

IV. 163 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE—Continued

PMN No.	Identity/generic name	Date of commencement
P 88-1068	G Fatty acid copolymer	June 26, 1988.
P 88-1108	G Alcohols, C16-12, ethoxylated, reaction product with maleic anhydride	July 20, 1988.
P 88-1634	G Substituted malononitrile	May 4, 1988.
Y 87-0077	G Poly(oxy-1,4-butanediylloxycarbonyl-1,4-phenylene-carbonyl), reaction product with hexosubstituted heteromono-cycle.	May 9, 1988.
Y 87-0180	G Copolyester	May 23, 1988.
Y 88-0054	G Styrene copolymer	Apr. 26, 1988.
Y 88-0077	G Acrylic copolymer, ammonium salt	May 9, 1988.
Y 88-0106	2-Methylpentamethylenediamin; zinc oxide; isophthalic acid; orthophosphorous acid; high molecular weight aliphatic primary alcohol;	June 1, 1988.
Y 88-0128	Polyacrylic acid, partial sodium salt; modified polyacrylic acid	Mar. 31, 1988.
Y 88-0130	Polymer of aromatic diacid, alkanediol, and branched alkanediol	Apr. 23, 1988.
Y 88-0135	G Rosin modified phenolic resin	April 24, 1988.
Y 88-0136	G Rosin modified phenolic resin	Do.
Y 88-0139	G Polymer of aromatic diacid, alkanediol, and branched-alkanediol	May 2, 1988.
Y 88-0140	G Aliphatic polyester urethane	Apr. 8, 1988.
Y 88-0169	G Polyether-type polyurethane	May 31, 1988.
Y 88-0170	G Unsaturated polyester resin	May 6, 1988.
Y 88-0171	G Random copolymer emulsion	Do.
Y 88-0176	G Butadiene-containing polymer	May 10, 1988.
Y 88-0180	G Aliphatic urethane	May 23, 1988.
Y 88-0185	G Polyvinyl acetate poly(alkyleneoxy)acrylate copolymer	June 27, 1988.
Y 88-0188	G Styrene/acrylic modified alkyd copolymer	June 17, 1988.
Y 88-0203	G Water-reducible alkyd resin	June 28, 1988.

V. 51 PREMANUFACTURE NOTICES
FOR WHICH THE PERIOD HAS BEEN
SUSPENDED

PMN No.

P 88-0609	P 88-1240
P 88-0758	P 88-1246
P 88-0875	P 88-1250
P 88-1005	P 88-1251
P 88-1020	P 88-1275
P 88-1037	P 88-1276
P 88-1109	P 88-1277
P 88-1115	P 88-1278
P 88-1116	P 88-1293
P 88-1117	P 88-1304
P 88-1118	P 88-1308
P 88-1120	P 88-1313
P 88-1121	P 88-1314
P 88-1122	P 88-1317
P 88-1162	P 88-1529
P 88-1168	P 88-1559
P 88-1180	P 88-1561
P 88-1189	P 88-1569
P 88-1197	P 88-1571
P 88-1205	P 88-1572
P 88-1211	P 88-1622
P 88-1212	P 88-1647
P 88-1219	P 88-1648
P 88-1220	P 88-1674
P 88-1229	P 88-1675
P 88-1231	

[FR Doc. 88-21779 Filed 10-14-88; 8:45 am]

BILLING CODE 6560-50-M

Federal Register

**Monday
October 17, 1988**

Part VI

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 200 et al.

**Disclosure of Social Security Numbers
and Employer Identification Numbers by
Applicants and Participants in HUD
Programs; Proposed Rule**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 200, 201, 203, 205, 207, 213, 215, 221, 232, 234, 235, 236, 241, 242, 244, 247, 250, 251, 255, 290, 501, 510, 570, 590, 750, 813, 880, 881, 882, 883, 884, 885, 886, 900, 904, 905, 913, and 960

[Docket No. R-88-1419; FR-2501]

Disclosure of Social Security Numbers and Employer Identification Numbers by Applicants and Participants in HUD Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This rule would require certain individuals to disclose their Social Security Numbers (SSNs) when they apply for participation in a program subject to this rule, or when their continuing eligibility to participate in the program is determined. In addition, it would require certain entities to disclose their Employer Identification Numbers, and certain officials of these entities to disclose their SSNs, when the entities apply for participation in a covered program. Failure of any individual or entity to make the required disclosure would constitute grounds for denying eligibility, or continuing eligibility, under the program involved.

Covered programs would include those providing only FHA mortgage and loan insurance and coinsurance under 24 CFR Chapter II, Subchapter B; other housing assistance programs and related authorities under 24 CFR Chapter II, Subchapter B; the Rehabilitation Loan, Community Development Block Grant, Urban Development Action Grant, and the Urban Homesteading programs under 24 CFR Chapter V; and the Section 8, and Public and Indian Housing programs under 24 CFR Chapters VIII and IX.

The rule would enable HUD to use social security and Employer Identification Numbers to help decrease the incidence of fraud, waste, and abuse in the programs subject to the rule.

DATE: Comments must be received by December 16, 1988.

ADDRESS: Comments on the rule: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Communications should refer to the

above docket number and title. A copy of each communication submitted will be available for public inspection by interested persons during regular business hours in the Office of the Rules Docket Clerk at the address listed above.

FOR FURTHER INFORMATION CONTACT:

For programs administered by the Assistant Secretary for Housing: James Tahash, Director of Planning and Procedures, Office of Multifamily Housing Management, room 6182, 451 7th St. SW., Washington, DC 20410, telephone number (202) 426-3944. For programs administered by the Assistant Secretary for Public and Indian Housing: Edward C. Whipple, Chief, Occupancy Branch, room 4206, 451 7th St. SW., Washington, DC 20410, telephone number (202) 426-0744. For programs administered by the Assistant Secretary for Community Planning and Development: Jo Ann W. Stanton, Director, Office of Management, room 7240, 451 7th St. SW., Washington, DC 20410, telephone number (202) 755-6898. For questions concerning the collection and use of social security and Employer Identification numbers: Dennis Raschka, Director, Fraud Control Division, Office of Inspector General, room 8254, telephone (202) 426-6493, 541 7th Street, SW., Washington, DC 20410. For questions concerning the applicability of the Privacy Act or the Freedom of Information Act: Burton Bloomberg, Associate General Counsel for Equal Opportunity and Administrative Law, room 10244, 451 7th Street SW., Washington, DC 20410, telephone (202) 755-7203. None of these listed telephone numbers is toll-free.

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the Federal Register. Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided later in this preamble under the subheading, "Findings and

Certifications." Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20420; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Statutory Basis

This proposed rule would implement section 165 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) for a number of HUD programs. Section 165(a) authorizes HUD to require applicants and participants (and members of their households) in any HUD program involving loans, grants, interest or rental assistance of any kind, or mortgage or loan insurance, to disclose their social security numbers (SSNs) or Employer Identification Numbers (EINs) to HUD. This disclosure is made an explicit condition of initial or continuing eligibility for participation in any of these programs, and is also designed to ensure the proper level of benefits under these programs.

Section 165(b) requires HUD to define the terms "applicant" and "participant" by regulation. It specifies, however, that the terms may not include persons acting purely in their official capacity, such as State or local government officials or officers of lending institutions.

Structure of Rule

This proposed rule would implement the requirements for the disclosure of SSNs and EINs through four independent, but parallel, provisions. These are:

1. *24 CFR Part 200, Subpart T:* This subpart would cover the TMAP/Assignment, Occupied Conveyance, and Rent Supplement programs; the Section 221(d)(3) BMIR, 235, and 236 programs; and the Management and Preservation of HUD Multifamily Projects authority under 24 CFR Part 290.

2. *24 CFR Part 200, Subpart U:* This subpart would apply to the other loan and mortgage insurance and coinsurance programs administered by HUD under 24 CFR Chapter II, Subchapter B.

3. *24 CFR Part 501:* This part would cover the Rehabilitation Loan, Rental Rehabilitation, and Urban Homesteading programs, and elements of the Community Development Block Grant (CDBG) and the Urban

Development Action Grant (UDAG) programs, under 24 CFR Chapter V.

4. *24 CFR Part 750*. This part would cover most of the housing assistance programs administered by HUD under 24 CFR Chapters VIII and IX.

The remainder of the rule contains conforming changes that are designed to incorporate the proposed disclosure requirements into the existing regulatory provisions to which the rule would apply. Readers should review these changes carefully to determine matters such as the timing and context of the required disclosures, and the effect upon eligibility, or continued eligibility, caused by a failure to meet these requirements.

Programs Covered by the Rule

The disclosure requirements contained in this proposed rule would apply to the following programs:

1. *24 CFR Part 200, Subpart T*. (a) Temporary Mortgage Assistance Payments (TMAP) and Assignment of Mortgages to HUD under Part 203, Subpart C.

[It should be noted that the conforming amendments to Part 203 amend the currently effective rules for the Assignment program. The TMAP and revised Assignment program rules have been published in final form, but have not yet been made effective. The Department proposes to subject TMAP and the revised Assignment authority to the requirements of this rule, and will do so either in the final rule in this proceeding or when the TMAP/revised Assignment rule takes effect.]

(b) Occupied Conveyance under Part 203, Subpart C.

(c) Rent Supplement Payments under Part 215.

(d) Low Cost and Moderate Income Mortgage Insurance for Below Market Interest Rate (BMIR) Mortgages under Part 221.

(e) Mortgage Insurance and Assistance Payments for Homeownership and Project Rehabilitation under Part 235.

(f) Mortgage Insurance and Interest Reduction Payments for Rental Projects under Part 236.

(g) Management of HUD-Owned Multifamily Housing Projects under Part 290.

2. *24 CFR Part 200, Subpart U*. All mortgage and loan insurance and coinsurance programs contained in Subchapter B of 24 CFR chapter II, other than those covered by 24 CFR Part 200, Subpart T. These would include:

(a) Property improvement and manufactured home loan programs under Part 201.

(b) Single family mortgage insurance programs under Parts 203, 213, 220, 221, and 234, and Title I insured loans.

(c) Multifamily mortgage insurance programs under Parts 207, 213, 220, and 221.

(d) Multifamily coinsurance programs pursuant to Parts 250, 251, and 255.

(e) Mortgage insurance for nursing homes and related facilities under Part 232 and for hospitals under Part 242.

3. *24 CFR Part 501*. (a) Rehabilitation Loan program under Part 510.

(b) Relocation payments and assistance under the Community Development Block Grant program (Part 570).

(c) Private participating parties under the Urban Development Action Grant program (Part 570, Subpart G).

(d) The Urban Homesteading program under Part 590.

4. *24 CFR Part 750*. The Section 8, and Public and Indian Housing programs, as follows:

(a) Section 8 Housing Assistance Payments for New for the Elderly or Handicapped under Part 885.

(b) Section 8 Housing Assistance Program for Substantial Rehabilitation under Part 881 (including Section 8 assisted loans for the Elderly or Handicapped under Part 885).

(c) Section 8 Housing Assistance Payments for Housing Certificates and Moderate Rehabilitation under Part 882.

(d) Section 8 Housing Assistance Payments, State Housing Agencies, under Part 883.

(e) Section 8 Housing Assistance Payments, New Construction Set-Aside for Section 515 Rural Rental Housing Projects under Part 884.

(f) Section 8 Housing Assistance Payments, Special Allocations under Part 886, Subpart A (Loan Management) and Subpart C (Property Disposition).

(g) Housing Vouchers under Part 887.

(h) Section 23 Housing Assistance Payments, New Construction and Substantial Rehabilitation, under Part 900.

(i) Low Rent Housing Homeownership Opportunities under Part 904.

(j) Indian Housing under Part 905.

(k) Admission to, and Occupancy of, Public Housing under Part 960.

The Department has selected these programs because they involve an initial or periodic (or both) review of income or credit standing for eligibility in a HUD program, and this information can more easily be accessed for verification with the social security number as an identifier. Additions to this list may occur when Congress authorizes new programs that meet these requirements, or when other existing programs administered by the Department

demonstrate a need for coverage by this rule.

"Applicants" Subject to the Rule

The rule would cover two broad classes of "applicants": "individual applicants" and "entity applicants." Generally, "individual applicants" would be those seeking to participate in a covered program in their own right. Examples include an individual or family seeking home mortgage insurance, admission to public or Indian housing, or a Section 8 Certificate or Voucher.

"Entity applicants" generally would refer to those that seek to participate in a covered program, other than in an individual right. Entities could include a corporation, partnership, or other "non-individual" entity. Examples include corporate mortgagors seeking to participate in an FHA multifamily mortgage insurance program or partnerships seeking to own a project under the Section 8 New Construction program.

The following is the complete listing of "applicants" that would be covered under the rule:

1. *24 CFR Part 200, Subpart T*

(a) "Individual Applicant"

(i) A mortgagor who seeks TMAP or Assignment assistance under Part 203, Subpart C.

(ii) An occupant who wishes to occupy a property after HUD has acquired it under Part 203, Subpart C.

(iii) An individual or family that seeks assistance under Part 215, 221 (BMIR), 236 or 290.

(iv) A homeowner or cooperative member seeking homeownership assistance under Part 235.

(v) An individual or individuals who seek to participate as private owners under Part 215, 221 (BMIR), or 236.

(b) "Entity applicant" A partnership, corporation, or other association or entity, either non-profit or for-profit, that seeks to participate as a private owner under 24 CFR Part 215, 221 (BMIR), or 236.

2. *24 CFR Part 200, Subpart U*.

(a) "Individual applicant" An individual or individuals who apply for mortgage or loan insurance or coinsurance under any of the programs providing only such insurance or coinsurance under 24 CFR Chapter II, Subchapter B, or who seek to assume an existing insured loan, and who intend to hold the mortgaged property in their individual right.

(b) "Entity applicant" A partnership, corporation, or other association or entity, either profit or non-profit, that seeks to participate in any of the

mortgage or loan insurance or coinsurance programs under 24 CFR Chapter II, Subchapter B, or that seeks to participate in the assumption of an existing insured mortgage. Examples of an entity applicant include a for-profit corporation that wishes to become a private owner of a multifamily project, or a partnership that seeks to establish a board and care home.

3. 24 CFR Part 501.

(a) "Individual applicant"

(i) An individual borrower under the Rehabilitation Loan Program (Part 510).

(ii) An individual or family seeking relocation payments and assistance under the CDBG program (24 CFR 570.202(i)).

(iii) A homesteader under the Urban Homesteading program (Part 590).

(b) "Entity applicant"

(i) An entity borrower under the Rehabilitation Loan program.

(ii) A business, non-profit organization, or farm operation seeking relocation payments and assistance under the CDBG program (24 CFR 570.202(i)).

(iii) A private participating party under the UDAG program.

4. 24 CFR Part 750.

(a) "Individual applicant"

(i) An individual or family wishing to participate, or to receive assistance, as appropriate, under Part 880, 881, 882, 883, 884, 885, 886, 887, 904, or 960.

(ii) A family seeking assistance under Part 900.

(iii) A prospective tenant or homebuyer under Part 905.

(iv) An individual who seeks to participate as a private owner in any of the programs contained in 24 CFR Part 850, 880, 881, 883, 884, 885, or 886.

(b) "Entity Applicant" A partnership, corporation, or any other association of entity, either non-profit or for-profit, that seeks to participate as a private owner in any of the programs contained in 24 CFR Part 880, 881, 883, 884, or 886.

"Participants" Subject to the Rule

"Participants" subject to the rule's proposed disclosure requirements would be limited to individuals or families receiving a form of housing assistance that provides for determinations of continuing eligibility for the assistance involved. Thus, only 24 CFR Part 200, Subpart T, and Part 750 would have "participants." The following would be "participants" under these programs:

1. 24 CFR Part 200, Subpart T.

(a) A mortgagor who is receiving TMAP or assignment assistance under Part 203, Subpart C.

(b) An occupant who occupies a property after HUD has acquired it under Part 203, Subpart C.

(c) A tenant under Part 215, 221 (BMIR), 236, or 290.

(d) A homeowner or a cooperative member receiving homeownership assistance under Part 235.

2. 24 CFR Part 750.

(a) A family receiving assistance under Parts 880, 881, 882, 883, 884, 886, 887, 900, or 960.

(b) A homebuyer under Part 904.

(c) A homebuyer or tenant under Part 905.

Exclusion of Certain Individuals and Entities From the Rule's Coverage

As noted above, section 165 of the 1987 Act excludes from its coverage those persons whose participation in a covered program is limited to their official capacity, such as State or local government officials or officials of lending institutions. The Department believes that this provision is designed to exclude individuals whose sole function with respect to a transaction under a covered program is to *facilitate* the objective of the transaction.

Thus, using the statutory examples, officials and employees of a State Housing Finance Agency that is serving as contract administrator under the State Agency Section 8 program (Part 883) would not have to disclose their SSNs for purposes of carrying out their responsibilities for the Agency. Similarly, officials of a private lending institution that is to serve as a mortgagee for an FHA insurance transaction would not be required to disclose their SSNs in connection with the transaction.

These statutory exclusions reflect the fact that the State or local agencies and private lenders, as well as their officials, do not *participate* in the program involved: their role is limited to aiding the successful completion of the transaction. Thus, these entities do not have a sufficiently strong link to the transaction to justify mandatory disclosure of their SSNs.

By contrast, however, the Department does not believe that the "official capacity" exclusion applies to officials of an entity that is seeking to *participate* in a covered program, for example, by becoming the owner of a Section 8 New Construction project. In such circumstances, the participation of the entity results in a continuing relationship with the Department that may involve substantial sums of money. Requiring the principals of these entities to disclose their SSNs could be essential to averting fraud, waste, and abuse in the program involved, and the Department does not believe that Congress intended to grant them a

categorical exemption from the requirement under section 165.

Consequently, the proposed rule specifically exempts from the proposed SSN disclosure requirements those officials and employees of entities that are not actually participating in the programs involved. It would make clear, however, that principals of entity *applicants* would be subject to the required disclosures. "Principals" would include officers, directors, principal stockholders, or such other officials as HUD may prescribe in administrative instructions.

The rule would also exclude from the disclosure requirements public housing agencies (PHAs) that participate in any covered program, irrespective of whether the PHA is acting as a facilitator (for example, as a Section 8 contract administrator), or as an actual participant (as where the PHA is a Section 8 project owner or the owner and operator of public housing). Other instances in which public entities would be excluded from the disclosure requirements under the proposed rule include where the governments of Guam and Hawaii, the Hawaiian Home Lands Commission, and Indian Tribes are mortgagors or co-mortgagors under sections 214, 247, and 248, respectively, of the National Housing Act.

The exclusions cited above are based upon the discretion accorded the Department by section 165(b) of the 1987 Act to define the terms "applicant" and "participant." Each of these entities involves a form of governmental body, many of which have had long and productive relationships with the Department. The Department does not believe that the fraud, waste, and abuse exposure where these entities are involved—whether as a facilitator of, or a participant in, HUD's programs—is sufficiently great, or the possibility of recovery where there is an instance of these problems so poor, that the Department should require the entity to produce its EIN and the principal officials their SSNs as a condition of participation in a covered program.

Other definitions

1. *Social Security Number.* The rule would define "Social Security Number" as follows:

Social Security Number (SSN) means the number that is assigned to a person by the Social Security Administration of the Department of Health and Human Services, and that identifies the record of the person's earnings that are reported to the Administration. The SSN has nine digits separated by hyphens, as follows: 000-00-0000; it does not include

a number with a letter as a suffix that is used to identify an auxiliary beneficiary under the Social Security System.

This definition is based upon that used in the regulations of the Internal Revenue Service (IRS).

2. *Employer Identification Number.* "Employer Identification Number" would be defined as follows:

Employer Identification Number (EIN) means the taxpayer identifying number of an individual, trust, estate, partnership, association, company, or corporation that is assigned pursuant to section 6011(b) of the Internal Revenue Code of 1986, or corresponding provisions of prior law, or pursuant to section 6109 of the Code. The EIN has nine digits separated by a hyphen, as follows: 00-0000000.

This definition is also patterned after that used in IRS regulations.

3. *Processing entity.* "Processing entity" would be defined as the person or entity that is responsible for making determinations regarding an applicant's eligibility, or a participant's continuing eligibility, for participation in the program involved. Examples of "processing entity" would include private owners or PHA owners under the Section 8 program; PHAs or Indian Housing Authorities (IHAs) that own and operate Public and Indian Housing projects; mortgagees under the Direct Endorsement program (§ 200.163); owners of Section 236, 221(d)(3) BMIR, or Rent Supplement projects; or lenders under FHA mortgage coinsurance authorities.

Required Disclosures Under the Rule

1. *Social Security Numbers: Individual Applicants, Participants, and Certain Officials of Entity Applicants.* Each individual applicant and each participant would be required to disclose the complete and accurate social security number(s) assigned to such person. This requirement would extend to each member of the household of the applicant or participant, except that in the FHA authorities subject to Part 200, Subpart U, only family members that will be obligated to pay the debt evidenced by the mortgage or loan documents would have to provide social security numbers. In the Section 235 program, only family members 18 years or older would have to make the required disclosure. Each officer, director, principal stockholder (as defined in HUD administrative instructions), and such other officials as HUD may require, of an entity applicant would be required to make the same disclosure.

The disclosure requirements for individual applicants and participants,

as well as members of their households, are explicitly authorized by section 165 of the 1987 Act. With the exception of FHA programs subject to Part 200, Subpart T, the Department believes that full implementation of the authority accorded under section 165 is essential to achievement of the legislative objective of controlling fraud, waste and abuse in HUD programs. Each of the individuals required under the rule to disclose their Numbers are receiving some form of assistance from the Department, thereby justifying the Department's interest in ensuring that they are appropriate program beneficiaries.

In the case of FHA insurance, the Department believes that family members (other than those who will actually be parties to the transaction) do not benefit in the same way as participants in the Department's assistance programs. Thus, the Department believes that extending the rule's coverage to these individuals is unnecessary for purposes of mitigating fraud, waste, and abuse and would impose an inappropriate burden.

As noted above, the Department believes that its efforts to reduce the incidence of fraud, waste, and abuse in HUD programs necessitate the disclosure of personal social security numbers by certain key officials of an entity. Mere reliance on the entity's Employer Identification Number will often fail to reveal information needed to determine the suitability of its officials to participate in HUD's programs.

The rule would provide that no person who is under the age of six years, or who has not been issued a SSN, would be subject to the disclosure requirements. The age exception is consistent with Section 6109(e) of the Internal Revenue Code of 1986. That provision requires taxpayers to include in their tax return a dependent's social security number whenever claiming one or more exemptions for dependents who are at least five years of age before the close of a taxable year. This proposed rule uses the age of six (rather than five before the close of the taxable year) to provide a clear, uniform standard, without the need to determine a dependent's age within a given taxable year.

The exclusion for persons who have not been assigned a SSN reflects the Department's belief that section 165 extends only to the disclosure of assigned Numbers, and is not intended to require the assignment of a Number as a condition to initial or continued participation in a covered program.

In addition, the rule would require disclosure of *each* SSN assigned to an individual, since some individuals have two or more SSNs. The Department believes that disclosure of each SSN is central to protection of HUD programs from fraud, waste, or abuse.

Finally, the Department is concerned that the rule's proposed disclosure and document production requirements not impose special hardships on elderly applicants and participants in programs covered by the rule. The Department specifically requests public comment on this point, including possible measures to ameliorate any undue burdens on the elderly.

2. *Employee Identification Numbers: Entity applicants.* Each entity applicant would be required to disclose the complete and accurate Employer Identification Number(s) assigned to it. As with SSNs, only EINs assigned to the entity would be disclosed, and any EIN assigned would have to be reported.

Disclosure Under the Rule: To Whom and When

The disclosure of SSNs and EINs would be made to the processing entity. For all applicants (both individual and entity), the disclosure would have to be made when the eligibility of the applicant under any of the covered programs is being determined.

Participants who were not subject to the rule's disclosure requirements as applicants (*i.e.*, those who became participants before the effective date of the rule) would have to provide their social security numbers at the first regularly scheduled income reexamination held after the effective date of the final rule in this proceeding.

Participants who were subject to the disclosure requirements as applicants, or as preexisting participants under the preceding paragraph, would have to disclose their social security numbers at subsequent regularly scheduled income reviews only if there has been a change in their circumstances since eligibility was determined or since their last regularly scheduled income review (whichever is later). The following circumstances would necessitate subsequent disclosure:

(i) There has been a change in the family composition of a participant.

(ii) Any member of the household of a participant has been assigned a social security number for the first time (including any member who is six years of age, under the circumstances described above).

(iii) Any member of the household of the participant has obtained a

previously undisclosed social security card.

(iv) Such other circumstances as HUD may prescribe in administrative instructions.

Where there has been a change in the composition of the family, each member of the household would be required to produce social security numbers, even if one or more members have done so previously. In the other two instances, only the individual involved would have to produce the number. These requirements reflect the Department's concern that disclosure be required only where necessary to produce information helpful to its efforts to mitigate abuse in HUD programs.

The exact timing and context of the required disclosure for both applicants and participants would be governed by the specific rules for the program involved. Readers should review the amendments proposed for the individual program regulations subject to this rule for more information.

Required Documentation

The documentation necessary to verify the SSN of an individual who is required to disclose the number would be a valid SSN card issued by the Social Security Administration of the Department of Health and Human Services, or such other evidence of the SSN, including such substantiation, as HUD may prescribe in administrative instructions. The documentation necessary to verify the EIN of an entity applicant that is required to disclose this number would be the official, written communication from the IRS assigning the EIN to the entity applicant, or such other evidence of the EIN, including such substantiation, as HUD may prescribe in administrative instructions.

The Department recognizes that it may not be possible for some applicants to produce SSN cards or official EIN designations without considerable effort and expense. Therefore, the Department proposes to prescribe in administrative instructions other classes of evidence (including any required substantiation) that the Department will regard as sufficient to document SSNs and EINs. An example of such evidence for SSNs may include a State driver's license that displays the individual's SSN. The Department may prescribe in administrative instructions that more than one alternate document be required, if the social security card is not provided for inspection.

Any individual who is not required to disclose a SSN because he or she has not been assigned one would have to sign a certification to this fact. This certification would be designed to

discourage applicants and participants from avoiding the rule's disclosure requirements simply by representing that they do not have a number.

Except as discussed in the next section, failure to meet these documentation and certification requirements constitutes grounds for denying eligibility of an applicant, or for terminating assistance or tenancy (or both) of a participant, under the program involved, as described below. This provision tracks the explicit language of section 165 that the required disclosures are a condition of initial or continuing eligibility for the covered programs.

Special Rules for Applicants and Participants in Housing Assistance Programs

If an individual who is an applicant or participant in a housing assistance program listed in 24 CFR Part 200, Subpart T, or Part 750, or any family member of the applicant or participant, cannot produce acceptable evidence of a SSN, the individual (or the individual's parent or guardian, in the case of an individual who is under the age of 18 years) would have to provide the individual's or relevant family member's SSN and execute a certification that the number provided has been assigned to the individual, but that the individual (and, as appropriate, the parent or guardian) cannot produce evidence to verify it. The processing entity would have to accept this certification, and continue processing the applicant or participant for purposes of establishing program eligibility.

In the case of an applicant, if the processing entity determines that the applicant is otherwise eligible for assistance, the applicant may not become a participant until it presents to the processing entity acceptable documentation of its SSN. During this period, the applicant would retain the place it occupied in the covered program following its determination of eligibility, including (as appropriate) its place on any waiting list maintained for the covered program.

In the case of a participant, if the processing entity determines that the participant otherwise continues to be eligible under the covered program, the participant would continue to receive assistance.

An applicant or a participant would have to provide the processing entity with acceptable documentation of the SSN within 60 calendar days of the above certification. Failure to do so would constitute immediate grounds for denying eligibility to the applicant, or terminating the assistance or tenancy

(or both) of the participant, under the covered program.

These special documentation rules would apply only to individuals and families seeking housing assistance, and to those already receiving housing assistance, under a program referred to in 24 CFR Part 200, Subpart T, or Part 750. The provisions reflect the Department's concern that *immediate* denial of initial or continuing eligibility could have extreme effects on these applicants and participants. Applicants could have their ability to obtain timely housing assistance seriously frustrated; participants could lose their housing assistance, and even their tenancy.

The Department believes that these circumstances justify a limited period within which otherwise eligible applicants and participants would be "held in place." For applicants, this would mean that although they could not receive housing assistance immediately, they would retain their place for assistance as though they were determined to be fully eligible; participants would continue to receive assistance. The Department believes that the 60-day period in the proposed rule should be adequate to enable applicants and participants to secure acceptable documentation of their SSNs. As with the certification described earlier for those who have not been assigned a SSN, the certification here is designed to discourage persons from using these special provisions to remain on a waiting list or to continue receiving assistance, even though they may not meet the rule's disclosure requirements.

Rejection of Documentation

The processing entity may reject evidence proffered for a specific SSN or EIN, or a certification provided as to a SSN, even if the evidence is in a class, and the certification is in the form, sanctioned by HUD. The rule would prescribe the circumstances under which such a rejection could take place.

Generally, rejection may occur in the following situations:

1. Upon presentation, if the document or the social security number appears to be false on its face. HUD would include in administrative instructions the circumstances that would instigate such a rejection.
2. During review by the processing entity or HUD, if conflicting information is received as to the validity of the social security number or the identity of the person.
3. During audits, investigations, or other reviews, if the social security number is discovered to be invalid or not issued to the person.

