railroad. The selection method shall be capable of verification with respect to the randomness of the selection process, and any records necessary to document random selection shall be retained for not less than 24 months from the date upon which the particular samples were collected.

* * * * *

3. Section 219.701 is amended by revising paragraph (a) to read as follows:

§ 219.701 Standards for urine drug testing.

(a) On and after January 16, 1990, the conduct of urine drug testing under subparts D, F, and G of this part shall be governed by this subpart and part 40 of subtitle A of this title. Laboratories employed for these purposes must be certified by the Department of Health and Human Services under that Department's Mandatory Guidelines for Federal Workplace Drug Testing Programs.

* * * * *

4. Section 219.711 is revised by amending paragraph (c)(1) to read as follows:

§ 219.711 Confidentiality of test results.

* * * * *

(c)(1) Effective January 16, 1990, results of post-accident toxicological testing under subpart C of this part are reported to the railroad's Medical Review Officer, and the railroad shall treat the test results as subject to paragraph (b) of this section, except where publicly disclosed by FRA or the National Transportation Safety Board.

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Issued in Washington, DC, on September 21, 1989.

Gilbert E. Carmichael,

Federal Railroad Administrator.

[FR Doc. 89–22797 Filed 9–22–89; 4:24 pm]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 217, 219, and 225

[FRA Docket No. RSOR-6, Notice No. 24]

RIN 2130-AA43

Alcohol/Drug Regulations: Proposed Amendments

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of Proposed rulemaking.

SUMMARY: FRA issues a notice of proposed rulemaking requesting comments on proposed amendments to its rule on Control of Alcohol and Drug Use in Railroad Operations and related provisions of other rules. These amendments are necessary to make improvements in the regulatory program in light of experience and prior public comment, to correct and clarify certain provisions, and to conform the original provisions of the alcohol/drug rule to the amendments issued with the random testing rule in November of 1988.

DATES: Written comments must be received no later than October 27, 1989. Comments received after that date will be considered to the extent possible without incurring additional expense or delay. FRA will hold a public hearing on the proposed amendments prior to the closing of the comment period on a date to be announced in a future notice in the Federal Register.

ADDRESSES: Written comments should be submitted to the Docket Clerk, Office of the Chief Counsel (RCC-30), FRA, Room 8201, 400 7th Street SW., Washington, DC 20590. Persons desiring to be notified that their written comments have been received by the FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for comments, during regular business hours in Room 8201 of the Nassif Building at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Walter C. Rockey, Jr., Executive Assistant to the Associate Administrator for Safety (RRS-3), FRA, Washington, DC 20590, (Telephone: (202) 366-0897), Dr. Sam Holley, Alcohol & Drug Program Manager (RRs-10), Office of Safety Enforcement, FRA, Washington, DC 20590, (Telephone: (202) 366-0501) or Grady Cothen, Special Counsel (RCC-4), FRA, Washington, DC 20590, (Telephone: (202) 366-0767).

SUPPLEMENTARY INFORMATION: The following abbreviations are used in this notice:

BAC: Blood alcohol concentration.

DOT Procedures: Transportation Workplace Drug Testing Procedures (49 CFR part 40; 53 FR 47002, Nov. 21, 1988).

MRO: Medical Review Officer.

NIDA: National Institute on Drug Abuse, Alcohol, Drug Abuse and Mental Health Administration (the unit within the Department of Health and Human Services responsible for urine drug testing standards and certification of laboratories for the Federal workplace).

On November 21, 1988, FRA published in the **Federal Register** a final rule (53 FR 47102) making certain amendments to its regulations on control of alcohol and drug use in railroad operations (49 CFR part 219). The amendments added requirements for random testing, a prohibition on non-medical use of controlled substances at any time (a "drug-free rule"), and new urine drug testing requirements incorporating the DOT Procedures (53 FR 47002).

In issuing the random testing rule and associated amendments, FRA indicated that further rulemaking would be required to conform the existing provisions of the alcohol/drug regulations to the new requirements. FRA also indicated that it intended to address a number of issues that had emerged during administration of the existing program, including issues identified through an informal safety inquiry designed to review first-year operations (*see* 52 FR 2118; Jan. 20, 1987). FRA has withheld action in these areas in anticipation of final judicial action in pending litigation. With the issuance of a Supreme Court decision completing resolution of challenges to the 1985 FRA rule (*Skinner* v. *Railway Labor Executives' Association*, 109 S. Ct. 1402 (March 21, 1989)), FRA is now able to address remaining issues in light of the decision and without further complicating or delaying the judicial process.

The proposed amendments would accomplish the following general objectives:

- Clarify certain rule language that has not been uniformly well understood in practice and make technical corrections.
- Conform prior rule language regarding testing procedures for pre-employment and reasonable cause tests to accommodate adoption of the DOT Procedures (the HHS Guidelines for Federal Workplace Drug Testing Programs, as adapted).
- Add enhanced conditions and safeguards for urine and blood alcohol testing that is permitted (or offered as an employee option) under the current rule.
- Ensure that employees are properly informed when tests are conducted under the FRA rules and that the reason for each test is clearly communicated.
- Conform prior rule language to reflect adoption of the drug-free rule (§ 219.102).
- Refine the criteria for post-accident toxicological testing by ensuring that tests are conducted after passenger train accidents involving personal injuries, while excusing testing after events clearly resulting from natural causes ("Acts of God").
- Strengthen the pre-employment testing program by specifying the action an employer shall take when non-authorized drug use is detected and by requiring tests when employees transfer from non-covered to covered service.
- Establish uniform minimum standards for handling employees determined to have violated the rules based on required or authorized tests, building on the same principles used in the random testing rulemaking.
- Consolidate similar provisions scattered across the rule into provisions of general applicability and otherwise improve organization of the rule text.

FRA also requests comment on whether the prohibited blood alcohol concentration should be lowered from .04%.

In a final rule amendment published elsewhere in today's **Federal Register**, FRA extends from October 2, 1989, to January 16, 1990, the date by which railroads must comply with subpart H of part 219 (and 49 CFR part 40) with respect to reasonable cause and pre-employment drug testing (subparts D and F of part 219). The effective date of 49 CFR 219.102 (the "drug-free rule") and the date by which Class I freight railroads, Amtrak and commuter railroads must submit random drug testing programs will remain October 2, 1989. Other compliance dates are also unchanged. *See* 54 FR 22283 (May 23, 1989) (prior revision of compliance schedule).

The Secretary of Transportation is also issuing a separate Advance Notice of Proposed Rulemaking on alcohol abuse prevention that addresses a broad range of issues involving alcohol countermeasures in all forms of commercial transportation.

Section-by-Section Analysis

Part 219

Subpart A—General

Section 219.3(a) would be revised to update a cross-reference to section 202(e) of the Federal Railroad Safety Act of 1970.

Paragraph (b) would be amended to conform the previous small railroad exclusion for reasonable cause and pre-employment testing and the voluntary referral/co-worker report provisions to the same standards provided in the random testing rule—i.e., the railroad would both have to employ 15 or fewer Hours of Service employees and not operate on tracks of another railroad except as necessary for interchange. FRA intends the interchange exclusion to apply to railroads that interchange cars on tracks in close proximity to one another. Where a small railroad operates over trackage of a covered railroad for several miles and thus takes on the characteristics of the covered carrier, that small railroad would be covered by the entire FRA regulation.

FRA recognizes that it is not plausible to include railroads in the random testing program (by virtue of the fact that they engage in joint operations with other railroads) unless they fully participate in the remainder of the program. The former random testing exclusion (now § 219.609) would then be collapsed into the general-purpose applicability section.

Section 219.5 (definitions) would be revised by deleting the paragraph numbers and by adding certain definitions for clarity.

The terms "Class I, "Class II" and "Class III" (used to modify "railroad") would be defined to have the meaning assigned by the Interstate Commerce Commission (when applied to "rail carrier"). These terms are well known in the railroad industry and are used with respect to required compliance dates with the random testing program.

The definition of impact accident is amended to reemphasize that the damage threshold for a train accident must be met for the event to come within the definition. Following issuance of the original rule in 1985, it became clear that many railroad officers did not understand the "train accident" and "train incident" concepts embodied in FRA's accident/incident reporting system (see 49 CFR part 225). Although extensive educational efforts have generally alleviated this problem, FRA wishes to avoid any confusion in the future. FRA will therefore add clarifying references at a number of points within the regulatory text. The definition of "impact accident" is further clarified by noting that raking collisions are not within its scope. Although certain raking collisions may involve crew member responsibility, the original rule was not intended to reach these events, since they involve a wide variety of scenarios where human factors may not be at issue or where identifying the individuals associated with the circumstances of the accident may be difficult.

"Independent" would be further defined as not under common control with the railroad. This term is used in relation to medical facilities used for reasonable cause and post-accident tests. In these circumstances, the positions of the railroad and individual employees may be clearly adverse to one another; and ensuring that collections of samples are handled by disinterested parties may be important to ensuring employee respect for the fairness of the program. FRA notes, however, that this proposed change may involve a hardship in certain cases where a railroad is owned and controlled (as a financial matter) by a principal shipper, whose medical clinic is the most convenient site for collection. FRA solicits comment on this issue.

"Medical Review Officer" would be added as a defined term. The definition is the same contained in 49 CFR 40.2.

"Railroad" would be given the same meaning assigned by section 202(e) of the Federal Railroad Safety Act of 1970, as amended by the Rail Safety Improvement Act of 1988. This definition is inclusive of all operations of common carriers engaged in interstate commerce, passenger and freight, regardless of the physical characteristics of the operations, and may include non-carriers, as well. However, *see* § 219.3 (application).

As used in current program operations, the term "railroad property damage" has the same meaning assigned under 49 CFR part 225, FRA's accident/incident reporting regulations. FRA will add a definition to part 219 to avoid any confusion over this concept. Railroad property damage refers to damage to railroad property, including railroad on-track equipment, signals, track, track structures (including bridges and tunnels), or roadbed, including labor costs and all other costs for repair or replacement in kind. Estimated cost for replacement of railroad propety is to be calculated as described in the FRA Guide for Preparing Accident/Incident Reports. FRA does not specify a detailed method for calculating passenger equipment damage in the current Guide, nor (in contrast to freight equipment) is there a recognized commercial standard that could be applied to value passenger equipment in this context. FRA therefore proposes to require that passenger equipment damage be calculated based on replacement value.

Section 219.9 would be amended to simplify the section and conform it to FRA's comprehensive approach to civil penalty assessments as set forth in 49 CFR part 209 (53 FR 52918, Dec. 29, 1988). FRA believes that the structure of the individual rule provisions will adequately protect against liability arising inappropriately. Further, FRA notes that the railroads have now had an extended period to become accustomed to the alcohol/drug regulations and to devise systems that will ensure compliance.

FRA proposes to retain two specific qualifications on the duty of compliance which are unique to the alcohol/drug area. These provisions provide that a railroad would be in violation of prohibitions on alcohol or drug use, possession or impairment by one of its employees only where the railroad had (i) willfully required or permitted the employee to go or remain on duty in covered service while the employee was in violation or (ii) failed to exercise due diligence (a high degree of care) to assure compliance. FRA has retained these limitations on railroad liability by adding a new § 219.105 to subpart B and by cross-referencing that new section in § 219.9.

Paragraph (b) would be added to address the issue of joint operations. When railroads operate in common facilities or on the property of another railroad, individual responsibilities (as among the railroads) are normally determined by joint operating agreements, trackage rights agreements, and other private contracts. (FRA may focus its compliance efforts on the track owner with respect to track safety matters and the operating entity with respect to certain other matters.) FRA has been queried concerning application of the alcohol/drug rule in joint operations with sufficient frequency to indicate the need for a clarifying amendment. The proposed amendment would make the host railroad primarily responsible for compliance with testing under subparts C and D, which involve occurrences under circumstances where supervisors of the foreign line employees may be unavailable. The employing railroad has a secondary responsibility in these in joint operating contexts and would retain the primary responsibility with respect to other aspects of the rules, including the alcohol/drug use prohibitions and

random testing. Railroads could still agree among themselves with respect to which entity would be expected to take the initiative in defined circumstances. Obviously, it will be important for employees to know to whom they must be responsive in circumstances where testing may be required or authorized.

Section 219.11 would be amended through several technical and clarifying changes. Paragraph (a) would be amended to conform the implied consent provisions of the rule by recognizing the new random testing subpart.

Paragraph (b) would be amended to state expressly the policy of the agency that necessary medical treatment shall be accorded priority over breath or body fluid testing where the employee has sustained a personal injury. The amendment would also make clear that extraordinary medical intervention (catheterization) is not authorized where the employee is unable to provide a urine sample as a result of an injury or related treatment. A new paragraph (b)(3) would provide the failure to remain available following an accident or casualty as required by company rules shall be considered a refusal to participate in testing (under the part). Finally, a new paragraph (b)(4) would state expressly that tampering with a sample to prevent a valid test constitutes a refusal.

Paragraph (d) would be amended to extend the express consent requirement now in place for post-accident testing to include reasonable cause and random testing. The purpose of the provision is to make clear that an employee shall evidence written consent to testing whenever such testing is legitimately required under this part. The consent would be provided to the entity collecting the specimen, if required by that entity. Since collectors are not in privity with the employer and must rely on employer representations, some collectors may require such expressions before going forward. However, FRA has noted that some medical facilities use forms of consent that may contain extraneous material. The amendment would appropriately limit the effect of the consent to that required by the section, and any clause waiving rights the employee would otherwise enjoy against the employer would be void. Employees could not be required to waive any recourse that they may have as a result of an improper collection.

Paragraph (g) would be added to make clear that, on the one hand, the rule does not restrict the railroad from conducting other testing (that the railroad may otherwise be free to do) and, on the other, that samples taken under this part may not be used for testing other than that authorized or mandated under the rule. The rule further states that all urine from a void constitutes a single sample. These limitations are necessary to avoid the implication of Federal action with respect to tests that go beyond the scope of those authorized or required by the rule. The new provision would be an expanded version of the language presently at § 219.305 (which would be deleted).

Section 219.19 (Field Manual) would be amended to conform to other changes, particularly the inclusion of post-accident testing procedures in appendix C. FRA intends to develop a Second Edition of the Field Manual reflecting the addition of the random testing program, the DOT Procedures, and the decisions made in this proceeding.

At the time of the final rule, § 219.21 will be amended to reflect the current placement of paperwork burdens.

Section 219.23 would add a requirement that employees be given clear written notice when tests are conducted under the FRA rule and the basis upon which the test was required. This information should generally be included on the urine collection form.

This proposal is responsive to two separate concerns. First, a number of railroads have commenced for-cause and other testing programs under their own management authority or under collectively bargained agreements. These programs may be broader or narrower than the FRA testing programs, both with respect to the type of employee covered and the bases on which testing may be required. In certain cases, these programs are clearly distinct from the FRA testing programs; in others, sufficient overlap exists to present the possibility for confusion. In either case, employees have the right to know who is requiring their participation in testing. Although as a safety regulatory agency, FRA has no direct interest in the regulation of tests conducted wholly under management programs, FRA has repeatedly been asked to become involved in the investigation of individual testing incidents. In some of these cases, employees were apparently led to believe that tests were being required under the FRA rule.

Similarly, even where it is clear that FRA's authority is being relied upon for testing a covered employee, employees may not be told immediately the basis of the test (reasonable suspicion, violation of an enumerated operating rule, etc.). Although it may not be realistic to require supervisors to write detailed reports of the circumstances underlying a test prior to sample collection, the employee should be told with reasonable specificity why it is they are being tested (as it expressly required for random testing under § 219.601(b)(7)).

The proposal would not require written notices for individual non-FRA testing events. Use of approved forms would be sufficient to provide notice that employees are being tested under subpart C (mandatory post-accident testing). The rule would prohibit use of those forms for other purposes.

Subpart B—Prohibitions

Section 219.101 (prohibitions). FRA solicits comment on whether the current *per se* prohibited blood alcohol concentration (BAC) should be reduced from .04 to .00 percent. FRA notes the suggestions of the National Transportation Board that this be done and the action by the Federal Highway Administration under the Commercial Motor Vehicle Safety Act of 1986 that motor vehicle drivers with BACs in the range above .00 percent, but below .04 percent, be removed from service for a 24-hour period (53 FR 39044, Oct. 4, 1988). The railroad industry has long maintained (though has not successfully enforced) a rule that an employee may not report for work with any alcohol in the employee's system.

Prior to issuance of the current .04% *per se* prohibition in 1985, FRA received extensive testimony on the subject of alcohol use in railroad operations. FRA noted at that time that prohibitions established at lower levels are more difficult to enforce. As the NTSB and other commenters have recognized, most chemical tests for alcohol are reliable down to only about .02 percent (though well-controlled gas chromatographic analyses provide sensitivity to .01 percent with good confidence). Cases where employees are caught drinking or in possession of alcohol on the job are punishable without regard to BAC. There are therefor few cases where a .00 percent rule would be enforceable but where other prohibitions would not also apply. Those cases would principally involve BACs in the range of .02–.04 percent, and would be subject to severe problems with respect to timeliness of chemical testing (since BAC would fall below reliably documentable levels from within a matter of minutes to one or two hours). Issues of fairness might also arise where employees who had consumed alcohol some hours before were subject to short calls and forced to report to work without knowing whether every remaining trace of alcohol had been eliminated from their blood.

Clearly, then, the question before FRA is whether the exemplary or preventive value of a no-alcohol standard would be of sufficient use in reducing consumption of alcoholic beverage, during the period employees are subject to call, to offset the technical and practical problem involved in dealing with low blood alcohol levels. In light of the Federal Highway Administration action, and the expert study on which it was based, FRA believes that this issue warrants review and reserves the option to lower the prohibited level contained in § 219.101 in the final rule document, either to .00 percent or another level. *See* Transportation Research Board, *Zero Alcohol and Other Options* (National Research Council Special Report No. 216, Washington, DC, 1987).

Section 219.103 (Prescribed and over-the-counter drugs) would be amended to explicitly address the situation in which the employee is being treated by more than one medical practitioner and therefore is at risk with respect to drug interactions. One of the prescribing physicians or dentists would be required to evaluate the effect of all medications in combination.

Section 219.104 would be added to address the general issue of responsive action in the event an employee tests positive in a required or authorized test. The approach embodied in the drafting combines the provisions of the random drug testing rule governing suspension and conditions for return to service (current § 219.605) with post-suspension hearing procedures similar to those for refusals of post-accident testing (§ 219.213(b)).

With the advent of the drug-use prohibition of § 219.104 and the decision in the context of the random drug testing rulemaking to establish a safety floor with respect to responsive action when an employee tests positive, it is clear that the entire rule should be reviewed for consistency and sound design. Options available to FRA include repealing the existing provision relating to responsive action, limiting procedural guidance to cases where FRA authorized or mandated tests are reported as positive indicating violation of Subpart B of the current rule, and including requirements for any situation where violation of Subpart B may be established (including railroad tests, evidence from observations by supervisors, and other sources).

FRA believes that Federalizing the entire disciplinary process related to substance abuse on the railroads would not be wise and is not necessary. However, where mandated or authorized tests are conducted and alcohol or drug presence is verified indicating violation of the FRA rule, FRA believes that minimal standards should be set out to protect employees while establishing a safety floor with respect to handling of the violator.

The proposed rule would provide that if, as a result of a test under the FRA rule, it is believed that the employee violated § 219.101 or § 219.102, the employee would then be entitled to a prompt hearing before a person other than the charging officer. If the railroad determines that the FRA rule was violated, the employee could not be returned to service until the employee had been evaluated by a substance abuse professional ("EAP counselor"), had participated in any primary treatment deemed necessary, and had tested negative on return-to-work alcohol and drug tests. Thereafter, the employee would be subject to aftercare and a reasonable program of follow-up testing. The procedures are intended to work in tandem with existing diciplinary systems in the railroad industry, as is the case with respect to refusals of post-accident testing under existing rules that have withstood judicial scrutiny.

It should be noted that the proposed rule would require suspension only when the Medical Review Officer has reported the test result as positive, following opportunity for a medical interview. Even then, if the railroad later determined that there was a defect in the test procedure or that the test result was attributable to innocent ingestion (a remote possibility, however unlikely), then the employee would have available the normal remedies, such as reinstatement with back pay.

The return-to-service provisions are not intended to require reinstatement of employees who violate alcohol/drug prohibitions. In the case of first-time violators many railroads assess stern sanctions, up to and including dismissal. Such sanctions create a salutary deterrent effect. Other railroads participate in Operation Red Block, under which first-time violators may be protected from disciplinary sanctions if they are willing to accept treatment. In exchange for this leniency, employees join together in prevention committees and participate directly in enforcement of workplace fitness requirements. Still other railroads deal with first-time violators through the railroad's medical qualifications program. In the case of employees who have violated alcohol/drug prohibitions more than once, virtually all railroads impose a sanction of dismissal. However, company policies continue to encourage self-referral of employees who may have received treatment in the past and who are experiencing a recurrence of uncontrolled abuse. The proposed rule amendment would be compatible with each of these approaches, so long as the minimum requirements are met. FRA believes these requirements are necessary to undergird company substance abuse programs, avoid conflict with the variety of state laws addressing occupational drug testing, and ensure that the testing requirements are effective.

FRA has not included in the regulatory text, but notices for comment, a requirement that any employee who is determined to have violated the rule's prohibitions for a second time during a five-year period would be deemed disqualified for an established period thereafter. A similar issue is being raised in connection with FRA's rulemaking on locomotive operator certification pursuant to the Rail Safety Improvement Act of 1988.

Paragraph (d) would add provisions more fully describing the scope of follow-up testing. Although FRA has not sought to be highly prescriptive with respect to the frequency and duration of follow-up testing, leaving these issues to the judgment of the companies and their medical officers or EAP counselors, FRA does believe that such testing (of whatever duration) should include both alcohol and controlled substances). It is extremely common for those with substance abuse problems to engage in "polyabuse"—i.e., the abuse of more than one compound. Alcohol is by far the most common alternative drug among those with marijuana, cocaine, or other drug abuse problems. The testing requirement is designed to address alcohol on the basis of use that would offend the rule, since not all those who violate § 219.101 or 219.102 will be chemically dependent, and such dependency may provide the only basis on which a therapy of total abstinence can be required (though it may be identified as a treatment goal for others). Accordingly, the form of testing would be breath testing or urine alcohol testing using the two-sample procedure. The theory underlying urine testing for alcohol is more full described in connection with amendments to the reasonable cause testing provisions.

Section 219.105 would be added to describe the limitations on railroad liability with respect to the prevention of violations of the subpart B prohibitions. These limitations are currently found in § 219.9. In summary, the provisions require the railroad to exercise a high degree of care to prevent violations, but do not impose liability where, despite such efforts, an individual employee uses alcohol or

drugs in a manner that is prohibited (and the railroad is not aware of the conduct).

Subpart C—Post-Accident Toxicological Testing

FRA believes that the post-accident testing requirements have, in general, served their intended purposes well and do not require major overhaul in light of program experience. However, FRA proposes a variety of clarifying, perfecting and conforming amendments in light of experience under the rule and other related rulemaking.

Throughout the proposed amendments, FRA includes parenthetical explanations of the concepts underlying the testing criteria ("train accident," "train incident").

Section 219.201. FRA proposes to clarify § 219.201(a)(1)(ii). Release of hazardous material in a train accident accompanied by an evacuation or injury from product would be a qualifying event for testing only where the hazardous material release involves railroad freight car lading. Although FRA makes this proposal based on experience involving relatively minor releases of hazardous materials (e.g., from a propane tank along the right of away), FRA solicits comment on whether a different rule should apply. FRA also solicits comment on whether the hazardous materials testing criteria should be refined or modified to more closely resemble the revised criteria for immediate reporting of certain hazardous materials incidents to the Research and Special Programs Administration (*See* 54 FR 25808, 25812; June 19, 1989).

FRA proposes to add to the listing of major train accidents at paragraph (a)(1)(iv) any train accident involving a passenger train that results in one or more reportable injures. Although most significant passenger train accidents have been covered under other testing criteria, FRA agrees with the National Transportation Safety Board and others who have recommended that a separate criterion be stated in the regulations to avoid a typical situations where passenger safety has been seriously imperiled, yet testing would not otherwise occur. FRA estimates that no more than ten (10) additional accidents per year would require testing under this criterion. It should be noted again that the proposal will require testing only after a "train accident" as defined by the rule. That is, there must have been an event involving derailment or collision producing damage that reaches the reporting threshold (currently $5,700). An accident involving a trip or fall by a passenger or rough train handling resulting in minor injury would not, by itself, require testing under subpart C.

Paragraph (b) of the current rule excepts rail-highway grade crossing accidents from testing. The proposed amendment to that section would also except any case of an accident/incident the cause and severity of which are wholly attributable to a natural cause (e.g., flood, tornado or other natural disaster), as determined on the basis of objective and documented facts by the railroad representative responding to the scene. In the past three years, FRA is aware of two documented tornado-caused accidents where testing was required. FRA agrees that testing should be excused in those situations. However, FRA remains concerned that an exception could be abused or could lead to loss of important data where it is initially believed that the subject employees had no opportunity to respond to the natural cause, but it is later determined that they could have avoided or reduced the severity of the accident by taking proper responsive action. This notice proposes the "Act of God" exception but also requests comment on how abuse of this provision can best be prevented.

Paragraph (c)(1) would be amended to disqualify from making the testing determinations any railroad representative who is immediately involved in the circumstances of the accident/incident. This could include a railroad officer riding the train in a supervisory capacity or directing the routing of trains at a dispatching center.

The amendment would also clarify the issue of joint decision making with respect to whether an accident qualifies for testing. In order to ensure compliance with Subpart C and avoid testing where it is not required, some railroads have required that the responding railroad representative contact higher authority to discuss the testing decision. This practice has the advantage of more uniform decision making, but can also contribute to delays in testing and confusion over responsibility for the decision. The amendment would reiterate that the responding representative must make the required factual determinations and would require that any other person making a final decision based on facts reported by the on-scene representative certify the basis of the decision in writing within 24 hours. The proposal is not intended to prevent collaboration between the on-scene official and a high authority (or person with specialized expertise) on issues such as the railroad damage estimate for individual units of damaged equipment. However, the on-scene representative must describe the visible damage in suitable detail to derive an estimate. A host freight railroad may rely upon replacement damage estimates and repair estimates provided by a passenger railroad, subject to the same requirement that visible damage be described.

Paragraph (c)(2) would be amended to emphasize that the "good faith" language with respect to determination of qualifying events for testing does not excuse errors of law. The railroad and its supervisors are responsible for being aware of the requirements of Subpart C so that testing can be conducted readily and according to the prescribed criteria. Although a good faith error in estimating property damage would be understandable, it would not be excusable for the railroad to apply a property damage criterion other than those specified in subpart C.

A new subparagraph (4) with paragraph (c) would clarify that if an accident is deemed to be a qualifying event based on reasonable inquiry and good faith judgment (together with application of the mandatory criteria), then it is a qualifying event for all purposes, including reporting of test results, even if at a later date the factual predicates are found not to match precisely the testing criteria. For instance, if field estimates should place damage at $550,000, but later more detailed estimates reduce the amount to $480,000, that would not vitiate the basis of the test. On the other hand, if the railroad fails to make reasonable inquiry into the facts, exercises bad faith in determining the facts, or applies inappropriate standards, and it is later determined that the accident did not qualify for testing, then any samples received would be destroyed and results of any analysis would not be reported.

Section 219.203(a) deals with the responsibilities of the railroad and employees tested.

Paragraph (a)(1) would be amended expressly to require employee cooperation in testing. Non-cooperation would include deliberate avoidance of testing by going absent without leave, refusal to provide specimens, and failure to participate in documentation of the collection process.

Paragraph (a)(3) would be amended for purposes of emphasis. As originally issued, the rule was structured to require testing of all train crew members and other covered employees involved in the circumstances of "major train accidents" described in §219.201(a)(1), but it provided for exclusion of individual train crew members involved in "impact accidents" and "fatal train

incidents" under §219.201(a) (2) and (3) where the railroad representative could immediately determine (i.e., without incurring further delays in testing) that the particular employee had no role in the cause(s) of the accident. FRA is concerned that in some situations railroads may have hesitated to utilize this provision. Accordingly, FRA proposes to change the words "employee is excluded" to read "employee shall be excluded." Although FRA recognizes that the causes of an impact accident or fatal train incident (fatality to on-duty employee) may not be immediately clear and that, as a result, the rule creates a presumption of testing where significant doubt exists, FRA believes that using mandatory language with respect to the exclusion may provide reassurance to railroad representatives that, where they can exclude responsibility on the part of one or more employees based on information that becomes immediately available in the course of determining whether the event qualifies for testing, then the policy of the rule clearly directs that they not be tested. The amendment also notes that employee contribution to the severity of the accident should be considered in making this determination (as it is in determining whether an employee may be tested under subpart D), since in many cases prompt crewmember response or appropriate dispatcher oversight may significantly mitigate the severity of an accident.

Paragraph (b) of §219.203 would be amended by adding a new subparagraph (4) that addresses issues raised during implementation with respect to prompt testing of employees while they remain in duty status. Railroad rules typically require employees to remain on site following an accident or casualty, unless it is necessary to perform other duties. The current post-accident testing rules are built on the assumption that this will occur and that the railroad will promptly direct employees to accompany a supervisor to an independent medical facility for testing. Although this is typically the case in practice, there have been exceptions. In some cases, employees have been allowed to leave duty status following qualifying events and have later been recalled for testing. In one well publicized case, an employee left his post and was not available for testing for over three days.

