equal to the amount which was not expended in accordance with this Part; or

(3) Limit the availability of funds to projects or activities not affected by such failure to comply; provided, however, that the Secretary may on due notice revoke the recipient's Letter of Credit in whole or in part at any time if the Secretary determines that such action is necessary to preclude the further expenditure of funds for activities affected by such failure to comply.

(b) *Secretarial referral to the Attorney General.* If there is reason to believe that a recipient has failed to comply substantially with any provision of the Act, the Secretary may refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted. Upon such a referral, the Attorney General may bring a civil action in any United States district court having venue thereof for such relief as may be appropriate, including an action to recover the amount of the assistance furnished under this Part which was not expended in accordance with it, or for mandatory or injunctive relief.

Authority: Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.); Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: August 30, 1984.

Jack R. Stokvis,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 84-23667 Filed 9-6-84; 8:45 am]

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NAVAJO AND HOPI INDIAN RELOCATION COMMISSION

25 CFR Part 700

Commission Operations and Relocation Procedures Payments for Acquisition of Improvements

AGENCY: Navajo and Hopi Indian Relocation Commission.

ACTION: Final rule.

SUMMARY: This notice adopts regulations to allow payment, under limited circumstances, for habitations and other improvements acquired by the Commission pursuant to 25 U.S.C. 640d-14. This action is necessary because Pub. L. 93-531, the Navajo and Hopi Indian Relocation Act, makes no provision for any payments other than moving expenses and incentive bonuses. The adoption of these regulations will allow the Commission to take final action on certain unresolved claims for relocation benefits which cannot be closed within the current regulatory structure.

EFFECTIVE DATE: October 9, 1984.

FOR FURTHER INFORMATION CONTACT: Paul Tessler, CFR Liaison Officer, Navajo and Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, AZ 86002. Telephone No.: (602) 779-2721.

SUPPLEMENTARY INFORMATION: The principal author of this rulemaking is E. Susan Crystal, Attorney at Law, of the Navajo and Hopi Indian Relocation Commission.

The following is an analysis of the comment received.

Comment was received from the Hopi Tribe questioning the Commission's legislative authority to pay for improvements and also indicating that no payments should be made to persons who moved into the disputed area after December 22, 1973. The portion of the comment which suggested no payments to persons who moved into the area after December 22, 1973 was incorporated into the final rule.

Comment was received from the Navajo Tribe's Department of Justice generally stating that the Commission should pay for all properties owned by individual Navajos regardless of whether or not they are eligible for relocation. This was not incorporated into the final rule. The Justice Department suggested that District Six evictees be paid for improvements. This comment was not incorporated into the final rule. The Justice Department also suggested that ownership disputes be resolved by Tribal Courts. This comment was not appropriate to incorporate into this final rule, however, it has and will be Commission policy to refer such disputes to Tribal Court.

The Navajo-Hopi Legal Services Program commented that the Commission should pay for improvements without requiring the owners to go through the application and denial process. This was not incorporated into the final rule. This commentor made several other suggestions which were irrelevant to the proposed rule.

List of Subjects in 25 CFR Part 700

Administrative practice and procedure, Conflict of interests, Freedom of information, Grant program—Indians, Indian claims, Privacy, Real property acquisition, Relocation assistance.

PART 700—[AMENDED]

Accordingly, the Commission amends Subpart B of Part 700 by adding § 700.127 to read as follows:

Subpart B—Acquisition and Disposal of Habitation and/or Improvement

§ 700.127 Payments for Acquisition of Improvements.

Payments for acquisition of improvements shall be made in the following situations:

(a) To individuals who have been denied benefits under these rules and who can prove ownership of habitations and improvements on land partitioned to the tribe of which they are not members. If the owner is deceased the payment shall be made to his or her estate. Payments under this subsection are further limited by 25 U.S.C. 640d-14(c), Pub. L. 93-531, section 15(c).

(b) To individuals who have been certified as eligible for relocation benefits but who at the time of certification, own a decent, safe and sanitary dwelling as determined by the Commission pursuant to Section 700.187 and who own habitation and improvements on land partitioned to the tribe of which they are not members.

Ownership shall be determined on the basis of Commission appraisal records at the time of the initial eligibility determination.