In any of these circumstances, HUD or the processing entity may demand presentation of the person's social security card. Failure or refusal to do so would be grounds for denial or termination of eligibility. Rejection of the evidence would be grounds for immediate denial of initial or continuing eligibility for a program subject to the rule.

Penalties for Failure to Meet Disclosure Requirements

As noted above, section 165 of the 1987 Act provides that its disclosure requirements are a condition of initial and continuing eligibility for any program subject to its provisions. For individual applicants, the rule would provide that the failure to disclose SSNs would be grounds for denial of eligibility for the covered program. For entity applicants, eligibility would be denied if the entity failed to disclose its EIN or if the entity's principals failed to disclose their SSNs.

In the case of participants who fail to disclose SSNs, the processing entity would be required to terminate assistance under the program and, if authorized under the program, would have to terminate the participant's tenancy. Whether termination of tenancy is required depends on the authority involved. In some cases, termination of assistance also requires that the family be evicted from the project (see, for example, the Public and Indian Housing program).

In others, such as the Housing Development Grants program, assistance can be terminated without terminating the participant's tenancy: the participant simply pays an unsubsidized rental. In still others, failure to meet the proposed rule's disclosure requirements not only would result in termination to assistance, but also would specifically be made a substantial violation of the lease for which termination of tenancy is the appropriate remedy (see, for example, the Section 8 New Construction and Substantial Rehabilitation programs, as amended by this proposed rule). Readers should carefully review the program-specific amendments to this rule, as well as existing regulatory and administrative guidance for the existing programs, to determine the effects of the proposed rule.

Implementation

For applicants, the proposed rule would apply to all applicant eligibility determinations initiated on or after the effective date of the rule. For participants, the rule would apply to each scheduled review of participant

income initiated on or after the effective date of the rule, and to each such review conducted thereafter.

Purposes That SSNs and EINs May Serve

The purpose of this rule is to enable the Department to use social security and Employer Identification numbers to help decrease the incidence of fraud, waste, and abuse in the programs subject to the rule. Specific examples of how the Department may use these numbers include (but are not limited to) the following:

- (1) Identification of a person or entity in manual or automated records.
- (2) Identification of a person or entity during debt collection efforts.
- (3) A cross-check between the Department's automated systems for evidence of a person's or entity's previous or current participation in other programs.
- (4) Identification of a person's or entity's eligibility for, or level or benefits in, the Department's programs based upon its records in other Federal agencies.
- (5) Identification of a person or entity for purposes of requesting information from other government or private sources during an audit or investigation.
- (6) Confirmation of a person's or entity's identity with the Social Security Administration or the Internal Revenue Service.

Relation Between Section 165 and Other Federal Requirements

Section 165 of the 1987 Act deals only with the disclosure of SSNs and EINs and provides its own penalty: if applicants and participants fail to meet the regulatory requirements implementing this provision, they will not be eligible under the covered program, either as an applicant seeking initial entry or as a participant seeking continuing eligibility for program participation. Section 165 has no effect on other Federal requirements, or on the availability of other Federal penalties for failure to meet those requirements. Thus, if an applicant or participant deliberately falsifies its SSN or EIN, the Department may deny eligibility for program participation under section 165, as well as impose other Federal penalties for fraud and misrepresentation in applying for participation in a Federal program.

Limitations on the Collection, Maintenance, Use, and Dissemination of SSNs and EINs, and on Information Derived From Them

The collection, maintenance, use, and dissemination of social security and

Employer Identification numbers may be subject to the requirements of the Privacy Act of 1974, 5 U.S.C. 552a. The provisions of the Act apply to records on individual U.S. citizens (or aliens lawfully admitted for permanent residence) that are maintained by HUD in a "system of records" where by information is retrieved by the name of the individual or other identifying number or symbol. Records concerning many individual applicants and participants in the housing programs listed in 24 CFR Part 200, Subparts T and U, Part 501, and Part 750 are maintained in Privacy Act systems of records. (A complete listing of the Department's Privacy Act systems is published in the Federal Register's Privacy Act Issuance: 1986 Compilation.) Records concerning partnerships, corporations, and other similar entities are not governed by the Act.

As noted above, HUD would collect social security and Employer Identification Numbers as a means of identifying individuals and entities that are applicants for, or participants in, HUD programs, and for purposes of ensuring that they are income-eligible for the covered program and that the level of benefits provided is appropriate. The numbers would generally be used to decrease the incidence of fraud, waste, and abuse in HUD programs.

HUD may disclose social security and Employer Identification numbers maintained in Privacy Act systems of records only as permitted by the Act. In general, the numbers may be disclosed outside the agency to facilitate the administration of the program pursuant to which the number was disclosed. Specific permissible routine uses of the numbers are listed in the individual Privacy Act notices for each system of records published by the Federal Register in its Privacy Act Issuances: 1986 Compilation. Requests for numbers not contained in a Privacy Act system of records will be governed by the Freedom of Information Act, 5 U.S.C. 552 (FOIA). The FOIA permits HUD to withhold the numbers of individuals where disclosure would constitute a clearly unwarranted invasion of personal privacy.

For the most part, the Privacy Act applies only to Federal agencies, and does not govern the collection, maintenance, use, or disclosure of information by the processing entity under the program involved, or by other entities or persons. However, the rule would subject this information to all applicable Federal, State, and local laws. State and local laws concerning the protection of personal privacy may

restrict the use of numbers by the processing entity or by other entities and persons. In addition, the Privacy Act requires any Federal, State, or local agency requesting a social security number to inform the individual whether disclosure of the number is mandatory or voluntary, the authority for the collection of the number, and what uses will be made of it.

HUD would not be responsible for the further use of social security or Employer Identification numbers that have been properly disclosed outside the Department. However, the requirements of the Privacy Act are applicable to other Federal agencies that may receive the social security or Employer Identification number from HUD, and that maintain the number in a Privacy Act system or records.

Indian Housing Authorities

For purposes of brevity, this rule encompasses Indian Housing authorized by Title II of the 1937 Act under proposed 24 CFR Part 750, and provides that PHAs include Indian Housing Authorities.

On June 29, 1988, President Reagan signed into law the "Indian Housing Act of 1988" (Pub. L. 100-358), which created a separate charter for Indian Housing under Title II of the 1937 Act. On the same day, the Department published a proposed rule to consolidate all Indian Housing regulations from 24 CFR Chapter IX into a revamped Part 905. When this rule is made final, it will be inserted in the appropriate place in the reconstituted Part 905.

Findings and Certifications

Environment. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel,

Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

Major rule. This rule would not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it would 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.

Regulatory Flexibility Act. 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 would require applicants and participants in certain HUD programs to disclose social security or Employer Identification numbers, as appropriate. The costs of complying with this requirement would be slight.

Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule would not (if implemented) have federalism implications and, thus, are not subject to review under the Order. The only entities subject to the rule that are covered by the Order are PHAs and State Housing Finance Agencies in their role as "processing entities." These entities already perform significant functions with respect to HUD assistance applicants and participants, and the additional burden to collect Social Security Numbers under the rule would appear too insubstantial.

Executive Order 12606, the Family. The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. Individual applicants and participants, and members of their families, would be required to disclose their Social Security Numbers. This is an insignificant burden for those who have been issued Numbers. For those who may not have Numbers, applicants for, or participants in, HUD assistance programs would be given a reasonable period to obtain an SSN before they would be held ineligible for initial or continuing assistance. This would provide additional protection to lower income families for whom ineligibility or loss of assistance could be most damaging.

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

Catalog of Federal Domestic Assistance. The catalog of Federal Domestic Assistance program numbers are 14.103, 14.112, 14.115, 14.116, 14.117, 14.121, 14.123, 14.124, 14.125, 14.126, 14.127, 14.128, 14.129, 14.133, 14.134, 14.135, 14.137, 14.139, 14.151, 14.156, 14.164, 14.218, 14.219, 14.221, 14.223, 14.225, 14.227, 14.230, 14.232, 14.580, 14.850, 14.851, and 14.852.

Information collection requirements. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Virtually all of the sections of this proposed rule have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondents	Total annual responses	Hours per response	Total hours
SSNs/EINs ¹ on Housing Form HUD-92068F, Request for Financial Information (2502-0159).....	203	76,000	1	76,000	* 0.0056	426
SSNs/EINs on Housing Form HUD-9539, Request for Occupied Conveyance (2502-0268).....	203	4,600	8.6	39,600	0.0056	222
SSNs/EINs on Housing Form HUD-50059, Owner's Certification of Compliance (2502-0204).....	215, 221, 236, 290, 750, 880, 881, 883, 884, 885, 886	2,171,256	1	2,171,256	0.0056	12,159
SSNs/EINs on Housing Form HUD-93101 Recertification of Family Income and Composition (2502-0082).....	235	150,000	1.25	187,500	0.0056	1,050

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondents	Total annual responses	Hours per response	Total hours
SSNs/EINs on Housing Form HUD-2530, Previous Participation Certificate (2502-0118).....	207, 213, 215, 221, 232, 236, 241, 242, 244, 250, 251, 255	9,000	1	9,000	0.0056	50
SSNs/EINs on Housing Forms HUD-92900, -92004G Application for HUD/FHA Insured Mortgage (2502-0059)	200, 201, 203, 205, 213, 221, 234, 235	1,603,334	1	1,603,334	0.0056	8,979
SSNs/EINs on Housing Form HUD-92013, Sec. 202 Application Submission Requirements (2502-0267).....	885	1,300	1	1,300	0.0056	7
SSNs/EINs on Forms HUD-6230, 6243, & 40023, Sec. 312 Loan Program (2506-0076)	501, 510	800	13.1	10,536	0.0056	59
SSNs/EINs from Urban Homesteaders	501, 590	769	1	769	0.0056	4
SSNs/EINs from Families, Individuals, Businesses, & Farms Seeking Relocation Assistance	501, 570	4,332	1	4,332	0.0056	24
SSNs/EINs on Form SF-424 Urban Development Action Grant (2506-0040)	570	2,400	1.6	3,925	0.0056	22
SSNs/EINs on Form HUD-50058, Tenant Data Summary (2577-0083) ..	750, 813, 882, 887, 900, 904, 905, 913, 960	3,500	754	2,640,000	0.0056	14,784
Total Annual Burden						37,786

NOTE:

¹ SSNs/EINs = Social Security Numbers/Employer Identification Numbers.
² 0.0056 hour = 20 seconds.

List of subjects.

24 CFR Part 200

Administrative practice and procedure,
 Claims,
 Housing standards
 Loan programs: housing and community development,
 Mortgage insurance,
 Organization and functions (Government agencies),
 Reporting and recordkeeping requirements,
 Minimum property standards,
 Incorporation by reference.

24 CFR Part 201

Health facilities,
 Historic preservation,
 Home improvement,
 Mobile homes,
 Manufactured homes and lots.

24 CFR Part 203

Home improvement,
 Loan programs: housing and community development,
 Mortgage insurance,
 Solar energy.

24 CFR Part 205

Community facilities,
 Mortgage insurance,
 Land development.

24 CFR Part 207

Mortgage insurance,
 Rental housing,
 Mobil home parks.

24 CFR Part 213

Mortgage insurance,
 Cooperatives.

24 CFR Part 215

Grant programs: housing and community development,
 Rent subsidies.

24 CFR Part 221

Condominiums,
 Low and moderate income housing,
 Mortgage insurance,
 Displaced families,
 Single family housing,
 Projects,
 Cooperatives.

24 CFR Part 232

Fire prevention,
 Health facilities,
 Loan programs: health,
 Loan programs: housing and community development,
 Mortgage insurance,
 Nursing homes,
 Intermediate care facilities.

24 CFR Part 234

Condominiums,
 Mortgage insurance,
 Homeownership,
 Projects,
 Units.

24 CFR Part 235

Condominiums,
 Cooperatives,
 Low and moderate income housing,
 Mortgage insurance,
 Homeownership,

Grant programs: housing and community development.

24 CFR Part 236

Low and moderate income housing,
 Mortgage insurance,
 Rent subsidies,
 Taxes,
 Utilities,
 Projects.

24 CFR Part 241

Energy conservation,
 Mortgage insurance,
 Solar energy,
 Projects.

24 CFR Part 242

Hospitals,
 Mortgage insurance.

24 CFR Part 244

Health facilities,
 Mortgage insurance.

24 CFR Part 247

Low and moderate income housing,
 Public housing,
 Tenant eviction.

24 CFR Part 250

Intergovernmental relations,
 Low and moderate income housing,
 Mortgage insurance.

24 CFR Part 251

Mortgage insurance.
 Coinsurance of multifamily mortgages.

24 CFR Part 255

Mortgage insurance, Coinsurance of mortgages covering existing multifamily properties.

24 CFR Part 290

Mortgage insurance, Low and moderate income housing.

24 CFR Part 501

Certain community development programs, Disclosure of Social Security and Employer Identification Numbers.

24 CFR Part 510

Loan programs: housing and community development, Housing, Relocation assistance, Home improvement, Rehabilitation, Urban renewal.

24 CFR Part 570

Community development block grants, Grant programs: housing and community development, Loan programs: housing and community development, Low and moderate income housing, New communities, Pockets of poverty, Small cities.

24 CFR Part 590

Government property, Homesteading, Housing, Intergovernmental relations, Loan programs: housing and community development.

24 CFR Part 750

Certain housing assistance programs, Disclosure of Social Security Numbers and Employer Identification Numbers.

24 CFR Part 813

Low and moderate income housing.

24 CFR Part 860

Grant programs: housing and community development, Rent subsidies, Low and moderate income housing, New construction.

24 CFR Part 881

Grant programs: housing and community development, Rent subsidies, Low and moderate income housing.

24 CFR Part 882

Grant programs: housing and community development, Housing, Mobile homes, Rent subsidies, Low and moderate income housing.

24 CFR Part 883

Grant programs: housing and community development, Rent subsidies, New construction and substantial rehabilitation, Low and moderate income housing.

24 CFR Part 884

Grant programs: housing and community development, Rent subsidies, Rural areas, Low and moderate income housing.

24 CFR Part 885

Grant programs: housing and community development, Aged, Handicapped, Loan programs: housing and community development, Low and moderate income housing.

24 CFR Part 886

Grant programs: housing and community development, Low and moderate income housing, Rent subsidies.

24 CFR Part 900

Housing assistance payments: new construction and substantial rehabilitation, Guaranteed/insured loans.

24 CFR Part 904

Grant programs: housing and community development, Loan programs: housing and community development, Low and moderate income housing, Public housing, Homeownership.

24 CFR Part 905

Grant programs: housing and community development, Grant programs: Indians, Indians, Loan programs: Indians, Low and moderate income housing, Public housing, Homeownership.

24 CFR Part 913

Public housing, Indian housing.

24 CFR Part 960

Public housing.

Accordingly, 24 CFR Parts 200, 201, 203, 205, 207, 213, 215, 221, 232, 234, 235, 236, 241, 242, 244, 247, 250, 251, 255, 290, 501, 510, 570, 590, 750, 813, 880, 881, 882, 883, 884, 885, 886, 900, 904, 905, 913, and 960 would be amended and new 24 CFR Parts 501 and 750 would be added, to read as follows:

PART 200—INTRODUCTION

1. The authority citation for Part 200 would be revised to read as follows:

Authority: Titles I, and II, National Housing Act (12 U.S.C. 1701-1715z-18); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Subparts T and U are also issued under sec. 165, Housing and Community Development Act of 1987 (42 U.S.C. 3543); Subpart T is also issued under sec. 101, Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) and sec. 203, Housing and Community

Development Amendments of 1978 (12 U.S.C. 1715z-11).

2. Part 200 would be amended by adding new Subparts T and U, to read as follows:

Subpart T—Disclosure of Social Security Numbers and Employer Identification Numbers by Applicants and Participants in Assisted Mortgage and Loan Insurance and Related Programs

Sec.	
200.1001	Summary and purpose.
200.1003	Applicability.
200.1005	Definitions.
200.1010	Disclosure of Social Security and Employer Identification Numbers.
200.1015	Penalties for failing to disclose Social Security and Employer Identification Numbers.
200.1020	Limitations on the collection, maintenance, use, and dissemination of Social Security and Employer Identification Numbers, and on information derived therefrom.
200.1025	Implementation.

Subpart T—Disclosure of Social Security Numbers and Employer Identification Numbers by Applicants and Participants in Assisted Mortgage and Loan Insurance and Related Programs

§ 200.1001 Summary and purpose.

(a) *Summary.* (1) This subpart implements section 165 of the Housing and Community Development Act of 1987 (42 U.S.C. 3543) as it pertains to the assisted mortgage and loan insurance and related programs administered by the Department of Housing and Urban Development under Subchapter B of this Chapter. The programs covered by this subpart include the following: Temporary Mortgage Assistance Program (TMAP)/Assignment under Part 203, Subpart C; Occupied Conveyance under Part 203, Subpart C; Rent Supplements under Part 215; management of HUD-acquired multifamily properties under Part 290; and the rental and homeownership assistance programs under sections 221(d)(3)(BMR), 235, and 236 of the National Housing Act.

(2) This subpart requires applicants seeking to participate as private owners in certain programs that are subject to this part to disclose their Employer Identification Numbers. Applicants seeking to receive, and certain recipients of, housing assistance under any of the programs covered by this part, as well as certain officials of prospective private owners, must disclose their social security numbers. The failure of any person or entity to make the required disclosures constitutes grounds for denial of

eligibility, or termination of assistance or tenancy (or both), for the program involved.

(3) Section 165 is implemented for the unassisted mortgage and loan insurance and coinsurance programs administered by the Department under Subchapter B of this Chapter, at Part 200, Subpart U. The provision is implemented for the majority of the housing assistance programs administered by the Department under 24 CFR Chapters VIII and IX, at 24 CFR Part 750, and for certain of the Department's community and neighborhood development programs, at 24 CFR Part 501.

(b) *Purpose.* The purpose of this subpart is to enable the Department to use social security and Employer Identification Numbers to help decrease the incidence of fraud, waste, and abuse in the programs subject to the subpart. Specific examples of how the Department may use social security and Employer Identification Numbers include (but are not limited to) the following:

(1) Identifying a person or entity in manual or automated records.

(2) Identifying a person or entity during debt collection efforts.

(3) Cross-checking among the Department's automated systems for a person's or entity's previous or current participation in other programs.

(4) Identifying a person or entity in the records of other Federal agencies for the purpose of obtaining information on the person's or entity's eligibility for, or level of benefits in, the Department's programs.

(5) Identifying a person or entity for the purpose of requesting information about the person or entity from other government or private sources during an audit or investigation.

(6) Validating a person's or entity's identity with the Social Security Administration or the Internal Revenue Service.

(7) Ensuring that the person or entity is eligible for the program involved and that the level of benefits provided is appropriate.

§ 200.1003 Applicability.

This subpart applies to the following housing assistance programs contained in Subchapter B of this chapter:

(a) *Part 203, Subpart C, Temporary Mortgage Assistance Payments and Assignment of Mortgages to HUD.*

(b) *Part 203, Subpart C, Occupied Conveyance.*

(c) *Part 215, Rent Supplement Payments.*

(d) *Part 221, Low Cost and Moderate Income Mortgage Insurance (BMIR).*

(e) *Part 235, Mortgage Insurance and Assistance Payments for Homeownership and Project Rehabilitation.*

(f) *Part 236, Mortgage Insurance and Interest Reduction Payments for Rental Projects.*

(g) *Part 290, Management and Disposition of HUD-Owned Multifamily Housing Projects.*

§ 200.1005 Definitions

As used in this subpart:

Applicant means an individual applicant or an entity applicant.

Employer Identification Number (EIN) means the taxpayer identifying number of an individual, trust, estate, partnership, association, company, or corporation that is assigned pursuant to section 6011(b) of the Internal Revenue Code of 1986, or corresponding provisions of prior law, or pursuant to section 6109 of the Code. The EIN has nine digits separated by a hyphen as follows: 00-0000000.

Entity applicant means a partnership, corporation, or any other association or entity, either non-profit or for-profit, that seeks to participate as a private owner in 24 CFR Part 215, 221 (BMIR), or 236. Entity applicant does not include a public entity, such as a PHA or a State Housing Finance Agency.

HUD or Department means the United States Department of Housing and Urban Development.

Individual Applicant has the following meanings for the programs referred to in § 200.1003:

(a) *Part 203, Subpart C, Temporary Mortgage Assistance Payments and Assignment of Mortgages to HUD:* A mortgagor who seeks TMAP or Assignment assistance.

(b) *Part 203, Subpart C, Occupied Conveyance:* An occupant who wishes to occupy a property after HUD has acquired it.

(c) *Parts 215, 221(BMIR), and 236:*

(i) An applicant for assistance under any of the covered programs; or

(ii) An individual who seeks to participate in any of the covered programs as a private owner.

(d) *Part 235:* A homeowner or cooperative member seeking homeownership assistance.

(e) *Part 290:* An applicant for assistance.

Participant has the following meanings for the programs referred to in § 200.1003:

(a) *Part 203, Subpart C, Temporary Mortgage Assistance Payments and Assignments of Mortgages to HUD:* A mortgagor who is receiving TMAP or whose mortgage has been assigned to HUD.

(b) *Part 203, Subpart C, Occupied Conveyance:* An occupant who occupies a property after HUD has acquired it.

(c) *Parts 215, 221(BMIR), 236, and 290:* A tenant or a qualified tenant under any of the covered programs.

(d) *Part 235:* A homeowner or a cooperative member receiving homeownership assistance.

PHA means a State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage or assist in the development or operation of housing for lower income families. PHA includes Indian Housing Authorities.

Processing entity means HUD or such other person or entity that is responsible for making eligibility determinations and scheduled income reviews under any of the programs referred to in § 200.1003.

Scheduled income review has the following meaning for the programs referred to in § 200.1003:

(a) *Part 203, Subpart C, Temporary Mortgage Assistance Payments and Assignments of Mortgages to HUD:* The review of the monthly payment due from the mortgagor under the assistance agreement, as provided by § 203.643(c) (TMAP) and § 203.648(c) (Assignment).

(b) *Parts 215, 221(BMIR), 235, and 236:* The regularly scheduled reexamination of participant income.

(c) *Part 290:* Income certification as provided by § 290.17(e).

Social Security Number (SSN) means the number that is assigned to a person by the Social Security Administration of the Department of Health and Human Services, and that identifies the record of the person's earning that are reported to the Administration. The SSN has nine digits separated by hyphens, as follows: 000-00-0000; it does not include a number with a letter as a suffix that is used to identify an auxiliary beneficiary under the Social Security System.

§ 200.1010 Disclosure of Social Security and Employer Identification Numbers.

(a) *Required disclosure: individual applicants, participants, and certain officials of entity applicants.* (1) The following individuals must disclose the complete and accurate social security number(s) that have been assigned to them.

(i) Each individual applicant under a program referred to in § 200.1003, including each member of the applicant's household (other than a member of the household of an applicant who seeks to participate as a private owner in the covered program).

(ii) Each participant in a program referred to in § 200.1003, including each member of the participant's household.

(iii) Each officer, director, principal stockholder (as defined in HUD administrative instructions), or other official of an entity applicant under a program referred to in § 200.1003, as HUD may specify in administrative instructions.

(2) The requirements of paragraph (a)(1) of this section do not apply to any person who:

(i) Is under the age of six years (18 years in the Section 235 program); or

(ii) Has not been assigned a SSN.

(b) *Required disclosure: entity applicants.* Each entity applicant under the programs referred to in § 200.1003 must disclose the complete and accurate Employer Identification Number(s) that have been assigned to it.

(c) *Disclosure: To whom and when.* (1) *Disclosure to the processing entity.* The disclosure of SSNs (as provided by paragraph (a) of this section) and EINs (as provided by paragraph (b) of this section) must be made to the processing entity.

(2) *Disclosure by applicants.* Applicants must make the disclosure referred to in paragraph (a) or (b) of this section (as appropriate), when their eligibility under a program referred to in § 200.1003 is being determined.

(3) *Initial disclosure by those who were participants before [Insert the effective date of this rule].* If the participant's initial eligibility for a program referred to in § 200.1003 was initiated before [insert the effective date of this rule], the disclosure referred to in paragraph (a) of this section must be made at the next regularly scheduled income reexamination.

(4) *Subsequent disclosure by participants who have made an initial disclosure under this section.* Once a participant has made the initial disclosure referred to in paragraph (c)(2) (as an applicant) or paragraph (c)(3) (as a preexisting participant) of this section, subsequent disclosures are not required, unless one of the following circumstances has occurred since the participant's eligibility under the program was determined, or since the last regularly scheduled reexamination of income (whichever was later), in which case the participant must make the disclosure required by paragraph (c)(5) of this section:

(i) There has been a change in the composition of the participant's family.

(ii) Any member of the participant's household has been assigned a SSN for the first time (including any member who is six years of age and has been assigned a SSN, as required by section

6109(e) of the Internal Revenue Code of 1986).

(iii) Any member of the participant's household has obtained a previously undisclosed SSN card.

(iv) Such other circumstances as HUD may prescribe in administrative instructions.

(5)(i) In the circumstances described in paragraph (c)(4)(i) of this section, the participant must make the disclosure referred to in paragraph (a) of this section at the next regularly scheduled reexamination of income.

(ii) In the circumstances described in paragraph (c)(4)(ii) or (iii) of this section, only the household member or members who meet the requirements of either of those paragraphs must make the disclosure referred to in paragraph (a) of this section, at the next regularly scheduled reexamination of income.

(d) *Required documentation—(1) Social Security Number(s).* The documentation necessary to verify the SSN of an individual who is required to disclose his or her SSN under paragraph (a) or (c) of this section is a valid SSN card issued by the Social Security Administration of the Department of Health and Human Services, or such other evidence of the SSN, including one or more alternate documents or such other substantiation of the SSN as HUD may prescribe in administrative instructions. An example of such evidence may include a State driver's license that displays the SSN of the individual.

(2) *Employer Identification Number(s).* The documentation necessary to verify the EIN of an entity applicant that is required to disclose its EIN under paragraph (b) of this section is the official, written communication from the IRS assigning the EIN to the entity applicant, or such other evidence of the EIN, including such substantiation as HUD may prescribe in administrative instructions.

(3) Any individual who is not required to disclose a SSN because he or she has not been assigned a SSN, as provided by paragraph (a)(2)(ii) of this section, must certify that he or she has not been assigned a SSN.

(4) Except as provided by paragraph (e) of this section, failure to meet the documentation or certification requirements of this paragraph (d) constitutes grounds for denying eligibility of an applicant, or terminating the assistance or the tenancy (or both) of a participant, under any program referred to in § 200.1003, as provided by § 200.1015.

(e) *Special documentation rules for individual applicants and participants.* (1) If an individual applicant (other than

an applicant who seeks to participate as a private owner) or a participant (or any household member of the individual applicant or participant) who is required to disclose a SSN under paragraph (a) or (c) of this section cannot produce evidence of the SSN that is acceptable under paragraph (d)(1) of this section, the individual (or the individual's parent or guardian, in the case of an individual who is under the age of 18 years) must provide the individual's SSN and certify that the number provided has been assigned to the individual, but that the individual (and, as appropriate, the parent or guardian) cannot produce evidence to verify the number.

(2) The processing entity must accept the certification referred to in paragraph (e)(1) of this section, and continue to process the individual applicant's or participant's eligibility to participate in the program.

(3) *Individual applicants.* If the processing entity determines that the individual applicant is otherwise eligible for assistance, the individual applicant may not become a participant in a covered program unless it presents to the processing entity the documentation required under paragraph (d)(1), and within the time period specified in paragraph (e)(5), of this section. During such period, the individual applicant will retain the position that is occupied in the program at the time the determination of eligibility was made, including (as appropriate) its place on any waiting list maintained for the covered program.

(4) *Participants.* If the processing entity determines that the participant otherwise continues to be eligible under the covered program, the participant will continue to participate in the program provided that it presents to the processing entity the documentation required under paragraph (d)(1), within the time period specified in paragraph (e)(5), of this section.

(5) An individual applicant or a participant under this paragraph (e) must provide the processing entity with the documentation required under paragraph (d)(1) of this section within 60 calendar days of the certification in paragraph (e)(1) of this section. Failure to do so constitutes grounds for denying eligibility to an individual applicant or terminating the assistance or tenancy (or both) of a participant, under any program referred to in § 200.1003, as provided by § 200.1015.

(f) *Rejection of documentation.* (1) The processing entity may reject evidence referred to in paragraph (d)(1) or (2) of this section, or a certification provided under paragraph (e)(1) of this section,

only for such reasons as HUD may prescribe in administrative instructions.

(2) Rejection of documentation under paragraph (f)(1) of this section will, as provided in HUD administrative instructions, constitute grounds for denying eligibility to an applicant, or terminating assistance or tenancy (or both) for a participant, under any program referred to in § 200.1003, as provided by § 200.1015.

(g) *Information on SSNs and EINs.* (1) Information regarding SSNs and SSN cards may be obtained by contacting the local Social Security Office or consulting the Social Security Administration regulations at 20 CFR Chapter III, (see in particular, Part 422).

(2) Information regarding EINs may be obtained by contacting the local office of the Internal Revenue Service or consulting the appropriate regulations for the Internal Revenue Service.

(h) *Form and manner of certifications.* The certifications referred to in paragraphs (d)(3) and (e)(1) of this section must be in the form and manner prescribed by HUD.

§ 200.1015 Penalties for failing to disclose Social Security and Employer Identification Numbers.

(a) *Denial of eligibility: individual applicants.* The processing entity must deny the eligibility of an individual applicant under any of the programs referred to in § 200.1003, if the individual applicant, or any member of the individual applicant's household, does not meet the SSN disclosure requirements specified in § 200.1010.