FRA believes there will seldom be a situation where a railroad is justified in releasing an employee prior to testing. The proposed amendment makes clear, therefore, that the railroad shall retain covered employees who "may be subject to testing" in duty status for the period necessary to make the on-site determinations and, as appropriate, complete the sample collection procedure. Where, through inadvertence or circumstances not now foreseen, the railroad releases the employee and later determines that testing should have occurred, FRA proposes to make clear that the employee will not be recalled. An employee who is free to go home without restriction is also free to utilize alcoholic beverages. Although use of controlled substances is permitted only consistent with medical authorization, it is nevertheless true that actual or claimed intervening use of drugs creates major complications in interpreting the significance of testing data. FRA therefore believes that considerations of employee privacy (with respect to legitimate off-duty use of alcohol), fairness and effectiveness argue for terminating the testing procedure where the employee has been released from duty.

However, where an injured employee is transported for the purpose of medical care directly to the medical facility, intervening alcohol use is not an issue. Further, any administration of drugs at the medical facility can be readily verified, both as to time and dosage. As is the case today, railroads would continue to have an obligation to pursue testing in these circumstances, unless provision of the sample or samples might be inconsistent with the employee's health.

In the extraordinary case where the employee is absent without leave following an accident but later reappears, testing could still be conducted. However, the refusal implicit is becoming absent without permission would not be excused.

Paragraph (c) would be amended to explicitly require the railroad to pre-designate post-accident collection sites. It is necessary for the railroad to survey available hospitals, clinics and other medical facilities to determine which facilities are willing to assist in post-accident testing, to ensure that services will be available promptly, and to emphasize the importance of careful, controlled collections in conformity with this part. Most major railroads have undertaken this task. However, in some limited situations, employees have been transported to facilities that would not assist in the collection process. In other cases, hospital emergency rooms have been used only because other available facilities had not been surveyed. Hospital emergency rooms appropriately give priority to trauma cases, and collections may be delayed as a result. FRA proposes to amend the rule to ensure that any remaining railroads follow through appropriately.

Section 219.205 would be amended to reference the new appendix C (post-accident sample collection) in lieu of the Field Manual.

Paragraph (d) would be amended to clarify its intent that toxicology kits be shipped as soon as possible (normally within a matter of minutes or a very few hours). The means of transportation should be adequate to ensure delivery within 24 hours of shipment. The section is further clarified to emphasize that, whenever reasonably possible, transfer of the sealed kit should be directly from the collecting medical facility to the courier, so that no issue arises with respect to the railroad's access to the specimens. FRA recognizes that this will not always be practical, given the remote locations at which some collections must occur. If, therefore, the railroad representative must transport the sealed kit to a point of shipment, it is the responsibility of the railroad to document secure chain of custody of the kit during that interval. This could be done through a separate chain of custody document or other writing documenting continuity of custody and attested by all persons who may have handled the box.

Section 219.207(d) would be amended to update a cross-reference (to Appendix C in place of the Field Manual).

Section 219.209(a)(1) would be amended to update the telephone number to which notification of post-accident testing events will be provided.

Section 219.211 would be amended to address the issues of medical review of post-accident testing results. Existing paragraphs would be redesignated to accommodate revision of the section.

In order to understand the manner in which these provisions will function, it is necessary to describe FRA's administrative procedures for post-accident testing. At the time of sample collection, employees are provided the opportunity to provide information concerning medical use or administration of drugs. This information is reviewed on FRA's behalf by qualified personnel, including a medical doctor having qualifications to serve as a Medical Review Officer, prior to the reporting of any analytically positive result. Because a principal function of the FRA post-accident testing program is to determine accident causation and to explore the role of impairing substances in railroad safety, all confirmed, analytically significant results are reported to the railroad and the employee, and are available for

accident investigation purposes, whether or not they indicate prohibited use. This is done because it is possible for even legitimate medical use of a drug to cause side effects that may lead to an accident. An important long-term function of the post-accident testing program may be to identify whether medical practice in this area is sufficiently sensitive to the potential adverse safety consequences of therapeutic drug use and to determine whether such use is being properly supervised.

However, where the employee has declared medical use of a controlled substance, FRA does endeavor to affirm in the laboratory report whether the findings are consistent with declared medical use. In exceptional cases, this may require contacting the employee directly to ascertain more information concerning claimed dosage or time of ingestion. However, FRA may not attempt at this stage to verify the existence of a proper prescription. Instead, FRA believes it is more appropriate for the railroad Medical Review Officer, who is often also the medical officer of the railroad, to make appropriate inquiries and to disclose to FRA only such information as is necessary for FRA's purposes (which normally would not include data describing the underlying condition for which the drug was prescribed).

Accordingly, paragraph (b) would provide that test results are reported to the employee and the railroad's Medicial Review Officer. The railroad would have the same duty of confidentiality with respect to the results as provided for tests subject to subpart G of the regulations, except to the extent the FRA or the NTSB has publicly disclosed the results as necessary for the conduct of an accident investigation.

Under paragraph (c), test results for surviving employees would be reviewed by the railroad's MRO in the same manner required for other tests subject to the regulations. Although the principal purpose of the review would be to reconcile test results with claimed medical use of drugs, FRA's designated laboratory will cooperate with the Medical Review Officer with respect to other steps the MRO may wish to take to review the test results. The results of the review would be reported to FRA for use in FRA's accident investigation, enforcement and data collection processes.

It should be noted that FRA maintains an independent oversight and technical review capability for its designated laboratory which can provide expert advice to FRA with respect to any contested test result. There may be occasions where the interests of the railroad employing the Medical Review Officer and that of investigating public agencies are inconsistent. Accordingly, neither FRA nor NTSB would be bound by the results of the railroad MRO review, although it would be binding with respect to disciplinary purposes internal to the railroad; and FRA would consider the results of the review in exercising its responsibilities.

Paragraph (d) describes FRA's practice of maintaining medical information in confidence to the extent permitted by law, except where necessary to discharge its statutory responsibilities. FRA believes that it is obligated by law to provide information pertinent to an accident investigation to the National Transportation Safety Board. FRA urges the Board to maintain medical information in confidence except as necessary for the proper conduct of its investigations.

Paragraph (e) (currently (a)(2)) would clarify the manner in which an employee could contribute to the accident/incident investigation by responding to the toxicology report.

Redesignated paragraph (h) (currently (d)) would be amended to lengthen the retention period for positive samples from six months to two years, which is the actual current practice. The retention period for negativre samples would be reduced from six months to three months. Retention of negative specimens is appropriate in this context because of the significance of certain of the events subject to testing; however, the current retention period for negatives is believed to be unreasonably long.

A new paragraph (i) would make explicit the agency's current practice of allowing reanalysis of specimens by the designated laboratory or by another certified laboratory with an appropriate, validated assay, at the employee's request. The request would have to be made within 60 days of the date of the toxicology report, in order to encourage early problem resolution and to minimize technical issues related to extended storage and later reanalysis of specimens. It would be within FRA's discretion whether to allow reanalysis after that period.

Although FRA can provide for reanalysis at its designated laboratory at the employee's request, any employee-requested reanalysis conducted at another laboratory would be at the expense of the employee. However, this would not bar FRA from procuring additional analysis in a proper case where necessary to achieve program purposes.

Section 219.213(a)(1) (refusals) would be amended to make a technical correction. (Other amendments to section 219.11 provide that the concept of refusal of a test includes failure to remain available as required by company rules or tampering with a specimen to defeat the test.)

The new paragraph (a)(4) would provide that, upon the expiration of the 9-month disqualification period, an employee could return to work only under the same conditions provided for violations of the alcohol/drug prohibitions in § 219.104. It should be noted that the required EAP evaluation and any necessary treatment could occur within the 9-month period.

Subpart D—Reasonable Cause Testing

As structured in the final rule issued in 1985, reasonable cause testing was designed to detect and deter on-the-job alcohol or drug use or impairment. Employers were permitted to act on information derived from this testing with respect to non-medical drug use that was not established to have shown use or impairment on the job, but were not required to do so. With adoption of § 219.102, the Federal drug-free rule, the focus of this testing procedure will now be expanded to include prohibited use of controlled substances at any time, as evidenced by drugs or their metabolites remaining in the body at the time of an in-service reasonable cause urine test. Over time, this innovation may warrant adjustment of the bases for testing, as well as the other changes proposed in this notice. However, due to the short period available to complete the instant rulemaking, the additional issues presented with respect to further program development will be deferred.

FRA notes that the major issue facing the agency with respect to the reasonable cause program is whether to retain that aspect of its character which is designed to address drug impairment. The rule currently creates a presumption of impairment from a positive urine test, unless the employee exercises the available option of a blood test. If the employee provides a blood sample, then the urine and blood test results are reviewed together; and the best available scientific information is used in concert with evidence concerning the employee's behavior to ascertain whether, on a preponderance of the evidence basis, the employee is impaired. Even if the employee is not determined to have been impaired, however, the railroad may still proceed based on a positive urine test alone to assess any discipline that may be appropriate under its established

policies published to employees through a required notice.

As further background, it should be emphasized that the purpose of the blood test is not to "confirm" the urine test results. Urine analysis includes both screening and confirmatory analysis by gas chromatography/mass spectrometry for the parent drug or for metabolites of the prohibited parent drug. It would not be unusual for a urine test to be positive and the blood test for the same drug negative, depending on the relative recency of use and the sensitivity of the blood test. This is true because drugs are generally found in the blood in lower concentrations than the urine during the latter phase of the elimination cycle. Residual blood levels of the drug or its metabolities may then be so low as to escape detection by available tests.

FRA recognizes the limitations of the current approach in light of the addition of the drug-free rule. If a railroad maintains a policy of handling all positive drug tests in the same manner regardless of the likelihood that the employee was impaired by the acute effects of the drug on the job (e.g., through medical disqualification), then it can be argued that the blood test option and the presumption of impairment are superfluous. At the same time, if at any later date the railroad or an arbitrator may be tempted to infer from a positive urine test and unsafe conduct that the employee was impaired on the job, then it may be useful to the employee to have the right of a blood test at the time of urine sample collection in order to provide exculpatory information.

FRA is also aware that appropriately sensitive blood analyses for drugs are available from a limited number of laboratories; and the interpretation of the results of these tests require specialized knowledge beyond that required for normal medical review purposes.

Accordingly, FRA requests comment on elimination of the urine impairment presumption and the boood test option. However, the structure of the proposed rule changes assumes retention of both. FRA believes that tests conducted in the railroad industry on reasonable suspicion or after unsafe practices may present special considerations that warrant providing employees with the opportunity to provide full information concerning their fitness. The existing program appears to have worked reasonably well in practice, though some railroads may have been discouraged from utilizing the FRA authority because of the complexities that these features introduce. Further, FRA has just completed extended litigation challenging the reasonable cause and post-accident testing programs. Both programs were upheld in their entirety. Major changes to either program may be seen to invite further litigation, and by their nature these issues are sufficiently complex and technical to invite extended judicial consideration of any challenges. FRA believes that the interests of safety may be better served by reserving significant changes for further consideration at a later date. Accordingly, the proposed changes would not disturb the basic program design but make only those changes necessary to conform the rule to advances in testing safeguards and reflect experience in program administration.

FRA further solicits comment on the possibility of excusing the requirement that employees have a blood test option where the urine result is used for limited purposes, such as temporary medical disqualification in the case of an initial positive. Where the railroad does not attempt to make a determination concerning on-duty use or impairment (i.e., where the railroad treats all cases as if the blood test was exculpatory as to on-duty acute effects), less reason would appear to require the additional expense and complication associated with the optional blood test.

Section 219.301 of the existing rule sets out the circumstances under which testing may be required. Instructing railroad supervisors to understand these conditions for testing is a significant undertaking that the railroads have addressed through structured training programs. The proposed amendments are, again, minor and of a clarifying or conforming nature.

Paragraph (a) would be amended to reflect the fact that reasonable cause urine tests would now detect non-compliance with § 219.102, as well as § 219.101, and to reference the new § 219.23, which requires notice to employees concerning the authority under which the test was conducted as the general basis of the test (e.g., suspicion of current impairment, violation of an enumerated operating rule).

Paragraph (b)(3), which enumerates those rule violations that provide a basis for a reasonable cause breath or urine test, would be amended by making a typographical correction and by adding explicit reference to two unsafe practices that have been construed as coming within the purview of the existing provisions. Both entering a cross-over before both switches have been properly lined for movement and running through a switch (other than a switch designed to activate automatically with the movement's approach) involve operating on a segment of track in an unauthorized manner. The proposed amendments would clarify that these particular unsafe practices provide a basis for testing. The proposed amendments would also clarify that failure to flag a train that is fouling an adjacent track, where required by the railroad's rules, is likewise a basis for testing.

Paragraph (f) would be amended to provide that reasonable cause collections may only be conducted promptly following the observations or events upon which the testing decision is based, consistent with the need to protect life and property. FRA has noted an excessive number of instances where the railroad has, following a rule violation or reportable accident/incident, allowed the employees involved to complete their normal duties before commencing the testing process. This practice erodes employee confidence in the program and renders less valuable the right of the employee to provide a blood test for analysis. It also raises questions concerning the railroad's commitment to maintaining a safe work environment and may lead to violations of the Hours of Service Act and the 8-hour limitation on testing described below. The intent of the proposed amendment is to require that testing be commenced as soon as practical after the triggering event, since the purpose of testing is to ascertain whether alcohol or drug use may have contributed to the occurrence.

It should be noted that the 8-hour limitation is not based on fixed technical limitations on breath or urine testing. In the case of alcohol, which is eliminated from the blood at an average rate of about .018% per hour, the detection window obviously varies in relation to the blood alcohol level at the time of the event in question (and individual variations in rate of elimination). Drug residues may be eliminated in the urine for periods after last use from two to three days to in excess of one week, depending on the drug, frequency of prior use, and degree of concentration of the urine. Thus, for alcohol, very prompt testing is desirable. For other drugs, urine levels will normally remain detectable well beyond the 8-hour period. However, drug levels in the blood tend to fall more quickly than urine levels, depending on the drug in question and whether the parent or metabolites, or both, are subject to testing.

Paragraph (f)(2) (newly subdivided) would be amended with respect to the 8-hour limitation. Unlike post-accident testing, for which the public interest in

obtaining available toxicological information regardless of necessary delays, the reasonable cause testing program sets an absolute 8-hour limitation. FRA solicits comments with respect to all issues involving the 8-hour rule.

The proposed changes would clarify and refine the 8-hour rule in light of program experience. First, the 8-hour period would run from the time of the event or the time the responsible supervisor receives notice of the event, whichever is later. This provision is intended to deal with the situation such as one in which an employee is injured, but either the employee conceals the injury to avoid testing or the seriousness of the injury does not manifest itself until some hours later. In either case, allowing 8 hours (if necessary) within which the supervisor can go to the site, evaluate the situation, determine who should be tested, transport the employees to the collection site, and complete the collection procedure may not be excessive. FRA is concerned, however, that the proposed provision may itself be subject to manipulation on the side of the railroad and solicits any suggestions for further refinement.

Paragraph (f)(3) would provide that an employee, once released, may not be recalled for reasonable cause testing. This would be true even if the employee reported an on-the-job injury after leaving work. FRA believes that the railroads have sufficient ability to penalize employees who fail to make prompt reports of injuries. Should an injury manifest itself following the end of the duty tour, it is more likely to be of a less serious variety or (as in the case of muscle strain) of the kind that could be incurred without employee fault.

Paragraph (f)(4) defines "responsible railroad supervisor" for purposes of who would receive notice to commence the 8-hour period. The definition is intended to be sufficiently broad to avoid abuse; but FRA nevertheless solicits comment on its formulation.

Section 291.303 of the existing rule addresses safeguards for breath testing. Since implementation of the rule in 1986, over 1,000 evidential breath tests have been conducted under the rule. So far as FRA has been made aware, there have been no significant problems with the regulatory structure. However, FRA is prepared to make any perfecting changes that may appear appropriate on the basis of comments submitted.

FRA specifically proposes to amend paragraph (c) to specify standards for analysis of blood samples that may be submitted on an optional basis by any employee who tests positive in replicate evidential breath tests. The proposed standards reflect common forensic testing standards similar to those used in many U.S. jurisdictions and those embodied in the FRA post-accident testing program. Quality control procedures parallel the essential internal quality control procedures for drug urinalysis contained in the DOT Procedures. Comment is requested with respect to laboratory qualifications and external quality control (*see* discussion of urine alcohol analysis with respect to § 219.307, below).

The proposed blood testing safeguards specifically provide that if the blood test is negative for alcohol (at a cutoff of .02%) then the breath tests shall also be deemed to be negative. FRA is well aware that this may not be a scientifically "correct" outcome, in view of the fact that delays in sample collection may result in elimination of detectable levels of alcohol from the blood. However, the purpose of the blood test option is to qualitatively verify that the breath alcohol device was measuring ethyl alcohol and to provide reassurance to all employees that the test procedure is fair and not subject to manipulation by the employer. The only way these objectives can be achieved is to rely, from a qualitative point of view, on the blood alcohol analysis.

FRA notes that it is common for breath test readings and later blood analysis quantitations to vary. In the most frequently encountered case, the breath analysis reading may be taken at the peak of the blood alcohol curve (comprised of an absorption phase and elimination phase) or during the period of declining BAC. A blood sample taken at a later time may show a BAC lower than that displayed on the breath alcohol device, even though the breath device displayed a conservatively low reading in relation to actual BAC. This is true because in the intervening period a portion of the alcohol in the blood has been metabolized by the liver. The better quantitation is that taken closest to the triggering event, even though a breath device has been used to estimate BAC. Accordingly, if the blood test is positive, the breath test reading should normally be viewed as authoritative (assuming compliance with periodic verification of calibration, plausible compatibility of two quantitations, etc.).

Under the current rule, breath alcohol readings below .02 percent are considered negative. An indicated BAC of .04 percent or above indicates possible violation of § 219.101; however, only an indicated BAC of .05 percent or more on a properly calibrated evidential device operated under appropriate environmental conditions by a qualified operator would normally be dispositive on this point, since devices are maintained within plus or minus .01% of true value. Note that under proposed § 219.104, an indicated BAC of .05 percent or above would require removal of the employee from service and impose certain minimum standards for returning the employee to service. A railroad encountering an indicated BAC of .02–.04% would be free to apply its own disciplinary standards. Railroad rules have historically required that an employee not have any alcohol in his or her system while on duty. FRA does not condone use of any alcohol. (See discussion of § 219.101, above.)

Section 219.305 of the current rule sets out a portion of the procedures and safeguards for urine alcohol and drug tests. These provisions were issued at a time when no national laboratory certification program was available and prior to development of current, enhanced testing safeguards. FRA therefore provided in its final rule of last November that railroads would be required to comply with the Transportation Workplace Drug Testing Procedures (49 CFR part 40; 53 FR 47002, Nov. 21, 1988) (DOT Procedures), which were based on the HHS Guidelines (Department of Health and Human Services Guidelines for Federal Workplace Drug Testing Programs (53 FR 11970, April 11, 1988). The proposed amendments would repeal portions of the existing sections that are covered in greater detail in the new subpart H, which incorporates the DOT Procedures and indicates appropriate linkages to existing railroad procedures.

FRA does propose to retain the requirement of paragraph (d) that reasonable cause urine collections be performed at independent medical facilities, since on-property collections would raise issues of alleged bias in the context of events involving some adversity between the employer and employee and since collection at a medical facility will make exercise of the blood test option realistic.

However, FRA is keenly aware that requiring collection at independent medical facilities will, in some cases, make control of the collection process more difficult. Further, railroads that are making extensive arrangements for random urine collections on the property may find this requirement burdensome. Accordingly, FRA solicits comments on this issue and, as with other issues raised in this notice, reserves the right to make further changes in light of comments received.

The existing rule provisions allow for alcohol analysis using urine, but do not

mandate safeguards specific to this analysis. The proposed amendment would continue this alcohol testing authority (more fully discussed below) but cross-referenced a revised § 219.307 containing urine alcohol testing standards.

Paragraph (e) would be deleted from this section, since the issue will be covered in the proposed amendments to § 219.11.

Section 219.307 of the existing rule contains standards for laboratory urine analysis and reporting. These provisions would be repealed in favor of the more rigorous and detailed provisions of subpart H and the new part 40.

A revised § 219.307 would address the specific issue of urine alcohol testing. Urine is ordinarily not a preferred fluid for alcohol analysis because urine alcohol levels based on single samples do not reliably correspond to blood alcohol concentrations at the time the urine is collected (nor at any clearly definable point in the past). However, there are situations where urine alcohol analysis may be indicated. Often observations giving rise to suspicion of alcohol or drug impairment will provide insufficient cues to discern whether the symptoms displayed resulted from use of drugs, alcohol, or alcohol and drugs in combination. After unsafe practices, specific indicators may again be absent. Prompt testing for both alcohol and drugs may therefore be indicated, but it may not be administratively practical to conduct both breath analysis and urine drug test. Even if breath analysis equipment is available, it may not be portable; or it may be unrealistic to introduce such equipment in the context where the employee may be found (e.g., where the employees is receiving treatment in a medical facility).

This section, together with the new appendix D, sets forth the technical standards for urine alcohol analysis. Appendix D is based on the existing Field Manual note regarding urine alcohol testing. In brief, the procedure calls for a two-sample procedure. At the time of provision of the first sample, which would normally be used for drug analysis under subpart H, the employee would be directed to entirely void the bladder. A waiting period would be observed during which the employee might be offered fluids. A second sample would then be collected for urine alcohol analysis. Since this sample would represent urine delivered to the bladder during the interval between the first and second collections, and since urine is produced in the kidney from blood, the urine alcohol level of the second sample will mirror the blood alcohol level. However, alcohol is found in body fluids in proportion to the water content of the fluid. Urine has a higher water content than blood. It is therefore necessary to divide the urine alcohol level by 1.5, which provides an acceptable estimate of average BAC in the interval between the first and second sample.

A sample collected under appendix D would be placed in a standard urine collection bottle containing at least 1% sodium fluoride (w/v) as a preservative. Except as otherwise specified, collection, handling and retention of the urine specimen would be the same as provided for drug analysis in subpart H. Thus, for example, the original sample container would be required to be retained in a separate accessioning/aliquoting/storage area at all times.

Quantitative test results would be reported to the Medial Review Officer, who would review and act upon the results in the same manner provided in subpart H, except that both a quantitated urine alcohol level and estimated BAC would be reported to the employer. Where this procedure is followed, an employee would have the option of providing a blood sample for analysis. This might be advantageous to an employee who has consumed alcohol off duty and is unable to completely void the bladder because of a physical disorder, but should not be viewed as obligatory by any employee, since the Medical Review Officer will be available to evaluate and take into consideration such explanations.

Laboratory analysis would incorporate standard forensic alcohol testing techniques, and internal quality control provisions would be similar to those required for urine drug testing. FRA requests comment on the qualifications of laboratories to perform this testing and the problem of external quality control and reserves the right to include specific requirements in the final rule. Such requirements could, include *inter alia*, participation in an external open proficiency testing survey, use of a laboratory certified by HHS/NIDA, use of a laboratory certified under the Clinical Laboratory Improvement Act, and submission of blind quality control specimens.

The proposed alcohol screening provisions would take into account the availability of commercial immunoassays for alcohol. Screening would be at a level of .05% (w/v), which is equivalent to an achieved BAC below .04%. Published literature suggests certain available assays are reliable at this level but less information exists with respect to lower levels. Confirmation would be by gas chromatography (GC), which is scientifically and forensically recognized as the preferred method of confirming volatiles such as ethyl alcohol. If the GC method is used for both screening and confirmation, two different columns must be employed to ensure specific identification of ethyl alcohol. FRA believes that a combination of two analytically distinct methods (e.g., immunoassay and GC, or dichromate oxidation and GC) should satisfy the requirement of specificity without requiring two GC analyses under different conditions, but requests comment on this issue.

The proposed criteria for protocols would require use of a suitable internal standard, external (ethyl alcohol) standards, and controls. FRA would not specify which of several GC methods should be employed. A cutoff of .05% would also be used for reporting after confirmation.

Section 219.309 of the rule addresses the presumption of impairment from a positive urine test, a subject with respect to which FRA requests comment above. FRA proposes to amend the notice required by paragraph (b) to reflect the addition of § 219.102 and the provision regarding notice of company policy would likewise be revised to require the company to express any distinctions between consequences of a positive for a person determined to have been impaired or used the drug on the job in contrast to drug use other than on the job.

Subpart E—Identification of Troubled Employees

As issued in 1985, this subpart requires that railroads adopt policies to encourage the voluntary referral of covered employees for treatment and co-worker identification of those who are unsafe to work with. The key to the success of these concepts is that, if the employee accepts help and successfully completes treatment, the employee's position is protected. This subpart has worked well in practice and does not require extensive revision.

Sections 219.403 and 219.405 would be amended to reference the new § 219.102.

FRA solicits comments regarding whether employees reported under the co-worker report provision should be subject to follow-up testing, either on a mandatory basis or at the option of the employer. Although FRA would much prefer not to include follow-up testing in the case of voluntary referrals, since such a requirement could discourage referrals, commenters may wish to address this issue, as well.

Subpart E—Pre-employment Drug Screens

The pre-employment drug screen requirement applies to applicants for positions that include covered service. Testing is required for certain drugs, and employers may include alcohol. As currently worded, the provision does not require testing on transfer from non-covered to covered service.

FRA proposes to make several changes to this program further to ensure sound scientific practice in testing and to increase the effectiveness of the program.

Section 219.501 would be amended to emphasize that the pre-employment drug testing procedure must be complete (i.e., a negative report must have been provided to the employer) before the individual enters covered service. The section would also be amended to require testing of any present employee who seeks to transfer from non-covered to covered service. FRA believes that, although a period of service with any employer does provide a certain amount of information concerning fitness, it is necesssary to verify that an employee seeking to transfer to covered service is not currently using prohibited controlled substances. Drug abuse habits may begin at any time and may require a period of some duration before they manifest themselves through a negative impact on job performance. Those who will be subject to other forms of testing as covered employees, including random testing, should come to covered service free of any problems that would require remedial action. Addressing this "gateway" is particularly important given the fact that the railroad industry continues in a period of generally declining employment and often seeks new engineers, dispatchers and other employees from the ranks of those already in its employ. Where performance of a safety-sensitive function is in question, testing of internal applicants is clearly warranted from the point of view of Fourth Amendment law. *National Treasury Employees Union* v. *von Raab*, 109 S. Ct. 1384 (March 21, 1989).

Based on contacts with representative railroad employers, FRA estimates that this proposal would result in not more than 500 employees being tested in any given year for the foreseeable future. In many cases, railroads are already requiring medically-based testing in this context. However, in some cases testing is not conducted; and the impetus of a Federal mandate may be necessary to ensure obstacles are not interposed.

Paragraph (c) would be amended to conform this subpart to subpart H and 49 CFR part 40.

Paragraph (d) would be revised to address the issue of urine alcohol testing. FRA currently authorizes railroads to test for alcohol in the pre-employment context. However, FRA believes that more rigorous standards are needed if such testing is to continue. The proposed rule would require notice to the employee that the sample will be tested for alcohol, as well as controlled substances. Since the only legitimate purpose of pre-employment alcohol testing is to identify possible alcohol abuse, the two-sample technique used for reasonable cause testing will not be necessary in this context; however, otherwise the same technical standards should apply. A suitably high cutoff should be used to limit issues concerning recent social drinking; .10% urine alcohol is proposed (equivalent to an attained BAC of almost .08%). The rule would also require that all applicants testing positive be handled in the same manner (pursuant to company policy) to ensure fairness and avoid use of the testing procedure to produce discriminatory hiring outcomes.

Section 219.503 would be amended to conform recordkeeping and reporting under this section to subpart H.

Section 219.505 would specify that an applicant who is making non-medical use of a controlled substance, as evidenced by a positive test reported by the MRO under subpart H, not be employed on the basis of the application for which the test was taken.

Subpart G—Random Drug Testing Program

The random drug testing provisions were issued last November after extensive public comment and do not require significant revision at this time. The few changes proposed here are of an editorial, clarifying or organizational nature and do not affect the structure or basic requirements for the subpart.

Section 219.601(b)(6) would be amended to clarify the circumstances under which employees who work in covered service only a portion of the time may be subject to random testing. Such employees may include clerks who occasionally are assigned to duties involving communication of train orders, electricians who sometimes are called upon to work on cab signal apparatus, and other employees (including, particularly on smaller railroads, supervisors). The objective of the current rule provisions was to ensure testing each employee who actually performs covered service perceives the possibility that he or she may be subject to testing on a random basis. At the same time, it would make little sense to require that employees who work in covered service only two or three days per year be tested as frequently as those who work in covered service on a regular basis. FRA has therefore provided advice that, although "occasional" Hours of Service employees should be included in the pools from which names or other identifiers are selected, they should be considered available for testing only during those periods they are on duty in covered service. (Under the Hours of Service act, an entire duty tour is "covered service" if any safety-sensitive functions subject to the Act are assigned for performance during the duty tour.) The clarifying amendment is intended to ensure that all railroads understand this principle. Obviously, the problem addressed by the amendment does not arise to any significant extent where the railroad's plan selects Hours of Service positions or position units, since whoever fills the position on any given day will be subject to testing.

Section 219.603(b)(3) would be deleted, since equivalent language of broader scope is being proposed for inclusion in § 219.11.

Section 219.605 deals with procedures for drug urine laboratory reports that indicate presence of a drug. Paragraph (b) would be revised to reference the new § 219.104, which deals with handling of a positive test result. (Provisions of subpart H already address the manner in which results will be reported.) Paragraphs (c) through (e) would be deleted, since the subject matter would be contained in § 219.104.

Section 219.607 (records retention) would be moved to a new § 219.713, since it will apply to all forms of company records relating to testing under the part.

Section 219.609 (small railroad exlusion) would be deleted, since the same exclusion will be contained in a revised § 219.3.

Subpart H—Procedures and Safeguards for Urine Drug Testing

This subpart would also be amended exclusively for editorial and organizational purposes.

Section 219.707 (MRO review). FRA requests comment on whether paragraph (c) should be amended to modify or delete the requirement that the employee be provided a copy of the MRO-approved test results within 48 hours of delivery to the railroad officer, or immediately upon the railroad's taking any action adverse to the employee, whichever first occurs. In a

filing on 49 CFR Part 40, the Association of American Railroads (AAR) has expressed concerns that it may not be physically possible to transmit the test result within the limitations stated. FRA appreciates the concern raised by the AAR; however, FRA has also noted instances where employees have been removed from service without receiving copies of test results for extended periods, despite current rule provisions requiring prompt delivery.

Paragraph (d) would be amended by deleting the final sentence of the paragraph. This text would be moved to § 219.711(b) and amended for clarity.

Section 219.709(a) would be amended to correct a typographical error ("within the 365-day period").

Section 219.711(a) would be amended by adding text derived from § 219.707(d) regarding the MRO's responsibility for confidentiality of medical information. FRA notes that the reference in this provision to use, in an established medical qualifications program, of medical information disclosed incident to the testing does not provide license to short-cut the medical review process. It is not intended that an MRO who is also a company medical officer (as will often be the case in the railroad industry) could medically disqualify an individual before a test reported as positive by the laboratory is fully reviewed. On the other hand, if the employee does provide information that suggests the presence of an underlying medical disorder that the employee is required by contract to disclose to the employer's medical office, or if verbal communication or laboratory results indicate use of drugs with potential adverse side effects that would normally be subject to review under the medical program, this information would be treated in the same fashion as information otherwise disclosed to the company medical officer as required under the employment contact. In the railroad industry, major railroads have a long history of maintaining medical qualifications programs for key safety-sensitive employees.

Existing paragraph (b) of this section would be designated as paragraph (c). The requirements of current paragraph (c) would be included in § 219.211 of subpart C, since it applies to post-accident testing under the subpart.

FRA also requests comment on the extent to which there is tension between the Subpart H confidentiality policy for drug test results and the requirement of 49 CFR 225.17 that railroads report to FRA any information relating to alcohol or drug use in an accident/incident.This issue may arise in relation to reasonable cause tests conducted following qualifying accidents and incidents. Comment is also requested concerning how any such tension should be addressed to protect against unnecessary disclosure while providing sufficient information pertinent to accident/incident causation.

Section 219.713 of the proposed amendments is derived from current section § 219.607. The section heading is amended to remove the reference to "confidentiality," which is separately treated in § 219.711.

Appendix A of the current rule provides for civil penalties, which were recently adjusted to reflect increases in the statutory range provided by the Rail Safety and Service Improvement Act of 1988. *See* 53 FR 52918, 52928–30, Dec. 29, 1988. FRA proposes, at the time of final rule, to make conforming changes to the penalty schedule generally consistent with the approach and penalty amounts presently in place. FRA will consider any comments received on this issue.

Appendix C would set out procedures for post-accident toxicological testing (sample collection and handling). FRA believes that significant improvements can be made in the approach used to collection and documentation of post-accident tests based on developments since issuance of the rule in 1985 and experience in program admistration. FRA has endeavored to emphasize simplicity (in order to foster orderly and successful collections at medical facilities) and proper identification and securing of specimens (in order to protect the rights of employees). An effort has been made to have these procedures parallel as closely as possible the procedures for urine collections under the DOT Procedures. However, mandatory post-accident collections have the following characteristics that set them aside from most occupational drug testing programs:

- Collections must always be conducted at medical facilities.
- Blood, as well as urine, must be provided.
- Employees to be tested may include personnel injured in the accident.
- Individual collections are typically of greater significance than those for random tests and most other types of tests.

These factors have a number of ramifications for collection procedures. For instance, although stringently managed urine collections are encouraged, measures to ensure against tampering by the donor are less critical where a blood sample is available. If a urine specimen appears to be dilute or to contain an adulterant, the blood can be screened for drugs of interest. (Alcohol screening is routinely conducted using the blood sample.) Urine collection procedures generally assume the provision of a single specimen. Where blood must be collected, as well, additional complications are introduced with respect to maintenance and documentation of chain of custody. Injured employees cannot be expected to provide samples at a pre-designated collection site in every case, but must be approached humanely and with appropriate flexibility and sensitivity in the clinical environment. Even rather minor injuries may lead to administration of drugs that will be detected in later testing, and serious injuries may result in administration of whole blood or plasma from another donor; it is therefore important contemporaneously to obtain information concerning medical treatment resulting from the accident or casualty. Personal identifying information must be included on the collection forms provided to the laboratory and FRA, since neither is in privity with the employee so as to have available a social security number, assignment on the date of the accident, or a mailing address. Similarly, medical drug use must be reflected on the collection form for the following reasons: (i) To obtain the best information concerning recent drug use and dosage (i.e., before the employee's memory has faded), (ii) to allow prompt use in the context of the accident investigation and (iii) to ensure accurate declarations. If facial defects appear in the collection process, routine nullifying of the test is not indicated, since the specimens represent evidence that may be critical to an accident investigation. Instead, efforts may be made to determine if any error could have affected sample identity or integrity; and any apparent gaps in custody and control must be reviewed to determine if continuity of custody and control can be documented. The post-accident collection process and FRA's administrative procedures are intended to take into acccount each of these concerns.

FRA notes three possible approaches to documentation of post-accident specimen chain-of-custody from collection to sealing in the toxicology kit. Chain-of-custody documentation could be provided (1) On a single form for both blood and urine of an individual employee, (2) on separate blood and urine forms for each employee, or (3) on batch urine and batch blood forms. It is important that the system established allow custody of each specimen to be

followed (i.e., the documentation must follow the sample). In reviewing the system proposed, commenters are asked to consider efficiency of collection and the receptivity of medical facility personnel to the proposed system.

Appendix D sets forth the method for collecting urine samples for alcohol analysis. This "void and second sample" procedure is derived from FRA's 1985 Field Manual and has been utilized with evident success by at least one major rail system. It reflects the best information available to FRA concerning urine alcohol analysis. FRA notes that urine is not a preferred specimen for alcohol analysis, since both breath and blood provide a much more direct means of determining current blood alcohol concentration. However, circumstances will arise where it is not practical to perform both a urine drug collection and another type of test for alcohol. This "void and second sample" procedure can provide a practical alternative to invasive blood testing. FRA specifically solicits comments on the experience of the industry in using this technique.

In incorporating the procedure into the regulations, FRA has made several modifications to the procedure. For example, alcohol analysis is limited to the second sample. Specific cautions are provided with respect to MRO review. Introductory matter has been eliminated, and the procedures would now be required (where the railroad elects to utilize urine alcohol analysis) rather than recommended.

Part 217

Part 217 of title 49, Code of Federal Regulations, sets forth requirements for filing of railroad operating rules and for programs of operational tests and inspections. Section 217.13 was amended at the time of 1985 alcohol/drug final rule to require filing of certain specific data concerning Rule G observations and violations and chemical tests (50 FR 31508, 31578, Aug. 2, 1985). This section was further amended to reflect the random testing requirements (53 FR 47102, 47131, Nov. 21, 1988). FRA has noted some difficulties in administration of the original provisions, principally due to the decision by some railroads to conduct for-cause testing under their own authorities, and has further noted the need to make the data collection elements consistent. Accordingly, FRA proposes further amendments to ensure that the data collected is reasonably complete and useful as a means of tracking alcohol/drug compliance. Comment is solicited on any further refinements that might be made to this section. In order to assist commenters, a copy of the proposed revised form 6180.77 incorporating changes in the rule is reproduced at the end of this notice.

Part 225

Part 225 of title 49, Code of Federal Regulations, sets forth requirements for accident/incident reporting. Section 225.17 was amended at the time of 1985 alcohol/drug final rule to require reporting of certain alcohol/drug information relating to reportable accidents and casualties (50 FR 31508, 31579, Aug. 2, 1985). The proposed amendment to the same section would merely emphasize the obligation of the railroad to provide required data with respect to reportable incidents (personal injuries), as well as train accidents. Such reporting has been included in the FRA accident/incident reporting system since calendar 1986.

Regulatory Impact

This proposed rule has been evaluated in accordance with existing regulatory policies. It is not a "major" rule under Executive Order 12291, but it is deemed a "significant" rule as defined under DOT policies and procedures. FRA has considered the regulatory costs and benefits associated with the proposed rule and has tentatively determined that the costs of the revisions are *de minimis*. Therefore, no further regulatory evaluation is warranted. Benefits of the proposed rule would include increased efficiency of program administration and improved safety. However, FRA specifically requests public comment on the costs and benefits of the proposed rule and will consider comments received in developing the final rule.

The regulations proposed herein would not have substantial effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

It is certified that the proposed amendments will not have a significant economic impact of a substantial number of small entities under the provisions of the Regulatory Flexibility Act (5 U.S.C. 60 et seq.). However, FRA specifically solicits comment on the extent to which revision of § 219.3(b) may impose regulatory burdens on certain small railroads. FRA also welcome suggestions with respect to phased compliance with the proposed amendments in order to provide for adjustment to new regulatory obligations.

FRA has evaluated these proposed regulations in accordance with its procedures for insuring full consideration of the environmental impacts of FRA actions as required by the National Environmental Policy Act (45 U.S.C. 4321 et seq.), other environmental statutes, Executive Orders and DOT order 5610.1c. These proposed regulations meet the criteria that establish this as a non-major action for environmental purposes.

Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) applies because this proposed rule is expected to change several currently approved collections of information. The extent of the burden hours involved and what impact the changes will have on currently approved clearances cannot be determined at this time. FRA solicits comments on burden estimates to complete these information collection requirements, the practical utility of the information, and alternative methods that might be less burdensome to obtain this information. Persons desiring to comment on this topic should submit their views in writing to Ms. Gloria Swanson, Office of Safety, RRS–21, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590, and to Ms. Pamela Barr, Regulatory Policy Branch (OMB No. 2130–0526), Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Washington, DC 20503. Copies of any such comments should also be submitted to the docket of this rulemaking at the address provided above. A request for OMB approval of these revised information collection requirements will be made upon preparation of a final rule document.

Request for Public Comment

FRA proposes to amend 49 CFR parts 217, 219 and 225 as set forth below. FRA solicits public comment on the proposed amendments, other issues raised in this preamble, and any other matters pertaining to the administration or enforcement of the alcohol/drug regulations that might warrant further amendment. FRA may make changes in the final rules based on comments received in response to this notice.

Therefore, in consideration of the foregoing, FRA proposes to amend parts 217, 219 and 225, title 49, Code of Federal Regulations as follows:

List of Subjects

49 CFR Part 217

Railroad safety, Railroad operating rules, Reporting and recordkeeping requirements.

49 CFR Part 219

Railroad safety, Control of alcohol and drug use, Reporting and recordkeeping requirements.

49 CFR Part 225

Railroad safety, Accident/incident reporting, Reporting and recordkeeping requirements.

PART 219—[AMENDED]

1. The authority citation for Part 219 continues to read as follows:

Authority: 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

2. Amend Part 219 as follows:

a. Revise the table of contents to read as follows:

Subpart A—General

Sec.
219.1 Purpose and scope.
219.3 Application.
219.5 Definitions.
219.7 Waivers.
219.9 Responsibility for compliance.
219.11 Consent required; implied.
219.13 Preemptive effect.
219.15 Alcohol concentration in blood and breath.
219.17 Construction.
219.19 Field Manual.
219.21 Information collection.
219.23 Notice to employees.

Subpart B—Prohibition

219.101 Alcohol and drug use prohibited.
219.102 Prohibition on abuse of controlled substances.
219.103 Prescribed and over-the-counter drugs.
219.104 Responsive action.
219.105 Railroad's duty to prevent violations.

Subpart C—Post-Accident Toxicological Testing

219.201 Events for which testing is required.
219.203 Responsibilities of railroads and employees.
219.205 Sample collection and handling.
219.207 Fatality.
219.209 Reports of tests and refusals.
219.211 Analysis and follow-up.
219.213 Unlawful refusals; consequences.

Subpart D—Authorization to Test for Cause

219.301 Testing for reasonable cause.
219.303 Breath test procedures and safeguards.
219.305 Urine test procedures and safeguards.
219.307 Standards for urine alcohol assays.
219.309 Presumption of impairment; notice.

Subpart E—Identification of Troubled Employees

219.401 Requirement for policies.
219.403 Voluntary referral policy.
219.405 Co-worker report policy.
219.407 Alternate policies.

Subpart F—Pre-Employment Drug Screens

219.501 Pre-employment drug screens.
219.503 Notification; records.
219.505 Refusals; consequences of positive.

Subpart G—Random Drug Testing Program

219.601 Railroad random testing programs.
219.603 Participation in testing; refusals.
219.605 Postive test results; procedures.

Subpart H—Procedures and Safeguards for Urine Drug Testing

219.701 Standards for urine drug testing.
219.703 Collection.
219.705 Drugs tested.
219.707 Review by MRO.
219.709 Retest.
219.711 Confidentiality of test results.
219.713 Reports; FRA access to records; confidentiality.

Appendix A to Part 219—Schedule of Civil Penalties
Appendix B to Part 219—Designation of Laboratory for Post-Accident Toxicological Testing
Appendix C to Part 219—Post-Accident Testing Sample Collection
Appendix D to Part 219—Procedure for Collection of Urine Alcohol Specimen

b. Revise § 219.3 to read as follows:

§ 219.3 Application.

(a) Except as provided in paragraph (b), this part applies to—

(1) Railroads that operate rolling equipment on standard gage track which is part of the general railroad system of transportation; and

(2) Railroads that provide commuter or other short-haul rail passenger service in a metropolitan or suburban area (as described by section 202(e) of the Federal Railroad Safety Act of 1970, as amended).

(b) Subparts D, E, F and G do not apply to a railroad that employs not more than 15 employees covered by the Hours of service act (45 U.S.C. 61–64b) and that does not operate on tracks of another railroad (or otherwise engage in joint operations with another railroad) except as necessary for purposes of interchange.

(c)(1) Subpart G of this part shall not apply to any person for whom compliance with that subpart would violate the domestic laws or policies of another country.

(2) Subpart G is not effective until January 1, 1991, with respect to any employee whose place of reporting or point of departure ("home terminal") for rail transportation services is located outside the territory of the United States.

c. Revise § 219.5 to read as follows:

§ 219.5 Definitions.

As used in this part—

Alcohol means ethyl alcohol (ethanol). References to use or possession of alcohol include use or possession of any beverage, mixture or preparation containing ethyl alcohol.

Class I, Class II, and *Class III* have the meaning assigned by regulations of the Interstate Commerce Commission (49 CFR part 1201), (General Instructions 1–1)) as those regulations may be revised and applied by order of the Commission (including modifications in class thresholds based revenue deflator adjustments).

Controlled substance has the meaning assigned by 21 U.S.C. 802 and includes all substances listed on Schedules I through V as they may be revised from time to time (21 CFR parts 1301–1316).

Covered employee means a person who has been assigned to perform service subject to the Hours of Service Act (45 U.S.C. 61–64b) during a duty tour, whether or not the person has performed or is currently performing such service, and any person who performs such service.

Covered service means service for a railroad that is subject to the Hours of Service Act (45 U.S.C. 61–64b), but does not include any period the employee is relieved of all responsibilities and is free to come and go without restriction.

Co-worker means another employee of the railroad, including a working supervisor directly associated with a yard or train crew, such as a conductor or yard foreman, but not including any other railroad supervisor, special agent or officer.

Drug means any substance (other than alcohol) that has known mind or function-altering effects on a human subject, specifically including any psychoactive substance and including, but not limited to, controlled substances.

EAP Counselor means a person or persons qualified by experience, education, or training to counsel persons affected by substance abuse problems and to evaluate their progress in recovering from or controlling such problems. An "EAP counselor" may be a qualified full-time salaried employee of the railroad, a qualified practitioner who contracts with the railroad on a fee-for-service or other basis, or a qualified physician designated by the railroad to perform functions in connection with alcohol or drug abuse evaluation or counseling. As used in these rules, an EAP Counselor owes a duty to the railroad to make an honest and fully

informed evaluation of the condition and progress of the employee.

Field Manual refers to the document described in § 219.19 of this subpart.

FRA means the Federal Railroad Administration, U.S. Department of Transportation.

FRA representative means the Associate Administrator for Safety, FRA, the Associate Administrator's delegate (including a qualified State inspector acting under part 212 of this chapter), the Chief Counsel, FRA, or the Chief Counsel's delegate.

Hazardous material means a commodity designated as hazardous material by part 172 of this title.

Impact accident means a train accident (i.e., a rail equipment accident involving damage in excess of the current reporting threshold, $5,700 in 1989 and 1990) consisting of a head-on collision, a rear-end collision, a side collision (including a collision at a railroad crossing at grade), a switching collision, or impact with a deliberately-placed obstruction such as a bumping post. The following are not impact accidents:

(1) An accident in which the derailment of equipment causes an impact with other rail equipment;

(2) Impact of rail equipment with obstructions such as fallen trees, rock or snow slides, livestock, etc.; and

(3) Raking collisions caused by derailment of rolling stock or operation of equipment in violation of clearance limitations.

Independent means not under the ownership or control of the railroad, not under common control with the railroad, and not operated or staffed by a salaried officer or employee of the railroad. The fact that the railroad pays for services rendered by a medical facility or laboratory, selects that entity for performing tests under this part, or has a standing contractual relationship with that entity to perform tests under this part or perform other medical examinations or tests of railroad employees does not, by itself, remove the facility from this definition.

Medical facility means a hospital, clinic, physician's office, or laboratory where toxicological samples can be collected according to recognized professional standards.

Medical practitioner means a physician or dentist licensed or otherwise authorized to practice by the state.

Medical Review Officer or "MRO" refers to a licensed physician designated by the railroad who is responsible for receiving laboratory results generated by the railroad's drug testing program (including testing mandated or authorized by this part) who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test result (as reported by the laboratory) together with his or her medical history and any other relevant biomedical information.

NTSB means the National Transportation Safety Board.

Possess means to have on one's person or in one's personal effects or under one's control. However, the concept of possession as used in this part does not include control by virtue of presence in the employee's personal residence or other similar location off of railroad property.

Railroad means all forms of non-highway ground transportation that run on rails or electro-magnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service which was operated by Consolidated Rail Corporation as of January 1, 1979, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

Railroad property damage or "damage to railroad property" refers to damage to railroad property, including railroad on-track equipment, signals, track, track structures (including bridges and tunnels), or roadbed, including labor costs and all other costs for repair or replacement in kind. Estimated cost for replacement of railroad property shall be calculated as described in the FRA Guide for Preparing Accident/Incident Reports. (See 49 CFR § 225.21.) However, replacement of passenger equipment shall be calculated based on the cost of acquiring a new unit for comparable service.

Reportable injury means an injury reportable under part 225 of this title.

Reporting threshold means the amount specified in § 225.19(c) of this title, as adjusted from time to time in accordance with appendix A to part 225 of this title (i.e., $5,700 in 1989 and 1990).

Supervisory employee means an officer, special agent, or other employee of the railroad who is not a co-worker and who is responsible for supervising or monitoring the conduct or performance of one or more employees.

Train, except as context requires, means a locomotive, or more than one locomotive coupled, with or without cars. (A locomotive is a self-propelled unit of equipment which can be used in train service.)

Train accident means a passenger, freight, or work train accident described in § 225.19(c) of this title (a "rail equipment accident" involving damage in excess of the current reporting threshold, $5,700 in 1989 and 1990), including an accident involving a switching movement.

Train incident means an event involving the movement of railroad on-track equipment that results in a casualty but in which railroad property damage does not exceed the reporting threshold.

d. Revise § 219.9 to read as follows:

§ 219.9 Responsibility for compliance.

(a) Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations; where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed; and the standard of liability for a railroad will vary depending upon the requirement involved. See, e.g., § 219.105, which shall be construed to qualify the responsibility of a railroad for the unauthorized conduct of an employee that violates § 219.101 or § 219.102 (while imposing a duty of due diligence to prevent such conduct). Each day a violation continues shall constitute a separate offense. See appendix A to this part for a statement of agency civil penalty policy.

(b) In the case of joint operations, primary responsibility for compliance with this part with respect to determination of events qualifying for breath or body fluid testing under Subparts C and D or this part shall rest with the host railroad, and all affected employees shall be responsive to direction from the host railroad consistent with this part. However, nothing in this paragraph shall restrict the ability of the railroads to provide for an appropriate assignment of responsibility for compliance with this part as among those railroads through a joint operating agreement or other binding contract. FRA reserves the right to bring an enforcement action for noncompliance with applicable portions

of this part against the host railroad, the employing railroad, or both.

e. By revising section 209.11 to read as follows:

§ 219.11 Consent required; implied.

(a) Any employee who performs covered service for a railroad on or after February 10, 1986, shall be deemed to have consented to testing as required in subparts B, C, D, and G of this part; and consent is implied by performance of such service.

(b)(1) Each such employee shall participate in such testing, as required under the conditions set forth in this part by a representative of the railroad.

(2) In any case where an employee has sustained a personal injury and is subject to alcohol or drug testing under this part, necessary medical treatment shall be accorded priority over provision of the breath or body fluid sample. No employee who is unable to urinate normally (based on the judgment of a medical professional that catheterization would be required) as a result of a personal injury or incident medical treatment shall be required to provide a urine sample.

(3) Failure to remain available following an accident or casualty as required by company rules (i.e., being absent without leave) shall be considered a refusal to participate in testing, without regard to any subsequent provision of samples.

(4) Tampering with a sample in order to prevent a valid test (e.g., through substitution, dilution or adulteration) constitutes a refusal to provide a sample.

(c) A covered employee who is required to be tested under subpart C or D and who is taken to a medical facility for observation or treatment after an accident or incident shall be deemed to have consented to the release to FRA of the following:

(1) The remaining portion of any body fluid sample taken by the treating facility within 12 hours of the accident or incident that is not required for medical purposes, together with any normal medical facility record(s) pertaining to the taking of such sample;

(2) The results of any laboratory tests for alcohol or any drug conducted by or for the treating facility on such sample; and

(3) The identity, dosage, and time of administration of any drugs administered by the treating facility prior to the time samples were taken by the treating facility or prior to the time samples were taken in compliance with this part.

(d) An employee required to participate in body fluid testing under Subpart C (post-accident toxicological testing), Subpart D (reasonable cause testing), or Subpart G (random testing) shall, if requested by the representative of the railroad or the medical facility (including under Subpart G of this part, a non-medical contract collector), evidence consent to taking of samples, their release for toxicological analysis under pertinent provisions of this part, and release of the test results to the railroad's Medical Review Officer by promptly executing a consent form, if required by the medical facility. The employee is not required to execute any document or clause waiving rights that the employee would otherwise have against the employer, and any such waiver is void. Any consent provided consistent with this section shall be construed to extend only to those actions specified herein.

(e) Nothing in this part shall be construed to authorize the use of physical coercion or any other deprivation of liberty in order to compel breath or body fluid testing.

(f) Any railroad employee who performs service for a railroad on or after February 10, 1986, shall be deemed to have consented to removal of body fluid and/or tissue samples necessary for toxicological analysis from the remains of such employee, if such employee dies within 12 hours of an accident or incident described in subpart C as a result of such event. This consent is specifically required of employees not in covered service, as well as employees in covered service.

(g) Nothing in this subpart restricts any discretion available to the railroad to request or require that an employee cooperate in additional body fluid testing. However, no such testing may be performed on urine or blood samples provided under this part. For purposes of this paragraph, all urine from a void constitutes a single sample.

f. Amend § 219.19 by revising paragraph (a) to read as follows:

§ 219.19 Field Manual.

(a) Recommended practice standards for breath testing under subpart D of this part, and relataed materials designed to assist the railroads in establishing programs for control of alcohol and drug use are contained in the FRA Alcohol and Drug Field Manual, which is revised from time to time by the Office of Safety, FRA.

* * * * *

g. Add at the end of Subpart A a new § 219.23 to read as follows:

§ 219.23 Notice to employees.

(a) Whenever a breath or body fluid test is required of an employee under this part, the railroad shall provide clear and unequivocal written notice to the employee that the test is being required under Federal Railroad Administration regulations. Rather than providing written notice for each individual test, a company that requires breath and/or body fluid tests only under the authority of this part for a clearly delineated portion of its employees may satisfy this requirement by publishing this fact in a manner that provides effective notice to each employee.

(b) Whenever a breath or body fluid test is required of an employee under this part, the railroad shall provide clear, unequivocal written notice of the basis or bases upon which the test is required (e.g., reasonable suspicion, violation of a specified operating/safety rule enumerated in subpart D, random selection, follow-up, etc.). Annotation of the urine custody and control form with the specific basis of the test (prior to providing a copy to the employee) satisfies the requirement of this paragraph.

(c) Use of approved forms for mandatory post-accident toxicological testing under subpart C of this part provides the notifications required under this section with respect to such tests. Use of those forms for any other test is prohibited.

h. Amend § 219.103 by revising paragraph (a) to read as follows:

§ 219.103 Prescribed and over-the-counter drugs.

(a) This subpart does not prohibit the use of a controlled substance (on Schedule II through V of the controlled substance list) prescribed or authorized by a medical practitioner, or possession incident to such use, if—

(1) The treating medical practitioner or a physician designated by the railroad has made a good faith judgment, with notice of the employee's assigned duties and on the basis of the available medical history, that use of the substance by the employee at the prescribed or authorized dosage level is consistent with the safe performance of the employee's duties;

(2) The substance is used at the dosage prescribed or authorized; and

(3) In the event the employee is being treated by more than one medical practitioner, at least one treating medical practitioner has been informed of all medications authorized or prescribed and has determined that use of the medications is consistent with the safe performance of the employee's duties (and the employee has observed

any restrictions imposed with respect to use of the medications in combination).

* * * * *

i. Add at the end of subpart B new §§ 219.104 and 219.105 to read as follows:

§ 219.104 Responsive action.

(a) *Removal from covered service.* If the railroad determines that there is reason to believe that an employee has violated § 219.101 or 219.102, as evidenced by a positive test result reported by the railroad's Medical Review Officer for a test conducted under subpart C, subpart D or subpart G of this part, the railroad shall immediately remove the employee from covered service.

(b) *Hearing procedures.* (1) Prior to or upon withdrawing the employee from covered service under this section, the railroad shall provide notice of the reason for this action and an opportunity for hearing before a presiding officer other than the charging official. This hearing may be consolidated with any other disciplinary hearing arising from the same accident or incident (or conduct directly related thereto), but the presiding officer shall make separate findings as to compliance with §§ 219.101 and 219.102 of this part.

(2) The hearing shall be convened within the period specified in the applicable collective bargaining agreement. In the absence of an agreement provision, the employee may demand that the hearing be convened within 10 calendar days of the suspension or, in the case of an employee who is unavailable due to injury, illness, or other sufficient cause, within 10 days of the date the charged employee becomes available for hearing.

(3) A post-suspension proceeding conforming to the requirements of an applicable collective bargaining agreement, together with the provisions for adjustment of disputes under section 3 of the Railway Labor Act, shall be deemed to satisfy the procedural requirements of this paragraph.

(4) Nothing in this part shall be deemed to abridge any additional procedural rights or remedies not inconsistent with this part that are available to the employee under a collective bargaining agreement, the Railway Labor Act, or (with respect to employment at will) at common law with respect to the removal or other adverse action taken as a consequence of a positive test result in a test authorized or required by this part.

(c) *Return to covered service.* An employee who has been determined to have violated § 219.101 or § 219.102 of this part shall not be returned to covered service unless the employee has—

(1) Been evaluated by an EAP counselor to determine if the employee is affected by a psychological or physical dependence on alcohol or one or more controlled substances or by another identifiable and treatable mental or physical disorder involving abuse of alcohol or drugs as a primary manifestation;

(2) Successfully completed any program of counseling or treatment determined to be necessary by the EAP counselor prior to return to covered service; and

(3) Presented a urine sample for testing under this subpart that tested negative for controlled substances assayed and has tested negative for alcohol under paragraph (d) of this section.

An employee returned to service under the above-stated conditions shall continue in any program of counseling or treatment deemed necessary by the EAP counselor and shall be subject to a reasonable program of follow-up drug and alcohol testing without prior notice for a period of not more than 60 months following return to service.

(d) *Follow-up tests.* Return-to-service and follow-up tests under paragraph (c) of this section shall include—

(1) Analysis of a urine specimen for controlled substances consistent with the requirements of subpart H of this part; and

(2) One of the following tests performed while the employee is in duty status:

(i) Analysis of a breath specimen for alcohol under safeguards consistent with those specified for reasonable cause breath testing under subpart C of this part; or

(ii) Analysis of a second urine specimen for alcohol in the same manner as prescribed in § 219.307 and Appendix D to this part (but the employee shall also have option to provide a blood sample for alcohol analysis).

§ 219.105 Railroad's duty to prevent violations.