(b) *Denial of eligibility: entity applicants.* The processing entity must deny the eligibility of an entity applicant under any of the programs referred to in § 200.1003, if:

(1) The entity applicant does not meet the EIN disclosure requirements specified in § 200.1010; or

(2) Any of the officials of the entity applicant referred to in § 200.1010(a)(1)(ii) does not meet the SSN disclosure requirements specified in § 200.1010.

(c) *Termination of assistance or tenancy: participants.* The processing entity must terminate the assistance, and (as appropriate) the tenancy of a participant, under any of the programs referred to in § 200.1003, if the participant, or any member of the participant's household, does not meet the SSN disclosure requirements specified in § 200.1010.

(d) *Cross reference.* Individuals should consult the regulations and administrative instructions for the programs referred to in § 200.1003 for further information on the use of SSNs

and EINs in determining the eligibility of applicants, and the continued eligibility of participants.

§ 200.1020 Limitations on the collection, maintenance, use, and dissemination of Social Security and Employer Identification Numbers, and on information derived therefrom.

The collection, maintenance, use, and dissemination of SSNs and EINs obtained pursuant to this subpart, and of any information derived from them, must be conducted to the extent applicable, in compliance with the Privacy Act (5 U.S.C. 552a) and all other provisions of Federal, State, and local law.

§ 200.1025 Implementation.

(a) *Applicants.* The provisions of this subpart, and the conforming changes made with respect to the disclosure and use of SSNs and EINs for applicants in the regulations governing the programs referred to in § 200.1003, apply to all applicant eligibility determinations initiated on or after [insert effective date of this rule].

(b) *Participants.* The provisions of this subpart, and the conforming changes made with respect to the disclosure and use of SSNs for participants in the regulations governing the programs referred to in § 200.1003, apply to:

(1) Each scheduled income review of a participant initiated by the processing entity on or after [insert effective date of this rule]; and

(2) Each such review conducted thereafter.

Subpart U—Disclosure of Social Security Numbers and Employer Identification Numbers by Applicants in Unassisted Mortgage and Loan Insurance and Coinsurance Programs

Sec.

- 200.1101 Summary and purpose.
- 200.1103 Applicability.
- 200.1105 Definitions.
- 200.1110 Disclosure of Social Security and Employer Identification Numbers.
- 200.1115 Penalties for failing to disclose Social Security and Employer Identification Numbers.
- 200.1120 Limitations on the collection, maintenance use, and dissemination of Social Security and Employer Identification Numbers, and on information derived therefrom.
- 200.1125 Implementation.

Subpart U—Disclosure of Social Security Numbers and Employer Identification Numbers by Applicants in Unassisted Mortgage and Loan Insurance and Coinsurance Programs

§ 200.1101 Summary and purpose.

(a) *Summary.* (1) This subpart implements section 165 of the Housing

and Community Development Act of 1987 (42 U.S.C. 3543) as it pertains to the unassisted loan and mortgage insurance and coinsurance programs administered by the Department of Housing and Urban Development under Subchapter B of this Chapter. The programs covered by this subpart include the Department's unassisted home mortgage and multifamily mortgage insuring and coinsuring authorities under the National Housing Act, as well as the property improvement and manufactured home loan program under Title I of the Act and mortgage insurance for nursing homes and related facilities, hospitals, group practice facilities, and land development under sections 232 and 242, and Titles XI and X, respectively, of the Act.

(2) This subpart requires corporate and other entity applicants that seek HUD-insured or -coinsured financing under any of the programs covered by this subpart to disclose their Employer Identification Numbers. Individual applicants that seek HUD-insured financing under any of the programs covered by this subpart, as well as certain officials of prospective corporate and other entity owners, must disclose their social security numbers. The failure of any person or entity to make the required disclosures constitutes grounds for denial of eligibility for HUD mortgage or loan insurance or coinsurance under the covered program.

(3) Section 165 is implemented for the assisted mortgage and loan insurance and related programs administered by the Department under Subchapter B of this Chapter, at Part 200, Subpart T. The provision is implemented for most of the housing assistance programs administered by the Department under 24 CFR Chapters VIII and IX, at 24 CFR Part 750, and for certain of the Department's community and neighborhood development programs, at 24 CFR Part 501.

(b) *Purpose.* The purpose of this subpart is to enable the Department to use social security and Employer Identification numbers to help decrease the incidence of fraud, waste, and abuse in the programs subject to the subpart. Specific examples of how the Department may use social security and Employer Identification Numbers include (but are not limited to) the following:

(1) Identifying a person or entity in manual or automated records.

(2) Identifying a person or entity during debt collection efforts.

(3) Cross-checking among the Department's automated systems for a

person's or entity's previous or current participation in other programs.

(4) Identifying a person or entity in the records of other Federal agencies for the purpose of obtaining information on the person's or entity's eligibility for, or level of benefits in, the Department's programs.

(5) Identifying a person or entity for the purpose of requesting information from other government or private sources during audit or investigation.

(6) Confirming a person's or entity's identity with the Social Security Administration or the Internal Revenue Service.

(7) Ensuring that the person or entity is eligible for the covered program and that the level of benefits provided is appropriate.

§ 200.1103 Applicability.

This subpart applies to all mortgage and loan insurance and coinsurance programs contained in Subchapter B of this chapter, except the mortgage insurance and related programs referred to in § 200.1003.

§ 200.1105 Definitions.

As used in this subpart:

Assume an existing mortgage or loan means any assumption of a mortgage or loan that is insured or coinsured under any of the programs referred to in § 200.1103, irrespective of whether the assumption involves the release by the mortgagee of a previous mortgagor from personal liability on the mortgage note and the assumption of this liability, and the agreement to pay the mortgage debt, by the mortgagor.

Applicant means any mortgagor or borrower, or co-mortgagor or co-borrower that applies for a mortgage or loan insured or coinsured under any of the programs referred to in § 200.1103, or that seeks to assume an existing mortgage or loan insured or coinsured under any of these programs. The term does not include:

(a) A public entity (such as a PHA or a State Housing Financing Agency), or an Indian Tribe.

(b) A mortgagee or lender.

(c) Any member of the applicant's household who will not be obligated to pay the debt evidenced by the mortgage or loan documents.

(d) A person whose only involvement with an application for mortgage or loan insurance or coinsurance, or an assumption of an insured or coinsured mortgage or loan, is in his or her official capacity with a public entity or an Indian Tribe, or an official of a mortgagee or lender.

The term encompasses both an individual applicant and an entity applicant.

Employer Identification Number (EIN) means the taxpayer identifying number of an individual, trust, estate, partnership, association, company, or corporation that is assigned pursuant to section 6011(b) of the Internal Revenue Code of 1986, or corresponding provisions of prior law, or pursuant to section 6109 of the Code. The EIN has nine digits separated by a hyphen, as follows: 00-0000000.

Entity applicant means an applicant that applies for a mortgage or loan insured or coinsured under any of the programs referred to in § 200.1103, other than an individual applicant. Examples of an entity applicant include applicants that intend to hold the mortgaged property as a partnership, corporation, or any other association or entity.

HUD or Department means the United States Department of Housing and Urban Development.

Individual applicant means an individual or individuals who:

(a)(i) Apply for a mortgage or loan insured or coinsured under any of the programs referred to in § 200.1103, or

(ii) Seek to assume an existing mortgage or loan insured or coinsured under any of such programs, and

(b) Intend to hold the mortgaged property in their individual right.

PHA means any State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) that is authorized to engage or assist in the development or operation of housing for lower income families. The term includes Indian Housing Authorities.

Processing entity means the person or entity that is responsible for making eligibility determinations for:

(a) The insurance or coinsurance of mortgages or loans under any of the programs referred to in § 200.1103, or

(b) The assumption of existing insured or coinsured mortgages under any of such programs.

The processing entity is specified in the regulations governing the covered program, and may include (but is not limited to): HUD, an FHA-approved mortgagee or lender under 24 CFR Part 202 or 24 CFR 203.1 through 203.7, a mortgagee under the Direct Endorsement program (§ 200.163) or a lender under a coinsurance authority (Part 204, 250, 251, or 255).

Social Security Number (SSN) means the number that is assigned to an individual by the Social Security Administration of the Department of Health and Human Services, and that

identifies the record of the individual's earnings that are reported to the Administration. The SSN has nine digits separated by hyphens, as follows: 000-00-0000; it does not include a number with a letter suffix that is used to identify an auxiliary beneficiary under the Social Security System.

§ 200.1110 Disclosure of Social Security Numbers and Employer Identification Numbers.

(a) *Required disclosure: individual applicants, and certain officials of entity applicants.* (1)(i) Each individual applicant under the programs referred to in § 200.1103 must disclose the complete and accurate social security number(s) that have been assigned to such person.

(ii) Each officer, director, principal stockholder (as defined in HUD administrative instructions), or other official of an entity applicant under the programs referred to in § 200.1103, as HUD may specify in administrative instructions, must disclose the complete and accurate social security number(s) that have been assigned to such person.

(2) The requirements of paragraph (a)(1) of this section do not apply to any person who:

- (i) Is under the age of six years; or
- (ii) Has not been assigned a SSN.

(b) *Required disclosure: entity applicants.* Each entity applicant under the programs referred to in § 200.1103 must disclose the complete and accurate number for any Employer Identification Number(s) that have been assigned to it.

(c) *Disclosure: To whom and when?* The disclosure of SSNs (as provided by paragraph (a) of this section) and EINs (as provided by paragraph (b) of this section) must be made to the processing entity when the eligibility of the applicant under any of the programs referred to in § 200.1103 is being determined.

(d) *Required documentation.* (1) The documentation necessary to verify the SSN of an individual who is required to disclose his or her SSN under paragraph (a) of this section is a valid SSN card issued by the Social Security Administration of the Department of Health and Human Services, or such other evidence of the SSN, including one or more alternate documents or such other substantiation of the SSN, as HUD may prescribe in administrative instructions. An example of such evidence may include a State driver's license that displays the SSN of the individual.

(2) The documentation necessary to verify the EIN of an entity applicant that is required to disclose its EIN under paragraph (b) of this section is the

official, written communication from the IRS assigning the EIN to the entity applicant, or such other evidence of the EIN, including such substantiation, as HUD may prescribe in administrative instructions.

(3) Any individual who is not required to disclose a SSN because he or she has not been assigned a SSN, as provided by paragraph (a)(2)(ii) of this section, must certify (in a form and manner prescribed by HUD) that he or she has not been assigned a SSN.

(4) Failure to meet the documentation or certification requirements of this paragraph (d) constitutes grounds for denying eligibility of an applicant under any program referred to in § 200.1103, as provided by § 200.1115.

(e) *Rejection of documentation.* (1) The processing entity may reject the evidence referred to in paragraph (d)(1) or (2) of this section, or a certification under paragraph (d)(3) of this section, only for such reasons as HUD may prescribe in administrative instructions.

(2) Rejection of the documentation referred to in paragraph (e)(1) of this section will, as provided in HUD administrative instructions, be grounds for denying eligibility to an applicant, under any program referred to in § 200.1103, as provided by § 200.1115.

(f) *Information on SSNs and EINs.* (1) Information regarding SSNs and SSN cards may be obtained by contacting the local Social Security Office or consulting the regulations for the Social Security Administration at 20 CFR Chapter III, especially Part 422.

(2) Information regarding EINs may be obtained by contacting the local office of the Internal Revenue Service or consulting the appropriate regulations for the Internal Revenue Service.

§ 200.1115 Penalties for failing to disclose Social Security and Employer Identification Numbers.

(a) *Denial of eligibility: individual applicants.* The processing entity must deny the eligibility of an individual applicant under any of the programs referred to in § 200.1103, if the individual applicant does not meet the SSN disclosure requirements specified in § 200.1110.

(b) *Denial of eligibility: entity applicants.* The processing entity must deny the eligibility of an entity applicant under any of the programs referred to in § 200.1103, if:

(1) The entity applicant does not meet the EIN disclosure requirements specified in § 200.1110; or

(2) Any of the officials of the entity applicant referred to in § 200.1110(a)(1)(ii) does not meet the

SSN disclosure requirements specified in § 200.1110.

(c) *Cross reference.* Individuals should consult the regulations and administrative instructions for the programs referred to in § 200.1103 for further information on the use of SSNs and EINs in determining the eligibility of applicants under these programs.

§ 200.1120 Limitations on the collection, maintenance, use, and dissemination of Social Security and Employer Identification Numbers, and of information derived therefrom.

The collection, maintenance, use, and dissemination of SSNs and EINs obtained pursuant to this subpart, and of any information derived therefrom, must be conducted to the extent applicable, in compliance with the Privacy Act (5 U.S.C. 552a) and all other provisions of Federal, State, and local law.

§ 200.1125 Implementation.

The provisions of this subpart, and the conforming changes made with respect to the disclosure and use of SSNs and EINs for applicants in the regulations governing the programs referred to in § 200.1103, apply to all applicant eligibility determinations initiated on or after [insert effective date of this rule].

PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

3. The authority citation for Part 201 would continue to read as follows:

Authority: Sec. 2, National Housing Act (12 U.S.C. 1703); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. Part 201, Subpart C, would be amended by adding a new § 201.22a, to read as follows:

§ 201.22a Disclosure of Social Security and Employer Identification Numbers.

To be eligible for loan insurance under this part, the borrower must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart U, of this Chapter.

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

5. The authority citation for Part 203 would continue to read as follows:

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

6. Part 203, Subpart A, would be amended by adding a new § 203.35, to read as follows:

§ 203.35 Disclosure of Social Security and Employer Identification Numbers.

To be eligible for mortgage insurance under this part, the mortgagor must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart U, of this chapter.

7. In § 203.650, a new paragraph (a)(7) would be added, to read as follows:

§ 203.650 Assignment of mortgages.

(a) * * *

(7) The mortgagor discloses its social security number, as provided by Part 200, Subpart T, of this chapter.

8. In § 203.664, a new paragraph (a)(1)(vi) would be added, to read as follows:

§ 203.664 Forbearance relief on Indian Land insured pursuant to section 248 of the National Housing Act.

(a) * * *

(i) * * *

(vi) The mortgagor discloses its social security number, as provided by Part 200, Subpart T, of this chapter.

* * *

9. In § 203.674, new paragraphs (a)(5) and (b)(6) would be added, to read as follows:

§ 203.674 Eligibility for continued occupancy.

(a) * * *

(5) The occupant discloses its social security number, as provided by Part 200, Subpart T, of this chapter.

(b) * * *

(6) The occupant discloses its social security number, as provided by Part 200, Subpart T, of this chapter.

* * *

10. In § 203.677, a new paragraph (e) would be added, to read as follows:

§ 203.677 Decision to approve or deny a request.

* * *

(e) Notwithstanding the other provisions of this section, Part 200, Subpart T, of this chapter governs a decision to deny a request based on the failure of an occupant to disclose its social security number, as provided by that Part.

PART 205—MORTGAGE INSURANCE FOR LAND DEVELOPMENT [TITLE X]

11. The authority citation for Part 205 would be revised to read as follows:

Authority: Sec. 1010, National Housing Act (12 U.S.C. 1749j); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

12. § 205.30, a new paragraph (c) would be added, to read as follows:

§ 205.30 Eligible mortgagors.

(c) To be eligible for mortgage insurance under this part, the mortgagor must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart U, of this chapter.

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

13. The authority citation for Part 207 would continue to read as follows:

Authority: Secs. 207 and 211, National Housing Act (12 U.S.C. 1713, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Sections 207.258 and 207.258b are also issued under section 203(e), Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z-11(e)).

14. Part 207, Subpart A, would be amended by adding a new § 207.17a, to read as follows:

§ 207.17a Disclosure of social security and employer identification numbers.

To be eligible for mortgage insurance under this part, the mortgagor must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart U, of this chapter.

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

15. The authority citation for Part 213 would continue to read as follows:

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

16. In § 213.20, a new paragraph (c) would be added, to read as follows:

§ 213.20 Eligibility of mortgagors.

(c) To be eligible for mortgage insurance under this subpart, the mortgagor must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart U, of this chapter.

17. Part 213, Subpart C, would be amended by adding a new § 213.522a, to read as follows:

§ 213.522a Disclosure of social security and Employer Identification Numbers.

To be eligible for mortgage insurance under this subpart, the mortgagor must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart U, of this chapter.

PART 215—RENT SUPPLEMENT PAYMENTS

18. The authority citation for 24 CFR Part 215 would continue to read as follows:

Authority: Sec. 101(g), Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

19. In § 215.15, a new paragraph (d) would be added to read as follows:

§ 215.15 Eligible housing owner.

(d) To be eligible to receive rent supplement payments, the housing owner must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart T, of this chapter.

20. In § 215.20, a new paragraph (b)(2) would be added to read as follows:

§ 215.20 Qualified tenant.

(b) * * *
(2) For requirements covering the disclosure of social security numbers by individuals and families, see Part 200, Subpart T, of this chapter.

21. In § 215.55, paragraphs (a) and (c) would be revised to read as follows:

§ 215.55 Reexamination of family income and composition.

(a) *Regular reexaminations.* The owner must reexamine the income and family composition of all Qualified Tenants at least once every 12 months. After consultation with the Qualified Tenant and upon verification of the information, the owner must make appropriate adjustments in the Total Tenant Payment in accordance with § 215.45 and determine whether the family's unit size is still appropriate. The owner must adjust Tenant Rent and the Rent Supplement payment to reflect any change in Total Tenant Payment and must carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition, the owner must require the individual or family to disclose social security numbers, as provided by Part 200, Subpart T of this chapter.

(c) *Termination of assistance.* A Qualified Tenant's eligibility for Rent Supplement Payments continues until the Total Tenant Payment equals the Gross Rent. The rent charged at that point may not exceed the market rent approved by the Secretary. The termination of eligibility at such point will not affect the Qualified Tenant's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances during the term of the contract. However, assistance also may be terminated in accordance with any requirements of the lease or with HUD requirements. Eligibility for assistance must be terminated, if the Qualified Tenant fails to disclose social security numbers, as provided by Part 200, Subpart T of this chapter.

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

22. The authority citation for part 221 would be revised to read as follows:

Authority: Secs. 211, 221 National Housing Act (12 U.S.C. 1715b, 1715f); section 221.544(a)(3) is also issued under sec. 201(a) of the National Housing Act, 12 U.S.C. 1707(a).

23. Part 221, Subpart A, would be amended by adding new § 221.57, to read as follows:

§ 221.57 Disclosure of social security and Employer Identification Numbers.

To be eligible for mortgage insurance under this subpart, the mortgagor must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart U, of this chapter.

23a. Part 221, Subpart C, would be amended by adding a new § 221.510a to read as follows:

§ 221.510a Disclosure of social security and Employer Identification Numbers.

To be eligible for mortgage insurance under this subpart, the mortgagor must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart U, of this chapter.

24. In § 221.537, a new paragraph (e) would be added, to read as follows:

§ 221.537 Additional occupancy requirements; preferred purchasers or tenants.

(e) *Disclosure of social security numbers.* Upon determining an individual's or family's eligibility for initial occupancy under paragraph (a) of

this section, and at any subsequent reexamination of a tenant's income for continued occupancy under paragraph (b) of this section, the mortgagor must require the individual or family, or the tenant (as appropriate), to disclose social security numbers, as provided by Part 200, Subpart T, of this chapter. Failure of the individual or family, or the tenant (as appropriate), to make such disclosure will constitute grounds for denying eligibility for initial occupancy, or for terminating the tenancy, in accordance with the Commissioner's administrative instructions and § 200.1015.

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

25. The authority citation for Part 232 would be revised to read as follows:

Authority: Secs. 211, 232, National Housing Act (12 U.S.C. 1715b, 1715w); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

26. Part 232, Subpart A, would be amended by adding new § 232.20a to read as follows:

§ 232.20a Disclosure of social security and Employer Identification Numbers.

To be eligible for mortgage insurance under this subpart, the mortgagor must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart U, of this chapter.

26a. Part 232, Subpart C, would be amended by adding a new § 232.615a to read as follows:

§ 232.615a Disclosure of social security and Employer Identification Numbers.

To be eligible for mortgage insurance under this subpart, the mortgagor must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart U of this chapter.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

27. The authority citation for Part 234 would be revised to read as follows:

Authority: Secs. 211, 234, National Housing Act (12 U.S.C. 1715b, 1715y); section 234.520(a)(2)(ii) is also insured under sec. 201(a) of the National Housing Act, 12 U.S.C. 1707(a).

28. Part 234, Subpart A, would be amended by adding a new section, to read as follows:

§ 234.58 Disclosure of social security and Employer Identification Numbers.

To be eligible for mortgage insurance under this part, the mortgagor must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart U, of this chapter.

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

29. The authority citation for Part 235 would be revised to read as follows:

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

§ 235.1 [Amended]

30. In § 235.1, paragraph (a) would be amended to add § 203.35 to the listing of sections.

31. In § 235.10, a new paragraph (e) would be added to read as follows:

§ 235.10 Eligible mortgagors.

* * * * *

(e) To be eligible under this part, the mortgagor or cooperative member must meet the requirements for the disclosure of social security numbers, as provided by Part 200, Subpart T, of this chapter.

32. In § 235.350, a new paragraph (d) would be added, to read as follows:

§ 235.350 Mortgagor's required recertification.

* * * * *

(d) The homeowner must disclose its social security number in connection with any recertification under this section, to the extent and in the manner specified in Part 200, Subpart T, of this chapter.

33. In § 235.375, paragraphs (b) (4) and (e) would be revised to read as follows:

§ 235.375 Termination, suspension, or reinstatement of the assistance payment contract.

* * * * *

(b) * * *

(4) The mortgagee is unable to obtain from the homeowner (or from the cooperative association on behalf of the cooperative member) a required recertification of occupancy, employment, income, and family composition, and (if required) a disclosure of its social security number, as prescribed in § 235.350.

* * * * *

(e) *Reinstatement.* Where the assistance payments contract is suspended, it may be reinstated by the Secretary at the Secretary's discretion and on such conditions as the Secretary

may prescribe. To be eligible for reinstatement under this section, the mortgagor or cooperative member must meet the requirements for the disclosure of social security numbers, as provided by Part 200, Subpart T, of this chapter.

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

34. The authority citation for part 236 would be revised to read as follows:

Authority: Secs. 211, National Housing Act (12 U.S.C. 1715b, 1715z-1); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

35. Part 236, Subpart A, would be amended by adding a new § 236.11, to read as follows:

§ 236.11 Disclosure of social security and Employer Identification Numbers.

To be eligible for mortgage insurance under this part, the mortgagor must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart T, of this chapter.

36. In § 236.70, paragraph (a)(1) would be revised to read as follows:

§ 236.70 Occupancy requirements.

(a)(1) In the processing of applications for admission, the housing owner will determine eligibility following procedures prescribed by the Commissioner, including those specified for the disclosure of social security numbers in Part 200, Subpart T, of this chapter.

* * * * *

37. In § 236.80, paragraphs (a) and (c) would be revised to read as follows:

§ 236.80 Reexamination of income.

(a) *Regular reexaminations.* The owner must reexamine the income and family composition of all Qualified Tenants at least once every 12 months. After consultation with the Qualified Tenant and upon verification of the information, the owner must make appropriate adjustments in the Tenant Rent (or Total Tenant Payment for tenants receiving the benefit of Rental Assistance Payments) in accordance with § 236.55 or § 236.735, and determine whether the Qualified Tenant's unit size is still appropriate. The Owner must adjust Tenant Rent and the Rental Assistance Payment, if applicable, to reflect any change in Total Tenant Payment, and must carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition, the owner must require the family to disclose

social security numbers, as provided by Part 200, Subpart T, of this chapter.

(c) *Termination of assistance.* A Qualified Tenant loses eligibility for assistance when the Tenant Rent (Total Tenant Payment for tenants receiving the benefit of Rental Assistance Payments) equals the Basic Rent (Gross Rent for RAP tenants). The termination of eligibility at such point will not affect the Qualified Tenant's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents or other relevant circumstances during the term of the contract. However, assistance or eligibility to pay below Market Rent also may be terminated in accordance with any requirements of the lease or with HUD requirements. Eligibility for assistance must be terminated if the Qualified Tenant fails to disclose social security numbers, as provided by Part 200, Subpart T, of this chapter.

38. Section 236.710 would be revised to read as follows:

§ 236.710 Qualified tenant.

The benefits of rental assistance payments are available only to an individual or a family renting a dwelling unit in a project that is subject to a contract under this Subpart or occupying such a dwelling unit as a cooperative member. To qualify for such benefits, the individual or family must satisfy the definition of Qualified Tenant found in § 236.2 of Subpart A. In order to receive rental assistance under this Subpart, it must have been determined that the income of the individual or family is too low to permit the individual or family to pay the approved Gross Rent with 30 percent of such individual's or family's Adjusted Monthly Income, as defined in Subpart A. For requirements concerning the disclosure of social security numbers, see Part 200, Subpart T, of this chapter.

PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

39. The authority citation for Part 241 would continue to read as follows:

Authority: Secs. 211, 241, National Housing Act (12 U.S.C. 1715b, 1715z-6); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

40. Part 241, Subpart A, would be amended by adding a new § 241.11, to read as follows:

§ 241.11 Disclosure of social security and Employer Identification Numbers.

To be eligible for loan insurance under this subpart, the borrower must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart U, of this chapter.

41. Part 241, Subpart C, would be amended by adding a new section 241.626, to read as follows:

§ 241.626 Disclosure of social security and Employer Identification Numbers.

To be eligible for loan insurance under this subpart, the borrower must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart U, of this chapter.

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

42. The authority citation for Part 242 would continue to read as follows:

Authority: Secs. 211, 233(f), 242, National Housing Act (12 U.S.C. 1715b, 1715n(f), 1715z-7); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

43. Part 242, Subpart A, would be amended by adding a new § 242.24, to read as follows:

§ 242.24 Disclosure of social security and Employer Identification Numbers.

To be eligible for mortgage insurance under this part, the mortgagor must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart U, of this chapter.

PART 244—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES—[TITLE XI]

44. The authority citation for Part 244 would continue to read as follows:

Authority: Secs. 211, 1104, National Housing Act (12 U.S.C. 1715b, 1749aaa-5); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

45. Section 244.20 would be revised to read as follows:

§ 244.20 Eligible mortgagors.

In order to be eligible as a mortgagor under this subpart, the applicant must:

(a) Establish to the satisfaction of the Commissioner that it qualifies as a group practice unit, as that term is defined in § 244.1(c); and

(b) Meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart U, of this chapter.

PART 247—EVICTIONS FROM CERTAIN SUBSIDIZED AND HUD-OWNED PROJECTS

46. The authority citation for Part 247 would be revised to read as follows:

Authority: Sec. 101, Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); secs. 211, 221, 236, National Housing Act (12 U.S.C. 1715b, 1715f, 1715z-1); sec. 202, Housing Act of 1959 (12 U.S.C. 1701g); secs. 3, 5, 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

47. In § 247.3, paragraph (c) would be revised to read as follows:

§ 247.3 Entitlement of tenants to occupancy.

(c) *Material noncompliance.* (1) The term "material noncompliance with the rental agreement" includes:

(i) One or more substantial violations of the rental agreement; or

(ii) Repeated minor violations of the rental agreement that disrupt the livability of the project, adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related project facilities, interfere with the management of the project, or have an adverse financial effect on the project.

(2) Failure of the tenant to timely supply all required information on the income and composition, or eligibility factors, of the tenant household (including failure to disclose social security numbers, as provided by 24 CFR Part 200, Subpart T, or 24 CFR Part 750 (as appropriate)) or knowingly providing incomplete or inaccurate information will constitute a substantial violation of the rental agreement.

(3) The payment of rent or any other financial obligation due under the rental agreement after the due date, but within the grace period permitted under State law, constitutes a minor violation.

PART 250—COINSURANCE FOR STATE HOUSING FINANCE AGENCIES

48. The authority citation for Part 250 would be revised to read as follows:

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

49. Part 250, Subpart B, would be revised by adding a new section, to read as follows:

§ 250.112a Disclosure of social security and Employer Identification Numbers.

To be eligible for mortgage coinsurance under this part, the mortgagor must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart U, of this chapter.

PART 251—COINSURANCE FOR THE CONSTRUCTION OR SUBSTANTIAL REHABILITATION OF MULTIFAMILY HOUSING PROJECTS

50. The authority citation for Part 251 would continue to read as follows:

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

51. Part 251, Subpart C, would be amended by adding a new § 251.202a, to read as follows:

§ 251.202a Disclosure of social security and Employer Identification Numbers.

To be eligible for mortgage coinsurance under this part, the mortgagor must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart U, of this chapter.

PART 255—COINSURANCE FOR THE PURCHASE OR REFINANCING OF EXISTING MULTIFAMILY HOUSING PROJECTS

52. The authority citation for Part 251 would continue to read as follows:

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

53. Part 255, Subpart C would be amended by adding a new § 255.202a to read as follows:

§ 255.202a Disclosure of social security and Employer Identification Numbers.

To be eligible for coinsurance under this part, the mortgagor must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 200, Subpart U, of this chapter.

PART 290—MANAGEMENT AND DISPOSITION OF HUD-OWNED MULTIFAMILY HOUSING PROJECTS

54. The authority citation for Part 290 would be revised to read as follows:

Authority: Secs. 202, 203, 204, Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z-1b, 1701z-11, 1701z-12); secs. 207, 211, National Housing Act (12 U.S.C. 1713, 1715b); sec. 7(d), Department of

Housing and Urban Development Act (42 U.S.C. 3535(d)).