(a) A railroad may not willfully permit an employee to go or remain on duty in covered service in violation of the prohibitions of § 219.101 or § 219.102. As used in this section, the knowledge imputed to the railroad shall be limited to that of a railroad management employee (such as a supervisor deemed an "officer," whether or not such person is a corporate officer) or a supervisory employee in the offending employee's chain of command.

(b) A railroad must exercise due diligence to assure compliance with § 219.101 and § 219.102 by each covered employee.

J. Revise § 219.201 to read as follows:

§ 219.201 Events for which testing is required.

(a) *List of events.* On and after March 10, 1986, except as provided in paragraph (b) of this section, post-accident toxicological tests shall be conducted after any event that involves one or more of the circumstances described in paragraphs (a) (1) through (3) of this section:

(1) *Major train accident.* Any train accident (i.e., a rail equipment accident involving damage in excess of the current reporting threshold, § 5,700 in 1989 and 1990) that involves one or more of the following:

(i) A fatality;

(ii) Release of a hazardous material lading from railroad equipment accompanied by—

(A) An evacuation; or

(B) A reportable injury resulting from the hazardous material release (*e.g.*, from fire, explosion, inhalation, or skin contact with the material);

(iii) Damage to railroad property of $500,000 or more; or

(iv) Reportable injury to any person in a train accident involving a passenger train.

(2) *Impact accident.* An impact accident (i.e., a rail equipment accident defined as an "impact accident" in § 219.5 of this part that involves damage in excess of the current reporting threshold, $5,700 in 1989 and 1990) resulting in—

(i) A reportable injury; or

(ii) Damage to railroad property of $50,000 or more.

(3) *Fatal train incident.* Any train incident that involves a fatality to any on-duty railroad employee.

(b) *Exceptions.* No test shall be required in the case of a collision between railroad rolling stock and a motor vehicle or other highway conveyance at a rail/highway grade crossing. No test shall be required in the case of an accident/incident the cause and severity of which are wholly attributable to a natural cause (e.g., flood, tornado or other natural disaster), as determined on the basis of objective and documented facts by the railroad representative responding to the scene.

(c) *Good faith determinations.* (1) The railroad representative responding to the scene of the accident/incident shall determine whether the accident/incident falls within the requirements of paragraph (a) of this section or is within

the exception described in paragraph (b) of this section. It is the duty of the railroad representative to make reasonable inquiry into the facts as necessary to make such determinations. In making such inquiry, the railroad representative shall consider the need to obtain samples as soon as practical in order to determine the presence or absence of impairing substances reasonably contemporaneous with the accident/incident. The railroad representative satisfies the requirement of this section if, after making reasonable inquiry, the representative exercises good faith judgment in making the required determinations. The railroad representative making the determination required by this section shall not be a person directly involved in the accident/incident. This section does not prohibit consultation between the responding railroad representative and higher level railroad officials; however, the responding railroad representative shall make the factual determinations required by this section, and any decision by a person other than the responding railroad representative with respect to whether an accident/incident qualifies for testing shall be certified in writing by the decision maker within 24 hours of the decision, setting forth the facts reported by the responding railroad representative, the basis upon which the testing decision was made, and the person making the decision. This decision memorandum shall be made available to the FRA on request. However, any estimates of railroad property damage made by persons not on the scene shall be based on descriptions of specific physical damage provided by the on-scene railroad representative. In the case of an accident involving passenger equipment, a host railroad (whether present on scene or not) in making the decision whether testing is required, subject to the same requirment that visible physical damage be specifically described.

(2) A railroad is not in violation of this subpart if its representative has made such reasonable inquiry and exercised such good faith judgment but nevertheless errs in determining that post-accident testing is not required. This section does not excuse the railroad for any error arising from a mistake of law (e.g., application of testing criteria other than those contained in these regulations).

(3) A railroad does not act in excess of its authority under this subpart if its representative has made such reasonable inquiry and exercised such good faith judgment, but it is later determined, after investigation, that one or more of the conditions thought to have required testing were not, in fact, present.

(4) An accident/incident with respect to which the railroad has made reasonable inquiry and exercised good faith judgment in determining the facts necessary to apply the criteria contained in paragraph (a) of this section is deemed a qualifying event for purposes of sample analysis, reporting, and other purposes. In the event samples are collected following an event determined by FRA not to be a qualifying event within the meaning of this paragraph, FRA directs its designated laboratory to destroy any sample material submitted and to refrain from disclosing to any person the results of any analysis conducted.

k. Amend § 219.203 by revising paragraphs (a), (b), and (c) to read as follows:

§ 219.203 Responsibilities of railroads and employees.

(a) *Employees tested.* (1) Following each accident and incident described in § 219.201, the railroad (or railroads) shall take all practicable steps to assure that all covered employees of the railroad directly involved in the accident or incident provide blood and urine samples for toxicological testing by FRA. Such employees shall cooperate in the provision of samples as described in this subpart and appendix C.

(2) Such employees shall specifically include each and every operating employee assigned as a crew member of any train involved in the accident or incident. In any case where an operator, dispatcher, signal maintainer or other covered employee is directly and contemporaneously involved in the circumstances of the accident/incident, those employees shall also be required to provide samples.

(3) An employee shall be excluded from testing under the following circumstances: In any case of an accident/incident for which testing is mandated only under § 219.201(a)(2) of this subpart (an "impact accident") or 219.201(a)(3) ("fatal train incident"), if the railroad representative can immediately determine, on the basis of specific information, that the employee had no role in the cause(s) or severity of the accident/incident.

(4) The following provisions govern accidents/incidents involving non-covered employees:

(i) Surviving non-covered employees are not subject to testing under this subpart.

(ii) Testing of the remains of non-covered employees who are fatally injured in train accidents and incidents is required.

(b) *Timely sample collection.* (1) The railroad shall make every reasonable effort to assure that samples are provided as soon as possible after the accident or incident.

(2) The paragraph shall not be construed to inhibit the employees required to be tested from performing, in the immediate aftermath of the accident or incident, any duties that may be necessary for the preservation of life or property. However, where practical, the railroad shall utilize other employees to perform such duties.

(3) In the case of a revenue passenger train which is in proper condition to continue to the next station or its destination after an accident or incident, the railroad shall consider the safety and conveniences of passengers in determining whether the crew is immediately available for testing. A relief crew shall be called to relieve the train crew as soon as possible.

(4) Covered employees who may be subject to testing under this subpart shall be retained in duty status for the period necessary to make the determinations required by § 219.201 and this section and (as appropriate) to complete the sample collection procedure. However, an employee may not be recalled for testing under this subpart if that employee has been released from duty by a railroad officer or supervisor with actual or apparent authority to do so. An employee who has been transported to receive medical care is not released from duty for purposes of this section. Nothing in this section prohibits the subsequent testing of an employee who has failed to remain available for testing as required (i.e., who is absent without leave); but subsequent testing does not excuse such refusal by the employee timely to provide the required specimens.

(c) *Place of sample collection.* (1) Employees shall be transported to an independent medical facility where the samples shall be obtained. The railroad shall pre-designate for such testing one or more such facilities in reasonable proximity to any location where the railroad conducts operations. Designation shall be made on the basis of the willingness of the facility to conduct sample collection and the ability of the facility to complete sample collection promptly, professionally, and in accordance with pertinent requirements of this part. In all cases blood shall be drawn only by a qualified medical professional or by a qualified technician subject to the supervision of a qualified medical professional.

(2) In the case of an injured employee, the railroad shall request the treating medical facility to obtain the samples.

* * * * *

l. Amend § 219.205 by revising paragraphs (a), (c) and (d) to read as follows:

§ 219.205 Sample collection and handling.

(a) *General.* Samples shall be obtained, marked, preserved, handled, and made available to FRA consistent with the requirements of this section and the technical specifications set forth in appendix C to this part.

* * * * *

(c) *Shipping kit.* (1) FRA and the laboratory designated in appendix B to this part make available for purchase a limited number of standard shipping kits for the purpose of routine handling of toxicological samples under this subpart. Whenever possible, samples shall be placed in the shipping kit prepared for shipment according to the instructions provided in the kit and appendix C. Specifications for kits are contained in the Field Manual.

(2) Kits may be ordered directly from the laboratory designated in appendix B to this part.

(3) FRA maintains a limited number of kits at its field offices. A Class III railroad may utilize kits in FRA possession, rather than maintaining such kits on its property.

(d) *Shipment.* Samples shall be shipped as soon as possible by pre-paid air express or air freight (or other means adequate to ensure delivery within twenty-four (24) hours from time of shipment) to the laboratory designated in appendix B to this part. Whenever possible, the medical facility shall transfer the sealed toxicology kit directly to an express courier for transportation. If courier pickup is not available at the medical facility where the samples are collected, the railroad shall promptly transport the sealed shipping kit holding the samples to the nearest point of shipment via air express, air freight or equivalent means. The railroad shall maintain and document secure chain or custody of the kit from release by the medical facility to delivery for transportation, as described in appendix C.

m. Amend § 219.207 by revising paragraph (d) to read as follows:

§ 219.207 Fatality.

* * * * *

(d) Appendix C to this part specifies body fluid and/or tissue samples required for toxicological analysis in the case of a fatality.

n. Revise § 219.211 to read as follows:

§ 219.211 Analysis and follow-up.

(a) The laboratory designated in appendix B to this part undertakes prompt analysis of samples provided under this subpart, consistent with the need to develop all relevant information and produce a complete report.

(b) Effective January 16, 1990, results of post-accident toxicological testing under subpart C of this part are reported to the railroad's Medical Review Officer and the employee. The railroad shall treat the test results and any information concerning medical use or administration of drugs provided under this subpart in the same confidential manner as if subject to subpart H of this part, except where publicly disclosed by FRA or the National Transportation Safety Board.

(c) With respect to a surviving employee, a test reported as positive for alcohol or a controlled substance by the designated laboratory shall be reviewed by the railroad's Medical Review Officer in the same manner provided for tests conducted under subpart H of this part. The Medical Review Officer shall promptly report the results of each review to the Associate Administrator for Safety, FRA, Washington, DC 20590. Such report shall be in writing and shall reference the employing railroad, accident/incident date, and location; and the envelope shall be marked "CONFIDENTIAL: ATTENTION ALCOHOL/DRUG PROGRAM MANAGER." The report shall state whehter the test result was reported to the railroad as positive or negative and the basis of any determination that analytes detected by the laboratory derived from authorized use (including a statement of the compound prescribed, dosage, and any restrictions imposed by the authorized medical practitioner). Unless specifically requested by FRA in writing, the Medical Review Officer shall not disclose to FRA the underlying physical condition for which any medication was authorized or administered. Neither the Federal Railroad Administration nor the National Transportation Safety Board shall be bound by the railroad Medical Review Officer's determination, but that determination will be considered by FRA in relation to the accident/incident investigation and with respect to any enforcement action under consideration.

(d) To the extent permitted by law, FRA treats test results indicating use of prescription or physician-administered controlled substances (and other information concerning medically authorized drug use or administration provided incident to such testing) as confidential and withholds public disclosure, except where it is necessary to consider this information in an accident investigation in relation to determination of probable cause. However, FRA may provide any result of testing under this subpart and associated documents to the National Transportation Safety Board.

(e) An employee may respond in writing to the results of the test prior to the preparation of any final investigation report concerning the accident or incident. An employee wishing to respond shall do so by letter addressed to the Associate Adminsistrator for Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 within 45 days of receipt of the test results. Any such letter shall refer to the accident date, railroad and location and state the position occupied by the employee on the date of the accident/incident and shall identify any information contained therein that the employee requests be withheld from public disclosure on grounds of personal privacy (but the decision whether to honor such request shall be made by the FRA on the basis of controlling law). Results of the toxicological analysis and any response from the employee are also promptly made available to the National Transportation Safety Board on request.

(f)(1) Toxicology report may contain a statement of pharmacological significance to assist FRA and other parties in understanding the data reported. No such statement may be construed as a finding of probable cause in the accident or incident.

(2) The toxicology report is a part of the report of the accident/incident and therefore subject to the limitation of section 4 of the Accident Reports Act (45 U.S.C. 41) (prohibiting use of the report for any purpose in any action for damages).

(g)(1) It is in the public interest to ensure that any railroad disciplinary actions that may result from accidents and incidents for which testing is required under this subpart are disposed of on the basis of the most complete and reliable information available so that responsive action will be appropriate. Therefore, during the interval between an accident or incident and the date that the railroad receives notification of the results of the toxicological analysis, any provisions of collective bargaining agreements establishing maximum periods for charging employees with rule violations, or for holding an investigation, shall not be deemed to run as to any offense involving the accident or incident (*i.e.*, such periods shall be tolled).

(2) This provision shall not be construed to excuse the railroad from any obligation to timely charge an employee (or provide other actual notice) where the railroad obtains sufficient information relating to alcohol or drug use, impairment or possession or other rule violations prior to receipt of toxicological analysis.

(3) This provision does not authorize holding any employee out of service pending receipt of toxicological analysis; nor does it restrict a railroad from taking such action in an appropriate case.

(h) Except as provided in § 219.201 (with respect to nonqualifying events), each sample provided under this subpart is retained for not less than three months following the date of the accident or incident (two years from the date of the accident or incident in the case of a sample testing positive for alcohol or a controlled substance) and may be made available to the National Transportation Safety Board (on request).

(i) An employee (donor) may, within 60 days of the date of the toxicology report, request that the employee's blood and/or urine sample be retested by the designated laboratory or by another laboratory certified by the Department of Health and Human Services under that Department's Guidelines for Federal Workplace Drug Testing Programs that has available an appropriate, validated assay for the fluid and compound declared positive. Since some analytes may deteriorate during storage, detected levels of the compound shall, as technically appropriate, be reported and considered corroborative of the original test result. Any request for a retest shall be in writing, specify the railroad, accident date and location, be signed by the employee/donor, be addressed to the Associate Administrator for Safety, FRA, Washington, DC 20590, and be designated "CONFIDENTIAL: ATTENTION ALCOHOL/DRUG PROGRAM MANAGER." The expense of any employee-requested retest at a laboratory other than the laboratory designated under this subpart shall be borne by the employee.

o. Amend § 219.213 by revising paragraph (a)(1), by adding a new paragraph (a)(4), and by revising paragraph (c) to read as follows:

§ 219.213 Unlawful refusals; consequences.

(a) *Disqualification.* (1) An employee who refuses to cooperate in providing a blood or urine sample following an accident or incident specified in this subpart shall be withdrawn from covered service and shall be deemed disqualified for covered service for a period of nine (9) months.

* * * * *

(4) Upon the expiration of the 9-month period described in this section, a railroad may permit the employee to return to covered service only under the same conditions specified in § 219.104 of this part.

* * * * *

(c) *Subject of hearing.* The hearing required by this section shall determine whether the employee refused to submit to testing, having been requested to submit, under authority of this subpart, by a representative of the railroad. In determining whether a disqualification is required, the hearing official shall, as appropriate, also consider the following:

(1) Whether the railroad made a good faith determination, based on reasonable inquiry, that the accident or incident was within the mandatory testing requirements of this subpart; and

(2) In a case where a blood test was refused on the ground it would be inconsistent with the employee's health, whether such refusal was made in good faith and based on medical advice.

p. Amend § 219.301 by revising paragraph (a), by republishing the introductory text of paragraph (b), by revising paragraph (b)(3), and by revising paragraph (f) to read as follows:

§ 219.301 Testing for reasonable cause.

(a) *Authorization.* A railroad may, under the conditions specified in this subpart, require any covered employee, as a condition of employment in covered service, to cooperate in breath or urine testing, or both, to determine compliance with §§ 219.101 and 219.102 of this part or a railroad rule implementing the requirements of §§ 219.101 and 219.102. This authority is limited to testing after observations or events that occur during duty hours (including any period of overtime or emergency service). The provisions of this subpart apply only when, and to the extent that, the test in question is conducted in reliance upon the authority conferred by this section. Section 219.23 prescribes the notice to an employee that is required when an employee is required to provide a breath or body fluid sample under this part.

(b) *Reasonable cause for breath tests.* The following circumstances constitute reasonable cause for the administration of breath tests under this section:

* * * * *

(3) *Rule violation.* The employee has been directly involved in one of the following operating rule violations or errors:

(i) Noncompliance with a train order, track warrant, timetable, signal indication, special instruction or other direction with respect to movement of a train that involves—

(A) Occupancy of a block or other segment of track to which entry was not authorized;

(B) Failure to clear a track to permit opposing or following movement to pass;

(C) Moving across a railroad crossing at grade without authorization; or

(D) Passing an absolute restrictive signal or passing a restrictive signal without stopping (if required);

(ii) Failure to protect a train as required by a rule consistent with § 218.37 of this title (including failure to protect a train that is fouling an adjacent track, where required by the railroad's rules);

(iii) Operation of a train at a speed that exceeds the maximum authorized speed by at least ten (10) miles per hour or by fifty percent (50%) of such maximum authorized speed, whichever is less;

(iv) Alignment of a switch in violation of a railroad rule, failure to align a switch as required for movement, operation of a switch under a train, or unauthorized running through a switch;

(v) Failure to apply or stop short of derail as required;

(vi) Failure to secure a hand brake or failure to secure sufficient hand brakes;

(vii) Entering a crossover before both switches are lined for movement; or

(viii) In the case of a person performing a dispatching function or block operator function, issuance of a train order or establishment of a route that fails to provide proper protection for a train.

* * * * *

(f) *Prompt sample collection; time limitation.*

(1) Testing under this subpart may only be conducted promptly following the observations or events upon which the testing decision is based, consistent with the need to protect life and property.

(2) Nothing in this section shall authorize testing of an employee after the expiration of an 8-hour period from—

(i) The time of the observations or other events described in this section; or

(ii) In the case of an accident/incident, the time a responsible railroad supervisor receives notice of the event providing reasonable cause for conduct of the test.

(3) An employee may not be tested under this subpart if that employee has been released from duty. An employee

who has been transported to receive medical care is not released from duty for purposes of this section. Nothing in this section prohibits the subsequent testing of an employee who has failed to remain available for testing as required (i.e., who is absent without leave).

(4) As used in this section a "responsible railroad supervisor" means any responsible line supervisor (e.g., a trainmaster or road foreman of engines) or superior official in authority over the employee to be tested.

* * * * *

q. Amend § 219.303 by revising paragraph (c) to read as follows:

§ 219.303 Breath test procedures and safeguards.

* * * * *

(c)(1) In any case where a breath test is intended for use in the railroad disciplinary process and the result is positive, the employee shall be given the prompt opportunity to provide a blood sample at an independent medical facility for analysis by a competent independent laboratory. The railroad shall provide the required transportation to facilitate the blood test.

(2) A blood test under this section shall conform to the following standards:

(i) The specimen shall be collected in a medically acceptable manner by a qualified medical professional or technician using a non-ethanol swab and shall be deposited into a single-use sterile vacuum tube containing at least one percent sodium fluoride (and an anticoagulant).

(ii) While the specimen remains in full view of the employee, the specimen shall be clearly labeled with the employee's name and/or a unique identifying number and shall be sealed with a tamperproof seal.

(iii) The sample shall be handled in accordance with chain of custody procedures from the point of collection through analysis and secure storage at the laboratory.

(iv) The sample shall be screened for alcohol only by a method reliable at a detection limit of not higher than .02 percent. Any presumptive positive shall be confirmed by gas chromatography with a suitable internal standard. The screening run shall include at least 10% quality control samples. The confirmation run shall include ethanol standards, at least one blank specimen, and at least one control purchased commercially or provided through an external quality control program. Results declared positive on confirmation shall be consistent with pre-established criteria for retention time of internal and external standards. Blood alcohol concentration shall be reported only at values of .02 percent or greater within the linear portion of the standard curve. Unconfirmed presumptive positive results and values below .02 percent shall be reported as negative. Any quantitations to the third digit shall be rounded downward to two digits (i.e., .238% to .23%).

(v) The remaining portion of any specimen testing positive shall be retained for at least one year, and the employee shall have the right to request a retest of the specimen at a competent independent laboratory within 60 days of the date of the laboratory report.

(vi) Test results shall be reported to the Medical Review Officer who shall review and act upon the results in the same manner provided for drug urine testing in subpart H of this part, except that fully quantitated results shall be made available to the employer representative.

(3) If the blood test under this section is reported as negative, the breath test shall be deemed negative for all purposes.

* * * * *

r. Revise § 219.305 to read as follows:

§ 219.305 Urine test procedures and safeguards.

(a) Effective January 16, 1990, the conduct of urine drug testing under this subpart is governed by subpart H of this part and (to the extent not inconsistent with this part) part 40 of subtitle A of this title. However, urine shall be collected at the independent medical facility. Personnel of the medical facility shall supervise the collection procedure.

(b) A urine test procedure may include the provision of not more than two samples from the same employee.

(c) A railroad may analyze a urine sample provided under this part for alcohol only as specified in § 219.307 of this subpart.

(d) In any case where a urine test is intended for use in the railroad disciplinary process, the employee shall be given the opportunity to provide a blood sample at an independent medical facility for analysis by a competent independent laboratory. Alcohol analysis conducted on the blood specimen (which shall be performed in the event the urine sample is analyzed for alcohol) shall be in conformity with the standards set forth in § 219.303(c).

s. Revise § 219.307 to read as follows:

§ 219.307 Standards for urine alcohol assays.

(a) *General requirements.* Impairment of railroad employees may be caused by use of controlled substances, use of alcohol, or use of controlled substances and alcohol in combination. Accordingly, a railroad may cause a urine sample collected under this subpart to be analyzed for alcohol subject to the following additional conditions and safeguards.

(1) The urine alcohol analysis shall be conducted on the second sample collected under the procedure set forth in Appendix D to this part. The sample container shall contain at least one percent sodium fluoride as a preservative. In all other respects not inconsistent with this section, the collection, handling and retention of the urine sample shall be the same as required for drug urinalysis under subpart H of this part. The railroad may only use the second sample for alcohol analysis under this subpart.

(2) The urine alcohol analysis shall conform to the requirements set forth in this section.

(3) Quantitative test results shall be reported to the Medical Review Officer who shall review and act upon the results in the same manner provided for drug urine testing in subpart H of this part, except that the test result reported to the railroad representative shall include both a urine alcohol concentration and an estimate of blood alcohol concentration as derived in the manner discussed in appendix D.

(4) The employee shall be given an opportunity to provide a blood sample for alcohol analysis as set forth in § 219.303. If the employee provides a blood sample, the lower of the actual blood alcohol concentration and the estimate derived from the urine alcohol level shall be considered in relation to any discipline or other adverse action taken against the employee.

(b) *Laboratory analysis and reporting.* (1) The urine sample shall be screened by a method that reliably detects alcohol in the urine at a concentration of .05 percent (w/v), and a concentration equal to or greater than that value shall be considered presumptively positive subject to confirmation. The screening run shall include at least 10% quality control samples. If the screening method uses prepared reagents, they shall meet the requirements of the Food and Drug Administration for commercial distribution.

(2) Any presumptive positive shall be confirmed by gas chromatography with a suitable internal standard. The confirmation run shall include ethanol standards, at least one blank specimen, and at least one control purchased commercially or provided through an external quality control program. Results declared positive on confirmation shall be consistent with

pre-established criteria for retention times of internal and external standards. Urine alcohol concentration shall be reported only at values of .05 percent or greater within the linear portion of the standard curve. Unconfirmed presumptive positive results and urine alcohol values below .05 percent shall be reported as negative.

(3) If both screening and confirmation are performed by gas chromatography, confirmation shall be conducted on a second column to ensure specific identification of ethanol.

t. Amend § 219.309 by revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 219.309 Presumption of impairment; notice.

* * * * *

(b) * * *

(2) The following statement provides the required notice:

Under Federal Railroad Administration (FRA) safety regulations, you may be required to provide a urine sample after certain accidents and incidents or at any time the company reasonably suspects that you are under the influence of, or impaired by, drugs while on duty. Because of its sensitivity, the urine test may reveal whether or not you have used certain drugs within the recent past (in a rare case, up to *sixty* days before the sample is collected). As a general matter, the test cannot distinguish between recent use off the job and current impairment. However, the Federal regulations provide that if only the urine test is available, a positive finding on that test will support a presumption that you were impaired at the time the sample was taken.

You can avoid this presumption of impairment by demanding to provide a blood sample at the same time the urine sample is collected. The blood test will provide information pertinent to recency of use and current impairment. Regardless of the outcome of the blood test, if you provide a blood sample there will be no presumption of impairment from a positive urine test.

If you have used any drug off the job (other than a medication that you possessed lawfully) in the prior sixty days, it may be in your interest to provide a blood sample. If you have not made unauthorized use of any drug in the prior sixty days, you can expect that the urine test will be negative; and you may not wish to provide a blood sample.

Effective October 2, 1989, use of certain drugs (controlled substances) without medical authorization is prohibited by Federal regulation at any time. Therefore, presence of such drugs in the urine may be evidence of prohibited conduct, even if an optional blood test is negative. If a controlled substance is detected in the urine, you will be given an opportunity to discuss any legitimate administration or use of the controlled substance on a confidential basis with a Medical Review Officer.

You are not required to provide a blood sample at any time, except in the case of certain accidents and incidents subject to Federal post-accident testing requirements (49 CFR part 219, subpart C).

A complete copy of the Federal regulations is available for your review at _____.

(3) The railroad shall include in this notice a statement of company policy with respect to the disciplinary consequences (if any) attendant to on-the-job use, possession or impairment and prohibited drug use as detected only through a urine test.

§§ 219.403 and 219.405 [Amended]

u. Amend §§ 219.403(a) and 219.405(a) by adding "and § 219.102" immediately following "§ 219.101" in each section.

v. Revise § 219.501 to read as follows:

§ 219.501 Pre-employment drug screens.

(a) On and after May 1, 1986, each applicant who is given favorable consideration for a position with a railroad that involves the performance of covered service shall be tested for the presence of drugs prior to being employed in covered service. This requirement shall apply to final applicants for employment and, effective January 16, 1990, to employees seeking to transfer from non-covered service to duties involving covered service. The test shall be accomplished through analysis of a urine sample. Whenever feasible, the sample shall be obtained in connection with a pre-employment medical examination.

(b) Prior to collection of the urine sample, the applicant shall be notified that the sample will be tested for the presence of drugs. In the case of an applicant who declines to be tested and withdraws the application for employment, no record shall be maintained of the declination.

(c) Effective January 16, 1990, the conduct of urine drug testing under this subpart is governed by subpart H of this part and (to the extent not inconsistent with this part) part 40 of subtitle A of this title.

(d) A railroad may test for alcohol in pre-employment tests under this section under the following conditions:

(1) Prior to the collection of the sample, the applicant shall be notified that the sample will be tested for alcohol. In the case of an applicant who declines to be tested and withdraws the application for employment, no record shall be maintained of the declination.

(2) The test procedure shall utilize the same specimen analyzed for controlled substances, but the specimen bottle shall contain one percent sodium fluoride.

(3) Except as provided in this section, chemical analysis for alcohol shall be conducted according to the same standards required for reasonable cause urine alcohol testing in § 219.307 of this part.

(4) The reporting cutoff shall be .10 percent (w/v) urine alcohol (equivalent to an attained blood alcohol concentration of approximately .07 percent), and any lower concentration shall be reported as negative.

(5) Positive results shall be considered in the same manner for all applicants. (For instance, all applicants with a specified level shall be rejected; or all applicants testing positive shall be evaluated by a qualified physician against professionally recognized standards in order to determine if the applicant has an uncontrolled substance abuse disorder.)

w. Revise § 219.503 to read as follows:

§ 219.503 Notification; records.

The railroad shall provide for medical review of laboratory test results and shall notify the applicant of the results of any test in the same manner as provided for employees in subpart H. Records shall be maintained confidentially and shall be retained in the same manner as required under Subpart H for employee test records, except that such records need not reflect the identity of an applicant whose application for employment in covered service was denied.

x. Revise § 219.505 to read as follows:

§ 219.505 Refusals; consequences of positive.

(a) An applicant who has refused to submit to pre-employment testing under this section shall not be employed in covered service based upon the application and examination with respect to which such refusal was made. This section does not create any right on the part of the applicant to have a subsequent application considered; nor does it restrict the discretion of the railroad to entertain a subsequent application for employment from the same person.

(b) An applicant who is using a controlled substance without medical authorization shall not be employed in covered service. This section shall not be construed to bar employment based on a subsequent application if the applicant no longer uses a controlled substance without medical authorization.

y. Amend § 219.601 by republishing the introductory text of paragraph (b), and by revising paragraph (b)(6) to read as follows:

§ 219.601 Railroad random testing programs.

* * * * *

(b) *Form of programs.* Random testing programs submitted by or on behalf of each railroad under this subpart shall meet the following criteria, and the railroad and its managers, supervisors, officials and other employees and agents shall conform to such criteria in implementing the program:

* * * * *

(6) An employee shall be subject to testing only while on duty in covered service (including any duty tour during which the employee is assigned to perform functions that normally involve covered service, whether or not covered service is, in fact, performed during that particular duty tour).

z. Amend § 219.603 by removing paragraph (b)(3) and by revising paragraph (c) to read as follows:

§ 219.603 Participation in testing; refusals.

* * * * *

(c) Upon the expiration of the 9-month period described in this section, a railroad may permit the employee to return to covered service only under the same conditions specified in § 219.104 of this part.

aa. Amend § 219.605 by revising paragraph (b) to read as follows and by removing paragraphs (c), (d) and (e).

§ 219.605 Positive test results; procedures

* * * * *

(b) Procedures for administrative handling by the railroad in the event a sample provided under this subpart is reported as positive by the MRO are set forth in § 219.104 of this part.

§§ 219.607 and 219.609 [Removed]

bb. Remove §§ 219.607 and 219.609.