55. In § 290.17, a new paragraph (g) would be added, to read as follows:

§ 290.17 Rental rates.

(g) *Disclosure of social security numbers.* Any certifications or reexaminations of the income of tenants or prospective tenants in connection with tenancy under this section are subject to the requirements for the disclosure of social security numbers, as provided by Part 200, Subpart T, of this chapter.

56. 24 CFR, Chapter V, would be amended by adding a new Part 501, to read as follows:

PART 501—DISCLOSURE OF SOCIAL SECURITY NUMBERS AND EMPLOYER IDENTIFICATION NUMBERS BY APPLICANTS IN CERTAIN COMMUNITY DEVELOPMENT AUTHORITIES

Sec.

501.1 Summary and purpose.

501.3 Applicability.

501.5 Definitions.

501.10 Disclosure of social security and Employer Identification Numbers.

501.15 Penalties for failing to disclose social security and Employer Identification Numbers.

501.20 Limitations on the collection, maintenance, use, and dissemination of social security and Employer Identification Numbers, and on information derived therefrom.

501.25 Implementation.

Authority: Sec. 165, Housing and Community Development Act of 1987 (42 U.S.C. 3543); sec. 312, Housing Act of 1964 (42 U.S.C. 1452b); Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301-5320); sec. 810, Housing and Community Development Act of 1974 (12 U.S.C. 1706e); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 501.1 Summary and purpose.

(a) *Summary.* (1) This part implements section 165 of the Housing and Community Development Act of 1987 (42 U.S.C. 3543) as it pertains to applicants under certain community and neighborhood development authorities administered by the Department of Housing and Urban Development. This part applies to borrowers under the Rehabilitation Loan program (Part 510 of this chapter); individuals, families, and entities seeking relocation payments and assistance under the Community Development Block Grant (CDBG) program (Part 570 of this chapter); private participating parties under the Urban Development Action Grant (UDAG) program (Part 570, Subpart G,

of this chapter); and homesteaders under the Urban Homesteading program (Part of this chapter).

(2) This part requires corporate and other entities to disclose their Employer Identification Numbers as a condition to obtaining rehabilitation loans under the Rehabilitation Loan program, or relocation payments and assistance under the CDBG program, and those seeking to participate in the UDAG program. Individuals seeking assistance under any of the programs covered by this subpart, as well as certain officials of corporate and other entities, must disclose their social security numbers. The failure of any person or entity to make the required disclosures constitutes grounds for denial of eligibility or for termination of participation in the covered program.

(3) Section 165 is implemented for the assisted and unassisted mortgage and loan insurance and coinsurance and related programs administered by the Department under 24 CFR Chapter II, Subchapter B at Part 200, Subparts T and U, respectively. The provision is implemented at 24 CFR Part 750 for most of the housing assistance programs administered by the Department under 24 CFR Chapters VIII and IX.

(b) *Purpose.* The purpose of this part is to enable the Department to use social security and Employer Identification Numbers to help decrease the incidence of fraud, waste, and abuse in the programs subject to the subpart. Specific examples of how the Department may use social security and Employer Identification Numbers include (but are not limited to) the following:

(1) Identifying a person or entity in manual or automated records.

(2) Identifying a person or entity during debt collection efforts.

(3) Cross-checking among the Department's automated systems for previous or current participation in other programs.

(4) Identifying a person or entity in the records of other Federal agencies for the purpose of obtaining information on their eligibility for, or level of benefits in, the Department's programs.

(5) Identifying a person or entity for the purpose of requesting information about the person or entity from other government or private sources during audit or investigation.

(6) Validating a person's or entity's identity with the Social Security Administration or the Internal Revenue Service.

(7) Ensuring that the person or entity is eligible for the covered program and that the level of benefits provided is appropriate.

§ 501.3 Applicability.

This part applies to the Rehabilitation Loan program (Part 510 of this Chapter), the CDBG program (Part 570 of this chapter), the UDAG program (Part 570, Subpart G, of this chapter), and the Urban Homesteading program (Part 590 of this chapter).

§ 501.5 Definitions.

As used in this subpart:

Applicant means:

(a) A borrower under the Rehabilitation Loan Program (Part 510).

(b) An individual, family, business, non-profit organization, or farm operation seeking relocation payments and assistance under the CDBG program (24 CFR 570.202(i)).

(c) A private participating party under the UDAG program (Part 570, Subpart G).

(d) A homesteader under the Urban Homesteading program (Part 590).

Employer Identification Number (EIN) means the taxpayer identifying number of an individual, trust, estate, partnership, association, company, or corporation that is assigned pursuant to section 6011(b) of the Internal Revenue Code of 1986, or corresponding provisions of prior law, or pursuant to section 6109 of the Code. The EIN has nine digits separated by a hyphen as follows: 00-0000000.

Entity applicant means an applicant, other than an individual applicant.

Examples of an entity applicant include applicants that seek to participate or to obtain assistance under any program referred to in § 501.3, as a partnership, corporation, or any other association or entity.

HUD or Department means the United States Department of Housing and Urban Development.

Individual Applicant means an applicant that is an individual or a family and that seeks to participate or to obtain assistance under program referred to in § 501.3, in his or her individual right.

Processing entity means the person or entity responsible for determining the eligibility of applicants that seek to participate or to obtain assistance under any of the programs referred to in § 501.3.

Social security number (SSN) means the number that is assigned to a person by the Social Security Administration of the Department of Health and Human Services, and that identifies the record of the person's earnings reported to the Administration. The SSN has nine digits separated by hyphens, as follows: 000-00-0000; it does not include a number with a letter as a suffix that is used to

identify an auxiliary beneficiary under the Social Security System.

§ 501.10 Disclosure of social security and Employer Identification Numbers

(a) *Required disclosure: individual applicants, participants, and certain officials of entity applicants.* (1)(i) Each individual applicant (including each member of the household of the individual applicant) under the programs referred to in § 501.3, must disclose the complete and accurate social security number(s) that have been assigned to such person.

(ii) Each officer, director, principal stockholder, or other official of an entity applicant (as HUD may specify in administrative instructions) under the programs referred to in § 501.3 must disclose the complete and accurate number for any social security number(s) that have been assigned to such person.

(2) The requirements of paragraph (a)(1) of this section do not apply to any person who:

(i) Is under the age of six years; or

(ii) Has not been assigned a SSN.

(b) *Required disclosure: entity applicants.* Each entity applicant under the programs referred to in § 501.3 must disclose the complete and accurate Employer Identification number(s) that have been assigned to it.

(c) *Disclosure: to whom and when?* The disclosure of SSNs (as provided by paragraph (a) of this section) and EINs (as provided by paragraph (b) of this section) must be made to the processing entity when the applicant's eligibility under any of the programs referred to in § 501.3 is being determined.

(d) *Required documentation—(1) Social security number(s).* The documentation necessary to verify the SSN of an individual who is required to disclose his or her SSN under paragraph (a) of this section is a valid SSN card issued by the Social Security Administration of the Department of Health and Human Services, or such other evidence of the SSN, including one or more alternate documents or such other substantiation of the SSN, as HUD may prescribe in administrative instructions. An example of such evidence may include a State driver's license that displays the SSN of the individual.

(2) *Employer identification number(s).* The documentation necessary to verify the EIN of an entity applicant that is required to disclose its EIN under paragraph (b) of this section is the official, written communication from the IRS assigning the EIN to the entity applicant, or such other evidence of the EIN, including such substantiation as

HUD may prescribe in administrative instructions.

(3) Any individual who is not required to disclose a SSN because he or she has not been assigned a SSN, as provided by paragraph (a)(2)(ii) of this section, must certify (in a form and manner prescribed by HUD) that he or she has not been assigned a SSN.

(4) Failure of the applicant to meet the documentation or certification requirements of this paragraph (d) constitutes grounds for denying eligibility of the applicant under any program referred to in § 501.3, as provided by § 501.15.

(e) *Rejection of documentation.* (1) The processing entity may reject evidence referred to in paragraph (d) (1) or (2) of this section, or a certification provided under paragraph (d)(3) of this section, only for such reasons as HUD may prescribe in administrative instructions.

(2) Rejection of documentation under paragraph (e)(1) of this section will, as provided in HUD administrative instructions, constitute grounds for denying eligibility to an applicant, under any program referred to in § 501.3, as provided by § 501.15.

(f) *Information on SSNs and EINs.* (1) Information regarding SSNs and SSN cards may be obtained by contacting the local Social Security Office or consulting the Social Security Administration regulations at 20 CFR Chapter III, (see in particular Part 422).

(2) Information regarding EINs may be obtained by contacting the local office of the Internal Revenue Service or consulting the appropriate regulations for the Internal Revenue Service.

§ 501.15 Penalties for failing to disclose social security and Employer Identification Numbers.

(a) *Denial of eligibility: individual applicants.* The processing entity must deny the eligibility of an individual applicant under any of the programs referred to in § 501.3, if the individual applicant, or any member of the individual applicant's household does not meet the SSN disclosure requirements specified in § 501.10.

(b) *Denial of eligibility: entity applicants.* The processing entity must deny the eligibility of an entity applicant under any of the programs referred to in § 501.3, if:

(1) The entity applicant does not meet the EIN disclosure requirements specified in § 501.10; or

(2) Any of the officials of the entity applicant referred to in § 501.10(a)(1)(ii) does not meet the SSN disclosure requirements specified in § 501.10.

(c) *Cross reference.* Individuals should consult the regulations and administrative instructions for the programs referred to in § 501.3 for further information on the use of SSNs and EINs in determining the eligibility of applicants.

§ 501.20. *Limitations on the collection, maintenance, use, and dissemination of social security and Employer Identification Numbers, and on information derived therefrom.*

The collection, maintenance, use, and dissemination of SSNs and EINs obtained pursuant to this part, and of any information derived therefrom, must be conducted to the extent applicable, in compliance with the Privacy Act (5 U.S.C. 552a) and all other provisions of Federal, State, and local law.

§ 501.25 Implementation.

The provisions of this part, and the conforming changes made with respect to the disclosure and use of SSNs and EINs for applicants in the regulations governing the programs referred to in § 501.3, apply to all applicant eligibility determinations initiated on or after [insert effective date of this rule].

PART 510—SECTION 312 REHABILITATION LOAN PROGRAM

57. The authority citation for Part 510 would continue to read as follows:

Authority: Sec. 312, United States Housing Act of 1964 (42 U.S.C. 1452b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

58. Part 510 would be amended by adding a new § 510.106 to read as follows:

§ 510.106 Disclosure of social security and Employer Identification Numbers.

To be eligible for a loan under this part, the borrower must meet the requirements for the disclosure of social security and Employer Identification Numbers, as provided by Part 501 of this chapter.

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

59. The authority citation for Part 570 would continue revised to read as follows:

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301-5320); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

60. In § 570.201, paragraph (i) would be revised to read as follows:

§ 570.201 Basic eligible activities.

(i) *Relocation.* Relocation payments and assistance for permanently or temporarily displaced individuals, families, businesses, nonprofit organizations, and farm operations where: (1) Required under the provisions of § 570.606(a); and (2) relocation payments and assistance are determined by the recipient to be appropriate as provided in § 570.606(b). To be eligible for payments and assistance under this paragraph (i), the individual, family, or entity must meet the requirements for the disclosure of social security and Employer Identification Numbers, in accordance with Part 501 of this Chapter, and HUD administrative instructions.

61. In § 570.458, paragraph (c)(2) would be revised to read as follows:

§ 570.458 Full applications.

* * * * *

(c) * * *

(2) A description of the project to be undertaken, how the property involved is controlled, and the nature of the project. The applicant must substantiate the market and economic feasibility of the proposed project, must analyze the economic benefits which the activities are expected to produce, and must show how the proposed activities will take advantage of unique opportunities to attract private investment. The applicant must identify the public and private participating parties in the proposed project; clarify the relationship of each to the request for action grant funds; and submit participating parties' social security and Employer Identification Numbers, as provided by Part 501 of this chapter. Information provided shall include proposed cost and methods of financing. Failure to submit social security and Employer Identification Numbers as required by Part 501 will render the application ineligible for assistance under this subpart.

PART 590—URBAN HOMESTEADING

62. The authority citation for Part 590 would be revised to read as follows:

Authority: Sec. 810, Housing and Community Development Act of 1974 (12 U.S.C. 1706e); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

63. In § 590.11, a new paragraph (d)(11) would be added, to read as follows:

§ 590.11 Applications.

* * * * *

(d) *Certification.* * * *

(11) The applicant and its designated public agency will require homesteaders

to disclose their social security numbers, as provided by Part 501 of this chapter.

64. 24 CFR Chapter VII would be amended by adding a new Part 750, to read as follows:

PART 750—DISCLOSURE OF SOCIAL SECURITY NUMBERS AND EMPLOYER IDENTIFICATION NUMBERS BY APPLICANTS AND PARTICIPANTS IN CERTAIN HOUSING ASSISTANCE PROGRAMS

Subpart A—General

Sec.

§ 750.1 Summary and purpose.

§ 750.3 Applicability.

§ 750.5 Definitions.

Subpart B—Disclosure of Social Security and Employer Identification Numbers

§ 750.10 Disclosure of social security and employer identification numbers.

§ 750.15 Penalties for failing to disclose social security and Employer Identification Numbers.

§ 750.20 Limitation on the collection, maintenance, use, and dissemination of social security and Employer Identification Numbers, and on information derived therefrom.

Subpart C—Implementation

§ 750.25 Implementation.

Authority: Sec. 165, Housing and Community Development Act of 1987 (42 U.S.C. 3543); secs. 3, 6, 8, 17, 205, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437d, 1437f, 1437o; 1437(ee)); sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General

§ 750.1 Summary and purpose.

(a) *Summary.* (1) This part implements Section 165 of the Housing and Community Development Act of 1987 (42 U.S.C. 3543) as it pertains to most of the housing assistance programs administered by the Department of Housing and Urban Development under 24 CFR Chapters VIII and IX. The programs covered by this part are the Section 8 Housing Assistance Payments program and the Public and Indian Housing program.

(2) This part requires applicants that seek to participate as private owners in certain programs that are subject to this part to disclose their Employer Identification Number(s). Applicants that seek to receive, and certain recipients of, housing assistance under any of the programs covered by this part, as well as certain officials of prospective private owners, must disclose their social security number(s). The failure of any person or entity to make the required disclosures

constitutes grounds for denial of eligibility, or termination of assistance or tenancy (or both), for the covered program.

(3) Section 165 is implemented for HUD's unassisted mortgage and loan insurance and coinsurance programs under 24 CFR Chapter II, Subchapter B, at 24 CFR Part 200, Subpart T. This provision is implemented for the assisted mortgage and loan insurance and related programs administered by the Department under 24 CFR Chapter II, Subchapter B, at 24 CFR Part 200, Subpart U, and for certain of the Department's community and neighborhood development programs, at 24 CFR Part 501.

(b) *Purpose.* The purpose of this part is to enable the Department to use social security and Employer Identification numbers to help decrease the incidence of fraud, waste, and abuse in the housing assistance programs subject to the part. Specific examples of how the Department may use social security and Employer Identification numbers include (but are not limited to) the following:

- (1) Identifying a person or entity in manual or automated records.
- (2) Identifying a person or entity during debt collection efforts.
- (3) Cross-checking among the Department's automated systems for a person's or entity's previous or current participation in other programs.
- (4) Identifying a person or entity in the records of other Federal agencies for the purpose of obtaining information on the person's or entity's eligibility for, or level of benefits in, the Department's programs.
- (5) Identifying a person or entity for the purpose of requesting information about the person or entity from other government or private sources during audit or investigation.
- (6) Confirming a person's or entity's identity with the Social Security Administration or the Internal Revenue Service.
- (7) Ensuring that the person or entity is eligible for the covered program and that the level of benefits provided to it is appropriate.

§ 750.3 Applicability.

This part applies to the following housing assistance programs contained in Chapters VIII and IX of this title:

- (a) *Part 880*, Section 8 Housing Assistance Payments Program for New Construction.
- (b) *Part 881*, Section 8 Housing Assistance Payments Program for Substantial Rehabilitation.
- (c) *Part 882*, Section 8 Housing Assistance Payments Program for

Housing Certificates and Moderate Rehabilitation.

(d) *Part 883*, Section 8 Housing Assistance Payments Program for State Housing Agencies.

(e) *Part 884*, Section 8 Housing Assistance Payments Program, New Construction Set-aside for Section 515 Rural Rental Housing Projects.

(f) *Part 885*, Loans for Housing for the Elderly or Handicapped.

(g) *Part 886*, Section 8 Housing Assistance Payments Program—Special Allocations (Subpart A, Loan Management, and Subpart C, Property Disposition).

(h) *Part 887*, Housing Vouchers.

(i) *Part 900*, Section 23 Housing Assistance Payments Program—New Construction and Substantial Rehabilitation.

(j) *Part 904*, Low Rent Housing Homeownership Opportunities.

(k) *Part 905*, Indian Housing.

(l) *Part 960*, Admission to, and Occupancy of, Public Housing.

§ 750.5 Definitions.

As used in this part:

Applicant means an individual applicant and an entity applicant.

Employer Identification Number (EIN) means the taxpayer identifying number of an individual, trust, estate, partnership, association, company, or corporation that is assigned pursuant to section 6011(b) of the Internal Revenue Code of 1986, or corresponding provisions of prior law, or pursuant to section 6109 of the Code. The EIN has nine digits separated by a hyphen, as follows: 00-0000000.

Entity applicant means a partnership, corporation, or any other association or entity, either non-profit or for-profit, that seeks to participate as a private owner in any of the programs contained in 24 CFR Part 880, 881, 884, 885, or 886. Entity applicant does not include a public entity, such as a PHA or a State Housing Finance Agency.

HUD or Department means the United States Department of Housing and Urban Development.

Individual applicant has the following meaning for the programs referred to in § 750.3:

- (a) *Parts 880, 881, 884, 885, and 886:* An applicant for assistance under the covered program, and an individual who seeks to participate in the covered program as a private owner.
- (b) *Parts 882, 883, and 887:* An applicant for assistance or participation, as appropriate, under the covered program.
- (c) *Part 900:* A family seeking assistance under the program.

(d) *Part 904:* A prospective homebuyer.

(e) *Part 905:* A prospective tenant or homebuyer under the program.

(f) *Part 960:* A prospective tenant.

Participant has the following meaning for the programs referred to in § 750.3.

(a) *Parts 880, 881, 882, 883, 884, 886, 887, and 900:* A family receiving assistance under the covered program.

(b) *Part 904:* A homebuyer under the program.

(c) *Part 905:* A tenant or homebuyer under the program.

(d) *Part 960:* A tenant under the program.

PHA means any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) that is authorized to engage or assist in the development or operation of housing for lower income families under 24 CFR Chapters VIII or IX. The term includes Indian Housing Authorities.

Processing entity means the person or entity that is responsible for making eligibility determinations and any regularly scheduled income reexaminations under any of the programs referred to in § 750.3.

Social security number (SSN) means the number that is assigned to a person by the Social Security Administration of the Department of Health and Human Services, and that identifies the record of the person's earnings that are reported to the Administration. The SSN has nine digits separated by hyphens, as follows: 000-00-0000; it does not include a number with a letter as a suffix that is used to identify an auxiliary beneficiary under the Social Security System.

Subpart B—Disclosure of Social Security and Employer Identification Numbers

§ 750.10 Disclosure of social security and Employer Identification Numbers.

(a) *Required disclosure: individual applicants, participants, and certain officials of entity applicants.* (1) The following individuals must disclose the complete and accurate social security number(s) that have been assigned to them:

(i) Each individual applicant under a program referred to in § 750.3, including each member of the household of the applicant (other than a member of the household of an applicant who seeks to participate as a private owner in the covered program).

(ii) Each participant in a program referred to in § 750.3 including each member of the participant's household.

(iii) Each officer, director, principal stockholder (as defined in HUD administrative instructions), or other official of an entity applicant under a program referred to in § 750.3 as HUD may specify in administrative instructions.

(2) The requirements of paragraph (a)(1) of this section do not apply to any person who:

- (i) Is under the age of six; or
- (ii) Has not been assigned an SSN.

(b) *Required disclosure: entity applicants.*—Each entity applicant under a program referred to in § 750.3 must disclose the complete and accurate Employer Identification number(s) that have been assigned to it.

(c) *Disclosure: to whom and when.*—

(1) *Disclosure to the processing entity.*—The disclosure of SSNs (as provided by paragraph (a) of this section) and EINs (as provided by paragraph (b) of this section) must be made to the processing entity.

(2) *Disclosure by applicants.*—Applicants must make the disclosure referred to in paragraph (a) or (b) of this section (as appropriate), when their eligibility under a program referred to in § 750.3 is being determined.

(3) *Initial disclosure by those who were participants before [insert the effective date of this rule].* If the participant's initial eligibility for a program referred to in § 750.3 was initiated before [insert the effective date of this rule], the disclosure referred to in paragraph (a) of this section must be made at the next regularly scheduled income reexamination.

(4) *Subsequent disclosure by participants who have made an initial disclosure under this section.*—Once a participant has made the initial disclosure referred to in paragraph (c)(2) (as an applicant) or paragraph (c)(3) (as a preexisting participant) of this section, subsequent disclosures are not required, unless one of the following circumstances has occurred since the participant's eligibility under the program was determined, or since the last regularly scheduled reexamination of income (whichever is later), in which case the participant must make the disclosure required by (c)(5) of this section.

(i) There has been a change in the composition of the participant's family.

(ii) Any member of the participant's household has been assigned a SSN for the first time (including any member who is six years of age and has been assigned a SSN, as required by Section 6109(e) of the Internal Revenue Code of 1986).

(iii) Any member of the participant's household has obtained a previously undisclosed SSN card.

(iv) Such other circumstances as HUD (or in the case of the public housing program, or the Section 8 Certificate, Voucher, or Moderate Rehabilitation program, the PHA) may prescribe in administrative instructions.

(5)(i) In the circumstance described in paragraph (c)(4)(i) of this section, the participant must make the disclosure referred to in paragraph (a) of this section.

(ii) In the circumstances described in paragraph (c)(4)(ii) or (iii) of this section, only the household member or members who meet the requirements of either of those paragraphs must make the disclosure referred to in paragraph (a) of this section.

(d) *Required documentation.*—(1) *Social security number(s).* The documentation necessary to verify the SSN of an individual who is required to disclose his or her SSN under paragraph (a) of this section is a valid SSN card issued by the Social Security Administration of the Department of Health and Human Services, or such other evidence of the SSN, including one or more alternate documents or such other substantiation of the SSN, as HUD (or in the case of the public housing program, or the Section 8 Certificate, Voucher, or Moderate Rehabilitation program, the PHA) may prescribe in administrative instructions. An example of such evidence may include a State driver's license that displays the SSN of the individual.

(2) *Employer identification number(s).* The documentation necessary to verify the EIN of an entity applicant that is required to disclose its EIN under paragraph (b) of this section is the official, written communication from the IRS assigning the EIN to the entity applicant, or such other evidence of the EIN, including such substantiation, as HUD may prescribe in administrative instructions.

(3) Any individual who is not required to disclose a SSN because he or she has not been assigned a SSN, as provided by paragraph (a)(2)(ii) of this section, must certify that he or she has not been assigned a SSN.

(4) Except as provided by paragraph (e) of this section, failure to meet the documentation or certification requirements of this paragraph (d) constitutes grounds for denying eligibility of an applicant, or terminating the assistance or the tenancy (or both) of a participant, under any program referred to in § 750.3, as provided by § 750.15.

(e) *Special documentation rules for individual applicants and participants.*

(1)(i) If an individual applicant (other than an applicant who seeks to participate as a private owner) or a participant (or any household member of the individual applicant or participant) who is required to disclose a SSN under paragraph (a) or (c) of this section cannot produce evidence of the SSN that is acceptable under paragraph (d)(1) of this section, the individual must provide his or her SSN and certify that the number provided has been assigned to the person, but that he or she cannot produce evidence to verify the number.

(ii) If an individual referred to in paragraph (e)(1)(i) of this section is under the age of 18 years, the required certification must be made by his or her parent or guardian, or in the case of the public housing program, or the Section 8 Certificate, Voucher, or Moderate Rehabilitation program, by the individual or any other person, as the PHA deems appropriate.

(2) The processing entity must accept the certification referred to in paragraph (e)(1) of this section, and continue process the individual applicant's or participant's eligibility to participate in the program.

(3) *Individual applicants.* If the processing entity determines that the individual applicant is otherwise eligible for assistance, the applicant may not become a participant, in a covered program unless it presents to the processing entity the documentation required under paragraph (d)(1) of this section, and within the time period specified in paragraph (e)(5) of this section. During such period, the applicant will retain the position that it occupied in the program at the time the determination of eligibility was made, including (as appropriate) its place on any waiting list maintained for the covered program.

(4) *Participants.* If the processing entity determines that the participant otherwise continues to be eligible under the covered program, the participant will continue to participate in the program provided that it presents to the processing entity the documentation required under paragraph (d)(1) of this section, within the time period specified in paragraph (e)(5) of this section.

(5) An individual applicant or a participant under this paragraph (e) must provide the processing entity with the documentation required under paragraph (d)(1) of this section within 60 calendar days of the certification in paragraph (e)(1) of this section. Failure to do so constitutes grounds for denying eligibility to an individual applicant, or

terminating the assistance or tenancy (or both) of a participant, under any program referred to in § 750.3, as provided by § 750.15.

(f) *Rejection of documentation.* (1) The processing entity may reject evidence referred to in paragraph (d)(1) or (2) of this section, or a certification provided under paragraph (e)(1) of this section, only for such reasons as HUD (or in the case of the public housing program, or the Section 8 Certificate, Voucher, or Moderate Rehabilitation program, the PHA) may prescribe in administrative instructions.

(2) Rejection of documentation under paragraph (f)(1) of this section will, as provided in HUD (or in the case of the public housing program, or the Section 8 Certificate, Voucher, or Moderate Rehabilitation program, PHA) administrative instructions, constitute grounds for denying eligibility to an applicant, or terminating assistance or tenancy (or both) for a participant, under any program referred to in § 750.3, as provided by § 750.15.

(g) *Information on SSNs and EINs.* (1) Information regarding SSNs and SSN cards may be obtained by contacting the local Social Security Office or consulting the Social Security Administration regulations at 20 CFR Chapter III, (see particularly, Part 422).

(2) Information regarding EINs may be obtained by contacting the local office of the Internal Revenue Service or consulting the appropriate regulations for the Internal Revenue Service.

(h) *Form and manner of certifications.* The certifications referred to in paragraphs (d)(3) and (e)(1)(i) of this section must be in the form and manner that HUD (or in the case of the public housing program, or the Section 8 Certificate, Voucher, or Moderate Rehabilitation program, the PHA) prescribes.

§ 750.15 Penalties for failing to disclose social security and Employer Identification numbers.

(a) *Denial of eligibility: individual applicants.* The processing entity must deny the eligibility of an individual applicant under any of the programs referred to in § 750.3, if the individual applicant, or any member of the individual applicant's household, does not meet the SSN disclosure requirements specified in § 750.10.

(b) *Denial of eligibility: entity applicants.* The processing entity must deny the eligibility of an entity applicant under any of the programs referred to in § 750.3, if:

(1) The entity applicant does not meet

the EIN disclosure requirements specified in § 750.10; or

(2) Any of the officials of the entity applicant referred to in § 750.10(a)(1)(iii) does not meet the SSN disclosure requirements specified in § 750.10.

(c) *Termination of assistance or tenancy: participants.* The processing entity must terminate the assistance, and (as appropriate) the tenancy of a participant, under any of the programs referred to in § 750.3 if the participant, or any member of the participant's household, does not meet the SSN disclosure requirements specified in § 750.10.

(d) *Cross reference.* Individuals should consult the regulations and administrative instructions for the programs referred to in § 750.3 for further information on the use of SSNs and EINs in determining the eligibility of applicants, and the continued eligibility of participants.

§ 750.20 Limitations on the collection, maintenance, use, and dissemination of social security and Employer Identification Numbers, and on information derived therefrom.

The collection, maintenance, use, and dissemination of SSNs and EINs obtained pursuant to this part, and of any information derived therefrom, must be conducted, to the extent applicable, in compliance with the Privacy Act (5 U.S.C. 552a) and all other provisions of Federal, State, and local law.

Subpart C—Implementation

§ 750.25 Implementation.

(a) *Applicants.* The provisions of this part, and the conforming changes made with respect to the disclosure and use of SSNs and EINs for applicants in the regulations governing the programs referred to in § 750.3, apply to all applicant eligibility determinations initiated on or after [insert effective date of this rule].

(b) *Participants.* The provisions of this part, and the conforming changes made with respect to the disclosure and use of SSNs for participants in the regulations governing the programs referred to in § 750.3, apply to:

(1) Each regularly scheduled reexamination of the income of a participant initiated by the processing entity on or after [insert effective date of this rule]; and

(2) Each such reexamination conducted thereafter.

PART 813—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS AND RELATED PROGRAMS

65. The authority citation for Part 813 would be revised to read as follows:

Authority: Secs. 3, 5(b), 8, 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f, 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

66. In § 813.109, paragraph (a) would be revised to read as follows:

§ 813.109 Initial determination, verification, and reexamination of family income and composition.