§§ 219.707 [Amended]

cc. Remove the fourth (final) sentence of § 219.707(d).

§219.709 [Amended]

dd. Amend § 219.709 by removing the word "with" in the third sentence of paragraph (a) and by inserting in lieu thereof the word "within".

ee. Revise § 219.711 to read as follows:

§ 219.711 Confidentiality of test results.

(a) A laboratory reporting results of tests conducted under this subpart shall report those results only to the designated Medical Review Officer of the railroad. The results shall not be disclosed by the laboratory to any other person, except that the laboratory may affirm the test result to the employee to whom the sample was identified. This paragraph shall not be read to bar normal access to analytical data for laboratory accreditation or certification processes, but records shall be maintained by specimen identification number (or accession number) rather than employee name.

(b) The MRO may not disclose medically approved drug use or administration information obtained under this part (whether ascertained through testing or reported by the employee or the employee's medical practitioner at the employee's request) to non-medical railroad personnel; however, nothing in this part bars use of such information by the railroad's medical officer in the context of an established medical qualifications program insofar as it may indicate an underlying physical disorder that requires evaluation under the company's existing medical standards.

(c) No record of tests conducted subject to this subpart or information drawn thereform shall be used or disseminated by the railroad or within the railroad for any purpose other than providing for compliance with this part (and railroad rules consistent herewith), unless with the voluntary written consent of the employee. Such written consent shall specify the person to whom the information may be provided. Each railroad shall adopt and implement procedures to guard this information against unauthorized disclosure both within and external to the railroad company.

ff. Add a new § 219.713 at the end of Subpart H to read as follows:

§ 219.713 Reports; FRA access to records.

(a) Each railroad shall retain for at least 2 years from the date of sample collection all records of each test conducted under this subpart (with respect to tests required or authorized under subparts D, F, or G of this part) that is reported as positive by the Medical Review Officer, inlcuding urine custody and control forms, laboratory reports, and certification statements. Records of negative tests shall be retained for at least 1 year.

(b) Each railroad shall maintain for at least 5 years summary records of employee alcohol and drug test results conducted under this part (including subpart C) and rehabilitation (including primary treatment, aftercare, and follow-up alcohol/drug testing) for each covered employee. Records required to be kept shall be made available to FRA as provided by section 208 of the Federal Railroad Safety Act of 1970.

gg. Add a new appendix C is added to Part 219 to read as follows:

Appendix C—Post-Accident Testing Sample Collection

1.0 General

This appendix prescribes procedures for collection of samples for mandatory post-accident testing pursuant to subpart C of this part. Collection of blood and urine specimens is required to be conducted at an independent medical facility.

(Surviving Employees)

2.0 Surviving Employees

This unit 2 provides detailed procedures for collecting post-accident toxicological samples from surviving employees involved in train accidents and train incidents, as required by 49 CFR part 219, subpart C. Subpart C specifies qualifying events and employees required to be tested.

2.1 Collection Procedures: General

All forms and supplies necessary for collection and transfer of blood and urine specimens for six surviving employees can be found in the FRA post-accident toxicology kit, which is made available to the collection site by the railroad representative. Each kit contains supplies for blood/urine collections from six individuals, including instructions and necessary forms. The railroad is responsible for ensuring that kit materials are fresh, complete and meet FRA requirements.

2.11 Responsibility of the Railroad Representative

In the event of an accident/incident for which testing is required under Subpart C, the railroad representative shall, upon arrival at the independent medical facility, promptly make available to the medical facility representative a toxicology kit or kits and shall identify to the medical facility representative the instructions contained in the kit for conduct of the collection. (Each kit contains supplies to collect samples from six employees.) The railroad representative shall request the medical facility representative to review the instructions provided (Exhibit C–1) and, through qualified medical personnel, to provide for collection of the specimens according to the procedure set out.

The railroad representative shall undertake the following additional responsibilities—

- Complete Form 6180.73 describing the testing event and identifying the employees whose samples are to be deposited in the toxicology kit.
- As necessary to verify the identity of individual employees, affirm the identity of each employee to the medical facility personnel.
- To the extent consistent with the policy of the medical facility and the privacy of the employee, follow the progress of the collection procedure.

Warnings: The railroad representative shall not observe urination or otherwise disturb the privacy of urine donation. The railroad representative shall not handle sample containers.

2.12 Employee Responsibility

An employee who is identified for post-accident toxicological testing shall cooperate in testing as require by the railroad and

personnel of the independent medical facility. Such cooperation will normally consist of the following, to be performed as requested:

• Provide a blood sample, which a qualified medical professional or technician will draw using a single-use sterile syringe. The employee should be seated for this procedure.

• Provide, in the privacy of an enclosure, a urine sample into a single-use cup. The urine sample shall be presented to the medical facility personnel.

• Monitor the collection to ensure that the blood and urine samples are properly identified and sealed before they leave your sight. Verify the sample and seal by placing your initials on the seal.

• Complete necessary paperwork, including Steps 1 and 4 of FRA Form 6180.74 (revised).

• If required by the medical facility, complete a separate consent form for taking of the samples and their release to FRA for analysis under the FRA rule.

Note: The employee may not be required to complete any form that contains any waiver of rights the employee may have in the employment relationship or that releases or holds harmless the medical facility with respect to negligence in the collection.

2.2 The Collection

Exhibit C–1 contains instructions for collection of samples for post-accident toxicology from surviving employees. These instructions shall be observed for each collection. Instructions shall be contained in each collection kit and shall be provided to medical facility personnel involved in the collection and/or packaging of specimens for shipment.

(Post Mortem Collection)

3.0 Fatality

This unit 3 provides procedures for collecting post-accident body fluid/tissue samples from the remains of employees killed in train accidents and train incidents, as required by 49 CFR Part 219, Subpart C. Subpart C specifies qualifying events and employees required to be tested.

3.1 Collection

In the event of a fatality for which testing is required under subpart C, the railroad shall promptly make available to the custodian of the remains a copy of Exhibit C–2 to this appendix and a toxicology kit. The railroad representative shall request the custodian to review the instructions contained in Exhibit C–1 and, through qualified medical personnel, to provide the specimens as indicated.

(Surviving Employees and Fatalities)

4.0 Shipment

The railroad is responsible for arranging overnight transportation of the sealed toxicology kit containing the specimens. Whenever possible, the kit should be delivered directly from the medical personnel providing the specimens to an overnight express service courier. If it becomes necessary for the railroad to transport the kit from point of collection to point of shipment, then—

1. The kit shall be sealed by the medical personnel providing the specimens before the kit is turned over to the railroad representative;

2. The railroad shall limit the number of persons handling the kit to the minimum necessary to provide for transportation;

3. If the kit cannot immediately be delivered to the express carrier for transportation, it shall be maintained in secure temporary storage; and

4. The railroad representatives handling the kit shall document chain of custody of the kit and shall make available such documentation to FRA on request.

Exhibit C–1—Instructions for Collection of Blood and Urine Specimens: Mandatory Post-Accident Toxicological Testing

A. Purpose

These instructions are for the use of personnel of medical facilities conducting collection of blood and urine samples from surviving railroad employees following railroad accidents and casualties that qualify for mandatory alcohol/drug testing. The Federal Railroad Administration appreciates the participation of medical facilities in this important public safety program.

B. Prepare for Collection

Railroad employees have consented to provision of samples for analysis by the Federal Railroad Administration as a condition of employment.

A private, controlled area should be designated for collection of specimens and completion of paperwork.

Only one specimen should be collected at a time, with each employee's blood draw or urine collection having the complete attention of the collector until the specific sample has been labeled, sealed and documented.

Please remember two critical rules for the collections:

All labeling and sealing must be done in the sight of the donor, with the sample never having left the donor's sight until the sample has been labeled, sealed and initialled by the donor.

Custody and control of blood and urine samples must be documented on the forms provided. In order to do this it is important for the paperwork and the specimens to stay together.

To the extent practical, blood collection should take priority over urine collection.

You will use a single Post-Accident Testing Blood/Urine Custody and Control Form (FRA Form 6108.74 (revised)), consisting of six Steps to complete the collection for each employee. We will refer to it as the Control Form.

C. Identify the Donor

The employee donor must provide photo identification to each collector, or lacking this, be identified by the railroad representative.

The donor should remove all unnecessary outergarments such as coats or jackets, but may retain valuables, including wallet. Donors should not be asked to disrobe, unless necessary for a separate physical examination required by the attending physician.

D. Draw Blood

Assemble the materials for collecting blood from each employee: two 10 ml grey-stoppered blood tubes, the Control Form and an indelible marker.

Ask the donor to complete Step 1 on the Control Form.

With the donor seated, draw two (2) 10 ml tubes of blood using standard medical procedures (sterile, single-use syringe into evacuated gray-top tubes provided). Caution: Do not use alcohol or an alcohol-based swab to cleanse the venipuncture site.

Once both tubes are filled and the site of venipuncture is protected, immediately—

• Seal and label each tube by placing a numbered blood specimen label from the label set on the Control Form over the top of the tube and securing it down the sides.

• Ask the donor to initial each label. Please check to see that the initials match the employee name and note any discrepancy in the "Remarks" block of the Control Form.

• Complete Step 2 on the form.

• Skip to Step 5 and initiate chain of custody for the blood tubes by filling out the first line of the block to show receipt of the blood samples from the donor.

• Keep the paperwork and specimens together. If another medical facility representative will be collecting the urine sample from this employee, transfer both the form and the blood tubes to that person, showing the transfer of the blood tubes on the second line of Sept 5 (the chain of custody block).

E. Collect Urine

The urine collection agent should assemble at his/her station the materials for collecting urine from each employee: one plastic collection cup (covered with shrink wrap), one 125 ml polyethylene specimen bottle with preservative (with protective seal), the Control Form, and an indelible marker.

After requiring the employee to wash his/her hands, the collection agent should escort the employee directly to the urine collection area. To the extent practical, all sources of water in the collection area should be secured and a bluing agent (provided in the toxicology kit) placed in any toilet bowl, tank, or other standing water.

The employee will be provided a private place in which to void. Urination will not be directly observed. If the enclosure contains a source of running water that cannot be secured or any material (soap, etc.) that could be used to adulterate the specimen, the collection agent should monitor the provision of the sample from outside the enclosure. Any unusual behavior or appearance should be noted in the remarks section of the Control Form or on the back of that form.

The collection agent should then proceed as follows:

Unwrap the collection cup in the employee's presence and hand it to the employee.

Ask the employee to void at least 60 ml into the collection cup (at least to the line marked). Leave the private enclosure.

If there is a problem with urination or sample quantity, see the "Trouble Box" at the back of these instructions.

Once the void is complete, the employee should exit the private enclosure and deliver the specimen to the collection agent. Both the collection agent and the employee must proceed immediately to the labeling/sealing area, with the specimen never leaving the sight of the employee before being sealed and labeled.

Upon receipt of the specimen, proceed as follows:

- In the full view of the employee, remove the wrapper from the urine specimen bottle.
- As you pour the specimen into the specimen bottle, please inspect for any unusual signs indicating possible adulteration or dilution. Secure the top. Note any unusual signs under "remarks" at Step 3 of the Control Form.
- Within 4 minutes after the void, measure the temperature of the urine by reading the strip on the bottle. Mark the result at Step 3 of the Control Form.

If there is a problem with the urine sample, see the "Trouble Box" at the back of these instructions.

- Place the numbered urine specimen label from the Control Form label set over the top of the bottle and secure it to the sides.
- Ask the donor to initial the label. Please check to see that the initials match the employee name and note any discrepancy in the "Remarks" block of Step 3.
- Complete the remainder of Step 3 on the Control Form.
- Skip to Step 5 and initiate chain-of-custody by showing receipt of the urine sample from the donor.
- Keep the paperwork and specimens together. If another medical facility representative will be collecting the blood sample from this employee or preparing the box for shipment, transfer both the form and the blood tubes to that person, showing the transfer on the second line of Step 5 (the chain of custody block).

F. Complete Treatment Information.

Complete Step 6 of the Control Form.

G. Prepare the kit for Shipment.

The toxicology kit shall be prepared and sealed by a medical facility representative as follows:

- To avoid unnecessary steps in the chain of custody, it is preferred that one of the persons collecting urine/blood samples prepare the kit and do so immediately. If for some reason the kit cannot be prepared immediately, samples should be secured; and placement in and removal from secure storage should be reflected on the chain of custody block at Step 5 of the Control Form.
- Inspect step 5 of each Control Form to ensure you are shown in receipt of blood and urine samples and that the chain of custody to you is complete.
- Put blood tubes in styrofoam tube holders to avoid breakage.
- Do not use dry ice. Fill the quart metal can (provided) with wet ice, affix lid, and place in center of the kit.
- Place all forms and unused tamper-proof tape in zip-lock bag and seal securely. Place bag and unused supplies in kit, but keep the marker, green tape, label instruction, and kit seal.
- Close kit around the closure with green tape provided. Affix kit seal at right angle to green tape and sign and date across seal with indelible marker provided.
- Affix lable instruction provided to outside of kit.

H. Ship the kit.

The railroad should arrange to have the kit shipped overnight air express or (if express service is unavailable) by air freight, prepaid, to FRA's designated laboratory. Whenever possible, the medical facility collection agent should deliver the kit directly into the hands of the express courier or air freight representative.

If courier service is not available after a certain hour in the evening but is available the next morning, the medical facility should retain the samples in a secure refrigerated storage area until pick-up the next morning. Where courier pickup is not available at the medical facility where the samples are taken, the railroad is required to transport the shipping kit to the nearest point of shipment via air express, air freight or equivalent means.

If railroad is given custody of kit to arrange shipment, please record name of railroad official taking custody on the copy of the Form 6180.73 ("Accident Information") retained by the collection site.

"Trouble Box"

1. *Problem:* The employee claims an inability to urinate, either because he/she has recently voided or because of anxiety concerning the collection.

Action: The employee may be offered moderate quantities of liquid to assist urination. If the employee continues to claim inability after 4 hours, the urine collection should be discontinued, but the blood samples should be forwarded and all other procedures followed. Please note in area provided for remarks what explanation was provided by the employee.

2. *Problem:* The employee cannot provide approximately 60 ml of specimen.

Action: The employee should remain at the medical facility until as much as possible of the required amount can be given (up to 4 hours). The employee may be offered moderate quantities of liquids to aid urination. The first bottle should be sealed and securely stored with the blood tubes and Control Form pending shipment and a second bottle should be used for the subsequent void (using a second Control Form with the words "SECOND VOID—FIRST SAMPLE INSUFFICIENT" in the remarks block and labels from that form).

3. *Problem:* The urine temperature is outside the normal range of 32.5—37.7 °C/90.5—99.8 °F, and a suitable medical explanation cannot be provided by an oral temperature or other means; or

4. *Problem:* The collection agent observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample (e.g., substitute urine in plain view, blue dye in specimen presented, etc.) and a collection site supervisor or the railroad representative agrees that the circumstances indicate an attempt to tamper with the sample.

Action: Document the problem on the Control Form. If the collection site supervisor or railroad representative concur that the temperature of the specimen, or other clear and unequivocal evidence, indicates a possible attempt to substitute or alter the specimen, another void should be taken under direct observation by a collection agent of the same gender.

If a collection agent of the same sex is not available, do not proceed with this step.

If a collection agent of the same gender is available, proceed as follows: A new Control Form must be initiated for the second void. The original suspect specimen should be marked "Void 1" with the indelible marker and the follow-up void should be marked "Void 2," with both voids being sent to the laboratory and the incident clearly detailed on the Control Form.

Exhibit C-2M Instructions for Collection of Post Mortem Toxicology Samples: Employee Killed in a Railroad Accident/Incident

To the Medical Examiner, Coroner, or Pathologist

In compliance with Federal safety regulations (49 CFR part 219), a railroad representative has requested that you obtain samples for toxicology from the remains of a railroad employee who was killed in a railroad accident or incident. The deceased consented to the taking of such samples, as a matter of Federal law, by performing service on the railroad (49 CFR 219.11(f)).

Your assistance is requested in carrying out this program of testing, which is important to the protection of the public safety and the safety of those who work on the railroads.

Materials

The railroad will provide you a shipping kit that contains necessary supplies, including a pen that will write directly on all surfaces. If the kit is not immediately available, please proceed using supplies available to you that are suitable for forensic toxicology.

Samples Requested, in Order to Preference

(1) *Blood*—20 milliliters or more. Preferred sites: intact femoral vein or artery or peripheral vessels (up to 10 ml, as available) and intact heart (20 ml). Deposit blood in gray-stopper tubes individually by site and shake to mix specimen and preservative.

Note: If uncontaminated blood is not available, bloody fluid or clots from body cavity may be useful for qualitative purposes; but do not label as blood. Please indicate source and identity of sample on label of tube.

(2) *Urine*— as much as 125 milliliters, if available. Deposit into plastic bottle provided and shake to mix specimen and preservative.

(3) *Vitreous fluid*—all available, deposited into smallest available tube (e.g., 3 ml) with 1% sodium fluoride, or gray-stopper tube (provided). Shake to mix specimen and preservative.

(4) *If available at autopsy, organs*—50 to 100 grams each of two or more of the following in order preference, as available: liver, bile, brain, kidney, spleen, and/or lung. Specimens should be individually deposited into the sealable collection containers provided in the fatality kit and frozen prior to shipment.

(5) *If vitreous or urine is not available,* please provide—

a. *Spinal fluid*—all available, in 8 ml container (if available) with sodium fluoride or in gray-stopper tube; or, if spinal fluid cannot be obtained,

b. *Gastric content*—up to 100 milliliters, as available, into plastic bottle.

Sample Collection

Sampling at time of autopsy is preferred so that percutaneous needle puncturing is not necessary. However, if autopsy will not be conducted or is delayed, please proceed with sampling.

Blood samples should be taken by sterile syringe and deposited directly into evacuated tube, if possible, to avoid contamination of sample or dissipation of volatiles (ethyl alcohol).

Note: If only cavity fluid is available, please open cavity to collect sample. Note condition of cavity.

Please use smallest tubes available to accomodate available quantity of fluid sample (with 1% sodium fluoride).

Sample Identification Sealing

As each sample is collected, please place an identifier label from the set attached to the Post Accident Testing Blood/Urine Custody and Control Form (FRA Form 6180.74) on each container. Make sure the unique identification number on the label matches the pre-printed number on the Control Form.

Annotate each label with sample description and source (as appropriate) (e.g., blood, femoral vein).

Seal each specimen with tamper-proof tape (provided).

Please provide copy of any written documentation regarding condition of body and/or toxicology sampling procedure that is available at the time samples are shipped.

Handling:

Samples other than blood (provided in evacuated tubes) may be immediately frozen. Blood samples should be refrigerated.

All samples and documentation should be secured from unauthorized access pending delivery for transporation.

Information

If the railroad has not already done so, please place the name of the subject at the top of the Control Form (step 1). You are requested to complete step 2 of the form, annotating it by writing the word "FATALITY," listing the specimens provided, providing any further information under "Remarks." If it is necessary to transfer custody of the specimens from the person taking the specimens prior to preparing the kit for shipment, please use the blocks provided in step 5 to document transfer of custody.

The railroad representative will provide FRA Form 6180.73. Both forms should be placed in the shipping kit when completed; but you may retain the designated medical facility copy of each form for your records.

Packing the Shipping Kit

Please put tubes in styrofoam tube holders to avoid breakage.

Do not use dry ice. Fill the quart metal can (provided) with wet ice, affix lid, and place in center of the kit.

Place all forms and unused tamper-proof tape in zip-lock bag and seal securely. Place bag in kit.

Seal kit with green tape provided and sign and date across seal with indelible marker provided.

Affix label instruction provided to outside of kit.

If shipping by Federal Express, place strap inside the kit and instead secure the top with green vinyl tape provided. Otherwise, secure strap around lid.

Shipping the Kit

The railway should arrange to have the kit shipped overnight air express or (if express service is unavailable) by air freight, prepaid, to FRA's designated laboratory. Whenever possible, deliver the kit directly into the hands of the express courier or air freight representative.

If courier service is not available after a certain hour in the evening but is available the next morning, the medical facility should retain the samples in a secure refrigerated storage area until pick-up the next morning. Where courier pickup is not available at the medical facility where the samples are taken, the railroad is required to transport the shipping kit to the nearest point of shipment via air express, air freight or equivalent means.

If railroad is given custody of kit to arrange shipment, please record name of railroad official taking custody.

Other Toxicology

FRA requests that the person taking the samples advise if additional toxicological analysis will be undertaken with respect to the fatality. FRA toxicology reports are available to the coroner or medical examiner on request.

hh. Add a new appendix D to part 219 to read as follows:

Appendix D—To Part 219 Procedure for Collection of Urine Alcohol Specimen

The following procedures shall be followed where urine will be analyzed for alcohol content under subpart D of this part:

1. The employee should be instructed to provide an intitial sample in the manner provided in subpart H of this part, at the same time voiding the bladder completely. The subject shall be advised that failure to complete the void may work to his/her disadvantage. (The collector shall document the time this sample and the subsequent sample are taken.)

2. After the passage of 20 minutes, the employee should be instructed to provide a second sample in the same manner provided under subpart H. If the employee has difficulty in providing the second sample, it may be necessary to wait until that is possible. Fluids may be offered to assist in the production of the sample.

3. The initial sample shall be used for controlled substance analysis as provided in subpart H of this part.

4. The second sample shall be deposited into a single-use bottle containing one percent sodium fluoride as a preservative. This sample shall be identified, sealed and handled in the same manner provided under Subpart H and shall be analyzed for alcohol as provided in Subpart D of this part. The laboratory shall report the results exclusively to the Medical Review Officer as urine alcohol concentration (grams per 100 ml). Urine alcohol concentrations below .05 are reported as negative.

5. The Medical Review Officer may estimate BAC by dividing the urine alcohol concentration by 1.5 to produce an estimated average BAC for the time between the void and the collection of the second sample.

6. If the second BAC is under .05, the result may be taken to indicate the presence of alcohol, but it should be recognized that reliable quantitation will not be possible.

7. In reviewing the urine alcohol result and reporting an estimated BAC, the Medical Review Officer shall take into consideration any medical reason that may have limited the ability of the donor to void the bladder upon providing the initial sample. If the Medical Review Officer determines that any alcohol present in the urine may have derived from ingestion and elimination into the bladder prior to the duty period, the MRO shall report the result as negative.

8. In reviewing the result, the MRO shall also take into consideration any medical condition that could make possible *in vitro* production of alcohol after provision of the sample.

PART 217—[AMENDED]

1. The authority citation for part 217 continues to read as follows:

Authority: 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

2. Amend part 217 by revising paragraph (d) of § 219.13 to read as follows:

§ 217.13 Annual report.

* * * * *

(d) The number, type and result of each test and inspection related to enforcement of part 219 of this subchapter and the railroad's rule on alcohol and drug use ("Rule G"). This information shall be reported on Form FRA 6180.77, shall be provided separately for employees covered by the Hours of Service Act and other employees subject to the railroad's code of operating rules and operational testing program, and shall include the following:

(1) Total number of observations of individual employees (including observations for which breath, blood or urine tests were included and observations after accidents/incidents and rule violations) and total number of employees charged with violation of Rule G or a similar rule.

(2) Number of breath tests conducted under the authority of § 219.301 of this

title and number of such tests that were positive; number of breath tests conducted under railroad authority for specific cause and not relying on § 219.301 and number that were positive.

(3) Number of urine tests conducted under the authority of § 219.301 of this title and number of such tests that were positive; number of urine tests conducted under railroad authority for specific cause and not relying on § 219.301 and number that were positive. For positive tests indicate number for alcohol and for each of the following controlled substance drug groups: marijuana, cocaine, phencyclidine, opiates, amphetamines, and other controlled substances.

(4) Number of employees who refused to cooperate in testing under § 219.301; number of employees who refused to cooperate in testing under railroad authority for specific cause and not relying on § 219.301.

(5) Number of blood tests demanded by employees in connection with such observations and results by substance (alcohol, controlled substance drug group) (separated as to blood tests demanded under subpart D of this part and blood tests conducted under railroad authority).

(6) Number and results of random drug tests conducted under the authority of § 219.601 of this chapter. For positive tests indicate the number for each controlled substance by drug group, and the following information: number and type of disciplinary actions taken, number of employees referred for evaluation, number of employees evaluated as not requiring formal treatment, number of employees evaluated as requiring outpatient treatment, number of employees evaluated as requiring inpatient treatment, number of employees failing to complete abatement or rehabilitation (as determined by clinical of employees who completed abatement or rehabilitation determined after investigation to have been involved in subsequent alcohol/drug disciplinary offenses, and number of follow-up tests and results by drug group (including refusals). Also indicate the number of refusals to cooperate in random testing and provide a summary of any negative test findings based upon scientific insufficiency (without personal identifying information).

PART 225—[AMENDED]

1. The authority citation for part 225 continues to read as follows:

Authority: 45 U.S.C. 38, 42, and 43, as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49 (c) and (m).

2. Amend part 225 by adding a new paragraph (d)(3) to § 225.17 to read as follows:

§ 225.17 Doubtful cases; alcohol or drug involvement.

* * * * *

(d) * * *

(3) For any train or non-train incident, the railroad shall provide any available information concerning the possible involvement of alcohol or drug use or impairment in such accident or incident.

Issued in Washington, DC, on September 21, 1989.

Gilbert E. Carmichael,

Federal Railroad Administrator.

Note: The following forms will not appear in the Code of Federal Regulations.

BILLING CODE 4910-06-M

POST-ACCIDENT TESTING BLOOD/URINE CUSTODY AND CONTROL FORM (49 CFR 219)

Step 1. COMPLETED BY EMPLOYEE (DONOR) PROVIDING SPECIMENS

NAME OF EMPLOYEE - PRINT (last, first, mi)	SAMPLE SET IDENTIFICATION NUMBER
EMPLOYEE HOME ADDRESS	NAME/ADDRESS OF EMPLOYING RAILROAD
OPTIONAL: PLEASE NAME ANY MEDICATIONS YOU HAVE TAKEN WITHIN THE LAST 30 DAYS (MAY BE PRESCRIBED OR OVER THE COUNTER)	DATE/TIME OF LAST DOSE TAKEN

Step 2. COMPLETED BY COLLECTOR OF BLOOD SPECIMEN

NAME OF COLLECTOR - PRINT (last, first, mi)		DATE/TIME OF COLLECTION
COLLECTION SITE ADDRESS	TELEPHONE NUMBER	REMARKS

I certify the blood specimen identified here was presented to me by the person named in Step 1, bears the identification number in Step 1, and was collected, labeled and sealed according to the instructions.

I HAVE COMPLETED THE REQUIRED ENTRY IN STEP 5 BELOW, AS EXPLAINED IN THE INSTRUCTIONS GIVEN TO ME.

_____
Signature of Collector

Step 3. COMPLETED BY COLLECTOR OF URINE SPECIMEN

NAME OF COLLECTOR - PRINT (last, first, mi)		DATE/TIME OF COLLECTION
COLLECTION SITE ADDRESS	TELEPHONE NUMBER	REMARKS

Temperature of Specimen was read within 4 minutes	--YES --NO	Temperature was within range of 32.5-37.7 C/90.5-99.8 F	--YES --NO	If not, actual temp. was ____

I certify the urine specimen identified here was presented to me by the person named in Step 1, bears the identification number in Step 1, and was collected, labeled and sealed according to the instructions.

I HAVE COMPLETED THE REQUIRED ENTRY IN STEP 5 BELOW, AS EXPLAINED IN THE INSTRUCTIONS GIVEN TO ME.

_____
Signature of Collector

Step 4. COMPLETED BY EMPLOYEE

I certify that the information I have given in Step 1 is correct and that I provided the specimens described in Steps 2 and 3. Each specimen is in a container which has the identifying number recorded in Step 1. Each container has a tamper-proof seal that was applied by the collector in my presence and I have placed my initials on each label.

EXAMPLE OF MY INITIALS

* | | *

_____
Signature of Employee

Step 5. COMPLETED IN SEQUENCE BY COLLECTORS AND OTHERS TAKING POSSESSION OF SPECIMENS

Purpose of Change	Released by Signature/Print Name	Type of Fluid(s) Blood	Urine	Blood/Urine	Received by Signature/Print Name	Date
PROVIDE SPECIMEN	EMPLOYEE (DONOR)					

Step 6. COMPLETED BY MEDICAL FACILITY/PHYSICIAN

Describe any medication, solution, transfusion, or other treatment the employee received after the accident that might affect toxicological analyses.

Step 7. COMPLETED BY LABORATORY AT TIME OF ACCESSIONING

Accession Number _____ (first blood container)

Accession Number _____ (second blood container)

Accession Number _____ (urine container)

I certify the specimens identified by accession numbers above bear the identification number in Step 1. Each specimen was examined upon receipt, all seals were intact, and each specimen was handled as required by FRA.

PRINTED NAME	SIGNATURE	DATE

REMARKS

FRA F 6180.XX (draft)

ANNUAL REPORT
CONTROL OF ALCOHOL AND DRUG USE ON RAILROADS
49 CFR 217

PAPERWORK REDUCTION ACT NOTICE

The Paperwork Reduction Reauthorization Act of 1986 requires agencies to place a notice on each collection of information informing the repondent of the estimated average burden hours per response, together with a request that repondents direct any comments on the accuracy of the estimate and suggestions for reducing the burden to the agency and the Office of Management and Budget (OMB). Congress's objective in making this amendment is to facilitate an agency's management of collections of information, to reduce paperwork burdens on the public, and to encourage more meaningful public participation in the Federal paperwork review process. The Federal Railroad Administration believes that the following notice meets this requirement.