(a) *Responsibility for initial determination and reexamination.* The owner or PHA shall be responsible for determination of eligibility for admission, for determination of Annual Income, Adjusted Income and Total Tenant Payment, and for reexamination of family income and composition at least annually, as provided in pertinent program regulations and handbooks (see, e.g., 24 CFR Part 750: Part 880, Subpart F; Part 881, Subpart F; Part 882, Subparts B and E; Part 883, Subpart G; Part 884, Subpart B; Part 886, Subpart A; and Part 886, Subpart C. For purposes of this part, the provisions of Subpart F of Part 880 or 881, as appropriate, shall apply to projects developed under Part 885). As used in this Part, the "effective date" of an examination or reexamination refers to:

(1) In the case of an examination for admission, the effective date of initial occupancy, and

(2) In the case of a reexamination of an existing tenant, the effective date of the redetermined Total Tenant Payment.

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

67. The authority citation for 24 CFR Part 880 would be revised to read as follows:

Authority: Secs. 3, 5, 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

68. In § 880.305, paragraph (i) would be revised to read as follows:

§ 880.305 Contents of preliminary proposal.

(i) The identity of the owner, developer, builder, architect,

management agent (and other participants) and the names of officers and principal members, shareholders, investors, and other parties having a substantial interest; the disclosure of social security and Employer Identification Numbers, as provided by 24 CFR Part 750; the previous participation of each in HUD programs on the prescribed HUD form; and a disclosure of any possible conflict of interest by any of these parties which would be a violation of the Agreement, the Contract, or the ACC, if any; and information on the qualifications and experience of the principal participants.

69. In § 880.601, paragraph (b) would be revised to read as follows:

§ 880.601 Responsibilities of owner.

(b) *Management and maintenance.* The owner is responsible for all management functions (including provision of Federal selection preferences in accordance with § 880.613, selection of tenants, obtaining social security numbers from applicants (as provided by 24 CFR Part 750), reexamination of family income, evictions and other terminations of tenancy, and collection of rents) and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions must be performed in compliance with applicable Equal Opportunity requirements.

70. In § 880.603, the introductory text of paragraph (b), and paragraphs (b)(3), (c)(1) and (c)(3), would be revised to read as follows:

§ 880.603 Selection and admission of assisted tenants.

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for determining whether the applicant is eligible, in accordance with Parts 812 and 813 of this chapter, and Part 750 of Chapter VII. The owner is also responsible for the selection of families, including giving a Federal selection preference in accordance with § 880.613.

(3) If the owner determines that an applicant is ineligible on the basis of income or family composition, or because of a failure to disclose social security numbers (as provided by 24 CFR Part 750), or that the owner is not selecting the applicant for other reasons, the owner will promptly notify the

applicant in writing of the determination and its reasons, and that the applicant has the right to meet with the owner or managing agent in accordance with HUD requirements. Where the owner is a PHA, the applicant may request an informal hearing. If the PHA determines that the applicant is not eligible, the PHA will notify the applicant and inform the applicant that he or she has the right to request HUD review of the PHA's determination. The applicant may also exercise other rights if the applicant believes that he or she is being discriminated against on the basis of race, color, religion, sex, or national origin. The informal review provisions for the denial of a Federal preference under § 880.613 are contained in paragraph (k) of that section.

(4) * * *

(c) *Reexamination of Family income and composition.* (1) *Regular reexaminations.* The owner must reexamine the income and composition of all families at least every 12 months. Upon verification of the information, the owner must make appropriate adjustments in the Total Tenant Payment in accordance with Part 813 of this chapter and determine whether the family's unit size is still appropriate. The owner must adjust Tenant Rent and the Housing Assistant Payment to reflect any change in Total Tenant Payment and must carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition, the owner must require the family to disclose social security numbers, as provided by 24 CFR Part 750.

(3) *Continuation of housing assistance payments.* A family's eligibility for Housing Assistance Payments continues until the Total Tenant Payment equals the Gross Rent. The termination of eligibility at such point will not affect the family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information. Eligibility must be terminated if the family fails to disclose social security numbers, as provided by 24 CFR Part 750.

71. In § 880.607, paragraph (b)(3) would be revised to read as follows:

§ 880.607 Termination of tenancy and modification of lease.

* * * * *

(b) *Entitlement of families to occupancy.*

(3) *Material noncompliance.* Material noncompliance with the lease includes:

(i) One or more substantial violations of the lease; or

(ii) Repeated minor violations of the lease that disrupt the livability of the building; adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related facilities; interfere with the management of the building or have an adverse financial effect on the building.

Failure of the family to timely submit all required information on family income and composition or eligibility factors (including failure to disclose social security numbers, as provided by 24 CFR Part 750 or knowingly providing incomplete or inaccurate information) will constitute a substantial violation of the lease. Nonpayment of rent or any other financial obligation due under the lease (including any portion thereof) beyond any grace period permitted under State law will constitute a substantial violation of the lease. The payment of rent or any other financial obligation due under the lease after the due date but within the grace period permitted under State law will constitute a minor violation.

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

72. The authority citation for 24 CFR Part 881 would be revised to read as follows:

Authority: Secs. 3, 5, 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

73. In § 881.305, paragraph (q) would be revised to read as follows:

§ 881.305 Contents of preliminary proposal.

(q) The identity of the owner, developer, builder, architect (if applicable and identity is known), management agent (and other participants) and the names of officers and principal members, shareholders, investors, and other parties having a substantial interest; the disclosure of social security and Employer Identification numbers, as provided by 24 CFR Part 750; the previous participation of each in HUD programs on the prescribed HUD form; and a disclosure of any possible conflict of interest by any of these parties which

would be a violation of the Agreement, the Contract, or the ACC, if any; and information on the qualifications and experience of the principal participants.

74. In § 881.601, paragraph (b) would be revised to read as follows:

§ 881.601 Responsibilities of owner.

(b) *Management and maintenance.* The owner is responsible for all management functions (including provision of Federal selection preferences in accordance with § 881.613, selection of tenants, obtaining social security numbers from applicants (as provided by 24 CFR Part 750), reexamination of family incomes, evictions and other terminations of tenancy, and collection of rents) and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions must be performed in compliance with applicable Equal Opportunity requirements.

75. In § 881.603, the introductory text of paragraph (b), and paragraphs (b)(3), (c)(1) and (c)(3), would be revised to read as follows:

§ 881.603 Selection and admission of assisted tenants.

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for determining whether the applicant is eligible, in accordance with Parts 812 and 813 of this chapter, and Part 750 of Chapter VII. The owner is also responsible for the selection of families, including giving a Federal selection preference in accordance with § 881.613.

(3) If the owner determines that an applicant is ineligible on the basis of income or family composition, or failure to disclose social security numbers (as provided by 24 CFR Part 750), or that the owner is not selecting the applicant for other reasons, the owner will promptly notify the applicant in writing of the determination and its reasons, and that the applicant has the right to meet with the owner or managing agent in accordance with HUD requirements. Where the owner is a PHA, the applicant may request an informal hearing. If the PHA determines that the applicant is not eligible, the PHA will notify the applicant and inform the applicant that he or she has the right to request HUD review of the PHA's determination. The applicant may also

exercise other rights if the applicant believes that he or she is being discriminated against on the basis of race, color, creed, religion, sex, or national origin. The informal review provisions for the denial of a Federal preference under § 881.613 are contained in paragraph (k) of that section.

(c) *Reexamination of family income and composition.* (1) *Regular reexaminations.* The owner must reexamine the income and composition of all families at least once every 12 months. After consultation with the family and upon verification of the information, the owner must make appropriate adjustments in the Total Tenant Payment in accordance with Part 813 of this chapter and determine whether the family's unit size is still appropriate. The owner must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment and must carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition, the owner must require the family to disclose social security numbers, as provided by 24 CFR Part 750.

(3) *Continuation of housing assistance payments.* A family's eligibility for Housing Assistance Payments continues until the Total Tenant Payment equals the Gross Rent. The termination of eligibility at such point will not affect the family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated, in accordance with HUD requirements, for such reasons as failure to submit requested verification information. Eligibility must be terminated if the family fails to disclose social security numbers, as provided by 24 CFR Part 750.

76. In § 881.607, paragraph (b)(3) would be revised to read as follows:

§ 881.607 Termination of tenancy and modification of lease.

(b) *Entitlement of families to occupancy.*

(3) *Material noncompliance.* Material noncompliance with the lease includes:

- (i) One or more substantial violations of the lease; or
- (ii) Repeated minor violations of the lease that disrupt the livability of the building; adversely affect the health or

safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related facilities; interfere with the management of the building or have an adverse financial effect on the building.

Failure of the family to timely submit all required information on family income and composition or eligibility factors (including failure to disclose social security numbers, as provided by 24 CFR Part 750, or knowingly provided incomplete or inaccurate information) will constitute a substantial violation of the lease. Nonpayment of rent or any other financial obligation due under the lease (including any portion thereof) beyond any grace period permitted under State law will constitute a substantial violation of the lease. The payment of rent or any other financial obligation due under the lease after the due date but within the grace period permitted under State law will constitute a minor violation.

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

77. The authority citation for 24 CFR Part 882 would be revised to read as follows:

Authority: Secs. 3, 5, 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

78. In § 882.116, paragraphs (c) and (m) would be revised to read as follows:

§ 882.116 Responsibilities of the PHA.

(c) Receipt and review of applications for Certificates of Family Participation; provision of a Federal preference in selecting applicants for participation in accordance with § 882.219; verification of family income and other factors relating to eligibility and amount of assistance (including obtaining social security numbers from applicants, as provided by 24 CFR Part 750); and maintenance of a waiting list in accordance with this Part;

(m) Reexamination of Family Income, composition, and extent of medical or child care expenses; redeterminations, as appropriate, of the amount of Total Tenant Payment and amount of housing assistance payment in accordance with Part 813 of this chapter; and obtaining social security numbers from families, as provided by 24 CFR Part 750;

79. In § 882.118, paragraph (a)(1) would be revised to read as follows:

§ 882.118 Obligations of the family.

(a) The family must:

(1) Supply such certification, release, information, or documentation as the PHA or HUD determine to be necessary, including disclosure of social security numbers, (as provided by 24 CFR Part 750), and submissions required for an annual or interim reexamination of family income and composition.

80. In § 882.209, paragraph (a)(2) would be revised to read as follows:

§ 882.209 Selection and participation.

(a) * * *

(2) The PHA must determine whether an applicant for participation:

- (i) Qualifies as a family;
- (ii) Has disclosed social security numbers, as provided by 24 CFR Part 750; and
- (iii) Is income-eligible.

81. In § 882.210, paragraph (e) would be revised to read as follows:

§ 882.210 Grounds for denial or termination of assistance.

(e) The PHA must terminate housing assistance payments for any family that fails to disclose social security numbers, as provided by 24 CFR Part 750.

82. In § 882.212, paragraphs (a) and (c) would be revised to read as follows:

§ 882.212 Reexamination of family income and composition.

(a) *Regular reexaminations.* The PHA must reexamine the income and composition of all families at least once every 12 months. After consultation with the family and upon verification of the information, the PHA must make appropriate adjustments in the Total Tenant Payment in accordance with Part 813 of this chapter and determine whether the family's unit size is still appropriate (see § 882.213). The PHA must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment. At the time of the annual reexamination of family income and composition, the PHA must require the family to disclose social security numbers, as provided by 24 CFR Part 750.

(c) *Continuation of housing assistance payments.* A family's eligibility for Housing Assistance Payments shall continue until the Total Tenant payment equals the Gross Rent. The termination of eligibility at such point will not affect the family's other

rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information. Eligibility must be terminated if the family fails to disclose social security numbers, as provided by 24 CFR Part 750.

83. In § 882.514, paragraph (a)(1) would be revised to read as follows:

§ 882.514 Family participation.

(a) *Initial determination of family eligibility.* (1) The PHA is responsible for receipt and review of applications, and determination of family eligibility for participation in accordance with HUD regulations (see Parts 812 and 813, and 24 CFR Part 750). The PHA is responsible for verifying the sources and amount of the family's income and other information necessary for determining income eligibility and the amount of the assistance payments.

84. In § 882.515, paragraphs (a) and (c) would be revised to read as follows:

§ 882.515 Reexamination of family income and composition.

(a) *Regular reexaminations.* The PHA must reexamine the income and composition of all families at least once every 12 months. After consultation with the family and upon verification of the information, the PHA must make appropriate adjustments in the Total Tenant Payment in accordance with Part 813 of this chapter and determine whether the family's unit size is still appropriate (see § 882.213). The PHA must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment. At the time of the annual reexamination of family income and composition, the PHA must require the family to disclose social security numbers, as provided by 24 CFR Part 750.

(c) *Continuation of housing assistance payments.* A family's eligibility for Housing Assistance Payments shall continue until the Total Tenant Payment equals the Gross Rent. The termination of eligibility at such point will not affect the family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated in accordance with

HUD requirements for such reasons as failure to submit requested verification information. Eligibility must be terminated if the family fails to disclose social security numbers, as provided by 24 CFR Part 750.

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

85. The authority citation for 24 CFR Part 883 would be revised to read as follows:

Authority: Secs. 3, 5, 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

86. In § 883.403, paragraph (c)(1) would be revised to read as follows:

§ 883.403 HFA submission of proposals.

(c) *Proposal contents.* * * *

(1) The identity of the owner, developer, builder, architect, management agent (and other participants) and the names of officers and principal members, shareholders, investors, and others parties having a substantial interest in the project. This must include the previous participation of each person in HUD programs on the prescribed HUD form; a disclosure of any possible conflict of interest by any of these parties which would be a violation of the Agreement, the Contract, or the ACC; the disclosure of social security and Employer Identification Numbers, as provided by 24 CFR Part 750; and information on the qualifications and experience of the principal participants;

87. In § 883.702, paragraph (b) would be revised to read as follows:

§ 883.702 Responsibilities of owner.

(b) *Management and maintenance.* The owner is responsible for all management functions (including provision of Federal selection preferences in accordance with § 883.714, selection of tenants, obtaining social security numbers from families (as provided by 24 CFR Part 750), reexamination of family income, evictions and other terminations of tenancy, and collection of rents) and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions must be performed in compliance with applicable Equal Opportunity requirements.

88. In § 883.704, the introductory text of paragraph (b), and paragraphs (b)(3), (c)(1) and (c)(3), would be revised to read as follows:

§ 883.704 Selection and admission of tenants.

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for determining whether the applicant is eligible, in accordance with Parts 812 and 813 of this chapter, and Part 750 of Chapter VII. The owner is also responsible for the selection of families, including giving a Federal selection preference in accordance with § 883.714.

(3) If the owner determines that an applicant is ineligible on the basis of income or family composition, or failure to disclose social security numbers (as provided by 24 CFR Part 750), or that the owner is not selecting the applicant for other reasons, the owner will promptly notify the applicant in writing of the determination and its reasons, and that the applicant has the right to meet with the owner or managing agent in accordance with HUD requirements. Where the owner is a PHA, the applicant may request an informal hearing. If the PHA determines that the applicant is not eligible, the PHA will notify the applicant and inform the applicant that he or she has the right to request a review by the Agency and HUD of the PHA's determination. The applicant may also exercise other rights if the applicant believes that he or she is being discriminated against on the basis of race, color, religion, sex, or national origin. The informal review provisions for the denial of a Federal preference under § 883.714 are contained in paragraph (k) of that section.

(c) *Reexamination of the family income and composition.* (1) *Regular reexaminations.* The owner must reexamine the income and composition of all families at least once every 12 months. After consultation with the family and upon verification of the information, the owner must make appropriate adjustments in the Total Tenant Payment in accordance with Part 813 of this chapter and determine whether the family's unit size is still appropriate. The owner must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment and must carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition, the

owner must require the family to disclose social security numbers, as provided by 24 CFR Part 750.

(3) *Continuation of housing assistance payments.* A family's eligibility for Housing Assistance Payments continues until the Total Tenant Payment equals the Gross Rent. The termination of eligibility at such point will not affect the family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated, in accordance with HUD requirements, for such reasons as failure to submit requested verification information. Eligibility must be terminated if the family fails to disclose social security numbers, as provided by 24 CFR Part 750.

89. In § 883.708, paragraph (b)(3) would be revised to read as follows:

§ 883.708 Termination of tenancy and modification of lease.

(b) *Entitlement of families to occupancy*

(3) *Material noncompliance.* Material noncompliance with the lease includes:

(i) One or more substantial violations of the lease; or

(ii) Repeated minor violations of the lease that disrupt the livability of the building, adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related facilities; interfere with the management of the building; or have an adverse financial effect on the building or project. Failure of the family to timely submit all required information on family income and composition or eligibility factors (including failure to disclose social security numbers, as provided by 24 CFR Part 750) or knowingly providing incomplete or inaccurate information will constitute a substantial violation of the lease. Nonpayment of rent or any other financial obligation due under the lease (including any portion thereof) beyond any grace period permitted under State law will constitute a substantial violation of the lease. The payment of rent or any other financial obligation due under the lease after the due date but within the grace period permitted under State law will constitute a minor violation.

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

90. The authority citation for Part 884 would be revised to read as follows:

Authority: Secs. 3, 5, 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

91. In § 884.118, paragraphs (a) (3) and (7) would be revised to read as follows:

§ 884.118 Responsibilities of the owner.

(a) *

(3) Performance of all management functions, including the taking of applications; selection of families, including verification of income, provision of Federal selection preferences in accordance with § 884.226, obtaining social security numbers from applicants (as provided by 24 CFR Part 750), and other pertinent requirements; and determination of eligibility and amount of tenant rent in accordance with HUD-established schedules and criteria.

(7) Reexamination of family income and composition; redetermination, as appropriate, of the amount of Tenant Rent and the amount of housing assistance payment in accordance with Part 813; and obtaining social security numbers from participants, as provided by 24 CFR Part 750.

92. Section § 884.205 would be revised to read as follows:

§ 884.205 Submission of proposal.

When FmHA intends to use a portion of its set-aside for a project under these subparts, it must submit to the HUD field office a Proposal for that project on the prescribed FmHA form, including the completed attachments and HUD Previous Participation Certificate form and the Owner's social security and Employer Identification Numbers, as provided by 24 CFR Part 750. Such proposal must be submitted by the FmHA state director with a cover letter stating that Section 8 assistance is desired for the proposed project.

93. Section 884.216 would be revised to read as follows:

§ 884.216 Termination of tenancy.

The Owner is responsible for termination of tenancies, including evictions. However, conditions for payment of housing assistance payments for any resulting vacancies must be as set forth in § 884.106(c)(1).

Failure to disclose social security numbers, as provided by 24 CFR Part 750, will be grounds for termination of tenancy.

94. In § 884.218, paragraphs (a) and (c) would be revised to read as follows:

§ 884.218 Reexamination of family income and composition.

(a) *Regular reexaminations.* The owner must reexamine the income and composition of all families at least once each year. Upon verification of the information, the owner must make appropriate adjustments in the Total Tenant Payment in accordance with Part 813 of this chapter and determine whether the family's unit size is still appropriate. The owner must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment and carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition the owner must require the family to disclose social security numbers, as provided by 24 CFR Part 750.

(c) *Continuation of housing assistance payments.* A family's eligibility for Housing Assistance Payments continues until the Total Tenant Payment equals the Gross Rent, or until the family loses eligibility for continued occupancy under Farmer's Home Administration regulations. Eligibility must be terminated if the family fails to disclose social security numbers, as provided by 24 CFR Part 750.

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

95. The authority citation for Part 885 would continue to read as follows:

Authority: Sec. 202, Housing Act of 1959 (42 U.S.C. 1701g); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

96. In § 885.210, paragraph (b)(1) would be revised to read as follows:

§ 885.210 Contents of applications.

(b) * * *

(1) The name, address, and telephone number of the Borrower and the sponsor (if any), as well as social security and Employer Identification Numbers, as provided by 24 CFR Part 750.

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

97. The authority citation for 24 CFR Part 886 would be revised to read as follows:

Authority: Sections 3, 5, 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

99. In § 886.105, a new paragraph (g) would be added to read as follows:

§ 886.102 Content of application.

(g) The Owner's social security and Employer Identification Numbers, as provided by 24 CFR Part 750.

99. In § 886.119, paragraphs (a)(3) and (7) would be revised to read as follows:

§ 886.119 Responsibilities of owner.

(a) * * *

(3) Performance of all management functions, including the taking of applications; selection of families, verification of income, provision of Federal selection preferences in accordance with § 886.132, obtaining social security numbers from applicants (as provided by 24 CFR Part 750), and other pertinent requirements; and determination of eligibility and amount of Tenant Rent in accordance with Part 813 of this chapter.

(7) Reexamination of family income and composition; redetermination, as appropriate, of the amount of Tenant Rent and the amount of housing assistance payment in accordance with Part 813; collection of rent; and obtaining social security numbers from participants, as provided by 24 CFR Part 750.

100. In § 886.124, paragraphs (a) and (c) would be revised to read as follows:

§ 886.124 Reexamination of family income and composition.

(a) *Regular reexaminations.* The owner must reexamine the income and composition of all families at least once each year. Upon verification of the information, the owner must make appropriate adjustments in the Total Tenant Payment in accordance with Part 813 of this chapter and determine whether the family's unit size is still appropriate. The owner must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment and carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition, the owner must require the family to disclose social security numbers, as provided by 24 CFR Part 750.

(c) *Continuation of housing assistance payments.* A family's eligibility for housing assistance payments will

continue until the Total Tenant Payment equals the Gross Rent. The termination of eligibility will not affect the family's other rights under its lease, not will such termination preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated in accordance with program requirements for such reasons as failure to submit requested verification information. Eligibility must be terminated if the family fails to disclose social security numbers, as provided by 24 CFR Part 750.

101. In § 886.313, a new paragraph (d) would be added, to read as follows:

§ 886.313 Other Federal requirements.

(d) Disclosure of social security and Employer Identification numbers, as provided by 24 CFR Part 750.

102. In § 886.318, paragraphs (a) (3) and (6) would be revised to read as follows:

§ 886.318 Responsibilities of the owner.

(a) * * *

(3) Performance of all management functions, including the taking of applications; selection of families in accordance with the owner's tenant selection factors approved by HUD and the Federal preferences in accordance with § 886.337; obtaining social security numbers from applicants, as provided by 24 CFR Part 750; verification of income and other pertinent requirements; and determination of eligibility and amount of tenant rent in accordance with Part 813 of this chapter;

(6) Reexamination of family income, composition, and extent of exceptional medical or other unusual expenses; redeterminations, as appropriate, of the amount of Tenant Rent and amount of housing assistance payment in accordance with Part 813 of the chapter; and obtaining social security numbers from participants, as provided by 24 CFR Part 750.

103. In § 886.324, paragraphs (a) and (c) would be revised to read as follows:

§ 886.324 Reexamination of family income and composition.

(a) *Regular reexaminations.* The owner must reexamine the income and composition of all families at least once each year. Upon verification of the information, the owner must make appropriate adjustments in the Total Tenant Payment in accordance with Part 813 of this chapter and determine

whether the family's unit size is still appropriate. The owner must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment and carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition, the owner must require the family to disclose social security numbers, as provided by 24 CFR Part 750.

(c) *Continuation of housing assistance payments.* A family's eligibility for housing assistance payments will continue until the Total Tenant Payment equals the Gross Rent. The termination of eligibility at such point will not affect the family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information. Eligibility must be terminated if the family fails to disclose social security numbers, as provided by 24 CFR Part 750.

PART 900—SECTION 23 HOUSING ASSISTANCE PAYMENTS PROGRAM—NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION

104. The authority citation for Part 900 would be revised to read as follows:

Authority: Sec. 10(b), United States Housing Act of 1937 (42 U.S.C. 1410(b)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

105. In section 900.103, paragraphs (i) and (j) would be revised to read as follows:

§ 900.103 Basic policies.

(i) *Responsibilities of the LHA.* The LHA is responsible for determining family eligibility for assistance in accordance with provisions of Parts 912 and 913, and family eligibility and continuing eligibility for assistance in accordance with 24 CFR Part 750; determining the amount of adjusted income, the amount of rent payable by the family, and housing assistance payments in accordance with Part 913; issuing Certificates of Family Participation to eligible families; notifying families determined eligible; approving owner-family leases; making housing assistance payments on behalf of eligible families; reexamining family eligibility at least annually; inspecting units before leasing, and at least annually thereafter, to determine that

the units are maintained in decent, safe and sanitary condition (failure to do so shall constitute a Substantial Default by the LHA under the Annual Contributions Contract); authorizing evictions; and complying with equal opportunity requirements. The LHA must provide advice and guidance to eligible families in finding suitable housing, including advice and guidance to families experiencing discrimination, in an affirmative manner to further the policies of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968 and Executive Order 11063.

(j) *Responsibilities of the family.* A family receiving housing assistance under this program is responsible for fulfilling all its obligations under both the lease with the owner and the Certificate of Family Participation issued to it by the LHA; for cooperating with reexamination requirements; and for disclosing social security numbers at the time that the family's eligibility is determined and at the time of any regularly scheduled income requirement, as provided by 24 CFR Part 750.

106. In § 900.202, paragraphs (d)(3) and (f)(2)(iii) would be revised to read as follows:

§ 900.202 Project operation.

(d) *LHA determination of family eligibility and lease approval.* * * *

(3) That the request cannot be approved because the family is not eligible (including ineligibility caused by the family's failure to disclose social security numbers, as provided by 24 CFR Part 750), or the dwelling unit or the proposed lease does not meet program requirements.

(f) *Continued family participation.* * * *

(2) * * *
(iii) The LHA determines that the family continues to be eligible for such assistance (including continued eligibility under 24 CFR Part 750).

PART 904—LOW RENT HOUSING HOMEOWNERSHIP OPPORTUNITIES

107. The authority citation for Part 904 would be revised to read as follows:

Authority: United States Housing Act of 1937 (42 U.S.C. 1437-1437(q); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

108. In § 904.104, paragraph (c) would be revised to read as follows:

§ 904.104 Eligibility and selection of homebuyers.

(c) *Determination of eligibility and preparation of list.* The LHA, without participation of a recommending committee (see paragraph (e)(1) of this section), must determine the eligibility of each applicant family in respect to the income limits for the development and the disclosure of social security numbers (as provided by 24 CFR Part 750), and must then assign each eligible applicant its appropriate place on a waiting list for the development, in sequence based upon the date of the application, suitable type or size of unit, qualification for a Federal preference in accordance with § 904.122, and factors affecting preference or priority established by the LHA's regulations. Notwithstanding the fact that the LHA may not be accepting additional applications because of the length of the waiting list, the LHA may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for participation and claims that he or she qualifies for a Federal preference as provided in § 904.122(c)(2), unless the LHA determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of admissions to housing under Turnkey III, that—

(1) There is an adequate pool of applicants who are likely to qualify for a Federal preference and

(2) It is unlikely that, on the basis of the LHA's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for admission before other applicants on the waiting list.

109. In § 904.107, paragraph (m)(1) would be revised to read as follows:

§ 904.107 [Amended]

(m) *Termination by LHA.* (1) If the homebuyer breaches the Homebuyers Ownership Opportunity Agreement by failure to make the required monthly payment within ten days after its due date, by misrepresentation or withholding of information in applying for admission or in connection with any subsequent reexamination of income and family composition, or by failure to comply with any of the other homebuyer obligations under the Agreement, the LHA may terminate the Agreement. If a homebuyer fails to disclose social

security numbers (as provided by 24 CFR Part 750) in applying for admission or in connection with any subsequent reexamination of income, the LHA must terminate the Agreement and the homebuyer's tenancy, as provided by 24 CFR Part 750. No termination under this paragraph may occur less than 30 days after the LHA gives the homebuyer notice of its intent to do so in accordance with paragraph (m)(3) of this section.

* * *

PART 905—INDIAN HOUSING

110. The authority citation for 24 CFR Part 905 would be revised to read as follows:

Authority: Secs. 3, 4, 5, 6, 9, 11, 12, 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437b, 1437c, 1437d, 1437g, 1437i, 1437j, 1437n); sec. 7(b) Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

111. In § 905.302, a new paragraph (b)(2)(v) would be added, to read as follows:

§ 905.302 Admission policies.

* * *

(b) *Other admission policies.* * * *

(2) * * *

(v) To achieve compliance with 24 CFR Part 750, which requires applicants and participants to disclose social security numbers at the time eligibility is determined and subsequently at regularly scheduled income reexaminations.

112. In § 905.406, paragraph (a) would be revised to read as follows:

§ 905.406 Selection of MH homebuyers.

(a) *Admission policies.* In adopting admission regulations in accordance with § 905.302, an IHA may establish admission policies for MH Projects which are different from those for Rental or Turnkey III Projects of the IHA, including different income and

assets limits. All admissions are subject to 24 CFR Part 750.

* * *

PART 913—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE PUBLIC HOUSING AND INDIAN HOUSING PROGRAMS

113. The authority citation for Part 913 would be revised to read as follows:

Authority: Secs. 3, 6, 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437d, 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

114. In § 913.109, paragraph (a) would be revised to read as follows:

§ 913.109 Initial determination, verification, and reexamination of family income and composition.

(a) *Responsibility for initial determination and reexamination.* The PHA is responsible for determination of eligibility for admission; for determination of Annual Income, Adjusted Income and Total Tenant Payment; and for reexamination of family income and composition at least annually, as provided in pertinent program regulations and handbooks (Part 960, Subpart B, and 24 CFR Part 750). As used in this part, the "effective date" of an examination or reexamination refers to:

(1) In the case of an examination for admission, the effective date of initial occupancy, and

(2) In the case of a reexamination of an existing tenant, the effective date of the redetermined Total Tenant Payment.

* * *

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

115. The authority citation for 24 CFR Part 960 would be revised to read as follows:

Authority: Secs. 3, 5, 6, 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437d, 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

116. In § 960.204, paragraph (c)(4) would be revised to read as follows:

§ 960.204 PHA Tenant selection policies.

* * *

(c) * * *

(4) Be in compliance with State, local and Federal laws and regulations, including the nondiscrimination requirements of Title VI of the Civil Rights Act of 1964, the provisions of the ACC, and 24 CFR Part 750.

* * *

117. In § 960.206, paragraph (a) would be revised to read as follows:

§ 960.206 Verification procedures.

(a) *General.* Adequate procedures must be developed to obtain and verify information with respect to each applicant. (See Part 913 of this chapter and 24 CFR Part 750). Information relative to the acceptance or rejection of an applicant or the grant or denial of a Federal preference under § 960.211, must be documented and placed in the applicant's file.

* * *

118. In § 960.209, paragraph (a) would be revised to read as follows:

§ 960.209 Reexamination of family income and composition.

(a) *Regular reexaminations.* The PHA must reexamine the income and composition of all tenant families at least once every 12 months and determine whether the family's unit size is still appropriate. After consultation with the family and upon verification of the information, the PHA must make appropriate adjustments in the Total Tenant Payment and Tenant Rent in accordance with Part 913 of this chapter. At the time of the annual reexamination of family income and composition, the PHA must require the family to disclose social security numbers, as provided by 24 CFR Part 750.

* * *

Dated: September 30, 1988.

Samuel R. Pierce,
Secretary.

[FR Doc. 88-23786 Filed 10-14-88; 8:45 am]

BILLING CODE 4210-32-M

[The page contains extremely faint, illegible text, likely bleed-through from the reverse side. The text is organized into three columns. A large, dark, handwritten mark, possibly the number '9', is visible in the upper right quadrant of the page.]

Environmental Protection Agency

Monday
October 17, 1988

Part VII

Environmental Protection Agency

40 CFR Parts 51 and 52

Prevention of Significant Deterioration
for Nitrogen Oxides; Final Rule

ENVIRONMENTAL PROTECTION
AGENCY

40 CFR Parts 51 and 52

(AD-FRL-3436-1)

Prevention of Significant Deterioration
for Nitrogen OxidesAGENCY: Environmental Protection
Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating regulations under section 166 of the Clean Air Act (ACT) to prevent significant deterioration of air quality due to emission of nitrogen oxides. These regulations establish the maximum increase in ambient nitrogen dioxide concentrations allowed in an area above the baseline concentration; these maximum allowable increases are called increments. Increments for nitrogen dioxide were proposed in the Federal Register on February 8, 1988 (53 FR 3698). Today's action promulgates these increments for nitrogen dioxide. The intended effect of these regulations is to require all applicants for major new stationary sources and major modifications emitting nitrogen oxides to account for and, if necessary, restrict emissions so as not to cause or contribute to exceedances of the increments established today.

DATES: The revision to 40 CFR Part 51 will become effective October 17, 1989. The revisions to 40 CFR Part 52 will become effective November 19, 1990.

ADDRESSES: A docket, number A-87-16, containing information considered by EPA in the development of the promulgated regulations is available for public inspection between 8:00 a.m. and 4:00 p.m., weekdays, at EPA's Central Docket Section (LE-131), WIC Building, South Conference Center, Room 4, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Eric Noble at Mail Drop 15, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5362 (FTS 629-5362).

SUPPLEMENTARY INFORMATION: The contents of today's preamble are provided in the following outline:

I. Summary of the Regulation

II. Discussion of the Regulations

- A. PSD Increments
- B. Baseline Date
- C. Implementation Date
- D. Grandfathering Issues

III. Major Issues

- A. Pollutant Chosen for Increment
- B. Regulatory Alternatives
- C. Class II Increment
- D. Class I Increment
- E. Mobile Sources
- F. Model Facilities
- G. Air Quality Modeling
- H. Costs
- I. Restrictions on Siting
- J. Ozone
- K. Baseline Date
- L. Emissions Banking
- M. Administration

IV. Administrative

I. Summary of the Regulations

Pollutant to be regulated.....	Nitrogen Dioxide.
Type of regulation.....	Increment.
Area classification scheme.....	Classes I, II, and III.
Increments	Class I, 2.5 $\mu\text{g}/\text{m}^3$.
	Class II, 25 $\mu\text{g}/\text{m}^3$.
	Class III, 50 $\mu\text{g}/\text{m}^3$.
Averaging time	Annual.
Major source baseline date	Feb. 8, 1988.
Trigger Date (for minor source baseline date)	Feb. 8, 1988.
Effective Date (Part 51).....	Oct. 17, 1989.
Effective Date (general) (Part 52)	Nov. 19, 1990.

II. Discussion of the Regulations

On February 8, 1988, the EPA proposed prevention of significant deterioration (PSD) regulations for nitrogen oxides under section 166 of the Act, 42 U.S.C. 7476 (see 53 FR 3698). The term nitrogen oxides refers to a family of compounds of nitrogen and oxygen. The principal nitrogen oxides component present in the atmosphere at any time is nitrogen dioxide. Combustion sources emit mostly nitric oxide, with some nitrogen dioxide. Upon entering the atmosphere, the nitric oxide changes rapidly, mostly to nitrogen dioxide. The conversion process continues, albeit much more slowly, producing nitric acid and nitrate salts. The February 8, 1988 notice proposed to revise 40 CFR Parts 51 and 52 adding increments for nitrogen dioxide to the existing PSD program. Increments establish the maximum allowable increases in ambient concentrations of a pollutant allowed in a PSD area, above applicable baseline concentrations in specified geographic areas, as a result of emissions from both stationary and

mobile sources. After receiving and reviewing public comments on the proposed increment requirements, EPA is today promulgating final nitrogen dioxide increments.

The 40 CFR 51.166 regulations adopted today specify minimum rulemaking requirements for approvable State implementation plan (SIP) revisions. The 40 CFR 52.21 regulations adopted today specify the revisions that will eventually be applied by delegation (or directly by EPA) to areas which have not, within the specified time, submitted SIP revisions to EPA pursuant to today's 40 CFR 51.166 revisions.

The regulations adopted today stem in part from a lawsuit filed by the Sierra Club and others against the EPA Administrator in 1986 (*Sierra Club v. Thomas*, No. C-86-0971 WWS (N.D. CAL.)). In April 1987, the U.S. District Court for the Northern District of California directed the EPA Administrator to conduct a regulatory development program for nitrogen oxides under a specified schedule. The Court's schedule called for the publication of proposed regulations for nitrogen oxides by February 9, 1988, which was accomplished. The Court further directed the Administrator to promulgate final regulations on later than October 9, 1988 (see 658 F. Supp. 165). Today's action satisfies the order of the District Court.

A. PSD Increments

The PSD increments for nitrogen dioxide were developed pursuant to the provisions of section 166 of the Act. Specifically, this section requires the adoption of PSD regulations for nitrogen oxides (as well as for other pollutants) to provide "numerical measures against which permit applications may be evaluated, a framework for stimulating improved control technology, (and) protection of air quality values." Further, section 166 requires that the regulations include "specific measures at least as effective as" the existing increments established by Congress in section 163 of the Act for particulate matter and sulfur dioxide in meeting the goals and purposes of the PSD program.

The section 166 regulations for nitrogen oxides promulgated today are based on an ambient increment requirement for nitrogen dioxide as the numerical measure of significant deterioration in air quality. Nitrogen dioxide was selected as the pollutant for this regulation because it is the pollutant on which the national ambient air quality standards (NAAQS) for nitrogen oxides were based. Since the NAAQS are the measure of air quality, they are

also the most appropriate measure of changes in air quality, including significant deterioration. Nitrogen dioxide was also selected as the pollutant because nitrogen oxides emissions from stationary sources convert to nitrogen dioxide in the atmosphere.

The nitrogen dioxide increments follow the pattern enacted by Congress for the particulate matter and sulfur dioxide increments. These increments establish maximum increases in ambient air concentrations of nitrogen dioxide (expressed in micrograms per cubic meter ($\mu\text{g}/\text{m}^3$)) allowed in a PSD area over a baseline concentration. These increments are applicable to both stationary and mobile sources, and are implemented through a series of permit review requirements that are already in place for major new stationary sources or major modifications, as defined in 40 CFR Parts 51 and 52.

The nitrogen dioxide increment program also includes the three-tiered area classification system established by Congress in section 163 for increments of sulfur dioxide and particulate matter. Class I areas (including certain national parks and wilderness areas) were designated by Congress as areas of special national concern, where the need to prevent significant deterioration in air quality is the greatest. Consequently, the increment levels are most stringent in Class I areas. Class II areas are all areas not specifically designated in the Act as Class I areas. The increments of Class II areas are less stringent than the Class I increments and allow for a moderate degree of emissions growth. Class III areas are areas, originally designated as Class II, that have been redesignated by States where higher levels of industrial development and emissions growth are desired, and are subject to the least stringent increment requirement. There are as yet no Class III areas.

Today's notice establishes nitrogen dioxide increments based on the percentages Congress used to set the increments for sulfur dioxide and particulate matter. For example, the nitrogen dioxide Class I increment is set at $2.5 \mu\text{g}/\text{m}^3$, a level of 2.5 percent of the NAAQS. It is based on the Class I sulfur dioxide increment, which is set at the same percentage (2.5 percent) of the sulfur dioxide NAAQS. Similarly, the Class II increment has been set at $25 \mu\text{g}/\text{m}^3$ and Class III increment has been set at $50 \mu\text{g}/\text{m}^3$. The EPA considers these increments to be "at least as effective as" the existing particulate matter and sulfur dioxide increments in preventing significant deterioration of air quality.

The NAAQS for nitrogen dioxide is expressed in 40 CFR 50.11 in parts per million and in $\mu\text{g}/\text{m}^3$ (i.e., 0.053 ppm or $100 \mu\text{g}/\text{m}^3$). However, for consistency with the sulfur dioxide and particulate matter increments, $\mu\text{g}/\text{m}^3$ will be used throughout this preamble. The regulation incorporating these increments is also expressed in micrograms per cubic meter. It should be noted that these increments, like those for particulate matter and sulfur dioxide, are absolute limits. This means, for example, that a modeled impact of $25.1 \mu\text{g}/\text{m}^3$ for a proposed new source would result in an exceedance of the Class II increment of $25 \mu\text{g}/\text{m}^3$, while a modeled impact of $24.9 \mu\text{g}/\text{m}^3$ would not. In neither case is the result "rounded off" to $25 \mu\text{g}/\text{m}^3$.

The averaging time for the nitrogen dioxide increments is an annual average, based on the averaging period of the NAAQS for nitrogen dioxide. Unlike particulate matter and sulfur dioxide, for which there are both short-term NAAQS and short-term increments, there is no short-term nitrogen dioxide NAAQS. Therefore, there is no comparative basis to establish a short-term nitrogen dioxide increment that is equivalent to short-term sulfur dioxide and particulate matter increments. As a result, only an annual time period has been used in establishing increments for nitrogen dioxide.

In determining what increment levels could be considered "at least as effective as" the particulate matter and sulfur dioxide increments, EPA first looked to the example set by Congress in enacting the increments for particulate matter and sulfur dioxide. Then, EPA considered the ability of these and other alternative increments to stimulate new control technology and balance industrial growth with environmental concerns. In addition, a relative comparison of the known and potential adverse environmental effects of particulate matter and sulfur dioxide (the pollutants for which numerical increments have been established) to nitrogen dioxide was undertaken by EPA. Given the paucity of scientific data, a comprehensive, quantitative profile of these effects for the nitrogen dioxide versus sulfur dioxide and particulate matter increments could not be developed.

The EPA determined that the increments for nitrogen dioxide do provide a framework for stimulating improved control technologies. For new or modified sources seeking to locate in an area that is approaching the increment limit, the increments establish an incentive to apply more stringent

control technologies in order to avoid violating the increment.

The EPA has also determined that the nitrogen dioxide increments adopted today will balance industrial growth with environmental concerns. It is estimated that no industrial source would be prevented from constructing in an area where the full increment is available, with one possible exception (i.e., a major chemical plant in an urban area with adverse meteorological conditions). In fact, EPA estimates most urban areas will be able to accommodate a number of nitrogen oxide emission sources. At the same time, the increments will provide a degree of protection to the environment by providing a mechanism for limiting the deterioration in air quality resulting from emissions of nitrogen oxides in all areas of the country subject to the PSD program.

The increments provide greater protection of air quality in Class I areas than in Class II areas by providing more stringent limits on increases in ambient concentrations of nitrogen dioxide. Beyond the increment requirements, section 165 of the Act gives the Federal land manager (FLM) in charge of specific Class I areas the authority and discretion to require the examination of the impacts of new sources on the air quality related values (AQRV's) associated with those areas. If these impacts are determined to be adverse, the reviewing authority may deny the application unless additional measures are taken to protect those AQRV's, even in instances where the increment is not violated.

The Class I increments established by Congress for particulate matter and sulfur dioxide vary with respect to their relative percentage of the NAAQS. In establishing the Class I increment for nitrogen dioxide, EPA determined that nitrogen dioxide more closely resembles sulfur dioxide than particulate matter in its characteristics and sources of emissions, and, therefore, sulfur dioxide was the model followed in setting these increments. As a result, the nitrogen dioxide increment for Class I areas has been set at the same percentage of the nitrogen dioxide NAAQS as the sulfur dioxide increment is of the sulfur dioxide NAAQS.

The EPA has concluded that the increment is the only one of the ten regulatory alternatives discussed in the 1980 Advanced Notice of Public Rulemaking (45 FR 30099) that currently provides a workable numerical measure and ultimately prevented. The EPA believes that the increment approach will best fulfill the goals of the PSD

program, as well as utilize the expertise already developed by State and local regulatory agencies in implementing increment-based programs for particulate matter and sulfur dioxide. This approach will require applicants for major new stationary sources and major modifications to model the area around the proposed source for increment exceedances. No support has been evidenced at the State level for any measure, other than direct application of the increments, for implementing the section 166 regulations for nitrogen oxides. However, since other methods might be preferable to some States, EPA remains open to other possible implementation approaches, provided that such approach (e.g., emissions density zoning) can be demonstrated to be as effective as direct application of the increments, as required by section 166. The EPA does not plan to issue any guidance on developing such alternatives. Interested States may develop alternatives on their own initiative and submit the proposed approach to EPA for approval.

B. Baseline Date

The term "baseline date," as used here and in the preamble to the proposed regulations, is somewhat of a misnomer, as it encompasses three different dates: (1) The major source baseline date, (2) the minor source baseline date, and (3) the trigger date for the minor source baseline date. The major source baseline date is the date after which construction of any major new or modified stationary source of nitrogen oxides emissions in a PSD area consumes increment. The minor source baseline date is the date after which emissions from all new or modified sources consume (or expand) increment, including emissions from major and minor sources. Once the baseline concentration is set, changes in actual emissions at any source consume (or expand) increment, regardless of whether the emissions changes are a result of construction. The minor source baseline date is the earliest date after a so-called "trigger date" on which a complete application for a major source or major modification is submitted for approval to a reviewing authority.

The date for both the major source baseline date and the trigger date proposed in the *Federal Register* was the date of proposal, February 8, 1988. The EPA has concluded that this date complies with the provisions of the Act while avoiding placing unnecessary administrative complexities on State agencies and permit applicants.

C. Implementation Date

There are two important time periods specified by section 166(b) of the Act that will affect the implementation of the increments for nitrogen dioxide. First, a 1-year time period is required by section 166(b) between the date of promulgation of these PSD section 166 regulations and the effective date of the regulation. Second, section 166(b) of the Act also provides States up to 9 months following the effective date of promulgation of the new regulations to prepare the necessary amendments to SIP's, and an additional 4 months (13 months total) for EPA to review the proposed SIP revisions prior to determining their approvability. Consequently, a period of up to 25 months (12 months from promulgation to the effective date plus 13 months for SIP approval) could elapse between the promulgation of these increments and their implementation.

The actual time which elapses between promulgation and implementation depends on two factors: The mechanism by which the PSD program is implemented in an area; and the action a State or area takes to enable it to implement the program. There are three mechanisms by which the PSD program is implemented. First, State can have its own PSD permitting procedures which have been approved by EPA as meeting the requirements of 40 CFR 51.166; this is termed a SIP-approved program. Second, where a State has failed to submit a PSD program meeting the requirements of 40 CFR 51.166, EPA can, pursuant to 40 CFR 52.21, delegate authority to the State to issue PSD permits in accordance with the Federal PSD regulations in 40 CFR 52.21; this is termed a delegated program. Finally, in a few areas of the country that have neither submitted an approvable program or sought a delegation, and in Indian lands where States lack authority to administer PSD requirements, EPA Regional Offices issue PSD permits directly, under 40 CFR 52.21.

Clearly, for SIP-approved programs, section 166(b) of the Act contemplated a 40 CFR 51.166 rule that would take effect 12 months after promulgation and allow States 9 months after that (21 months after promulgation) to submit revised SIP's incorporating the nitrogen dioxide increments. The EPA was then expected to approve or disapprove the SIP revision within 4 months, so the maximum time anticipated for implementation in SIP-approved areas is 25 months. The EPA will follow this schedule. Each State or area with a SIP-approved PSD program will have until

July 17, 1990, to submit to EPA a SIP revision implementing the nitrogen dioxide increment rule. Revised SIP's may, of course, be submitted earlier, but EPA cannot approve any such revisions until October 17, 1989, the effective date of today's 40 CFR 51.166 revision. If a State with a SIP-approved program fails to submit SIP revisions which incorporate the nitrogen dioxide increment regulations within 21 months, EPA will proceed through rulemaking to create a Federal (but delegable) program for that State which embodies the necessary additional provisions as promulgated in 40 CFR 52.21.

It is evident from Part C of the Act generally, and the detailed schedule in section 166 of the Act in particular, that Congress anticipated that virtually all the PSD programs would be SIP-approved by the time of section 166 rulemaking. Such is, however, not the case; 18 States have delegated PSD programs and EPA still implements the PSD program directly in all or part of two States, as well as in Indian lands.

In proposing this rule, EPA requested comment on the following two implementation date options for States currently lacking SIP-approved PSD programs and for Indian lands:

(1) October 17, 1989, the same effective date as the 40 CFR 51.166 revisions, or

(2) November 19, 1990, the date by which the Act anticipated the program would be implemented.

Upon further consideration, EPA has concluded that the most appropriate and consistent approach to implementing this regulation is to follow the language of section 166 to the greatest extent possible. Specifically, section 166(b) provides up to 21 months from the date of promulgation of section 166 regulations for States to submit SIP revisions to EPA for approval. The EPA believes it appropriate to provide each State an opportunity to develop a SIP-approved program. Therefore, every State will be provided 21 months in which to develop and submit a SIP program for PSD, including the regulations required by today's action. This approach should also minimize differences in implementation dates between the States due to differences in PSD program mechanisms. Therefore, this regulation establishes the general effective date of today's 40 CFR 52.21 revisions as November 19, 1990.

It should be noted, however, that, as events actually unfold over this 25-month period, the revisions to 40 CFR 52.21 regulations may come into effect in some areas at times other than the generally applicable effective date. First,

a State might adopt and submit the necessary SIP revisions (perhaps as part of a comprehensive PSD permitting program) and EPA might approve it, all between the 12-month and 25-month points. In that case, the revisions to 40 CFR 52.21 would not go into effect in that State at all. Second, EPA might advance the general effective date in the case where a State stipulates, in writing, that it does not intend to submit the necessary SIP revisions (thereby rejecting the 21-month SIP development time provided in the Act), and requests that EPA delegate to it (i.e., the State) the administration of the nitrogen dioxide increments program contained in § 52.21. Third, EPA might postpone the generally applicable effective date in the case of a State which submitted the necessary nitrogen dioxide revisions before the 21-month point but had not obtained EPA action on the submission before that effective date. In such a case, the postponement would last for the time it takes EPA to act on the submission. Finally, if an Indian tribe requests, in writing, an earlier effective date, EPA will consider advancing the effective date in accordance with the tribe's wishes. The EPA will make a case-by-case judgment based on all of the circumstances at the time of the request. In no event, however, would EPA make those revisions effective any earlier than the 12-month point.

Although implementation of the nitrogen dioxide increment program may not occur for up to 25 months after promulgation, EPA believes that it is prudent for States to be aware of the nitrogen dioxide increment consumption that is occurring during the interim period between the baseline date (February 8, 1988) and the implementation date. Determining increment consumption during this interim period will minimize the difficulties that would otherwise occur in retroactively determining the amount of increment consumption following actual implementation of the nitrogen dioxide increment regulations. Therefore, EPA urges States to have all permit applications for major new and major modified sources include a nitrogen dioxide increment consumption analysis. In the same vein, it would be appropriate for States to use the result of these analyses: (1) In evaluating BACT recommendations, and (2) to encourage sources which would consume most of, or exceed, an increment to mitigate their impact before construction.

D. Grandfathering Issues

Anticipating that today's amendments to § 52.21 will come into effect at some

time in at least some areas (i.e., not all States will submit approvable SIP revisions within the specified 21-month period), EPA has clarified the applicability of those amendments to projects that have already received permits or filed applications by the time the amendments do take effect. The EPA has added to § 52.21(i) a paragraph that states that the amendments requiring a nitrogen dioxide increment consumption analysis would not apply to any project that has already filed a complete application, including any project that has already received a permit, before the effective date of the amendments. The EPA has added to § 51.166(i) a paragraph that a State-adopted plan may contain a like exemption based on completion of a PSD permit application. A State, of course, may elect to have a more narrow exemption or no exemption at all.

In making a decision on whether to include an exemption in the SIP, States should note that major new and modified sources will consume increment after the baseline date. If, when increment consumption is eventually determined, the analysis indicates that exceedances of the increment are occurring, the State must take corrective action. This could possibly affect the level of control at already-permitted sources. To avoid such situations, States may elect not to include a grandfathering provision in their regulations.

III. Major Issues

The proposed section 166 regulations for nitrogen dioxide increments were published in the *Federal Register* on February 8, 1988 (53 FR 3698). The preamble to the proposed regulations discussed the availability of the Technical Support Document and other reference documents used in the development of these regulations. These documents describe in detail the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal, and copies of the preamble and the Technical Support Document were distributed to interested parties.

To provide interested persons the opportunity for oral presentation concerning the proposed increment regulations, a public hearing was held on March 23, 1988 at Research Triangle Park, North Carolina. The hearing was open to the public and each attendee was given an opportunity to comment on the proposed regulations.

The public comment period was from February 8, 1988 to April 22, 1988. Not counting requests for time extension and duplicate entries, fifty comment letters

were received from industry; Federal, State, and local agencies; trade and regulatory associations and environmental groups. Most of the comment letters contained multiple comments. Each of the major issues raised by commenters is discussed below, along with EPA's consideration of the comments. Related comments made by different commenters are grouped together and responded to in summary form below. A more detailed response to the comments received is available in the docket. The major issues are:

- (A) Pollutant chosen for increment;
- (B) Regulatory alternatives;
- (C) Class II increment;
- (D) Class I increment;
- (E) Mobile sources;
- (F) Model facilities;
- (G) Air quality modeling;
- (H) Costs;
- (I) Restrictions on siting;
- (J) Ozone;
- (K) Baseline date;
- (L) Emissions banking; and
- (M) Administration.

A. Pollutant Chosen for Increment

Two commenters stated that the PSD regulations for nitrogen oxides should not be limited in scope to ambient levels of nitrogen dioxide. These commenters stated that, by focusing on nitrogen dioxide, EPA has essentially excluded any mechanism or effective tool for assessing the impacts that will result from the conversion of nitrogen dioxide to a nitrate salt or nitric acid. Further, the commenters pointed out that EPA's focus on nitrogen dioxide is neither justified nor appropriate because section 166 of the Act speaks of nitrogen oxides. Finally, the commenters asserted that EPA has not justified the selection of nitrogen dioxide with reference to the specific goals and purposes of the PSD program, and that the protection of AQRV's (particularly against acid deposition and visibility impairment) requires the consideration and analysis of the impacts of all nitrogen oxides, not just nitrogen dioxide. The term AQRV refers to items of importance to a Class I area which can be affected by air pollutants. Visibility, water acidity, and specific plants and animals are typical subjects of AQRV analysis. The FLM is responsible for determining AQRV's for each Class I area.

The EPA's selection of nitrogen dioxide as the pollutant targeted by this regulation is consistent with congressional action in establishing sulfur dioxide as the increment for all sulfur compounds. Further, qualitative analyses of the impacts of nitrates (and

other nitrogen-containing compounds) in AQRV's are currently required under section 165(d)(2) as part of the consideration of PSD permit applications affecting, or potentially affecting, Class I areas (40 CFR 51.166(p) and 40 CFR 52.21(p)). The impacts on nitrates can therefore be addressed (albeit in a more qualitative manner): (1) Through the use of section 165 of the Act, which gives FLM's authority to review and comment on permit applications that would adversely affect AQRV's in Class I areas (40 CFR 51.166(p) and 40 CFR 52.21(p)), and (2) in Class II area by soil and vegetation analyses (40 CFR 51.166(o) and 52.21(o)).

One commenter stated that the nitrogen oxides PSD regulations should include a short-term increment, since the short-term effects addressed by the increment are not necessarily the same as those addressed by the annual NAAQS for nitrogen dioxide. This commenter stated that EPA should conduct a comparison of the effects of the nitrogen dioxide increment with the short-term sulfur dioxide increment in order to determine equal effectiveness.

As EPA stated in the preamble to the proposed regulation, there is no comparable basis on which to base a short-term increment for nitrogen dioxide. The use of the annual NAAQS as the basis of the increment is consistent with the approach taken by Congress with sulfur dioxide and particulate matter. Because there currently is no short-term NAAQS for nitrogen dioxide (which would define short-term air quality), there is currently no comparable basis for a short-term nitrogen dioxide increment.

B. Regulatory Alternatives

Several commenters stated that a PSD regulation for nitrogen oxides is unnecessary or should be based on the use of BACT, rather than on an increment approach, because of the current PSD requirement for stringent BACT. While EPA agrees that BACT requirements currently in place for nitrogen oxides certainly affect the amount of emissions at a proposed site, BACT cannot prevent a significant increase in ambient levels of nitrogen dioxide in areas where multiple facilities locate near one another. Further, section 166(c) requires the PSD program for nitrogen oxides to "provide * * * a framework for stimulating improved control technology." Under the increment program, as new sites are permitted they consume available increment. As the available increment is consumed, industry may be compelled to find more effective control measures than

previously existing BACT in order to expand existing operations or to build new facilities, thereby stimulating improved control technology.

The EPA has reviewed other regulatory alternatives, as discussed in the preamble to the proposed rulemaking. The EPA determined, however, that use of BACT alone does not satisfy the requirements of the Act. While BACT is an important regulatory tool in limiting the emissions from single sources, it must (in the long term, and in consideration of the potential impacts of multiple sources) be coupled with an increment or some other regulatory mechanism in areas where emissions are increasing in order to prevent significant deterioration in air quality.

A few commenters suggested that increments should be established on a regional basis, rather than nationwide. There are at least two difficulties with regional increments that led EPA to reject this alternative. First, such increment would be difficult to develop and implement. Appropriate increment levels would have to be developed individually for each region based on air quality values, economic growth rates, and other characteristics of the region. Determining the boundaries of each region would also be difficult.

Second, there is neither precedent nor clear authority in the Act for developing regional increments. Both the provisions of the Act and the history of the development and implementation of the PSD program by Congress and EPA support the conclusion that the increments are intended to be nationwide in scope, rather than regional.

C. Class II Increment

Nearly all facilities affected by today's regulation would be located in Class II areas. Some of these facilities may be located relatively close to a Class I area, but all will have to comply with at least the Class II increment. The level of the Class II increment drew numerous comments.

Several commenters stated that the inclusion of mobile source emissions in the PSD analysis is inappropriate and could, in effect, make the nitrogen dioxide increment more stringent than the particulate matter and sulfur dioxide increments.

The EPA does not agree with these comments for two reasons. First, the requirement that the effect of mobile source emissions on increment consumption to be examined is not applicable only to this nitrogen dioxide increment. Emissions from mobile sources, however, account for a much greater proportion of the ambient

concentration of nitrogen dioxide than for either sulfur dioxide or particulate matter, so it is understandable that the provision may seem new. Nevertheless, this requirement is in the current PSD regulations for sulfur dioxide and particulate matter (see 40 CFR 52.21(o) for provisions relating to area source analyses), and no acceptable rationale for altering the rule was provided.

Second, EPA's analysis indicates that, under some circumstances (e.g., urban areas), the decreasing contribution of mobile sources to nitrogen dioxide concentrations will actually improve nitrogen dioxide air quality (albeit temporarily) as controls on nitrogen oxides emissions from mobile sources result in reductions in mobile source emissions. This decrease in mobile source emissions should effectively expand the nitrogen dioxide increment available for other sources. As a consequence, for at least an estimated 5 to 10 years, the inclusion of mobile sources in the increment analysis for nitrogen dioxide should not make this regulation more stringent or the siting of industrial facilities more difficult, overall, than the existing increments for particulate matter and sulfur dioxide.

Several commenters, while stating that the nitrogen dioxide increment is more stringent than the particulate matter and sulfur dioxide increments, pointed out that congressional acid rain proposals call for nitrogen dioxide reductions that are one-half to one-third the reductions required for sulfur dioxide. This, they felt, suggests that Congress recognizes that sulfur dioxide has a greater environmental impact than nitrogen dioxide. Consequently, they argue that the nitrogen dioxide increment could be set at a level two to three times greater than the sulfur dioxide increments, measured as a percent of the NAAQS.