Public reporting burden for this collection of information is estimated to average -- hours per response. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Office of Safety, ATTN: RRS-21, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

INSTRUCTIONS

Items No. 1 through 11 relate to the railroad's rule on drug and alcohol use. Items No. 12 through 20 relate to the Federal rule, and to those tests conducted under the authority of 49 CFR 219.301. Items No. 21 through 35 relate to the Federal rule and to those tests conducted under 49 CFR 219.601. Attach a narrative statement to identify those urine or blood tests which resulted in multiple substance findings and to identify those substances.

Form is required to be completed and mailed to the Federal Railroad administrtion, Office of Safety, RRS-10, 400 Seventh Street, S.W., Washington, D.C. 20590 before March 1 each year.

FRA F 6180.XX (draft)

REPORT REQUIRED BY 49 CFR 217 RELATING TO THE CONTROL OF ALCOHOL AND DRUG USE ON RAILROADS

Railroad		Railroad Code (FRA Use Only)
Reporting Year	Date Report Submitted / /	Railroad Class Code (FRA Use Only)

SECTION I
OBSERVATIONS AND TESTS CONDUCTED UNDER RAILROAD RULE

ITEM	INFORMATION REQUIRED	HOURS OF SERICE EMPLOYEES	OTHER EMPLOYEES WHO ARE SUBJECT TO OPERATING RULES AND OPERATIONAL TESTS
1.	Total number of individual employees observed in tests and inspections related to enforcement of the railroad's rule on drug and alcohol use, including observations for which breath, blood or urine tests were conducted and observations after accidents/incidents and rule violations.		
2.	Number of employees who refused to cooperate in testing under railroad's rule.		
3.	Number of employees charged with a violation of the the railroad's rule.		
4.	Number of breath tests conducted under railroad's rule.		
5.	Number of employees for whom breath tests were positive.		
6.	Number of urine tests conducted under railroad's rule.		
7.	Number of employees for whom urine tests were positive.		
8.	Number of urine tests positive for: a. Alcohol		
	b. Marijuana		
	c. Cocaine		
	d. Phencyclidine		
	e. Opiates		
	f. Amphetamines		
	g. Other Controlled Substances		
9.	Number of blood tests conducted under railroad's rule.		
10.	Number of employees for whom blood tests were positive.		
11.	Number of blood tests positive for: a. Alcohol		
	b. Marijuana		
	c. Cocaine		
	d. Phencyclidine		
	e. Opiates		
	f. Amphetamines		
	g. Other Controlled Substances		

SECTION 2
TESTS CONDUCTED UNDER AUTHORITY OF FEDERAL RULE 49 CFR 219.301
REASONABLE CAUSE TESTING PROGRAM

ITEM	INFORMATION REQUIRED	HOURS OF SERVICE EMPLOYEES	OTHER EMPLOYEES WHO ARE SUBJECT TO OPERATING RULES AND OPERATIONAL TESTS
12.	Number of employees who refused to cooperate in testing for reasonable cause.		
13.	Number of breath tests.		
14.	Number of employees for whom breath tests were positive.		
15.	Number of urine tests.		
16.	Number of employees for whom urine tests were positive.		
17.	Number of urine tests positive for: a. Alcohol		
	b. Marijuana		
	c. Cocaine		
	d. Phencyclidine		
	e. Opiates		
	f. Amphetamines		
	g. Other Controlled Substances		
18.	Number of blood tests demanded under 49 CFR 219. 301.		
19.	Number of employees for whom blood tests were positive.		
20.	Number of blood tests positive for: a. Alcohol		
	b. Marijuana		
	c. Cocaine		
	d. Phencyclidine		
	e. Opiates		
	f. Amphetamines		
	g. Other Controlled Substances		

SECTION 3 TESTS CONDUCTED UNDER AUTHORITY OF FEDERAL RULE 49 CFR 219.601 RANDOM DRUG TESTING PROGRAM			
ITEM	INFORMATION REQUIRED	HOURS OF SERVICE EMPLOYEES	OTHER EMPLOYEES WHO ARE SUBJECT TO OPERATING RULES AND OPERATIONAL TESTS
21.	Number of employees tested.		
22.	Number of employees for whom urine tests were positive.		
23.	Number of urine tests positive for: a. Marijuana		
	b. Cocaine		
	c. Phencyclidine		
	d. Opiates		
	e. Amphetamines		
	f. Other Controlled Substances		
24.	Number of disciplinary actions taken. (Attach narrative statement describing the type of disciplinary actions taken.)		
25.	Number of employees referred for evaluation.		
26.	Number of employees evaluated as not requiring formal treatment.		
27.	Number of employees evaluated as requiring outpatient treatment.		
28.	Number of employees evaluated as requiring inpatient treatment.		
29.	Number of employees failing to complete abatement or rehabilitation (as determined by clinical judgement or positive test on return-to-work urine analysis).		
30.	Number of employees who completed abatement or rehabilitation determined after investigation to have been involved in subsequent alcohol/drug disciplinary offenses.		
31.	Number of followup tests conducted.		
32.	Number of followup tests positive for: a. Marijuana		
	b. Cocaine		
	c. Phencyclidine		
	d. Opiates		
	e. Amphetamines		
	f. Other Controlled Substances		
33.	Number of employees who refused to cooperate in followup testing.		
34.	Number of employees who refused to cooperate in random testing.		
35.	Were there any negative findings based on scientific insufficiency found by the Medical Review Officer? (If yes, attach a summary of the findings.)	YES ☐	NO ☐

[FR Doc. 89-22798 Filed 9-22-89; 4:24 pm]
BILLING CODE 4910-06-M

federal register

Wednesday
September 27, 1989

Part IV

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 200 et al.

Disclosure and Verification of Social Security Numbers and Employer Identification Numbers by Applicants and Participants in HUD Programs; Final 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, 252, 255, 290, 510, 750, 813, 880, 881, 882, 883, 884, 885, 886, 887, 900, 904, 905, 913, and 960

[Docket No. R-89-1419; FR-2501]

RIN 2501-AA72

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

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule requires certain individuals to disclose and verify 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, the rule requires certain entities to disclose their Employer Identification Numbers (EINs), 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 constitutes grounds for denying eligibility, or continuing eligibility, as provided by the provisions governing the program involved.

Covered programs 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 program under 24 CFR part 510; and the section 8 and Public and Indian Housing programs under 24 CFR chapters VIII and IX.

The rule will enable HUD to use Social Security and Employer Identification Numbers to help decrease the incidence of fraud, waste, and abuse in the program subject to the rule.

EFFECTIVE DATE: November 6, 1989, except for §§ 235.10(e), 235.350(d), 235.355, 235.375(b)(4) and (e), that contain information collection requirements that are awaiting OMB approval. In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the reporting or recordkeeping provisions that are included in this regulation have been submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained and the public notified to that effect through a technical amendment to this regulation.

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, 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, telephone number (202) 426-0744.

For the section 312 Rehabilitation Loan program: David Cohen, Director, Office of Urban Rehabilitation, telephone number (202) 755-5685.

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.

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, telephone (202) 755-7203.

The addresses listed above are all at 451 Seventh Street SW., Washington, DC 20410. None of the telephone numbers listed are 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 and have been assigned OMB control numbers 2502-0159, 2502-0268, 2502-0204, 2502-0118, 2502-0059, 2502-0267, 2506-0076 and 2577-0083. 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.

Background

On October 17, 1988, the Department published a proposed rule (53 FR 40624) to implement for a number of HUD programs section 165 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988). 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 to HUD their Social Security Numbers (SSNs) or Employer Identification Numbers (EINs). 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.

The proposed rule implemented the requirements for the disclosure of SSNs and EINs through four independent, but parallel, provisions:

1. *24 CFR part 200, subpart T:* This subpart covered 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 applied to the other loan and mortgage insurance and coinsurance programs administered by HUD under 24 CFR chapter II, subchapter B, including FHA loan insurance for property improvement and manufactured home loans under title I of the National Housing Act, and mortgage insurance for single family dwellings and multifamily projects under title II of the National Housing Act.

3. *24 CFR part 501:* This part covered 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 covered the section 8 Housing Assistance Payments and the Public and Indian Housing programs administered by HUD under 24 CFR chapters VIII and IX.

The remainder of the rule contained conforming changes that were designed to incorporate the proposed disclosure and verification requirements into the regulatory provisions for the authorities involved.

The proposed rule contained the following principal features. All applicants seeking to participate in programs subject to the rule were required to disclose and verify their SSNs or EINs, depending on the nature of the applicant. In the case of applicants seeking rental assistance (such as under the section 8 and Public and Indian Housing authorities), the applicant and all members of his or her household had to meet the disclosure and verification requirements. In the case of individuals, and certain officials of entities, desirous of becoming "private owners" of assisted projects, such as under the section 8 project-based subsidy authorities, only the individuals involved had to disclose and verify SSNs. In the case of corporations and other entities seeking to participate in cover programs as "private owners," the entities had to disclose and verify their EINs.

The proposed rule also required the disclosure and verification of SSNs by participants (and their family members) in programs providing housing assistance that require determinations of continuing eligibility for the assistance involved. Examples of these programs include the Rent Supplement and the sections 235 and 236 programs, and the section 8 and Public and Indian Housing programs.

The proposed rule provided guidance on the documentation required to verify an SSN or EIN. It also specified that failure to meet the disclosure and verification requirements would result in denial of eligibility, or termination of assistance or tenancy, as provided by the provisions governing the program involved. However, applicants or participants seeking rental assistance who could provide their SSNs, but could not meet the verification requirements, were given 60 days to remedy the deficiency before losing their place on the waiting list or having their assistance or tenancy terminated.

Discussion of Public Comments and Changes Made in the Final Rule

The Department received 11 comments on the proposed rule. Eight were from Public Housing Agencies (PHAs), and one each from a HUD Field Office, a national association, a city government, and a State Office of Communities and Development.

Eight of the commenters expressed support for the proposed rule. Three expressed concern with it, generally on grounds that the rule was, in their view, programmatically inflexible or administratively burdensome, or both. A number of commenters proposed changes for inclusion in the final rule. The following is a discussion of the comments on the proposed rule, as well as any changes made to the final rule.

Administrative Burden

Several of the commenters expressed concern over the costs of complying with the rule. One commenter questioned the cost-effectiveness of the rule's mandatory disclosure provisions, given the "minimal" incidence of fraud and abuse problems in its programs. Another commenter argued that fraud and abuse prevention can be carried out most effectively at the local level. This commenter stated that the local approach would be a "more effective prevention measure than the inflexible, onerous and bureaucratic measures proposed in the rule."

On the other hand, a number of commenters stated that the mandatory disclosure feature of the rule would be a "positive undertaking." These commenters believed that the rule would significantly increase the Department's ability to combat fraud and abuse in its programs.

The Department disagrees that the incidence of fraud and abuse in HUD's assisted housing programs is minimal. In 1982, the Department's Office of Inspector General (OIG) conservatively estimated that $200 million is paid out annually to tenants who falsify their eligibility in order to gain a larger assistance payment. It is conservatively estimated that at least 12 percent of HUD-assisted households are able either to gain eligibility or to receive more benefits than allowed by law, by underreporting their income or otherwise falsifying their eligibility. In some locations the percentage may be much higher. In the most recent income computer matching efforts by the OIG, $14.4 million was underreported to one PHA since 1983 that resulted in the tenants' share of rent being underpaid by over $2.9 million.

Like a number of the commenters, the Department agrees that the rule's mandatory disclosure and verification of SSNs and EINs will be an important weapon in the Department's efforts against this type of fraud and abuse in the Department's programs. We do not, however, believe that the rule will result in significantly increased administrative burdens, time, and compliance costs. Under HUD Form HUD-50059 (assisted housing programs), PHAs and multifamily owners and agents are now required to collect SSNs for each member of the family who receives income or who is at least 18 years old. The PHAs and IHAs are now recording SSNs for the head of the applicant/participant household, spouse, and one other adult, if provided by the family at admission or at annual reexamination. Although disclosure of the SSN is currently voluntary with the individual, the vast majority of tenants do provide their numbers.

The results of past HUD–OIG audits and computer matches have shown that in approximately 75–80 percent of the cases, applicants and participants are voluntarily providing SSNs/EINs to PHAs and multifamily owners and agents. A 1982 evaluation done under contract for HUD's Office of Policy Development and Research found that 92 percent of household heads report name and SSN to HUD. No data was gathered for other than family head of household. Making disclosure mandatory should, therefore, not impose a significant new burden on PHAs and other owners and agents.

It is true that the rule's procedures for verifying SSNs are not presently required. In many instances, however, SSNs are routinely verified when the 50059s are reviewed for other eligibility factors, such as establishing identity or family income. The PHAs and IHAs will verify a family's SSNs in conjunction with their verification of income, family status, and preference category. Moreover, the Department has made every effort to limit the processing entity's verification functions to the minimum necessary to carry out the rule's purposes. Thus, the Department does not believe that the rule's verification procedures present a novel requirement that is unduly burdensome.

Finally, the Department disagrees that a local approach would be more effective. We believe that an effective approach to fraud prevention requires a partnership of Federal, State, and local resources, and that lines of communication must be established with the various Federal, State, and local agencies involved in verifying information based on SSNs to make this a successful joint effort.

For these reasons, the Department believes that the mandatory disclosure requirements of the proposed rule will enhance the Department's ability to detect instances of fraud, waste, and abuse in its programs, without appreciably increasing the administrative burdens on PHAs and private owners of multifamily housing projects. Accordingly, the final rule is unchanged on this point.

One commenter stated that in connection with CDBG-funded rehabilitation of owner-occupied homes and relocation payments to tenants of CDBG-rehabilitated property, the rule's requirement for the disclosure of the

SSNs of all family members over the age of six would entail additional home interviews with program applicants, at a cost of $40 per visit, or $5,000 annually, if half of the applicants required such return visits. To this cost, the commenter continued, must be added the expense of reporting the SSN data to HUD and retaining the data for possible future use. Guidance was requested on the form and frequenty of the reports, and on the availability of additional HUD monies for the new expenses.

This comment is moot, because the Department has decided to eliminate from the rule's coverage the Community Development Block Grant (CDBG) program, as well as the Urban Homesteading and Urban Development Action Grant (UDAG) program. On further review, the Department does not believe that the benefits to be derived from requiring the disclosure and verification of SSNs and EINs in these programs is sufficient to justify imposition of section 165's requirements at this time.

One commenter questioned the cost-effectiveness of HUD's expenses in processing data reports from PHAs and other covered entities, and in carrying out planned computer matchings. The Department's projected implementation of the rule is sufficient response to this comment. The Department does not intend to process data reports from PHAs and other project owners. In addition, the Department routinely conducts cost-benefit analyses before carrying out any computer matching activities—a practice that the Department intends to continue in carrying out the rule's provisions.

Two commenters opposed the provision in the proposed rule that requires all family members to disclose their SSNs if there is a change in the composition of the family. They argued that this requirement is redundant and burdensome for those family members who have previously disclosed their SSNs to the entity involved. The Department agrees, and has made the necessary changes to the final rule.

As a related matter, the Department has amended the proposed rule to make several clarifying changes to the assisted housing programs subject to the rule's requirements—24 CFR part 200, subpart T, and part 750. These changes are designed to identify clearly which family members must disclose their SSNs, when the disclosure must take place, and what documentation is required to verify the SSNs. The changes also make clear that the applicant or participant—generally the head of household—is the individual who must submit all required information to the processing entity.

A summary chart of the final rule's complete disclosure and verification requirements for applicants and participants in these programs follows. The summary only covers family members who are required to disclose their SSNs. In this regard, the final rule makes no change in those who must make this disclosure: Individuals who are under the age of six or who have not been assigned an SSN are not subject to the rule's disclosure requirements.

Family members who must disclose and when	Nature of disclosure
Applicants	
All family members: at eligibility determination.	Complete and accurate SSNs for all SSNs assigned; valid SSN card or such other evidence as HUD (and PHA in part 750) may prescribe as proof of each SSN
Those who were participants before effective date of rule	
All family members: at next regularly scheduled income reexamination after rule's effective date.	Complete and accurate SSNs for all SSNs assigned; valid SSN card or such other evidence as HUD (and PHA in part 750) may prescribe as proof of each SSN
Participants who have made either of the above disclosures	
Special circumstances	
New family member: next interim or regularly scheduled income reexamination that includes the new family member.	Complete and accurate SSNs for all SSNs assigned to the family member involved; valid SSN card or such other evidence as HUD (and PHA in part 750) may prescribe as proof of each SSN
Family member who is assigned a new SSN or who obtains a previously undisclosed SSN; next regularly scheduled income reexamination.	
Special Circumstances in Administrative Instructions	
HUD (and the PHA in part 750) may specify in administrative instructions additional disclosure and verification requirements, including the nature of the disclosure and verification required, and the time and manner for making the disclosure and verification.	

This summary contains the change described above, to require only *new* family members (rather than all family members) to verify their SSNs. This is required to take place at the next income reexamination, irrespective of whether the reexamination is interim or regularly scheduled.

Finally, it should be noted that all members of participating families who are subject to the rule's disclosure requirements are not, in the absence of special circumstances, subject to further disclosure and verification of their SSNs.

One commenter indicated that HUD's failure to use HUD Form 50058 will result in duplicate reporting of SSNs—both on the 50058 and some other form to be submitted to HUD. The commenter asked when the Department intended to begin using the 50058 as had been intended.

The Department intends to use both Form HUD–50058 and Form HUD 50059 to gather the SSNs of assisted families. No additional forms will be used, thus obviating any duplicate reporting.

Program Inflexibility

A number of the comments addressed perceived instances of unnecessary inflexibility in the proposed rule. One PHA commenter argued that the rule's effective date is too abrupt. The proposed rule covered all applicant eligibility determinations initiated on or after the rule's effective date, as well as each regularly scheduled reexamination of family income conducted on or after that date. The commenter urged adoption of a six-month delayed effective date, to permit the PHA to devise necessary implementing forms and procedures.

As noted earlier, under Form HUD–50059, PHAs and IHAs are not recording SSNs for certain family members. The Department believes that PHAs' and IHAs' experience with this requirement—as well as the large number of families that voluntarily provide their SSNs—removes any need for a delayed implementation date. The final rule makes no change in the proposed rule's effective dates.

The same PHA commenter argued that the proposed rule was too harsh in requiring that tenancy be terminated for any participant family that does not meet the rule's disclosure and verification requirements. The commenter recommended instead a two-part process. If the tenant fails to provide SSNs for each covered household member, but the PHA believes that eviction is not otherwise warranted, the unit rent would be

increased to eliminate the Federal subsidy until the SSNs are provided. Where, however, a tenant has unreasonably failed to submit assigned SSNs for each family member, and the PHA believes that eviction is warranted, tenancy would be terminated.

The Department disagrees that the proposed rule's provisions requiring termination of tenancy for program participants who fail to make the required SSN disclosures is unduly harsh. Indeed, section 165 of the 1987 Act specifically envisions such a penalty, by making disclosure of SSNs a condition of both eligibility and continuing eligibility for covered programs.

Moreover, if a family participating in a covered housing assistance program was unable to produce the documentation necessary to verify the required SSNs, the proposed rule provided a period of 60 days within which the SSNs could be documented. During this period, a participant family would continue to receive assistance. The Department believes that this time period is sufficiently long to enable a reasonably diligent individual to obtain the necessary documentation, and to avoid the more serious penalties of termination of assistance/tenancy.

Given the clear meaning of section 165 and the considerable time provided family members to produce the requisite SSN documentation, the Department does not believe that the proposed rule's penalties for failing to supply the required documentation of SSNs were unduly harsh. The final rule is unchanged on this point.

A commenter indicated that it currently handles income verification by mail for participants (but not applicants) in its section 8 programs. Requiring these participants to send originals, or even copies, of their SSNs through the mail would, in the commenter's view, be unnecessarily burdensome both for the individual—especially elderly persons—and the PHA (which must return the material to the family).

The commenter suggests instead that the rule only require family members whose incomes are verified by mail to list the SSNs, rather than send proof of the numbers. Verification of the SSNs would be carried out through computer match at a later time.

The Department believes that verification of participant data my mail is a useful technique to relieve the administrative burdens on PHAs and assisted families alike. The Department also agrees with the commenter that sending original evidence through the mails is both burdensome and increases the chance of losing important documents.

We do not agree, however, that where documentation of the SSN would otherwise be required, the only means of verification should be by computer match. The proposed rule adopted the most efficacious means of ensuring the complete and accurate disclosure of SSNs—examination of the actual documents involved. The Department believes that although original documents ought not be sent through the mail, copies of the documents should be made available to the PHA or other entity processing the family's SSNs.

The Department believes that this approach strikes the appropriate balance between the legitimate interests of PHAs in reducing administrative burdens and the interest expressed in section 165 of the 1987 Act in ensuring that there are adequate safeguards against fraud and abuse in HUD's programs. PHAs would have the "next best evidence" of the SSNs involved, without the costs of processing and returning originals and the risk of loss if the originals were sent through the mail.

Accordingly, where a PHA provides for verification by mail of the continuing eligibility of participant families in the Certificate, Voucher, or Moderate Rehabilitation program, it may verify SSNs in this way as well. The tenant must provide copies of the documentation otherwise required for SSNs under the rule.

As a related point, another commenter asked whether the final rule should provide for waiver of the documentation requirement for elderly families, when the documentation is not readily available. The Department agrees with the commenter's concern about the ability of some elderly tenants to comply with the proposed rule's documentation requirements, even within the 60 additional days provided by the rule. We do not believe, however, that the commenter's suggested waiver of all documentation requirements is necessary or faithful to section 165's objective of protecting against fraud and abuse in the Department's programs.

The Department believes that the best approach is to permit PHAs and other processing entities in the covered programs to give elderly families another 60-day period, after the proposed rule's 60-day period, to supply the required documentation. We believe that this approach is consistent with section 165's purposes, while affording the additional time that some elderly families may need to gather the necessary information. The final rule has been amended accordingly.

Two commenters questioned the rule's provision that requires all family members above the age of six to disclose their SSNs. One commenter asked whether the PHA will be put in the position of breaking up families by requiring any member who fails to produce the SSN to move out. The other commenter argued that some households will have great difficulty in complying with this requirement and that the requirement is too inflexible. Specifically, the commenter stated,

> We do not relish the prospects of insisting on seeing documentation for every child before payments can be made, when we ourselves know that the case is urgent and deserving.

Initially, it should be noted that the proposed rule did not require the issuance of SSNs for all family members: only those who are over the age of five and who have been assigned an SSN, had to disclose it. As noted in the preamble to the proposed rule (53 FR 40627), use of the six-year-old standard is consistent with section 6109(e) of the Internal Revenue Code of 1986. That provision requires taxpayers to include in their tax returns a dependent's SSN whenever claiming one or more exemptions for dependents age five or older. Thus, the Department considers this requirement neither novel nor unreasonably burdensome.

With regard to the "family splitting" issue, the Department would note that section 165 of the 1987 Act clearly contemplates that all family members who have an SSN will disclose it, as a condition of eligibility, or continuing eligibility, under a covered program. Thus, the rule's statutory authority, and not the rule alone, provides for the ineligibility of a family in which one or more members fail to meet the requisite SSN disclosure and documentation.

In addition, the Department has taken care to ensure that families will not be rendered ineligible—either as applicants or participants—without receiving adequate time to secure the necessary documentation. The proposed rule only required the disclosure and verification of SSNs that have been assigned to the individual. If the individual cannot produce the required documentation, he or she would receive 60 days to do so (with an additional 60 days for elderly tenants, as discussed above). The Department continues to believe that this period is adequate to secure the necessary documentation, and that families will not unreasonably be denied initial or continuing access to assistance under the covered programs.

Other Issues

Two commenters urged HUD to make the disclosure of SSNs a joint Federal-State-local effort, by establishing lines of communication with the various Federal, State, and local agencies involved in verifying SSNs under the rule. The commenters indicated that these agencies sometimes charge for their verification services, and urged HUD to encourage these agencies to waive such charges for PHAs and local community development agencies attempting to comply with the rule.

Neither the proposed nor final rule requires the third-party verification to which the commenters refer. As indicated above, however, the Department believes that intergovernmental cooperation is an essential element in efforts to combat fraud, waste, and abuse in its programs, and intends to explore ways to develop and enhance these relationships in the future.

One commenter indicated that the rule may permit section 8 Certificate and Voucher assistance to commence, even though the project owner may not have verified the family's SSN. The commenter asked how the owner and family will know that their subsidies will not be interrupted because of lack of proper identification.

This comment appears to proceed from a misunderstanding of how the Certificate and Voucher programs work. Eligibility under these programs is determined by the PHA. If the PHA finds a family eligible (which will include acceptance of the applicant's SSN documentation), the family is given a "certificate" or "voucher" with which to rent a qualifying dwelling. The private owner may select the tenant and enter into a Housing Assistance Payments Contract with the PHA, but only after the PHA issues the Certificate or Voucher. Thus, the private owner has no responsibilities with respect to SSN information: the disclosure and verification of the family's SSNs takes place before the private owner enter the picture.

One commenter raised two technical suggestions: That language be inserted to ensure that parents or guardians can sign required certifications on behalf of minors and that the rule make clear that the Voucher program is covered by the rule. The final rule contains each of these suggestions.

Finally, the Department has made several changes in the final rule, based on its review of the proposed rule. First, the proposed rule would have permitted PHAs administering the section 8 Certificate, Voucher, or Moderate Rehabilitation program:

—To determine additional special circumstances under which participants would have to disclose their SSNs'

—To establish alternate documents or other substantiation of SSNs' and

—To designate someone other than a minor family member to certify to the fact that the individual has been assigned an SSN, but cannot produce evidence to verify it.

The final rule permits PHAs to exercise this authority only in conjunction with the Department's administrative instructions. This change is necessary to comply with section 165: HUD is given sole responsibility to implement section 165—a responsibility that could not be fully discharged if PHAs have unfettered discretion to exercise the cited discretion.

Second, for FHA and other programs that provide for one-time eligibility determinations, the final rule requires the disclosure and verification of SSNs for the applicant and any family member who will be liable on the mortgage or loan debt or other instrument. The Department does not believe that subjecting all members of such an applicant's family to section 165's requirements is necessary to furthering the rule's fraud, waste, and abuse purposes. By the same token, those whom the financing documents identify as responsible for payment of the indebtedness should be required to disclose and verify their SSNs.

Third, the proposed rule imposed its disclosure and verification requirements only on "individual applicants" who assume an existing, unsubsidized FHA insured loan. "Individual applicants" for both single family and multifamily mortgages were covered. There is no real distinction between "individual applicants" and "entity applicants," and subsidized and unsubsidized mortgages, from the standpoint of fraud, waste, and abuse concerns. Thus, the Department has amended the final rule to make clear that all types of FHA assumptions are covered by section 165.

Fourth, the proposed rule covered the Temporary Mortgage Assistance Payments (TMAP)/Assignment programs published at 52 FR 6915 (March 5, 1987). This treatment was premised on the expectation that the programs would have become operational in time for this final rule. This has not occurred, and the final rule deletes them from its coverage. It should be noted, however, that the final rule leaves intact a provision subjecting the current Assignment program to its provisions. When the new TMAP/Assignment programs are implemented, the Department will take the steps necessary to bring it within the rule's ambit.

Findings and Certifications

Environment

A Finding of No Signifiant 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 (7:30 a.m. to 5:30 p.m. weekdays) 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 does not constitute a "major rule," as that term is defined in section 1(d) of the Exectuive 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 requires processing entities, some of which are small entities, to collect and verify SSN and EIN information. Although this will increase the administrative burdens on these entities, for the reasons discussed earlier, the increase should be relatively 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 will not have substantial direct effects on the States or their political subdivisions, or on the relationship between the Federal government and the States, or on the

distribution of power among the various levels of government. As a result, the rule is 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 applicants and participants in HUD assistance programs, including the collection of SSNs from program applicants and participants. As noted above, the Department does not believe that the additional burden imposed by the rule to collect and verify SSNs will be substantial.

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.

The rules's principal effect on families involves those seeking or receiving rental assistance under several FHA assistance programs (see 24 CFR part 200, subpart T) and the section 8 Housing Assistance Payments programs and the Public and Indian Housing programs (see 24 CFR part 750). The rule provides that these families must disclose and verify their SSNs if they are to receive, or continue receiving, Federal assistance. To guard against the precipitate denial of eligibility or loss of assistance that could impose extreme financial hardship on these applicants and participants, those who cannot substantiate their SSNs are given a reasonable period to obtain proper evidence of their SSN before they are held ineligible for initial or continuing assistance. As noted earlier, the department believes that this scheme provides families adequate opportunity to comply with the rule's requirements before any action is taken with respect to their eligibility, or continuing eligibility, for the program. Thus, any effect that the rule may have on family formation, maintenance, or well-being should not be significant.

Semiannual Agenda of Regulations

This rule was not listed on the Department's Semiannual Agenda of Regulations published on April 24, 1989 (54 FR 16708) 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, 14.161, 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 rule have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

On September 22, 1988, the Department requested approval of the information collection requirements contained in this rule. On November 19, 1988, OMB filed comments on the request pursuant to section 3504(h) of the Paperwork Reduction Act. Those comments involved four concerns. These concerns, and the Department's response, are outlined below.

First, the Department listed inconsistently the current information collections that would be affected by this rulemaking. The proposed rule indicated that information collections with OMB Control Numbers 2502–0118 and 2502–0267 would be affected. The paperwork package submitted to OMB, however, did not mention these information collections. Also, the paperwork package submitted to OMB indicated that information collection 2502–0018 would be affected, but the proposed rule did not indicate this. OMB asked the Department to clarify for the public precisely which information collections would be affected by this rule.

To clarify this point, there are nine information collections affected by this rule. They include: (1) 2502–0159; (2) 2502–0268; (3) 2502–0204; (4) 2502–0082; (5) 2502–0118; (6) 2502–0059; (7) 2502–0267; (8) 2506–0076; and (9) 2577–0083. In addition, information collections 2502–0118 and 2502–0267 are in the rule and have current OMB approval. Information collection 2502–0018 was a typographical error and has been corrected to 2502–0118. The final rule omits 24 CFR parts 501, 590, and 570; therefore, the following information collections have been omitted: (1) "SSNs/EINs from Urban Homesteaders"; (2) "SSNs/EINs from Families, Individuals, Businesses, and Farms Seeking Relocation Assistance"; and (3) "SSNs/EINs on Form SF–424 Urban Development Action Grants (2506–0040)."

OMB's second concern was that in the proposed rule and paperwork submitted for OMB review, the Department indicated that two information collections had currently valid OMB control numbers (2502–0082 and 2506–0040) for collections of SSN and EIN information, when in fact, the OMB approval for these collections expired in March 1988 and January 1988, respectively.

In response to this concern, information collection 2502–0082 is pending approval by OMB and 24 CFR part 570 (requiring information collection 2506–0040) was deleted from the rule because of the belief that the benefits of disclosing and verifying SSNs/EINs does not justify the imposition of this requirement.

The third concern of OMB was that the Department had requested approval of the collection of SSN and EIN information for only three programs. OMB noted that for the other programs identified in the proposed rule and paperwork submissions, the Department did not request paperwork approval and offered no indication of precisely how this rulemaking will affect program applicants and participants. OMB stated that if the Department wishes to collect this information for the other programs, the Department must comply with Section 3504(h) of the Paperwork Reduction Act of 1980 by demonstrating either (1) that the implementation of this rulemaking will not affect in any way the current information requirements imposed on the public for each program or (2) that the imposition of the information requirements in the rulemaking, for each affected program, is consistent with the approval criteria at 5 CFR 1320.4.

In response to this concern, the Department agrees that the paperwork submission did not contain paperwork approval for all programs covered by the proposed rule. The paperwork submission was revised to include nine information collections for each affected program. The revised paperwork submission also includes an indication of precisely how this rulemaking will affect program applicants and participants.

For further clarification, the Department notes that the three reporting requirements submitted for OMB approval are no longer relevant, since 24 CFR parts 501, 590, and 570 are

not included in the final rule. The Department has excluded requiring SSNs/EINs from Urban Homesteaders, families, individuals, businesses and farms seeking relocation assistance and Urban Development Action Grant recipients.

OMB's final concern was that part 200, subpart U, and part 501 should be revised to indicate that an individual identity need not submit an SSN or EIN to the Department more than once. Changes have been made in the rule to eliminate multiple submissions of this data.

INFORMATION COLLECTIONS FOR FR-2501

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	Status
SSNs/EINs [1] on Housing Form HUD-92068F, Request for Financial Information (2502-0159).	203	76,000	1	76,000	0.0056 [2]	426	Expires, 11/30/90
SSNs/EINs on Housing Form HUD-9539, Request for Occupied Conveyance (2502-0268).	203	4,600	8.6	39,600	0.0056	222	Expires, 8/31/90
SSNs/EINs on Housing Form HUD-50059, Owner's Certification of Compliance (2502-0204).	215, 221, 236, 247, 290, 750, 880, 881, 883, 884, 885, 886	2,171,256	1	2,171,256	0.0056	12,159	Expires, 4/30/90
SSNs/EINs [3] on Housing Form HUD-93101 Recertification of Family Income and Composition (2502-0082).	235	150,962	varies	199,044	0.0056	1,115	Expired, 2/29/89 (Pending OMB approval)
SSNs/EINs on Housing Form HUD-2530, Previous Participation Certificate (2502-0118).	207, 213, 215, 221, 232, 236, 241, 242, 244, 250, 251, 252, 255	9,000	1	9,000	0.0056	50	Expires, 5/31/92
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	Expires, 9/30/89
SSNs/EINs on Housing Form HUD-92013, Sec. 202 Application Submission Requirements (2502-0267).	885	1,300	1	1,300	0.0056	7	Expires, 5/31/91
SSNs/EINs on Forms HUD-6230, 6243, & 40023, Sec. 312 Loan Program (2506-0076).	510	800	13.1	10,536	0.0056	59	Expires, 2/29/90
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	Expires, 3/31/91
Total Annual Burden						37,801	

[1] SSNs/EINs = Social Security Numbers/Employer Identification Numbers.
[2] 0.0056 hour = 2.0 seconds.
[3] This information collection requirement has been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. No person may be subject to penalty for failure to comply with this requirement until it has been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by a separate notice in the **Federal Register.**

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, Mobile 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 252

Mortgage Insurance, Coinsurance of nursing homes, intermediate care facilities, and board and care homes.

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 510

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

24 CFR 750

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

24 CFR 813

Low and moderate income housing.

24 CFR Part 880

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.

24 CFR Part 886

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

24 CFR Part 887

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

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, 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, 252, 255, 290, 510, 813, 880, 881, 882, 883, 884, 885, 886, 887, 900, 904, 905, 913, and 960 are amended, and a new 24 CFR part 750 is added, to read as follows:

PART 200—INTRODUCTION

1. The authority citation for part 200 is revised to read as follows:

Authority: Titles I, 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, Houisng 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 is amended by adding new subparts T and U, to read as follows:

Subpart T—Disclosure and Verification 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 and Verification of Social Security and Employer Identification Numbers.
200.1015 Penalties and failing to disclose and verify 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 and Verification 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 Departmment of Housing and Urban Development under subchapter B of this chapter. The programs covered by this subpart include the following: Assignment of Mortgages to HUD under part 203, subpart C; Occupied Conveyance under part 203, subpart C; Rent Supplement under part 215; Management of HUD-acquired multifamily properties under part 290; and the rental and homeownership assistance programs under sections 221(d)(3) (BMIR), 235 and 236 of the National Housing Act.

(2) This subpart requires applicants that seek to receive, and certain recipients of, housing assistance under any of the covered programs to disclose, and to submit documentation to verify, their Social Security Numbers.

Individuals, certain officials of corporations and other entities, and entities that seek to participate as private owners in certain programs subject to this subpart must disclose and verify their Social Security or Employer Identification Numbers, as appropriate. The failure of any person or entity to make the required disclosure and verification constitutes grounds for denial of eligibility, or termination of assistance or tenancy (or both), under 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 section 8 Housing Assistance Payments programs administered by the Department under 24 CFR chapter VIII, and for the Public and Indian Housing programs administered by the Department under 24 CFR chapter IX, at 24 CFR part 750; and for the section 312 Rehabilitation Loan program, 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 covered programs. 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 the previous or current participation of a person or entity in other programs.

(4) Identifying persons or entities 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 persons or entities for the purpose of requesting information about them from other government or private sources during an audit or investigation.

(6) Validating the identity of a person or entity 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.

(Approved by the Office of Management and Budget under OMB control number 2502–0059)

§ 200.1003 Applicability.

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

(a) *Part 203, subpart C,* 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:

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

(a) *Part 203, subpart C, 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), 236, and 290:* An individual or family seeking rental assistance under any of the programs.

(d) *Part 235:* A homeowner or cooperative member seeking homeownership assistance (including where the individual seeks to assume an existing mortgage).

Assume an existing mortgage means any assumption of a mortgage that is insured under section 221(BMIR), 235, or 236 (as appropriate) of the National Housing Act, 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.

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 that seeks to participate as a private owner (including where the entity seeks to assume an existing mortgage) 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 owner applicant means an individual who seeks to participate as a private owner (including where the individual seeks to assume an existing mortgage) in 24 CFR part 215, 221 (BMIR), 235 (without homeownership assistance) or 236.

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

(a) *Part 203, subpart C, Assignment of Mortgages to HUD:* A mortgagor who is receiving TMAP or whose mortgage has been assigned to HUD.

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

(c) *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 intrumentality 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 other person or entity that is responsible for making eligibility and related determinations and scheduled income reviews under any of the programs referred to in § 200.1003.

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

(a) *Part 203, subpart C, Assignment of Mortgages to HUD:* The review of the monthly payment due from the mortgagor under the assistance agreement, as provided by § 203.648(c).

(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 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.

§ 200.1010 Disclosure and Verification of Social Security and Employer Identification Numbers.

(a) *Disclosure: assistance applicant.* Each assistance applicant must submit the following information to the processing entity when the applicant's eligibility under the program involved is being determined:

(1)(i) The complete and accurate SSN(s) assigned to the applicant and to each member of the applicant's household who is at least six years of age; and

(ii) The documentation referred to in paragraph (f)(1) of this section to verify each such SSN; or

(2) If the applicant or any member of the applicant's household who is at least six years of age has not been assigned an SSN, a certification executed by the individual(s) involved that meets the requirements of paragraph (j) of this section.

(b) *Disclosure: individual owner applicants.* Each individual owner applicant must submit the following information to the processing entity when the applicant's eligibility under the program involved is being determined:

(1)(i) The complete and accurate SSN(s) assigned to the applicant and to each member of the applicant's household who will be obligated to pay the debt evidenced by the mortgage documents; and

(ii) The documentation referred to in paragraph (f)(1) of this section to verify the SSN(s); or

(2) If any individual referred to in paragraph (b)(1)(i) of this section has not been assigned an SSN, a certification executed by the individual involved that meets the requirements of paragraph (j) of this section.

(c) *Disclosure: certain officials of entity applicants.* Each officer, director, principal stockholder (as defined in HUD administrative instructions), or other official of an entity applicant (as specified in HUD administrative instructions) must submit the following information to the processing entity when the applicant's eligibility under the program involved is being determined:

(1) The complete and accurate SSN(s) assigned to each such individual; and

(2) The documentation referred to in paragraph (f)(1) of this section to verify each SSN.

(d) *Disclosure: participants*—(1) *Initial disclosure by those who were participants before November 6, 1989.* Each participant whose initial determination of eligibility under the program involved was begun before November 6, 1989, must submit the following information to the processing entity at the next scheduled income reexamination:

(i)(A) The complete and accurate SSN(s) assigned to the participant and to each member of the participant's family who is at least six years of age; and

(B) The documentation referred to in paragraph (f)(1) of this section to verify each such SSN; or

(ii) If the participant or any member of the participant's household who is at least six years of age has not been assigned an SSN, a certification executed by the individual(s) involved that meets the requirements of paragraph (j) of this section.

(2) *Subsequent disclosure by participants who have made an initial disclosure under this section.* Once a participant has disclosed and verified SSN(s), or submitted a certification(s) that no SSN(s) has been assigned, as provided by paragraph (a) (as an applicant) or paragraph (d)(1) (as a preexisting participant) of this section, the following rules apply:

(i) If the participant's household adds a new member(s) who is at least six years of age, the participant must submit to the processing entity, at the next interim or scheduled income reexamination that includes the new member(s):

(A) The complete and accurate SSN(s) assigned to each new member and the documentation referred to in paragraph (f)(1) of this section to verify the SSN(s) for each new member; or

(B) If the new member(s) has not been assigned an SSN, a certification executed by the individual(s) involved that meets the requirements of paragraph (j) of this section.

(ii) If the participant or any member of the participant's household who is at least six years of age obtains a previously undisclosed SSN, or has been assigned a new SSN (including any member who is six years of age or older and has been assigned an SSN, as required by section 6109(e) of the Internal Revenue Code of 1986), the participant must submit to the processing entity at the next scheduled income reexamination:

(A) The complete and accurate SSN(s) assigned to the participant or household member(s) involved; and

(B) The documentation referred to in paragraph (f)(1) of this section to verify the SSN(s) of each such individual.

(iii) HUD may specify in administrative instructions additional circumstances in which participants must disclose and verify SSNs, as well as the nature of the disclosure and the verification required, and the time and manner for making the disclosure and verification.

(e) *Disclosure: entity applicants.* Each entity applicant must submit the following information to the processing entity when the applicant's eligiblity under the program involved is being determined:

(1) The complete and accurate EIN(s) assigned to the applicant; and

(2) The documentation referred to in paragraph (f)(2) of this section to verify the EIN(s).

(f) *Required documentation*—(1) *Social Security Numbers.* The documentation necessary to verify the SSN of an individual who is required to disclose his or her SSN under paragraphs (a) through (d) 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. Examples of such evidence may include a State driver's license that displays the SSN of the individual.

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

(g) *Special documentation rules for assistance applicants and participants*—(1) *Certification of inability to meet documentation requirements.* If an individual who is required to disclose his or her SSN(s) under paragraph (a) (assistance applicants) or paragraph (d) (participants) of this section is able to disclose the SSN, but cannot meet the documentation requirements of paragraph (f)(1) of this section, the assistance applicant or participant (as appropriate) must submit to the processing entity the individual's SSN(s) and a certification executed by the individual that the SSN(s) submitted has been assigned to the individual, but that acceptable documentation to verify the SSN(s) cannot be provided.

(2) *Acceptance of certification by processing entity.* Except as provided by paragraph (h) of this section, the processing entity must accept the certification referred to in paragraph (g)(1) of this section, and continue to process the applicant's or participant's

eligibility to participate in the program involved.

(3) *Effect on applicants.* If the processing entity determines that the assistance applicant is otherwise eligible to particpate in the program, the applicant may not become a participant in the program, unless it submits to the the processing entity the documentation required under paragraph (f)(1) of this section within the time period specified in paragraph (g)(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 program.

(4) *Effect on participants.* If the processing entity determines that the participant otherwise continues to be eligible to participate in the program, participation will continue, provided that the participant submits to the processing entity the documentation required under paragraph (f)(1) of this section within the time period specified in paragraph (g)(5) of this section.

(5) *Time for submitting documentation.* The time period referred to in paragraphs (g) (4) and (5) of this section is 60 calendar days from the date on which the certification referred to in paragraph (g)(1) of this section is executed, except that the processing entity may, in its discretion and in such circumstances as it may permit, extend this period for up to an additional 60 days, if the individual is at least 62 years of age and is unable to submit the required documentation within the initial 60-day period.

(h) *Rejection of documentation or certification.* This processing entity may reject documentation referred to in paragraph (f) of this section, or a certification provided under paragraph (a)(2), (b)(2), (d), or (g)(1) of this section, only for such reasons (including the timeliness of the submission) as HUD may prescribe in administrative instructions.

(i) *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.

(j) *Form and manner of certifications.* The certifications referred to in paragraph (a)(2), (b)(2), (d), and (g)(1) of this section must be in the form and manner that HUD prescribes in administrative instructions. If an individual who is required to execute a certification is less than 18 years of age, it must be executed by his or her parent or guardian, or (in accordance with HUD administrative instructions) by the individual or another person.

(Approved by the Office of Management and Budget under OMB control number 2502–0059)

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

(a) *Denial of eligibility: assistance applicants and individual owner applicants.* The processing entity must deny the eligibility of an assistance applicant or of an individual owner applicant in accordance with the provisions governing the program involved, if the applicant does not meet the applicable SSN disclosure, documentation and verification, and certification requirements specified in § 200.1010.

(b) *Denial of eligibility: entity applicants.* The processing entity must deny the eligibility of an entity applicant in accordance with the provisions governing the program involved, if:

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

(2) Any of the officials of the entity applicant referred to in § 200.1010(c) does not meet the applicable SSN disclosure, and documentation and verification requirements, specified in § 200.1010.

(c) *Termination of assistance or tenancy: participants.* The processing entity must terminate the assistance or the tenancy (or both) of a participant in accordance with the provisions governing the program involved, if the participant does not meet the applicable SSN disclosure, documentation and verification, and certification 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 under those programs.

(Approved by the Office of Management and Budget under OMB control number 2502–0059)

§ 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 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.

(Approved by the Office of Management and Budget under OMB control number 2502–0059)

§ 200.1025 Implementation.

(a) *Applicants.* The provisions of this subpart, and the conforming changes made with respect to the disclosure, documentation and verification, 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 November 6, 1989.

(b) *Participants.* The provisions of this subpart, and the conforming changes made with respect to the disclosure, documentation and verification, and use of SSNs for participants in the regulations governing the programs referred to in § 200.1003, apply to each scheduled reexamination (and in the circumstances specified in § 200.1010(d)(2)(i), each interim reexamination) of the income of a participant initiated by the processing entity on or after November 6, 1989.

(Approved by the Office of Management and Budget under OMB control number 2502–0059)

Subpart U—Disclosure and Verification 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 and verification of Social Security and Employer Identification Numbers.
200.1115 Penalties for failing to disclose and verify 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 and Verification 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.* 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; the property improvement and manufactured home loan programs 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 and verify their Employer Identification Numbers. Individual applicants that seek HUD-insured or -coinsured financing under any of the programs covered by this subpart, as well as certain officials of prospective corporate and other entity owners, must disclose and verify their Social Security Numbers. The failure of any person or entity to meet these disclosure and verification requirements constitutes grounds for denial of eligibility for HUD mortgage or loan insurance or coinsurance under the program involved.

(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 the section 8 Housing Assistance Payments programs administered by the Department under 24 CFR chapter VIII, and for the Public and Indian Housing programs administered by the Department under 24 CFR chapter IX, at 24 CFR part 750; and for the section 312 Rehabilitation Loan program, 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 covered programs. 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 the previous or current participation of a person or entity in other programs.

(4) Identifying persons or entities 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 persons or entities for the purpose of requesting information about them from other government or private sources during audit or investigation.

(6) Validating the identity of a person or entity 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.

(Approved by the Office of Management and Budget under OMB control number 2502-0059)

§ 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 includes an individual applicant and an entity applicant, but 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) A person whose only involvement with an application for mortgage or loan insurance or coinsurance, or an assumption of an existing 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.

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 other association or entity, other than an individual applicant, that seeks to participate as a private owner (including where the entity seeks to assume an existing mortgage) under any of the programs referred to in § 200.1103.

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

Individual applicant means an individual(s) who:

(a)(1) Applies for a mortgage or loan insured or coinsured under any of the programs referred to in § 200.1103; or

(2) Seeks to assume an existing mortgage or loan; and

(b) Intends to hold the mortgaged property in his or her 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 and related determinations under any of the programs referred to in § 200.1103. 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, 252 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 and verification of Social Security and Employer Identification Numbers.

(a) *Disclosure: individual applicants.* Each individual applicant must submit the following information to the processing entity when the applicant's eligibility under the program involved is being determined:

(1)(i) The complete and accurate SSN(s) assigned to the applicant and to each member of the applicant's household who will be obligated to pay the debt evidenced by the mortgage or loan documents; and

(ii) The documentation referred to in paragraph (d)(1) of this section to verify each such SSN; or

(2) If any individual referred to in paragraph (a)(1)(i) of this section has not been assigned an SSN, a certification executed by the individual(s) involved that meets the requirements of paragraph (g) of this section.

(b) *Disclosure: certain officials of entity applicants.* Each officer, director, principal stockholder (as defined in HUD administrative instructions), or other official of an entity applicant (as specified in HUD administrative instructions) must submit the following information to the processing entity when the applicant's eligibility under the program involved is being determined:

(1) The complete and accurate SSN(s) assigned to each such individual; and

(2) The documentation referred to in paragraph (d)(1) of this section to verify each SSN.

(c) *Disclosure: entity applicants.* Each entity applicant must submit the following information to the processing entity when the applicant's eligibility under the program involved is being determined:

(1) The complete and accurate EIN(s) assigned to the applicant; and

(2) The documentation referred to in paragraph (d)(2) of this section to verify the EIN(s).

(d) *Required documentation*—(1) *Social Security Numbers.* The documentation necessary to verify the SSN of an individual who is required to disclose his or her SSN(s) under paragraphs (a) and (b) 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. Examples of such evidence may include a State driver's license that displays the SSN of the individual.

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

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

(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 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.

(g) *Form and manner of certifications.* The certification referred to in paragraph (a)(2) of this section must be in the form and manner that HUD prescribes in administrative instructions. If an individual who is required to execute a certification is less than 18 years of age, it must be executed by his or her parent or guardian, or (in accordance with HUD administrative instructions) by the individual or another person.

(Approved by the Office of Management and Budget under OMB control number 2502–0059)

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

(a) *Denial of eligibility: assistance applicants and individual owner applicants.* The processing entity must deny the eligibility of an individual applicant in accordance with the provisions governing the program involved, if the applicant does not meet the applicable SSN disclosure, documentation and verification, and certification requirements specified in § 200.1110.

(b) *Denial of eligibility: entity applicants.* The processing entity must deny the eligibility of an entity applicant in accordance with the provisions governing the program involved, if:

(1) The applicant does not meet the applicable EIN disclosure and verification requirements specified in § 200.1110, or

(2) Any of the officials of an entity applicant referred to in § 200.1110(b) does not meet the applicable SSN disclosure, and documentation and verification 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 those programs.

(Approved by the Office of Management and Budget under OMB control number 2502–0059)

§ 200.1120 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 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.

(Approved by the Office of Management and Budget under OMB control number 2502–0059)

§ 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 eligibility determinations for individual and entity applicants initiated on or after November 6, 1989.

(Approved by the Office of Management and Budget under OMB control number 2502–0059)

PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

3. The authority citation for part 201 continues 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 A, is amended by adding a new § 201.06, to read as follows:

§ 201.06 Disclosure and verification 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 and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under OMB control number 2502–0059)

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

5. The authority citation for part 203 continues to read as follows:

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

6. Part 203, subpart A, is amended by adding a new § 203.35, to read as follows:

§ 203.35 Disclosure and verification 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 and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under OMB control numbers 2502–0059, 2502–0159, and 2502–0268)

7. Section 203.650 is amended by revising the heading by redesignating the existing paragraph as paragraph (a), by adding a new paragraph (b), and by adding the OMB control numbers to the end of the section, to read as follows:

§ 203.650 Assignment of mortgages; Disclosure.

* * * * *

(b) The mortgagor discloses and verifies Social Security Numbers, as provided by part 200, subpart T, of this chapter.

(Approved by the Office of Management and Budget under OMB control numbers 2502–0159, 2502–0268, and 2502–0059)

8. Section 203.664 is amended by adding a new paragraph (a)(1)(vi) and the OMB control number to the end of the section, to read as follows:

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

* * * * *

(a) * * *

(1) * * *

(vi) The mortgagor discloses and verifies Social Security Numbers, as provided by part 200, subpart T, of this chapter.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2502–0159)

9. Section 203.674 is amended by adding new paragraphs (a)(5) and (b)(6) and the OMB control number to the end of the section, to read as follows:

§ 203.674 Eligibility for continued occupancy.

(a) * * *

(5) The occupant discloses and verifies Social Security Numbers, as provided by part 200, subpart T, of this chapter.

(b) * * *

(6) The occupant discloses and verifies Social Security Number, as provided by part 200, subpart T, of this chapter.

(Approved by the Office of Management and Budget under OMB control number 2502–0268)

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

10. The authority citation for part 205 continues to read as follows:

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

11. Section 205.30 is amended by adding a new paragraph (c) and the OMB control number to the end of the section, to read as follows:

§ 205.30 Eligible mortgagors.

* * * * *

(c) *Disclosure and verification 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 and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under OMB control number 2502–0059)

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

12. The authority citation for part 207 continues to read as follows:

Authority: 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)). 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)).

13. In part 207, subpart A, § 207.17 is amended by revising the heading; by designating paragraph (b) as paragraph (c), by adding a new paragraph (b), and by adding the OMB control number to the end of the section, to read as follows:

§ 207.17 Classification; Disclosure.

* * * * *

(b) *Disclosure and verification 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 and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2502–0118)

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

14. The authority citation for part 213 continues to read as follows:

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

15. Section 213.20 is amended by adding a new paragraph (c) and the OMB control number to the end of the section, 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 and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under OMB control numbers 2502–0059 and 2502–0118)

16. In part 213, subpart C, § 213.522 is amended by revising the heading, by redesignating the existing paragraph as paragraph (a), by adding a new paragraph (b), and by adding the OMB approval number at the end of the section, to read as follows:

§ 213.522 Credit standing; Disclosure and verification of Social Security and Employer Identification Numbers.

* * * * *

(b) To be eligible for mortgage insurance under this subpart, the mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer

Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under OMB control numbers 2502–0059 and 2502–0118)

PART 215—RENT SUPPLEMENT PAYMENTS

17. The authority citation for 24 CFR part 215 continues 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)).

18. Section 215.15 is amended by adding a new paragraph (d) and the OMB control number to the end of the section, 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 and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart T, of this chapter.

(Approved by the Office of Management and Budget under OMB control numbers 2502–0204 and 2502–0118)

19. Section 215.20 is amended by adding a new paragraph (b)(2) and the OMB control number to the end of the section, to read as follows:

§ 215.20 Qualified tenant.

* * * * *

(b) * * *

(2) For requirements covering the disclosure and verification of Social Security Numbers by individuals and families, see part 200, subpart T, of this chapter.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2502–0204 and 2502–0118)

20. Section 215.55 is 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 the Tenant Rent and the Rent Supplement payments to reflect any change in the 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 Qualified Tenant to meet the disclosure and verification requirements for Social Security Numbers, as provided by part 200, subpart T of this chapter.

(b) *Interim reexaminations.* The Qualified Tenant must comply with the provisions of its lease regarding interim reporting of changes in income. If the owner receives information concerning a change in the Qualified Tenant's income or other circumstances between regularly scheduled income reexaminations, the owner must consult with the Qualified Tenant and make any adjustments determined to be appropriate. Any change in the Qualified Tenant's income or other circumstances that results in an adjustment in the Total Tenant Payment, Tenant Rent, and the Rent Supplement Payment must be verified. See 24 CFR 750.10(d)(2)(i) for the requirements for the disclosure and verification of Social Security Numbers for interim reexaminations involving new family members.

(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, including the failure of the Qualified Tenant to meet the disclosure and verification requirements for Social Security Members, as provided by part 200, subpart T of this chapter.

(Approved by the Office of Management and Budget under OMB control number 2502–0204 and 2502–0118)

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

21. The authority citation for part 221 continues to read as follows:

Authority: Secs. 211, 221, National Housing Act (12 U.S.C. 1715b, 1715*l*); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); § 221.544(a)(3) is also issued under sec. 201(a), National Housing Act (12 U.S.C. 1707(a)).

22. Part 221, subpart A, is amended by adding a new § 221.57, to read as follows:

§ 221.57 Disclosure and verification 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 and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under OMB control numbers 2502–0204, 2502–0118, and 2502–0059)

23. In part 221, subpart C, § 221.510 is amended by adding a new paragraph (f) and the OMB control number is the end of the section, to read as follows:

§ 221.510 Eligible mortgagors.

* * * * *

(f) *Disclosure and verification 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 and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under control numbers 2502–0204, 2502–0118, and 2502–0059)

24. Section 221.537 is amended by adding a new paragraph (e) and the OMB approval number to the end of the section, to read as follows:

§ 221.537 Additional occupancy requirements; preferred purchasers or tenants.

* * * * *

(e) *Disclosure and verification 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 comply with the disclosure and verification requirements for 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 meet such requirements will constitute grounds for denying its eligibility for initial occupancy, or for terminating its tenancy, in accordance with the Commissioner's administrative

instructions and, if applicable, part 200, subpart T, of this chapter.

(Approved by the Office of Management and Budget under OMB control numbers 2502–0204, 2502–0118, and 2502–0059)

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

25. The authority citation for part 232 continues 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, is amended by adding a new § 232.21, to read as follows:

§ 232.21 Disclosure and verification 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 and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under OMB control number 2502–0118)

27. Part 232, subpart C, is amended by adding a new § 232.616 to read as follows:

§ 232.616 Disclosure and verification 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 and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under OMB control number 2502–0118)

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

28. The authority citation for part 234 continues to read as follows:

Authority: Secs. 211, 234, National Housing Act (12 U.S.C. 1715b, 1715y); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Section 234.520(a)(2)(ii) is also issued under sec. 201(a), National Housing Act (12 U.S.C. 1707(a)).

29. Part 234, subpart A, is amended by adding a new § 234.58, to read as follows:

§ 234.58 Disclosure and verification 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 and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under OMB control number 2502–0059)

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

30. The authority citation for part 235 continues to read as follows:

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

31. In § 235.1, paragraph (a) is amended to add § 203.35 to the listing of sections.

32. In § 235.10, a new paragraph (e) is 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 and verification of Social Security Numbers, as provided by part 200, subpart T, of this chapter.

33. In § 235.350, a new paragraph (d) is added, to read as follows:

§ 235.250 Mortgagor's required recertification.

* * * * *

(d) The homeowner must meet the disclosure and verification requirements for Social Security Numbers in connection with any recertification under this section, as provided by part 200, subpart T, of this chapter.

34. Section 235.355 is revised to read as follows:

§ 235.355 Mortgagor's optional recertification.

Upon request of the mortgagor or cooperative member, the mortgagee must accept recertification whenever the mortgagor, his or her spouse, or an adult (21 years or older) member of the family changes or loses employment which results in a decrease in the family income reported in the most recent certification or recertification. This recertification must be on a form prescribed by the Secretary. See 24 CFR 200.1015(d)(2)(i) for the requirements for the disclosure and verification of Social Security Numbers for recertifications involving new family members.