The EPA disagrees for a number of reasons. First, the acid rain legislation is in the proposal stage at this time. It would not be prudent, or permissible, for an agency to rely on proposed legislation in promulgating regulations. Second, even if the proposals are enacted, they are designed to address air quality and programmatic goals that are different from those addressed by the PSD increment program. The acid rain bills are designed to place limits on the emissions of pollutants that result in a specific environmental problem. Consequently, they may differentiate between pollutants based on various factors (e.g., control technology costs). The PSD program was developed with a different goal. It is intended to protect public health and welfare against actual

or potential adverse effects notwithstanding compliance with the NAAQS; protect and enhance air quality in national parks and other areas of special concern; insure that economic growth will occur in a manner consistent with the preservation of existing clean air resources; assure that emissions from one State will not interfere with the PSD plan of another State; and assure that decisions to increase air pollution are made only after careful evaluation of the consequences and public participation in the decisionmaking process (see section 160 of the Act). Consequently, the fact that Congress may be considering dissimilar control rates for sulfur rates for sulfur dioxide and nitrogen dioxide emissions for acid rain reduction does not imply that the same ratio should be adopted for PSD purposes.

Numerous commenters stated that the increments for nitrogen dioxide should be based on an evaluation of the environmental effects of nitrogen dioxide compared to those effects caused by particulate matter and sulfur dioxide. As indicated above, EPA believes that in adopting section 166, Congress was primarily concerned with preventing significant increases in ambient pollutant concentrations. Nevertheless, in its determination of "at least as effective as," EPA considered a variety of factors. These included the potential for the stimulation of new control technology, the possibility of adverse economic impacts on sources, and the potential or possible adverse effects of the pollutant in question.

When looking at the potential adverse effects of nitrogen dioxide versus sulfur dioxide and particulate matter, EPA undertook two analyses: (1) A comparative assessment of the potential for formation of acid compounds and particulate matter from nitrogen dioxide and sulfur dioxide, and (2) an analysis (which is discussed later in this document) of the potential for the nitrogen dioxide increments to limit an area's ability to attain the ozone NAAQS in areas where higher nitrogen oxides emissions might reduce ozone concentrations.

The comparative analysis was performed by EPA to determine the relative amounts of acidic compounds and particulate matter that could theoretically be generated from comparable concentrations of nitrogen dioxide and sulfur dioxide in the ambient air. It was concluded that, on an air quality basis, the conversion of roughly equivalent fractions of the ambient standards for nitrogen dioxide and sulfur dioxide to acid would

produce comparable amounts of acid. The analysis also showed that comparable amounts of particulate matter would be generated if equivalent fractions of the standards were converted to salts. Thus, when compared to sulfur dioxide on the basis of the formation of either acids or salts (nitrate or sulfate), the nitrogen dioxide Class II increment of $25 \mu\text{g}/\text{m}^3$ was found to be comparable to the sulfur dioxide Class II increment of $20 \mu\text{g}/\text{m}^3$. These analyses have been included in the public docket for this rulemaking.

This analysis did not attempt to assess factors such as pollutant fate, transport, or transformation. Rather, it assumed in each case that all the sulfur dioxide or nitrogen dioxide present would be converted to acid or salts. (Other pollutants such as sulfuric acid, nitric acid, and peroxyacetyl nitrate (PAN) can form from the emitted nitrogen oxides and sulfur dioxide and can coexist in the atmosphere with nitrogen dioxide and sulfur dioxide.) In addition, the analysis was not able to consider possible benefits (e.g., some of the acidic transformation products of nitrogen dioxide may be beneficial to the environment, at lower deposition rates, by stimulating terrestrial plant growth). Given that the uncertainty ranges associated with benefits analysis are too broad to permit their use as a tool to distinguish between comparatively narrow differences in options, EPA determined that it could not comprehensively compare the different effects due to sulfur dioxide and nitrogen dioxide to determine nitrogen dioxide increments "at least as effective as" those for sulfur dioxide.

In the absence of sufficient information as to the relative adverse effects of sulfur dioxide versus nitrogen dioxide, and with the only available comparative results indicating relative equivalence of the sulfur dioxide and nitrogen dioxide increments, EPA believes that it is reasonable to base its evaluation of significant deterioration on the percentages of the NAAQS, as Congress did for sulfur dioxide and particulate matter.

One commenter recommended that, where sources of nitrogen oxides outnumber those of sulfur dioxide, the proposed increment should be expanded to allow for continued economic expansion. On the other hand, another commenter suggested that increments for Class II areas should not be set at levels that specifically provide for industrial expansion, but that industrial expansion should be addressed through the use of Class III area designations.

The Class II nitrogen dioxide increments adopted by EPA followed the approach established by Congress in setting the Class II sulfur dioxide increment level to allow for continued expansion of emissions from sources, but within acceptable limits. Analyses were conducted by EPA to determine the projected impacts on industrial growth that would result from the promulgation of various increments. Based on these analyses, EPA has concluded that the impact on industrial growth will not be significant for a $25 \mu\text{g}/\text{m}^3$ increment. As noted, in instances where States wish to allow higher levels of growth in industry and emissions than permitted under the Class II increments, the PSD program provides procedures for States to designate Class III areas that would have less stringent increment requirements.

Other commenters suggested that setting the increment at 25 percent of the annual NAAQS for nitrogen dioxide is "unfounded, arbitrary, and simplistic;" that the percentages used to establish the increment should be based on the secondary NAAQS for particulate matter, rather than the primary NAAQS; and that the increment should be set at a level equal to the NAAQS.

Section 166 of the Act requires the nitrogen oxides regulations to be "at least as effective as" the sulfur dioxide and particulate matter increments enacted by Congress. As previously discussed, the EPA believes that basing the increments for nitrogen dioxide on the same percentage of the NAAQS as was used for the statutory increments is a reasonable approach to complying with this requirement, because it uses the same method Congress used. When Congress established the increments for particulate matter and sulfur dioxide, it generally calculated them as a percentage of the lower of the primary or secondary NAAQS for each averaging time. In the specific case that one commenter has raised, the annual average particulate matter increments were set by Congress at levels that were 8.3, 31.3, and 61.7 percent of the then annual average secondary NAAQS, which was based on total suspended particulate (TSP). However, as noted in those standards, the annual average secondary NAAQS was "a guide to be used in assessing implementation plans to achieve the 24-hour standard." Since the annual average particulate matter increments were established at levels that were 6.7, 25.3, and 49.3 percent of the then annual average primary NAAQS, it is reasonable to assume that Congress simply ignored the secondary guide.

The EPA, in turn, followed that approach for the nitrogen dioxide increments. Since the primary and secondary nitrogen dioxide NAAQS are the same, in effect the Class II nitrogen dioxide increment is based on 25 percent of either the primary or secondary nitrogen dioxide NAAQS. The EPA does not agree with the suggestion that the increment be set at a level equal to the NAAQS, since that would not provide clean air areas of the country with any of the protection against significant deterioration of air quality that is the stated purpose of the PSD provisions set forth in section 166 of the Act.

D. Class I Increment

The level of the Class I increment will, of course, affect any source that may locate within the boundaries of the Class I area but, more commonly, will affect those sources located in Class II areas which impact ambient nitrogen dioxide levels in a nearby Class I area. The stringency of the Class I increment caused concern primarily to commenters representing industry.

Two commenters stated that the Class I increment did not necessarily have to be set at 2.5 percent of the NAAQS for nitrogen dioxide, since Congress based the particulate matter and sulfur dioxide increments for Class I areas on different percentages of the NAAQS for those pollutants. These commenters suggested that EPA consider the impacts of nitrogen oxides on visibility or vegetation in selecting the size of the Class I increment. Other commenters suggested a higher percentage of the nitrogen dioxide NAAQS for the Class I nitrogen dioxide increment than Congress used for either particulate matter or sulfur dioxide. They believed less stringent increments could be justified because of differences they perceived in the environmental impacts of nitrogen dioxide compared to particulate matter and sulfur dioxide. One commenter recommended a more localized Class I increment, based on the unique AQRV's of the specific Class I area.

The EPA has concluded that the proposed Class I increments are consistent with the requirements of the Act and with previous congressional action in setting increments. In the PSD program, AQRV's are those environmental, social, aesthetic, and economic characteristics of Class I areas that are dependent upon existing ambient pollutant concentrations. Inasmuch as the PSD program is designed to define and to prevent significant deterioration in air quality on a nationwide basis, the increments

themselves do not address the variability in local AQRV's associated with specific Class I areas. Flexibility to address specific AQRV concerns or to grant waivers when AQRV's would not be threatened is provided to the FLM's and EPA during the process of permit review by section 165 of the Act (40 CFR 51.166(p) and 40 CFR 52.21(p)). Congress set low Class I increments for particulate matter and sulfur dioxide, and provided a mechanism in section 165 of the Act for the denial of a PSD permit where these AQRV's are adversely impacted, even when the Class I increment would not be violated. Today's action establishes a similarly stringent Class I increment for nitrogen dioxide using the sulfur dioxide increment established by Congress as a model. Sulfur dioxide, rather than particulate matter, was chosen as a model because, as noted earlier, nitrogen dioxide sources (primarily combustion sources) and emissions characteristics more closely resemble those of sulfur dioxide.

One commenter warned that the proposed Class I increment would constrain the future development of oil and gas reserves, affecting prices and supply. This commenter was also concerned with the impact analysis developed by EPA, thinking that enhanced oil recovery projects will be more prevalent in the future than assumed in the EPA analysis. These projects (e.g., oil shales, tar sands, steam floods for heavy crudes), which will use fuel-burning equipment, are large sources of nitrogen oxides emissions. The most likely sites for these projects are in the Rocky Mountain Region and California, possibly close to Class I areas.

The EPA's analysis of existing sources located near Class I areas indicates that none of these sources would have been seriously constrained by the nitrogen dioxide increment. In large part, this is because relatively few nitrogen oxides sources have located near Class I areas and there has been little overlap in the impact areas of different sources. Assuming these conditions continue, future siting of energy-related sources, or any other sources, can generally be contained only if the entire increment is consumed by an individual source. Even then, the FLM, if so convinced, can certify that a source in the vicinity of a Class I area will have no adverse impact on AQRV's, allowing the permit to be issued. The analysis mentioned above also indicates that exceedances of the short-term sulfur dioxide increments are more likely to be constraining for these source categories than the nitrogen

dioxide increment being promulgated today.

E. Mobile Sources

One commenter stated that mobile source emissions should not be included in the increment analysis because such emissions are not significant contributors to ambient nitrogen dioxide concentrations. The EPA has concluded that, although individual mobile sources may not be significant sources of nitrogen oxides emissions, in the aggregate they are very significant sources, particularly in urban areas. It is estimated that mobile sources produce, nationwide, almost half of all nitrogen oxides emissions. Consequently, the regulations promulgated today continue to require the inclusion of mobile sources in increment analyses.

The rationale for the inclusion of mobile source emissions in increment analyses is that the Act indicates Congress was concerned that increment consumption reflect actual ambient concentrations. The declaration of purpose in section 160 of the Act addresses the potential for increased air pollution without distinguishing between mobile and stationary sources. Although the operative provisions of Part C undoubtedly are geared toward stationary sources, the statute does not suggest that either States or EPA can ignore air quality deterioration caused by mobile sources. This argues strongly that EPA should continue to include mobile sources (as well as other minor and area sources) as increment-consuming sources of emissions.

A number of commenters stated that mobile sources should be excluded from the nitrogen dioxide increment analysis because: (1) Of the difficulty in (a) assessing the effectiveness of mobile source nitrogen oxides emission controls, (b) determining mobile source emissions over an area, and (c) determining the amount of increment consumed or expanded by mobile source emissions; (2) mobile sources have not been included in these analyses in the past for particulate matter and sulfur dioxide; (3) it is generally "impossible" to determine mobile source emissions growth for allowable emissions because of variables of highway design capacities, residential growth, or small business growth, especially considering local variation in weather conditions; and (4) the inclusion of mobile sources in modeling will reduce the accuracy of the model and increase analysis costs so that they will exceed the benefits derived from the inclusion of mobile sources.

In contrast to the commenters' concerns, EPA believes it is appropriate to include mobile sources in the increment program and that mobile source emissions will not unduly complicate the nitrogen dioxide increment program. This rule is not the first regulatory action that requires determining the emissions from mobile sources over an area. For instance, estimates of mobile source emissions are also made for SIP demonstrations of reasonable further progress and attainment, and for other regulatory programs. These techniques are well-documented, and have not posed undue burdens on the implementation of these regulatory programs. Therefore, it is not anticipated that their use in the PSD program for nitrogen dioxide increments will be unreasonably complex. In order to clarify the application of these procedures to the increment analysis for nitrogen dioxide, however, EPA will develop additional guidance in the use of these emissions estimating procedures for PSD applications.

The EPA does not feel that the inclusion of mobile sources in the analysis of nitrogen dioxide increment consumption should place too great a burden on PSD applicants. Currently, applicants obtain data on stationary source emissions from States and use this data to model increment consumption. Similarly, data on vehicle miles traveled in the vicinity of a proposed new or modified major source could be obtained from the State and used to model increment consumption (or expansion) by mobile sources. If a State has no data available on traffic patterns in the vicinity of the source, but has other data available or believes mobile source data from other studies or reports to be more accurate than State data, the use of such alternative data may be approvable on a case-by-case basis. Further, if a new PSD permit applicant is proposing to locate in close proximity to a previous PSD permittee, the new application may incorporate the previous applicant's mobile source analysis if the previous application is less than one year old (or the data have been updated by the new applicant), covers the same general impact area, and no new mobile source data have become available.

A number of commenters said it is inappropriate to make regulations specifying the use of the *Mobile 4* emission model when that model has not been made available. In response to this comment, EPA has changed this requirement to state that preliminary analyses should be made with the latest version of the *Mobile* model. Revisions

to the *Mobile* model are announced in the *Federal Register*.

Commenters claimed that including mobile source emissions in increment analyses will constrain the siting of stationary sources. Based on the results of an analysis conducted by EPA, a reduction in emissions from mobile sources will likely occur in many urban areas until the mid-1990's, resulting in an expansion of the increment in those areas. For this reason, the inclusion of mobile source emissions in the increment analysis for nitrogen dioxide should not constrain industrial stationary source growth during that time period.

Commenters also stated that EPA's conclusion that projected reductions in mobile source emissions will result in expansion of the increment is erroneous and commented that, in high growth areas, mobile sources may consume increment even though individual auto emissions may be decreasing. One commenter cited Texas Air Control Board (TACB) analyses that show that nitrogen dioxide levels in urban areas have stayed the same throughout the 1980's, rather than decreasing with reductions in vehicle emissions.

The EPA has reviewed the previously mentioned TACB ambient monitoring data study. The TACB results do not necessarily mean that ambient nitrogen dioxide levels from mobile source emissions are not decreasing. One possible conclusion from that study would be that increases in nitrogen oxides emissions from stationary sources are compensating for the decreasing mobile source emissions, in at least some urban areas, keeping ambient concentrations of nitrogen dioxide level.

Another commenter stated that EPA should do an impact analysis to evaluate the impact of mobile source growth in urban Class II areas on adjacent Class I areas. The contributions of nitrogen oxides emissions from mobile sources to ambient nitrogen dioxide concentrations were analyzed by EPA for a high growth urban area during the development of the proposed regulations. This analysis indicated that mobile source contributions to ambient nitrogen dioxide concentrations have been decreasing in urban areas and should continue to decrease until the mid-1990's. With a baseline date set at February 8, 1988, this means that mobile source emission controls in urban Class II areas adjacent to Class I areas will, in most cases, result in an expansion of increment in Class I areas as well as in Class II areas. Should mobile source

emissions increase again after 1995, no adverse impact on Class I areas would be experienced unless the entire reduction in emissions after the baseline date is offset by new emissions.

One commenter stated that EPA should address the maintenance of ambient nitrogen dioxide levels in urban areas affected by mobile sources after 1994. This commenter pointed out that the expansion of the increment created by improved mobile source emission controls can be considered temporary, so EPA should rethink whether this reduction should be considered an increment expansion that is "available" for industrial expansion, or whether this temporary expansion of the increment should be ignored.

The EPA retains its rationale from the proposal that there may be several circumstances in which an area might experience a temporary expansion of the available increment. Those include production decreases resulting from economic conditions as well as improved emission control technologies, as is the case with mobile sources. In each of these instances, however, States must make decisions regarding the management of their air quality resources and the allocation of the increment. In this sense, the increment expansion from reductions in mobile source emissions is not different from other issues regarding the management of available increment. With these regulations, EPA does not propose to place constraints on how States choose to manage the increment. If, however, stationary sources are allowed by the State to consume the expanded portion of the increment and mobile source emissions do increase at some future date, the State will be required to make the adjustments necessary (e.g., controls on existing sources) to maintain future compliance with the increments.

F. Model Facilities

In the development of this regulation, hypothetical facilities were modeled to analyze the cost effectiveness of various controls and to project the emissions levels that could be anticipated from implementation of those controls.

Comments were received on the various analyses that EPA conducted to develop the proposed regulations. These comments compare hypothetical plants to actual plants and identify potential inconsistencies between them. In some instances, EPA has reevaluated its selection of model facilities, or performed additional analyses in response to the comments received.

Several commenters stated that the size of the model utility power plant

chosen for analysis is smaller than those that are typical of the electric utility industry. In the model facility analysis, EPA evaluated a 500 megawatt (MW) utility boiler, while the commenters assert that a typical utility boiler is in the 1000 to 2000 MW size range. These commenters expressed concern that the larger utility boiler could not comply with the proposed nitrogen dioxide increment requirement.

In response to this comment, EPA reexamined the selection of the model utility boiler evaluated in the development of the proposed increments. In examining 40 PSD permit applications for new coal-fired utility plants in the new source review (NSR) data base, only 2 of 72 individual boilers were found that were larger than 1000 MW in capacity. The other utility boilers in the NSR data base ranged from 300 to 800 MW in size, and averaged approximately 500 MW. The EPA assumption of 500 MW is also consistent with the typical power plant boiler analyzed by the Electric Power Research Institute, the Department of Energy (DOE), and the Tennessee Valley Authority. The DOE also projected that future utility boilers would typically be approximately 500 MW, based on projections submitted by the utility industry. Consequently, EPA believes that the selection of a 500 MW boiler is appropriate for the model utility boiler analysis.

The EPA's model facilities analysis indicates that a utility boiler in the 1000 MW size range would be able to comply with the increment requirements, except under the most adverse circumstances. Some of the commenters cited a table in the Technical Support Document (Volume I, Table 2) to support their contention that these facilities would violate the increment. It should be noted that the figures given in this table are for uncontrolled sources and do not include the effectiveness of emission controls that could be used to reduce these emissions. Although a 1000 MW utility boiler was not examined in the initial analysis, EPA considers it reasonable to expect that the technology required to meet a $25 \mu\text{g}/\text{m}^3$ increment on a 1000 MW boiler would be similar to that required to meet a $15 \mu\text{g}/\text{m}^3$ increment for a 500 MW utility boiler which was analyzed by EPA. Based on this assumption, there are demonstrated or developing control technologies (e.g., overfire air, "low- NO_x " burners, reburning, selective catalytic combustion, selective noncatalytic reduction) available for reducing nitrogen oxides emissions from utility boilers to these levels. Using these

technologies, the increment would be constraining on the operation of a 1000 MW utility boiler only if it was located in an urban area and under the most restrictive meteorological conditions used in EPA's analyses.

Several commenters stated that internal combustion (IC) engines in the model facility for gas compressor stations are not typical in either size or control technology. They claimed that typical natural gas compressor stations have multiple IC engines in the 800-1500 horsepower range, rather than the three 4500 horsepower IC engines used in the model plant. This error, they feel, would result in an underestimation of costs of controlling emissions from this type of source. One commenter stated that prestratified charge and nonselective catalytic reduction cannot be used on a 4500 horsepower (hp) gas compressor engine, as indicated in the model plant analysis, and that both prestratified charge combustion and nonselective catalytic reduction can only be used on smaller rich-burn engines.

In response to these comments, EPA reviewed the size of the IC engines selected for this model facility, as well as the control devices applied to each. First, it was found that the 4500 hp IC engines are more typical of gas compressor stations than the multiple, smaller IC engines mentioned by the commenter. Second, in designing new or modified compressor stations, applicants can comply with the increment through the use of larger IC engines, or by selecting stationary gas turbines which have negligible control cost impacts.

In order to examine the impact of the increment on the multiple small engines, the costs of precombustion modification controls were determined for smaller engines (i.e., 1000 hp) of equal aggregate capacity and compared to the costs for the same controls on the larger engines analyzed in the model facility analysis. This analysis shows the costs of control for the 1000 hp engines are 2 to 3 times the costs of control for the 4500 hp engines. In order to determine the significance of these increases in costs, their impacts on product prices were calculated. At the $25 \mu\text{g}/\text{m}^3$ increment level, the maximum projected product price was unchanged for compressor stations located in rural areas and increased to 1.2 percent in urban areas. Although greater than the 0.4 percent increase in product prices for the model facility reported in the original analysis, these product price impacts are still less than the 5 percent significance level used to classify regulatory actions as major. Moreover, they do not reflect

available mitigating measures that could dampen the cost increases and subsequent price effects.

For the 1000 hp engine, the costs of prestratified charge combustion were compared to the costs of precombustion modification. With prestratified charge control technology, the total annual costs and cost effectiveness are less than the costs for precombustion modification, due the decrease in fuel use associated with prestratified charge. Although this decrease in fuel use may not be present in all instances, it is clear that the costs of prestratified charge controls on a 1000 hp engine will be no greater than the cost for precombustion modification.

Finally, the EPA reviewed the applicability of prestratified charge combustion and nonselective catalytic reduction to larger rich-burn engines. The EPA agrees with the commenters that prestratified charge combustion is only used on small engines. The preamble and Technical Support Document prepared for the proposal of these regulations erroneously described the technology analyzed for larger IC engines (i.e., 4500 hp) as prestratified charge combustion. In fact, the actual technology analyzed was precombustion modification. Nonselective catalytic reduction, however, is offered by vendors on engines of up to at least 10,000 hp. Consequently, analysis of this technology as applied to the model 4500 hp IC engine was appropriate.

One commenter stated that surface mining operations were not considered in EPA's analyses of the potential impacts of the proposed increment. This commenter submitted an air quality analysis of a theoretical surface coal mine to support the contention that application of the Class I and Class II increments to surface mining presents potential compliance problems.

The EPA has reviewed the materials submitted by the commenter. This review revealed that certain assumptions in the commenter's analysis result in an apparent overestimation of the impacts of surface mining operations on consumption of the nitrogen dioxide increment. The information submitted by the commenter was based largely on emissions from diesel engines and relied on outdated emission factors. In addition, vehicle miles traveled by the diesel equipment used at the mine were very high when compared with previous EPA studies of actual surface mining operations.

Assuming more reasonable estimates and using currently available emission factors, EPA estimates that the nitrogen oxides emissions and the impacts on

ambient nitrogen dioxide concentrations would be approximately 12 percent of the values reported by the commenter. Although, in some instances, the EPA analysis indicates that the off-site impacts of the mining operation could exceed the increment, these impacts could be reduced below the increment level through the use of more advanced emission control technology on diesel engines or reconfiguration of sources within the facility to reduce off-site impacts (e.g., placing the main haul road farther from the property line). If located very close to a Class I area, such a source does have the potential to cause increment exceedances. However, the siting of surface mines close to Class I areas has in the past been constrained more by aesthetic and visibility issues than by increments such as those for particulate matter, and EPA believes that this will continue to be the case in the future.

G. Air Quality Modeling

Several commenters stated that EPA air quality models predict concentrations higher than would actually occur. The use of these models in the nitrogen dioxide increment determination, they feel, would result in faster apparent consumption of the increment.

The EPA believes the issue of model overprediction should be viewed in two parts: whether the EPA models overpredict when determining the impact of a nonreactive pollutant, and whether the models overpredict when determining nitrogen dioxide increment consumption. On the first issue, the EPA does not agree that models such as the industrial source complex (ISC) model overpredict when determining the impact of a nonreactive pollutant. In fact, the downwash algorithm was recently modified because studies have shown that the previous algorithm underpredicted concentrations for sources with short stacks. As to the second issue, EPA recommends a three-tiered screening model approach for determining nitrogen dioxide annual averages. The EPA agrees that the first level screening technique (assuming that all the nitrogen oxides are emitted as nitrogen dioxide) provides a high estimate of nitrogen dioxide ground level concentrations. There is no simple, accurate model for determining the rate of nitric oxide to nitrogen dioxide conversion. After the initial screen, if more accurate modeling results are needed, the ozone limiting method can be applied to the annual nitrogen dioxide estimate from point sources as a second level screen, or for each hour of the year as a third level screen. The

ozone limiting method is a simple method that attempts to take into account the conversion of nitric oxide to nitrogen dioxide in the atmosphere. Its use will result in a lowering of the modeled maximum ground level concentrations. Therefore, EPA feels that the choice between simple overpredictive models and more complex, but more accurate, models available to the source provides a solution in possible cases of overprediction.

One commenter provided an analysis to show the impact of the overpredictive character of the initial, first level screen. That analysis was not credible, however, because of the use of atypical emission parameters that were then modeled as though the releases occurred near the edge of the property boundary, thus greatly increasing the impact of these emissions. Also, the facility was modeled on the assumption that it operates on a 24-hour basis, thereby including a large number of stable and low wind speed conditions that result in higher ground level concentrations. These conditions are less likely to occur during the day. Until experience with these screening methods demonstrates otherwise, EPA will continue to recommend the three-tiered modeling approach for obtaining annual average estimates of nitrogen dioxide from point sources. On a case-by-case basis, however, EPA will consider other modeling techniques proposed by permit applicants to more accurately assess increment consumption.

Several commenters stated that EPA does not have sufficient guidance on modeling long-term concentrations from mobile sources. The commenters said that there is a lot of uncertainty associated with modeling nitrogen dioxide emissions from mobile sources with the industrial source complex long-term (ISCLT) model and are concerned that such modeling will substantially overestimate actual concentrations.

The ISCLT model is recommended for determining impacts from mobile source emissions when localized areas of high ambient nitrogen dioxide concentrations are expected, because it is the only long-term guideline model that can be used for these sources. An assessment of the performance of the ISCLT model for these applications is not now available. The ISCLT model will, of course, continue to be evaluated as experience is gained with these applications. For most urban area analyses, localized areas of high ambient nitrogen dioxide concentrations need not be considered, and mobile sources can be modeled as area sources using the climatological

dispersion model (CDM) as a guideline. For determining nitrogen dioxide increment consumption, these models overestimate impacts because they do not account for nitrogen dioxide chemical transformations. When combined with the ozone limiting method, however, these models will result in less overestimation of ground level nitrogen dioxide concentrations.

Several commenters said that existing models are inappropriate for reactive pollutants at extended distances from the source and for long-term periods modeling of reactive pollutants is complex and burdensome and, given the reactive nature of nitrogen dioxide, sophisticated photochemical transport and dispersion models are required for realistic analysis of increment consumption. The commenters conclude that EPA must address the long-range modeling issues for reactive pollutants before a standard such as the $2.5 \mu\text{g}/\text{m}^3$ Class I nitrogen dioxide increment can be implemented.

The EPA agrees with the commenters that models to account for the long-range transport of reactive pollutants, such as nitrogen dioxide, are not fully developed. The chemistry involved in the modeling of several merging and background sources emitting nitrogen oxides can become very complex, as can defining meteorological conditions over the distances and time scales associated with long-range transport. Thus, applying a long-range transport model can be a highly complex and very expensive undertaking. However, EPA neither recommends nor requires that applicants perform this type of analysis for the purpose of complying with air quality standards and increments.

Some commenters stated that there is insufficient guidance available for calculating long-term concentrations for point and area (i.e., mobile) sources in complex terrain, and that meteorological data needed to make the calculations are not readily available. In response, EPA notes that the simple screening techniques described in section 5 of the EPA modeling guideline can be used to determine long-term concentrations for point sources in complex terrain. Mobile sources in complex terrain can be modeled using the area source algorithm in the CDM or ISCLT models. The use of these techniques can be justified because plume rise from areawide mobile source emissions is negligible, significant impacts occur close to the source, and plume impaction on elevated terrain is considered insignificant on an annual basis. More complex situations can be modeled on a case-by-case basis.

It is true that meteorological data in areas with complex terrain are generally sparse. Modeling mobile source effects, as recommended by EPA, however, would be done primarily for areas of high traffic, such as urban areas. In such areas, meteorological data should be readily available. For other cases, preconstruction monitoring of meteorological parameters may be required.

A number of commenters felt that the Prudhoe Bay study conducted in conjunction with this rulemaking did not consider several important modeling issues. The EPA agrees that the Prudhoe Bay area is complex and difficult to model. The Prudhoe Bay model analysis used in this rulemaking, however, was based on existing modeling results presented by applicants in their permit applications, represents the modeling guidance for which permits were issued, and is considered acceptable for the purposes of the rulemaking analysis. No new modeling was performed.

A number of commenters said that the use of the model facility analysis in the technical support document to determine the effect of the increment did not consider three important factors: (1) Many facilities which emit nitrogen oxides are located in complex terrain, although the model facility analysis considered flat terrain impact only; (2) the potential for wide variability in the modeling results needs to be reviewed before any factual forecasts on impacts can be made; and (3) receptors closer than 200 meters from the source were not considered, which is inconsistent with EPA modeling guidance that uses receptors as close as three building heights from a stack.

The EPA's model facility analysis did not use a complex terrain model to determine the effect of the increment because it is difficult to define a "prototypical" complex terrain example that can be used as a substitute for the site-specific analysis required for most facilities located in complex terrain. Because of this, and cost and schedule constraints, the effect of complex terrain was approximated by doubling the maximum ground level concentrations derived from the ISCLT model (see Appendix B of the Technical Support Document, Vol II).

Second, the EPA's model facility analysis considered the variability in modeling results by using the input of 5 years of meteorological data from three National Weather Service (NWS) stations, located in three distinct climatic zones. Urban and rural dispersion parameters were also used to provide a range of conditions. Thus, a wide range of model impact conditions

was obtained. The commenter selected the station which showed the highest impact to determine the potential for growth in the commenter's regions. A more accurate method for assessment of growth would be to use a nearby NWS station in that region.

Finally, the EPA's model facility analysis assumed typical building layouts, stack heights, and emissions, based on the new source review data base. The distance to maximum concentrations varied by source type, year and location of meteorological data selected, and urban or rural classification. For the higher emitting utility boiler and gas turbine sources, the distance to maximum impact was beyond 200 meters. Therefore, 200 meters was chosen as a reasonable close-in receptor distance.

H. Costs

Commenters stated that EPA did not consider all of the costs involved in implementing the nitrogen oxides PSD regulations, such as: (1) Retrofit costs in areas where little increment is available; (2) costs of nitrogen oxides control for mobile sources; (3) the costs of controlling hazardous wastes or toxic emissions generated by nitrogen oxides control technologies; and (4) annualized cost impacts as current electric generation reserve capacities are used up and power plant construction programs increase.

The costs of retrofitting nitrogen oxides emission control technologies to existing sources were not considered by EPA in the development of the increment because such controls are not expected to be required because of the increment program. Rather, the program is structured to prevent increment violations in the first place. In theory, existing sources could be called upon to retrofit controls if an increment violation is discovered. In that case, the PSD regulations require that the State develop a plan to correct the violation. The decision on which sources would have to be controlled rests with the State. The possibility of an increment violation would have been much greater if a 1980 baseline date has been established. In any case, all new PSD sources will know before construction begins whether control technologies are needed to avoid increment violations. In addition, the costs of retrofitting controls to modified sources may be higher than for applying controls to new sources, but are not expected to be substantially higher than the costs of controls required by current BACT requirements for new sources.

Mobile source emission control costs were not included in this analysis

because mobile sources are not subject to permitting under new source review. The costs of mobile source emission controls are accounted for in the development of regulatory requirements directly applicable to motor vehicles.

The costs of controlling hazardous wastes generated by nitrogen oxide emission control technologies were included in the analysis of the model facilities. These costs included the costs of recycling or disposing of spent catalysts.

The estimates of the cost impact of this increment on the electric utility industry are based on assumptions which may overstate the plant incremental control costs as well as the number of plants subject to control. These assumptions result in high estimated cost impacts for a number of reasons. First, the cost impacts of the increment requirements were estimated as the increase in control costs over the BACT base-case requirements. The BACT levels chosen for the base case, however, were not based on those implemented by the States with the most stringent BACT determinations. Consequently, the analyzed cost differences between BACT and the increment program are potentially overstated.

Further, the estimates of growth in the electric utility industry were based on the growth rate for all PSD sources during the last few years. Eleven percent of the PSD permits in recent years have been for electric utility generating stations. Consequently, of the 250 PSD permits per year expected, based on past experience, for the period 1990-1994, 28 permits per year were assumed to be for utility electric generating stations. Based on historical plant distributions, these PSD permits would be expected to include 15 coal-fired boilers. This corresponds to a combined new capacity of 7500 MW per year, assuming a typical boiler size of 500 MW. Therefore, for the 5-year period 1990-1994, a total of 75 coal-fired utilities with 37,500 MW of new capacity were projected by the EPA study. In contrast, the electric utility industry has projected an increase in coal-fired plant capacity of only 8600 MW during this 5-year period (see U.S. Department of Energy Information Administration, Inventory of Power Plants, 1986). Thus, EPA's analysis has likely overestimated the number of coal-fired steam electric utility facilities expected to be constructed during the time period studied, as well as the total capacity of these facilities.

One commenter used cost impact arguments to advocate nitrogen dioxide

increments that are no less than 45 percent of the NAAQS. The cost impacts of the proposed increments are alleged to: (1) Possibly preclude full development at a reasonable cost for lignite-based electricity generation; (2) result in pass-through of control costs from electricity purchased to consumers of products which use lignite-based electricity as a production input; and (3) affect the ability of firms to compete in foreign markets and, hence, affect the United States' balance of trade.

Promulgation of the proposed PSD increments will not preclude full development of lignite-based electricity generation. Moreover, the added costs of the promulgated increments should reflect the fact that the use of the air resource is not free and should be included in the costs of providing electricity.

One commenter believed the focus of the economic impact analyses should be the competitiveness of the industries affected by the regulation, not price impacts. The commenter also believed a regulatory impact analysis (RIA) may be in order as a result of a comparative analysis showing selective catalytic reduction to have 60 percent greater capital costs than noted in the proposal preamble.

Regarding the focus of the economic impact analysis, most such analyses begin with the potential cost increase. The decision to extend these estimates to examine the distributive consequences of a regulation is a function of the size of the potential cost increase and the requirements for more extensive analysis. The EPA economic impact analysis showed the potential cost increase, both as a percent of product prices and as an absolute annualized cost estimate, to be relatively small and to not warrant an RIA. Thus, the economic impact analysis was not extended to examine distributive effects like competitiveness.

With respect to the need for an RIA, the commenter's comparative cost analysis focuses on retrofit situations with selective catalytic reduction as the control technique. As noted in the response to previous commenters, the retrofit focus is not appropriate. Furthermore, techniques less costly than selective catalytic reduction are often available. Consequently, EPA maintains that an RIA is not required.

Some commenters stated that a price increase of less than 5 percent could be significant to the affected industry. The EPA agrees that potential production cost increases may be important. The ones associated with this regulation, however, are not significant. Both the absolute and the relative sizes of the

estimated production cost increases are such that the regulatory action is not classified as major. In particular, for all affected industries estimated, the worst-case fifth year annualized cost increases total less than \$64 million in the aggregate. This estimate is on the high side because it does not account for available, less costly control options.

Several commenters, albeit none of them representing State agencies, stated that the cost to the States of administering the program has been underestimated. The costs to State agencies of administering the nitrogen dioxide increment program (\$135,000 per year) were calculated by EPA as the incremental cost of examining each applicant's compliance with the nitrogen dioxide increment regulation. Since most sources subject to the PSD regulations for nitrogen oxides are also expected to be subject to the increment requirements for particulate matter and/or sulfur dioxide, the incremental administration costs of implementing the nitrogen dioxide increment requirements should be relatively minor. Using the \$135,000 per year cost estimate to calculate average costs per State (about \$3,000 per year) is misleading because many States receive no PSD applications for years at a time and would therefore incur no administrative costs for that period.

One commenter's estimate of administrative costs of \$10,000,000 per year cannot be effectively evaluated, since the commenter provided no information on the derivation of this figure. However, this estimate is not consistent with EPA's estimate of the costs of administering this increment program.

One commenter said the estimated total national costs to applicants of \$400,000 per year is too low for all the time, paperwork, and delays associated with compliance with this regulation. In response to this comment, EPA has reexamined the administrative burden of the increment requirements. In the development of these costs, EPA assumed that 16 hours would be required for the nitrogen dioxide increment consumption analysis associated with each PSD permit application. On reexamination, EPA agrees with the commenter that this is an underestimate based on the inclusion of mobile sources in the analysis. A more accurate estimate of the time typically required for this process was determined to be 60 hours for each application for which a mobile source emissions analysis was needed. The actual hours may be more or less than this estimate, depending on the complexity of the sources and the nature

of the area in which the source is located. Based on this revised estimate, it was projected that the total national administrative costs of this regulation to permit applicants will be approximately \$855,000 per year, rather than the initial estimate of \$400,000 per year.

I. Restrictions on Siting

Several commenters stated that the increment would prevent utility boilers from being constructed near urban areas where they would take advantage of available water supplies and wastewater treatment capacity. The EPA analysis indicated that, for utility power plants located in urban areas, there are control technologies available that will enable these sources to comply with the increment requirements in Class II areas under most anticipated meteorological conditions. It is possible, however, that adverse meteorological patterns or terrain associated with specific sites could make it difficult for a source to comply with the nitrogen dioxide increment, whether that source is a utility boiler or any other nitrogen oxides emissions source (utility boilers would be more likely, however, to have this problem with the short-term sulfur dioxide increments, which have been in effect since 1975, than with the annual nitrogen dioxide increments). This is a possible outcome of any increment system established and is part of the PSD approach to air quality management. In such a case, the source owner would have to review and consider other options available for the siting and design of the source.

One commenter took exception to the EPA claim that the increment will not pose severe constraints on the siting of chemical plants because large new chemical plants are not expected to locate near urban areas. He pointed to the location of many chemical plants at shipping centers near urban areas as contradicting this statement.

The EPA found that the Class II increment of 25 ug/m³ could impose constraints on the location of large chemical plants in urban areas, but only under adverse meteorological conditions, and only if the chemical plants include significant emissions from kilns, such as those considered in the model facility analysis. Large chemical facilities seeking to locate in urban areas having more moderate meteorological conditions, or having a different configuration of driers, kilns, process heaters, and other nitrogen oxides emissions sources, would be expected to be less constrained by the Class II increment.

It is more likely that chemical manufacturing companies would seek to expand or modify existing facilities in urban areas. In such an instance, the decisions on the siting and design of the modified facility made by the owner or operator of the source could be affected by the increment requirements. As discussed above, this is a possible outcome inherent in the design of the PSD program. It is EPA's conclusion, however, that only in those cases where previous increment consumption has been significant will the increment severely constrain the siting of modification of an industrial facility when compared to other factors, such as the availability of transportation, financing, raw materials, and labor.

One commenter stated that the proposed increments may severely constrain economic growth in rural areas, irrespective of the actual threat to air quality in those areas. The commenter stated that rural Class II areas should be managed differently from urban Class II areas so that the dispersal of growth is encouraged.

In establishing the PSD program, Congress did not distinguish between urban and rural Class II areas, either in terms of the increments for particulate matter and sulfur dioxide or any other aspects of air quality management. The EPA used similar logic when setting the same nitrogen dioxide increments for rural and urban Class II areas. The EPA analyses show that one possible effect of the increment will be the dispersal of industrial growth. Because industrial growth will generally be more rapid in or near urban areas, it is anticipated that any constraints on the siting of industrial facilities resulting from the imposition of an increment would be realized in urban areas first. As a consequence, the increments will create an incentive for the location of industrial facilities outside of urban areas and into rural areas where the increment has not been consumed. This is currently the case for sulfur dioxide and particulate matter. For nitrogen dioxide, emissions reductions from mobile sources are expected to delay this effect. The increments are not, of course, the sole factor shaping decisions about the siting and design of industrial facilities. The EPA expects the nitrogen dioxide increments to accommodate siting of new or modified sources in Class II areas in almost all cases.

J. Ozone

A number of commenters stated that EPA should analyze more thoroughly the relationship between nitrogen dioxide and ozone, the impact of the nitrogen dioxide increments on ozone formation,

the potential for acid rain formation, and other environmental issues (e.g., visibility degradation, vegetation damage).

Recognizing that there can be an inverse relationship between ambient nitrogen dioxide levels and ozone levels, a number of commenters said nitrogen dioxide increments should not be applied in ozone nonattainment areas in order to avoid worsening the ozone problems in those areas. One commenter said a nitrogen dioxide increment should be required in an area only if it can be shown that a decrease in ambient nitrogen dioxide will lead to a decrease in ozone levels. Another commenter noted that because of its role in the formation of ozone, nitrogen oxides emissions from new sources are already being reduced to the maximum extent in his area.

The EPA believes it is important to understand that the nitrogen dioxide increments will not reduce current nitrogen dioxide concentrations, but instead place a limit on increases in ambient nitrogen dioxide concentrations. Since it is possible that limiting increases in ambient nitrogen dioxide can also limit reductions in ozone concentrations, EPA conducted an analyses to determine the potential for all of the Class II nitrogen dioxide increment to be consumed in selected urban areas with ozone violations. The objective of the analysis was to assess whether a less stringent increment would be needed to allow (in certain areas) for ozone reduction by increasing nitrogen dioxide availability in the atmosphere. This analysis indicated that all of the proposed Class II nitrogen dioxide increment of $25 \mu\text{g}/\text{m}^3$ (annual average) would not be consumed in the urban areas studied, even when emissions growth was projected to the year 2010 using the growth assumptions believed to be most realistic. Consequently, it is not necessary to give further consideration to a less stringent increment on this basis. The analysis has been included in this rulemaking docket.

K. Baseline Date

Comments were solicited on the proposed baseline date of February 8, 1988, and on two alternatives. One of these alternatives was a 1980 baseline date, the date Congress expected the PSD regulations for nitrogen oxides to become effective. Some commenters claimed that a baseline date of 1980 is necessary in order to address the deterioration in air quality that has taken place due to increases in nitrogen oxides emissions since 1980. One commenter pointed out that, although

selection of a 1980 baseline date may result in some areas currently being in violation of the increment, these problems can be addressed through the use of the Class II designation.

A 1980 baseline date could affect Class I and some Class II areas differently. As discussed earlier in this notice, the first complete PSD permit application for a major new source or a major modification received after the trigger date establishes the minor source baseline date and the baseline concentration. Once the baseline concentration is set, minor (including mobile) sources can consume or expand increment. As discussed in the proposed rulemaking at 53 FR 3706, for urban Class II areas in which major source permits have been received since 1980, selection of a 1980 baseline date could result in the setting of a higher baseline concentration and, consequently, a higher nitrogen dioxide concentration limit (baseline plus increment) that would be the case for a 1988 baseline date. The EPA urban analysis indicates that, for many urban areas, the decrease in mobile source nitrogen oxides emissions since 1980 has exceeded increases in stationary source nitrogen oxides for the same period. Thus, mobile source emissions reductions either expand the available increment, if the minor source baseline date (and hence the baseline concentration) has been set, or reduce the baseline nitrogen dioxide concentration if it has not. For most rural areas, the major source baseline date and trigger date selections should have little impact. In Class I areas, a studies of the impact of a 1980 baseline indicate that the maximum degradation in Class I areas since 1980 has been less than $1 \mu\text{g}/\text{m}^3$.

The EPA agrees that redesignation from Class II to Class III is a possibility for those areas which find themselves in violation of the Class II increment because of a retroactive regulation. However, redesignation to Class III was intended as an avenue for those areas which wish to make the conscious decision to allow more future growth than would be permitted under a Class II increment—not as a remedy where a Class II increment has been (albeit unintentionally) exceeded by the setting of a baseline with a retroactive 1980 date.

On the other hand, several commenters supported the proposed 1988 baseline date, repeating many of the arguments in the preamble to the proposed regulations (53 FR 3705). For example, several commenters pointed out the practical problems with the use of a 1980 baseline date, which would

require the reconstruction of data on the ambient concentration of nitrogen dioxide and emissions of nitrogen oxides in a PSD area as of 1980. They stated that this information may no longer be available, or be difficult to obtain and analyze. Further, the consumption of increment since 1980 would also have to be based on available records of permits and emissions, which may not be complete. The EPA agrees with these commenters that a 1980 baseline date could present severe technical and administrative difficulties. In addition, although it is unlikely, the available historical records may show that some areas would already be in violation of the increment at the time of promulgation as the result of emissions growth since 1980. Such violations may require retrofit emissions control technologies to be applied to existing sources in order to bring the area into compliance with the increment. Requiring sources to retrofit emission control devices raises several concerns. First of all, it obviously would be very unfair. The EPA has had BACT requirements for NO_x emitters since before 1980. Sources based emission control system decisions on these regulations. A retrofit requirement could essentially undercut the emission control efforts already undertaken. In addition, this retrofitting goes against the grain of the general thrust of the congressional PSD program, namely, that it apply, insofar as new major sources and major modifications are concerned, prospectively and not retrospectively.

Several commenters stated that the baseline date should be the promulgation date or the effective date of the regulation. The rationale, for this recommendation was that the later baseline date would allow States and permit applicants more time to make an orderly transition into the increment program than would the February 1988 baseline.

The EPA does not believe that the February 1988 baseline date poses significant administrative difficulties for State agencies in implementing the inventory and increment requirements of the regulation. States have been aware of the nitrogen dioxide increments since the date of proposal. Although many commenters from industry suggested that this process would be time consuming, it is important to note that comments from the State agencies themselves have not questioned their ability to implement and administer an increment program for nitrogen dioxide based on a February 8, 1988 baseline date.

Setting the baseline date at the date of proposal will prevent the owners or operators of prospective new sources from attempting to avoid the increment requirements by submitting permit applications early. This situation usually occurs when a prospective baseline date is selected. Not only would such action result in some sources not being covered by the program, but dealing with this influx of new source applications would hinder the State agencies in their effort to implement this program and construct emissions inventories.

The EPA believes that the February 8, 1988 baseline represents the best accommodation of the pros and cons provided by the various choices. The EPA has concluded that this baseline is practical, both technically and administratively. A prospective baseline date would encourage early application and may provide inadequate environmental protection. Conversely, a retroactive baseline date would be very difficult to implement and would provide no clear environmental benefit because, as explained above, it would expand the available increment in some areas and contract it in others. In addition, it would present the possibility of requiring retrofitting of pollution control equipment, which, in keeping with congressional intent, the PSD program has historically sought to avoid.

L. Emissions Banking

A few commenters expressed their concern about the apparent elimination of the emissions banking system, because the establishment of a nitrogen dioxide increment would exclude previously banked nitrogen oxides emissions credits created by industries for their future expansion. To some extent, this concern is valid. Today's action does limit the use of banked nitrogen oxides emission reduction credits (ERC's) for netting to those ERC's which would affect the nitrogen dioxide increment. This restriction is already included in the definition of "net emissions increases" in determining whether emissions of sulfur dioxide and particulate matter are creditable. The EPA believes that it is appropriate to apply similar restrictions to nitrogen oxides netting transactions to comply with the actual emissions concept in section 169, paragraph (4), of the Act, as described above. Furthermore, EPA wishes to continue its policy of treating all ERC's the same within the new source review (including PSD) program. This means that banked ERC's receive no special consideration in netting transactions over any other ERC's. Banked ERC's must meet all the same

requirements as ERC's that are not banked.

M. Administration

Two commenters stated that the proposed nitrogen dioxide increment would place a large burden on the State agencies charged with the responsibility for administering the program. One claim that, for that local agency, the establishment of a nitrogen dioxide increment would result in a large increase in work load without a significant benefit in local air quality, because of the stringency of their existing BACT program. That agency also predicted that detailed increment consumption analysis will become a routine requirement because projects with nitrogen oxides emissions greater than 40 tons/year will probably exceed the significant impact level. The other commenter stated that the nitrogen oxides regulations will be even more difficult to administer and manage than sulfur dioxide or particulate matter increments, which, this commenter claimed, States have been unsuccessful in implementing to date.

The EPA agrees that the increment program for nitrogen dioxide will result in an increase in the States' work loads, since a new pollutant is being added to the increment consumption analysis. The added work load should be relatively small, however, because the nitrogen dioxide increment consumption analysis can be based on existing administrative structures. The only change to the modeling review procedures will be the need for separate reviews of the baseline concentration and increment consumption data, and verification that the increment has not been exceeded. The ability of State and local agencies to administer this program is evidenced by the fact that only one of the State and local agencies commenting on this regulation expressed concern that they would not be able to administer this program.

IV. Administrative

Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is intended to allow the public to identify and locate documents so they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated regulations and EPA responses to significant comments, the contents of the docket, except for intra-agency review materials, will serve

as the record in case of judicial review (see section 307(d)(7)(A) of the Act).

Under section 307(b)(1) of the Act, judicial review of the actions taken by this notice is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 2501 *et seq.* and have been assigned OMB Control Number 2060-0003. The public reporting burden for this collection of information is estimated to vary from 1 to 1000 hours per response, with an average of 60 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Reporting time per respondent will increase slightly as a result of this action. The increase per respondent, however, is insignificant on the average.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

Economic Impact Assessment

Section 317 of the Act requires the Administrator to prepare an economic impact assessment for any regulations under Part C of Title I (relating to PSD of air quality). An economic impact assessment was prepared for the PSD increments for nitrogen dioxide promulgated today. The economic impact assessment is included in Docket A-87-16.

Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have significant economic impact on a substantial number of small business entities (see 46 FR 8709).

List of Subjects

40 CFR Part 51

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Nitrogen dioxide, State implementation plans.

40 CFR Part 52

Air pollution control, Nitrogen dioxide.

Date: October 7, 1988.

Lee M. Thomas,
Administrator.

For the reasons set out in the preamble, Parts 51 and 52 of Chapter 1 of Title 40 of the Code of Federal Regulations are amended as set forth below:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority for Part 51 continues to read as follows:

Authority: Secs. 101(b)(1), 110, 160-169, 171-178, and 301(a) of the Clean Air Act, 42 U.S.C. 7401(b)(1), 7410, 7470-7479, 7501-7508, and 7601(a).

2. In § 51.166, paragraphs (b)(3)(iv), (b)(13)(i), (b)(13)(ii)(a), (b)(13)(ii)(b) and (b)(14)(i) are revised; paragraph (b)(14)(ii) is redesignated as paragraph (b)(14)(iii) and a new paragraph (b)(14)(ii) is added; paragraphs (b)(15)(i), (b)(15)(ii)(a), (f)(1)(v), (f)(4)(i), the last sentence of paragraphs (p)(4) and the tables in paragraphs (c) and (p)(4) are revised; and paragraph (j)(11) and the OMB control number are added to read as follows:

§ 51.166 Prevention of significant deterioration of air quality.

(b) ***

(3) ***

(iv) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides which occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

(13)(i) "Baseline concentration" means that ambient concentration level which exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(a) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in paragraph (b)(13)(ii) of this section;

(b) The allowable emissions of major stationary sources which commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

(ii) ***

(a) Actual emissions from any major stationary source on which construction commenced after the major source baseline date; and

(b) Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

(14)(i) "Major source baseline date" means:

(a) In the case of particulate matter and sulfur dioxide, January 6, 1975, and

(b) In the case of nitrogen dioxide, February 8, 1988.

(ii) "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 or to regulations approved pursuant to 40 CFR 51.166 submits a complete application under the relevant regulations. The trigger date is:

(a) In the case of particulate matter and sulfur dioxide, August 7, 1977, and

(b) In the case of nitrogen dioxide, February 8, 1988.

(15)(i) "Baseline area" means any intrastate area (and every part thereof) designated as attainment or unclassifiable under section 107(d)(1)(D) or (E) of the Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than 1 $\mu\text{g}/\text{m}^3$ (annual average) of the pollutant for which the minor source baseline date is established.

(ii) ***

(a) Establishes a minor source baseline date; or

(c) ***

Pollutant	Maximum allowable increase (micrograms per cubic meter)
CLASS I	
Particulate matter:	
TSP, annual geometric mean.....	5
TSP, 24-hr maximum.....	10

Pollutant	Maximum allowable increase (micrograms per cubic meter)
Sulfur dioxide:	
Annual arithmetic mean	2
24-hr maximum	5
3-hr maximum	25
Nitrogen dioxide:	
Annual arithmetic mean	2.5
CLASS II	
Particulate matter:	
TSP, annual geometric mean	19
TSP, 24-hr maximum	37
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	512
Nitrogen dioxide:	
Annual arithmetic mean	25
CLASS III	
Particulate matter:	
TSP, annual geometric mean	37
TSP, 24-hr maximum	75
Sulfur dioxide:	
Annual arithmetic mean	40
24-hr maximum	182
3-hr maximum	700
Nitrogen dioxide:	
Annual arithmetic mean	50

application as submitted before that date was complete.

(p) * * *

(4) * * * If the Federal land manager concurs with such demonstration and so certifies to the State, the reviewing authority may: *Provided*, That applicable requirements are otherwise met, issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide, particulate matter, and nitrogen oxides would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants:

Pollutant	Maximum allowable increase (micrograms per cubic meter)
Particulate matter:	
TSP, annual geometric mean	19
TSP, 24-hr maximum	37
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	325
Nitrogen dioxide: Annual arithmetic mean	25

(Approved by Office of Management and Budget under the control number 2060-0003)

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. In § 52.21, paragraphs (b)(3)(iv), (b)(13)(i), (b)(13)(ii)(a), (b)(13)(ii)(b) and (b)(14)(i) are revised; paragraph (b)(14)(ii) is redesignated as paragraph (b)(14)(iii) and a new paragraph (b)(14)(ii) is added; paragraphs (b)(15)(i), (b)(15)(ii)(a), (f)(1)(v), (f)(4)(i), the last sentence of paragraph (p)(5) and the tables in paragraphs (c) and (p)(5) are revised and paragraph (i)(12) and the OMB control number are added to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

(b) * * *

(3) * * *

(iv) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides which occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating

the amount of maximum allowable increases remaining available.

(13)(i) "Baseline concentration" means that ambient concentration level which exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a baseline date is established and shall include:

(a) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in paragraph (b)(13)(ii) of this section;

(b) The allowable emissions of major stationary sources which commenced construction before the major source baseline date but were not in operation by the applicable minor source baseline date.

(ii) * * *

(a) Actual emissions from any major stationary source on which construction commenced after the major source baseline date; and

(b) Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

(14)(i) "Major source baseline date" means:

(a) In the case of particulate matter and sulfur dioxide, January 6, 1975, and

(b) In the case of nitrogen dioxide, February 8, 1988.

(ii) "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 or to regulations approved pursuant to 40 CFR 51.166 submits a complete application under the relevant regulations. The trigger date is:

(a) In the case of particulate matter and sulfur dioxide, August 7, 1977, and

(b) In the case of nitrogen dioxide, February 8, 1988.

(15)(i) "Baseline area" means any intrastate area (and every part thereof) designated as attainment or unclassifiable under section 107(d)(1) (D) or (E) of the Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than $1 \mu\text{g}/\text{m}^3$ (annual average) of the pollutant for which the minor source baseline date is established.

(ii) * * *

(a) Establishes a minor source baseline date; or

(c) * * *

(f) * * *

(1) * * *

(v) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources which are affected by plan revisions approved by the Administrator as meeting the criteria specified in paragraph (f)(4) of this section.

(4) * * *

(i) Specifies the time over which the temporary emissions increase of sulfur dioxide, particulate matter, or nitrogen oxides would occur. Such time is not to exceed 2 years in duration unless a longer time is approved by the Administrator.

(i) * * *

(11) The plan may provide that the permitting requirements equivalent to those contained in paragraph (k)(2) of this section do not apply to a stationary source or modification with respect to any maximum allowable increase for nitrogen oxides if the owner or operator of the source or modification submitted an application for a permit under the applicable permit program approved or promulgated under the Act before the provisions embodying the maximum allowable increase took effect as part of the plan and the permitting authority subsequently determined that the

Pollutant	Maximum allowable increase (micrograms per cubic meter)
CLASS I	
Particulate matter:	
TSP, annual geometric mean	5
TSP, 24-hr maximum	10
Sulfur dioxide:	
Annual arithmetic mean	2
24-hr maximum	5
3-hr maximum	25
Nitrogen dioxide: Annual arithmetic mean	2.5
CLASS II	
Particulate matter:	
TSP, annual geometric mean	19
TSP, 24-hr maximum	37
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	512
Nitrogen dioxide: Annual arithmetic mean	25
CLASS III	
Particulate matter:	
TSP, annual geometric mean	37
TSP, 24-hr maximum	75
Sulfur dioxide:	
Annual arithmetic mean	40
24-hr maximum	182
3-hr maximum	700
Nitrogen dioxide: Annual arithmetic mean	50

(f) * * *

(1) * * *

(v) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources which are affected by plan revisions approved by the Administrator as meeting the criteria specified in paragraph (f)(4) of this section.

(4) * * *

(i) Specify the time over which the temporary emissions increase of sulfur dioxide, particulate matter, or nitrogen oxides would occur. Such time is not to exceed 2 years in duration unless a longer time is approved by the Administrator;

(i) * * *

(12) The requirements of paragraph (k)(2) of this section shall not apply to a stationary source or modification with respect to any maximum allowable increase for nitrogen oxides if the owner or operator of the source or modification submitted an application for a permit under this section before the provisions embodying the maximum allowable increase took effect as part of the applicable implementation plan and the Administrator subsequently determined that the application as submitted before that date was complete.

(p) * * *

(5) * * * If the Federal land manager concurs with such demonstration and he so certifies, the State may authorize the Administrator: *Provided*, That the applicable requirements of this section are otherwise met, to issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide, particulate matter, and nitrogen oxides would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants:

Pollutant	Maximum allowable increase (micrograms per cubic meter)
Particulate matter:	
TSP, annual geometric mean	19
TSP, 24-hr maximum	37
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	325
Nitrogen dioxide: Annual arithmetic mean	25

(Approved by Office of Management and Budget under the control number 2060-0003.)
[FR Doc. 88-23832 Filed 10-14-88; 8:45 am]
BILLING CODE 6560-50-M