35. In § 235.375, paragraphs (b)(4) and (e) are 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) disclosure and verification of Social Security Numbers, 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 and verification 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

36. The authority citation for part 236 continues to read as follows:

Authority: Secs. 211, 236, 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)).

37. Part 236, subpart A, is amended by adding a new § 236.11, to read as follows:

§ 236.11 Disclosure and verification 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 and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart T, of this chapter.

(Approved by the Office of Management and Budget under OMB control numbers 2502–0204 and 2502–0118)

38. In § 236.70, paragraph (a)(1) is revised and the OMB approval number is added to the end of the section, to read as follows:

§ 236.70 Occupancy requirements.

(a)(1) In processing applications for admission, the housing owner will

determine eligibility in accordance with procedures prescribed by the Commissioner, including those specified for the disclosure and verification of Social Security Numbers in part 200, subpart T, of this chapter.

* * * * *

(Approved by the Office of Management and Budget under OMB control numbers 2502–0204 and 2502–0118)

39. Section 236.80 is revised to read as follows:

§ 2367.80 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 the 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 meet the disclosure and verification requirements for Social Security Numbers, as provided by part 200, subpart T, of this chapter.

(b) *Interim reexaminations.* The Qualified Tenant must comply with the provisions of its lease regarding interim reporting of changes in income or family composition. If the owner receives information concerning a change in the Qualified Tenant's income or other circumstances between regularly scheduled reexaminations, the owner must consult with the Qualified Tenant and make any adjustments determined to be appropriate. Any change in the Qualified Tenant's income or other circumstances that results in an adjustment in the Rental Assistance Payment or Tenant Rent must be verified. See 24 CFR § 200.1015(d)(2)(i) for the requirements for the disclosure and verification of Social Security Numbers for interim reexaminations involving new family members.

(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, including failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by part 200, subpart T, of this chapter.

(Approved by the Office of Management and Budget under OMB control numbers 2502–0204 and 2502–0118)

40. Section 236.710 is 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 and verification of Social Security Numbers, see part 200, subpart T, of this chapter.

(Approved by the Office of Management and Budget under OMB control numbers 2502–0204 and 2502–0118)

PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

41. The authority citation for part 241 continues 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)).

42. Part 241, subpart A, is amended by adding a new § 241.11, to read as follows:

§ 241.11 Disclosure and verification 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 and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under OMB control number 2502–0118)

43. Part 241, subpart C, is amended by adding a new § 241.626, to read as follows:

§ 241.626 Disclosure and verification 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 and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under OMB control number 2502–0118)

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

44. The authority citation for part 242 continues 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)).

45. Part 242, subpart A, is amended by adding a new § 242.24, to read as follows:

§ 242.24 Disclosure and verification 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 and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under OMB control number 2502–0118)

PART 244—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES TITLE XI

46. The authority citation for part 244 continues to read as follows:

Authority: Secs. 211, 1104, National Housing Act (12 U.S.C. 1715b, 1719aaa–5); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

47. Section 244.20 is 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 and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under OMB control number 2502–0118)

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

48. The authority citation for part 247 continues 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, 1715*l*, 1715z–1); sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); 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)).

49. In § 247.3, paragraph (c) is revised and the OMB control number is added at the end of the section, to read as follows:

§ 247.3 Entitlement of tenants to occupancy.

* * * * *

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

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

(2) Repeated minor violations of the rental agreement that (i) disrupt the livability of the project, (ii) 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, (iii) interfere with the management of the project, or (iv) have an adverse financial effect on the project;

(3) Failure of the tenant to time supply all required information on the income and composition, or eligibility factors, of the tenant household (including failure to meet the disclosure and vertification requirements for 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; and

(4) Non-payment of rent or any other financial obligation due under the rental agreement (including any portion thereof) beyond any grace period permitted under State law, except that 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.

(Approved by the Office of Management and Budget under OMB control number 2502–0204)

PART 250—COINSURANCE FOR STATE HOUSING FINANCE AGENCIES

50. The authority citation for part 250 continues 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. In part 250, subpart B, § 250.113 is amended by revising the heading, by redesignating the existing paragraph as paragraph (a), by adding a new paragraph (b), and by adding the OMB approval number to the end of the section to read as follows:

§ 250.113 Regulation of mortgagors; Disclosure.

* * * * *

(b) To be eligible for mortgage coinsurance under this part, the mortgagor must meet the requirements for the disclosure and vertification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under OMB control number 2502–0118)

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

52. The authority citation for part 251 continues 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. In part 251, subpart C, § 251.202 is amended by revising the heading, by redesignating the existing text as paragraph (a), by adding a new paragraph (b) and by adding the OMB approval number to the end of the section, to read as follows:

§ 251.202 Eligible mortgagors; Disclosure.

* * * * *

(b) To be eligible for mortgage coinsurance under this part, the mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under OMB control number 2502–0118)

PART 252—COINSURANCE OF MORTGAGES COVERING NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

54. The authority citation for part 252 continues 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. 93535(d)).

55. In part 252, subpart C, § 252.202 is amended by revising the heading, by redesignating the present paragraph as paragraph as (a), by adding a new paragraph (b), and by adding the OMB approval number to the end of the section, to read as follows:

§ 252.202 Eligible mortgagors; Disclosure.

* * * * *

(b) To be eligible for mortgage coinsurance under this part, the mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under OMB control number 2502–0118)

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

56. The authority citation for part 255 continues to read as follows:

Authority: Secs. 211, 214, 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)).

57. In part 255, subpart C, § 255.202 is amended by revising the heading by redesignating the existing paragraph as paragraph (a), by adding a new paragraph (b), and by adding the OMB approval number at the end of the section, to read as follows:

§ 255.202 Eligible mortgagors; Disclosure.

* * * * *

(b) To be eligible for mortgage coinsurance under this part, the mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer Indentification Numbers, as provided by part 200, subpart U, of this chapter.

Approved by the Office of Management and Budget under OMB control number 2502–0118)

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

58. The authority citation for part 290 continues 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)).

59. Section 290.17 is amended by adding a new paragraph (g) and the OMB control number at the end of the section, to read as follows:

§ 290.17 Rental rates.

* * * * *

(g) *Disclosure and verification 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 and verification of Social Security Numbers, as provided by part 200, subpart T, of this chapter.

Approved by the Office of Management and Budget under OMB control number 2502–0204)

PART 510—SECTION 312 REHABILITATION LOAN PROGRAM

60. The authority citation for part 510 continues 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)). Sec. 510.106 is also issued under the authority of sec. 165, Housing and Community Development Act of 1987 (42 U.S.C. 3543).

61. Part 510 is amended by adding a new § 510.106 to read as follows:

§ 510.106 Disclosure and verification of Social Security and Employer Identification Numbers.

(a) *Disclosure: individual borrowers.* Each individual borrower must submit the following information to the processing entity when the borrower's eligibility for a loan under this part is being determined:

(1)(i) The complete and accurate SSN(s) assigned to the borrower and to each member of the borrower's household who will be obligated to pay the debt evidenced by the loan documents; and

(ii) The documentation referred to in paragraph (d)(1) of this section to verify each such SSN; or

(2) If any individual referred to in paragraph (a)(1)(i) of this section has not been assigned an SSN, a certification executed by the individual(s) involved that meets the requirements of paragraph (f) of this section.

(b) *Disclosure: certain officials of entity borrowers.* Each officer, director, principal stockholder (as defined in HUD administrative instructions), or other official of an entity borrower (as specified in HUD administrative instructions) must submit the following information to the processing entity when the borrower's eligibility for a loan under this part is being determined:

(1) The complete and accurate SSN(s) assigned to each such individual; and

(2) The documentation referred to in paragraph (d)(1) of this section to verify each SSN.

(c) *Disclosure: entity borrowers.* Each entity borrower must submit the following information to the processing entity when the borrower's eligibility for a loan under this part is being determined.

(1) The complete and accurate EIN(s) assigned to the borrower; and

(2) The documentation referred to in paragraph (d)(2) of this section to verify the EIN(s).

(d) *Required documentation*—(1) *Social Security Numbers.* The documentation necessary to verify the SSN of an individual who is required to disclose his or her SSN(s) under paragraphs (a) and (b) 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. Examples of such evidence may include a State driver's license that displays the SSN of the individual.

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

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

(f) *Form and manner of certifications.* The certification referred to in paragraph (a)(2) of this section must be in the form and manner that HUD prescribes in administrative instructions. If an individual who is required to execute the certification is less than 18 years of age, it must be executed by his or her parent or guardian, or (in accordance with HUD administrative instructions) by the individual or another person.

(g) *Penalties for failing to disclose and verify Social Security and Employer Identification Numbers*—(1) *Denial of eligibility: Individual borrowers.* The processing entity must deny the eligibility for a loan under this part of an individual borrower who fails to meet the SSN disclosure, documentation and verification, and certification requirements specified in this section.

(2) *Denial of eligiblity: Entity borrowers.* The processing entity must deny the eligibility for a loan under this part of an entity borrower if:

(i) The borrower does not meet the EIN disclosure and verification requirements specified in this section; or

(ii) Any of the officials of the entity borrower referred to in paragraph (b) of this section does not meet the SSN disclosure, and documentation and verification requirements, specified in this section.

(h) *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 section, 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.

(i) *Implementation.* The provisions of this section apply to all individual and entity borrower eligibility determinations initiated on or after November 6, 1989.

(j) *Definitions.* As used in this section:

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 borrower means a borrower, other than an individual borrower. Examples of an entity borrower include a partnership, corporation, or any other association or entity.

Individual borrower means an individual or individuals that seek to obtain a loan under this part.

Processing entity means the person or entity responsible for determining the eligibility of borrowers that seek to obtain a loan under this part.

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.

(Approved by the Office of Management and Budget under OMB Control No. 2506–0076.)

62. 24 CFR chapter VII is amended by adding a new part 750, to read as follows:

PART 750—DISCLOSURE AND VERIFICATION 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 and Verification of Social Security and Employer Identification Numbers

750.10 Disclosure and verification of Social Security and Employer Identification Numbers.
750.15 Penalties for failing to disclose and verify 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 the section 8 Housing Assistance Payments programs and the Public and Indian Housing program administered by the Department under 24 CFR chapters VIII and IX, respectively.

(2) This part requires applicants that seek to receive, and certain recipients of, housing assistance under any of the covered programs to disclose, and to submit documentation to verify, their Social Security Numbers. Individuals, and certain officials of corporations and other entities, that seek to participate as private owners in certain covered programs must disclose and verify their Social Security or Employer Identification Numbers, as appropriate. The failure of any person or entity to make the required disclosure and verification constitutes grounds for denial of eligibility, or termination of assistance or tenancy (or both), under the progam involved.

(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. The 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 the section 312 Rehabilitation Loan program, at 24 CFR 510.106.

(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 covered programs. Specific examples of how the Department may use these 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 the previous or current participation of the person or entity in other programs.

(4) Identifying persons or entities 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 persons or entities for the purpose of requesting information about them from other government or private sources during audit or investigation.

(6) Confirming the identity of a person or entity 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.

(Approved by the Office of Management and Budget under OMB Control No. 2502–0204.)

§ 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:

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

(a) *Parts 880, 881, 882, 883, 884, 885, 886, 887, and 900:* A family that seeks rental assistance under the program.

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

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

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

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 that seeks to participate as a private owner in any of the project-based assistance programs contained in 24 CFR part 880, 881, 882, 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 owner applicant means an individual who seeks to participate as a private owner in any of the project-based assistance programs contained in 24 CFR part 880, 881, 882, 884, 885, or 886.

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

(a) *Parts 880, 881, 882, 883, 884, 885, 886, 887, and 900:* A family receiving rental assistance under the 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.

Public housing agency (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 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 sued to identify an auxiliary beneficiary under the Social Security System.

Subpart B—Disclosure and Verification of Social Security and Employer Identification Numbers

§ 750.10 Disclosure and vertification of Social Security and Employer Identification Numbers.

(a) *Disclosure: assistance applicants.* Each assistance applicant must submit the following information to the processing entity when the applicant's eligibility under the program involved is being determined:

(1)(i) The complete and accurate SSN(s) assigned to the applicant and to each member of the applicant's household who is at least six years of age; and

(ii) The documentation referred to in paragraph (f)(1) of this section to verify each such SSN; or

(2) If the applicant or any member of the applicant's household who is at least six years of age has not been assigned an SSN, a certification executed by the individual(s) involved that meets the requirements of paragraph (j) of this section.

(b) *Disclosure: individual owner applicants.* Each individual owner applicant must submit the following information to the processing entity when the applicant's eligibility under the program involved is being determined:

(1)(i) The complete and accurate SSN(s) assigned to the applicant and to each member of the applicant's household who will be obligated to pay the debt evidenced by the mortgage documents; and

(ii) The documentation referred to in paragraph (f)(1) of this section to verify the SSN(s); or

(2) If any individual referred to in paragraph (a)(1)(i) of this section has not been assigned an SSN, a certification executed by the individual that meets the requirements of paragraph (j) of this section.

(c) *Disclosure: certain officials of entity applicants.* Each officer, director, principal stockholder (as defined in HUD administrative instructions), or other official of an entity applicant (as specified in HUD administrative instructions) must submit the following information to the processing entity when the applicant's eligibility under the program involved is being determined:

(1) The complete and accurate SSN(s) assigned to each such individual; and

(2) The documentation referred to in paragraph (f)(1) of this section to verify each SSN.

(d) *Disclosure: participants*—(1) *Initial disclosure by those who were participants before November 6, 1989.* Each participant whose initial determination of eligibility under the program involved was initiated before November 6, 1989, must submit the following information to the processing entity at the next regularly scheduled income reexamination for the program involved:

(i)(A) The complete and accurate SSN(s) assigned to the participant and to each member of the participant's family who is at least six years of age; and

(B) The documentation referred to in paragraph (f)(1) of this section to verify each such SSN; or

(ii) If the participant or any member of the participant's household who is at least six years of age has not been asssigned an SSN, a certification executed by the individual(s) involved that meets the requirements of paragraph (j) of this section.

(2) *Subsequent disclosure by participants who have made an initial disclosure under this section.* Once a participant has disclosed and verified SSN(s), or submitted a certification(s) that no SSN(s) has been assigned, as provided by paragraph (a) (as an applicant) or paragraph (d)(1) (as a preexisting participant) of this section, the following rules apply:

(i) If the participant's household adds a new member(s) who is at least six years of age, the participant must submit to the processing entity, at the next interim or regularly scheduled income reexamination that includes the new member(s):

(A) The complete and accurate SSN(s) assigned to each new member and the documentation referred to in paragraph (f)(1) of this section to verify the SSN(s) for each new member; or

(B) If the new member(s) has not been assigned an SSN, a certification executed by the individual(s) involved that meets the requirements of paragraph (j) of this section.

(ii) If the participant or any member of the participant's household who is at least six years of age obtains a previously undisclosed SSN, or has been assigned a new SSN (including any member who is six years of age or older and has been assigned an SSN, as required by section 6109(e) of the Internal Revenue Code of 1986), the participant must submit to the processing entity at the next regularly scheduled income reexamination:

(A) The complete and accurate SSN(s) assigned to the participant or household member(s) involved; and

(B) The documentation referred to in paragraph (f)(1) of this section to verify the SSN(s) of each such individual.

(iii) HUD (and in the case of the public housing program, or the section 8 Certificate, Voucher, or Moderate Rehabilitation program, the PHA) may specify in administrative instructions additional SSN disclosure and verification requirements, including the nature of the disclosure and the verification required, and the time and

manner for making the disclosure and verification.

(e) *Disclosure: entity applicants.* Each entity applicant must submit the following information to the processing entity when the applicant's eligibility under the program involved is being determined:

(1) The complete and accurate (EIN(s) assigned to the applicant; and

(2) The documentation referred to in paragraph (f)(2) of this section to verify the EIN(s).

(f) *Required documentation*—(1) *Social Security Numbers.* The documentation necessary to verify the SSN of an individual who is required to disclose his or her SSN(s) under paragraphs (a) through (d) 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 (and 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. Examples of such evidence may include:

(i) A State driver's license that displays the SSN of the individual; and

(ii) If a PHA conducts reexaminations of participants' income by mail, copies of the documentation required under this paragraph (f)(1).

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

(g) *Special documentation rules for assistance applicants and participants*—(1) *Certification of inability to meet documentation requirements.* If an individual who is required to disclose his or her SSN(s) under paragraph (a) (assistance applicants) or paragraph (d) (participants) of this section is able to disclose the SSN, but cannot meet the documentation requirements of paragraph (f)(1) of this section, the assistance applicant or participant (as appropriate) must submit to the processing entity the individual's SSN(s) and a certification executed by the individual that the SSN(s) submitted has been assigned to the individual, but that acceptable documentation to verify the SSN(s) cannot be provided.

(2) *Acceptance or certification by processing entity.* Except as provided by paragraph (h) of this section, the processing entity must accept the certification referred to in paragraph (g)(1) of this section, and continue to process the applicant's or participant's eligibility to participate in the program involved.

(3) *Effect on applicants.* If the processing entity determines that the assistance applicant is otherwise eligible to participate in the program, the applicant may not become a participant in the program, unless it submits to the processing entity the documentation required under paragraph (f)(1) of this section within the time period specified in paragraph (g)(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 program.

(4) *Effect on participants.* If the processing entity determines that the participant otherwise continues to be eligible to participate in the program, participation will continue, provided that the participant submits to the processing entity the documentation required under paragraph (f)(1) of this section within the time period specified in paragraph (g)(5) of this section.

(5) *Time for submitting documentation.* The time period referred to in paragraphs (g) (4) and (5) of this section is 60 calendar days from the date on which the certification referred to in paragraph (g)(1) of this section is excuted, except that the processing entity may, in its discertion and in such circumstances as it may permit, extend this period for up to an additional 60 days, if the individual is at least 62 years of age and is unable to submit the required documentation within the initial 60-day period.

(h) *Rejection of documentation or certification.* The processing entity may reject documentation referred to in paragraph (f) of this section, or a certification provided under paragraph (a)(2), (b)(2) (d), or (g)(1) of this section, only for such reasons (including the timeliness of the submission) as HUD (and 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.

(i) *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.

(j) *Form and manner of certifications.* The certifications referred to in paragraph (a)(2), (b)(2), (d), and (g)(1) of this section must be in the form and manner that HUD (and in the case of the public housing program, or the section 8 Certificate, Voucher, or Moderate Rehabilitation program, the PHA) prescribes in administrative instructions. If an individual who is required to execute a certification is less than 18 years of age, it must be executed by his or her parent or guardian, or (in accordance with administrative instructions issued by HUD and, it the case of the public housing program, or the section 8 Certificate, Voucher, or Moderate Rehabilitation program, the PHA) by the individual or another person.

(Approved by the Office of Management and Budget under OMB control number 2502–0204)

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

(a) *Denial of eligibility: assistance applicants and individual owner applicants.* The processing entity must deny the eligibility of an assistance applicant or of an individual owner applicant in accordance with the provisions governing the program involved, if the applicant does not meet the applicable SSN disclosure, documentation and verification, and certification requirements specified in § 750.10.

(b) *Denial of eligibility: entity applicants.* The processing entity must deny the eligibility of an entity applicant in accordance with the provisions governing the program involved; if:

(1) The applicant does not meet the applicable EIN disclosure and verification requirements specified in § 750.10; or

(2) Any of the officials of the entity applicant referred to in § 750.10(c) does not meet the applicable SSN disclosure, and documentation and verification requirements specified in § 750.10.

(c) *Termination of assistance or tenancy: participants;* The processing entity must terminate the assistance or the tenancy (or both) of a participant in accordance with the provisions governing the program involved, if the participant does not meet the applicable SSN disclosure, documentation and verification, and certification 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.

(Approved by the Office of Management and Budget under OMB control number 2502–0204)

§ 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.

(Approved by the Office of Management and Budget under OMB control number 2502–0204)

Subpart C—Implementation

§ 750.25 Implementation.

(a) *Applicants.* The provisions of this part, and the conforming changes made with respect to the disclosure, documentation and verification, 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 November 6, 1989.

(b) *Participants.* The provisions of this part, and the conforming changes made with respect to the disclosure, documentation and verification, and use of SSNs for participants in the regulations governing the programs referred to in § 750.3, apply to each regularly scheduled reexamination (and in the circumstances specified in § 750.10(d)(2)(i), each interim reexamination) of the income of a participant initiated by the processing entity on or after November 6, 1989.

(Approved by the Office of Management and Budget under OMB control number 2502–0204)

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

63. The authority citation for part 813 continues 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)).

64. In § 813.109, paragraph (a) is revised and the OMB control number is added at the end of the section, to read as follows:

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

(a) *Responsibility for initial determination and reexamination.* The owner or PHA shall be responsible for determination of eligibility for admission, for determination of Annual Income, Adjusted Income and Total Tenant Payment, and for reexamination of family income and composition at least annually, as provided in pertinent program regulations and handbooks (see, *e.g.*, part 880, subpart F, and part 881, subpart F, which, for purposes of this part, shall apply (as appropriate) to projects developed under part 885, subparts B and C; part 882, subparts B and E; part 883, subpart G; part 884, subpart B; part 886, subparts A and C; part 887, subpart H; and for the disclosure and verification of Social Security Numbers. As used in this part, the "effective date" of an examination or reexamination refers to:

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

(2) In the case of a reexamination of an existing tenant, the effective date of the redetermined housing assistance payment with respect to the Housing Voucher program (part 887) and the effective date of the redetermined Total Tenant Payment.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2577–0083)

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

65. The authority citation for 24 CFR part 880 continues 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)).

66. Part 880, subpart C, § 880.305 is amended by revising the heading by adding a new paragraph (m), and by adding the OMB control number to the end of the section, to read as follows:

§ 880.305 Contents of preliminary proposal; Disclosure.

* * * * *

(m) To be eligible to become an owner of housing assisted under this part, the owner (other than a PHA) must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by 24 CFR part 750.

(Approved by the Office of Management and Budget under OMB control number 2502–0204)

67. In § 880.601, paragraph (b) is revised and the OMB control number is added at the end of the section, 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 and verifying Social Security Numbers submitted by 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.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2502–0204)

68. In § 880.603, the introductory text of paragraph (b), and paragraphs (b)(3) and (c), are revised and the OMB control number is added to the end of the section, 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 failure to meet the disclosure and verification requirements for 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 § 880.613 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 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 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 meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750.

(2) *Interim reexaminations.* The family must comply with provisions in its lease regarding interim reporting of changes in income. If the owner receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the owner must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment to the Total Tenant Payment, Tenant Rent, and Housing Assistance Payment must be verified. See 24 CFR 750.10(d)(2)(i) for the requirements for the disclosure and verification of Social Security Numbers at interim reexaminations involving new family members.

(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, including failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750.

(Approved by the Office of Management and Budget under OMB control number 2502-0204)

69. In § 880.607, paragraph (b)(3) is revised, and the OMB control number is added to the end of the section, to read as follows:

§ 880.607 Termination of tenancy and modification of lease.

* * * * *

(b) * * *

(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 and verify 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.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2502-0204)

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

70. The authority citation for 24 CFR part 881 continues 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)).

71. Part 881, subpart C, is amended by adding a new § 881.312, to read as follows:

§ 881.312 Disclosure and verification of Social Security and Employer Identification Numbers by owners.

To be eligible to become an owner of housing assisted under this part, the owner (other than a PHA) must meet the disclosure and verification requirements for Social Security and Employer Identification Numbers, as provided by 24 CFR part 750.

(Approved by the Office of Management and Budget under OMB control number 2502-0204)

72. In § 881.601, paragraph (b) is revised and the OMB control number is added to the end of the section, 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 and verifying Social Security Numbers submitted by 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.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2502-0204)

73. In § 881.603, the introductory text of paragraph (b), and paragraphs (b)(3) and (c), are revised and the OMB control number is added to the end of the section, 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 because of failure to meet the disclosure and verification requirements for 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 the 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 and verify Social Security Numbers, as provided by 24 CFR part 750.

(2) *Interim reexaminations.* The family must comply with the provisions of its lease regarding interim reporting of changes in income. If the owner receives information concerning a change in income between regularly scheduled reexaminations, the owner must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment in the Total Tenant Payment, Tenant Rent, and Housing Assistance Payment must be verified. See 24 CFR 750.10(d)(2)(i) for the requirements for the disclosure and verification of Social Security Numbers at interim reexaminations involving new family members.

(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, including failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750.

(Approved by the Office of Management and Budget under OMB control number 2502-0204)

74. In § 881.607, paragraph (b)(3) is revised and the OMB control number is added to the end of the section, to read as follows:

§ 881.607 Termination of tenancy and modification of lease.

* * * * *

(b) * * *

(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 and verify Social Security Numbers (as provided by 24 CFR part 750), or knowingly provide 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.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2502-0204)

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

75. The authority citation for 24 CFR part 882 continues 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)).

76. In § 882.116, paragraphs (c) and (m) are revised and the OMB control number is added at the end of the section, 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 and verifying Social Security Numbers submitted by families, 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 and verifying Social Security Numbers submitted by families, as provided by 24 CFR part 750;

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2577-0083)

77. In § 882.118, paragraph (a)(1) is revised and the OMB control number is added to the end of the section, 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 determines to be necessary, including the submission of Social Security Numbers and verifying documentation (as provided by 24 CFR part 750), and submissions required for

an annual or interim reexamination of family income and composition.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2577–0083)

78. In § 882.209, paragraph (a)(2) is revised and the OMB control number is added to the end of the section, 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 and verified Social Security Numbers, as provided by 24 CFR part 750; and (iii) is income-eligible.

* * * * *

(Approved by the Office of Management and Budget under OMB approval number 2577–0083)

79. In § 882.212, paragraphs (a), (b), and (c) are revised and the OMB control number is added to the end of the section, 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 the 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 and verify Social Security Numbers, as provided by 24 CFR part 750.

(b) *Interim reexaminations.* The family must comply with § 882.118 for the interim reporting of changes in income. If the PHA receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the PHA just consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment in the Total Tenant Payment, Tenant Rent, and Housing Assistance Payment must be verified. See 24 CFR § 750.10(d)(2)(i) for the requirements for the disclosure and verification of Scoial Security Numbers at interim reexaminations involving new family members.

(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, including failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2577–0083)

80. In § 882.514 paragraph (a)(1) is revised and the OMB control number is added to the end of the section, 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 source and amount of the family's income and other information necessary for determining income eligibility and the amount of the assistance payments.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2577–0083)

81. Section 882.515 is 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 the 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 and verify Social Security Numbers, as provided by 234 CFR part 750.

(b) *Interim reexaminations.* The family must comply with § 882.118 for the interim reporting of changes in income. If the PHA receives information concerning a change in the family's income or other circumstances between regularly scheduled income reexaminations, the PHA must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment in the Total Tenant Payment, Tenant Rent, and Housing Assistance Payment must be verified. See 24 CFR 750.10(d)(2)(i) for the requirements for the disclosure and verification of Social Security Numbers for interim reexaminations involving new family members.

(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 verfication information, including failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750.

(Approved by the Office of Management and Budget under OMB approval number 2577–0083)

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

82. The authority citation for 24 CFR part 883 continues 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)).

83. Part 883, subpart D, is amended by adding a new § 883.412, to read as follows:

§ 883.412 Disclosure and verification of Social Security and Employer Identification Numbers by owners.

To be eligible to develop and own housing assisted under the program, the owner (other than a public entity) must meet the disclosure and verification requirements for Social Security and

Employer Identification Numbers, as provided by 24 CFR part 750.

(Approved by the Office of Management and Budget under OMB control number 2502–0204)

84. In § 883.702, paragraph (b) is revised and the OMB control number is added to the end of the section, 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 and verifying Social Security Numbers submitted by 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.

* * * * *

Approved by the Office of Management and Budget under OMB control number 2502–0204

85. In § 883.704, the introductory text of paragraph (b), and paragraphs (b)(3), and (c), are revised and the OMB control number is added to the end of the section, 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 because of failure to meet the disclosure and verification requirements for Social Security Numbers (as provided by 24 CFR part 750), or if 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 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 the 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 and verify Social Security Numbers, as provided by 24 CFR part 750.

(2) *Interim reexaminations.* The family must comply with the provisions of its lease regarding interim reporting of changes in income. If the owner receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the owner must consult with the family and make adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment in the Total Tenant Payment, Tenant Rent, and Housing Assistance Payment must be verified. See 24 CFR 750.10(d)(2)(i) for the requirements for the disclosure and verification of Social Security Numbers for interim reexaminations involving new family members.

(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, including failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750.

(Approved by the Office of Management and Budget under OMB control number 2502–0204

86. In § 883.708, paragraph (b)(3) is revised and the OMB control number is added to the end of the section, to read as follows:

§ 883.708 Termination of tenancy and modification of lease.

* * * * *

(b) * * *

(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 and verify 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.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2502–0204)

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

87. The authority citation for part 884 continues 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)).

88. In § 884.118, paragraphs (a)(3) and (a)(7) are revised and the OMB control number is added to the end of the section, 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 and verifying Social Security Numbers submitted by 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 and verifying Social Security Numbers submitted by participants, as provided by 24 CFR part 750.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2502–0204).

89. Part 884, subpart A, is amended by adding a new § 884.117, to read as follows:

§ 884.117 Disclosure and verification of Social Security and Employer Identification Numbers by owners.

To be eligible to become an owner of housing assisted under this part, the owner (other than a PHA) must meet the diclosure and verification requirements for Social Security and Employer Identification Numbers, as provided by 24 CFR part 705.

(Approved by the Office of Management and Budget under OMB control number 2502–0204)

90. In § 884.218, paragraphs (a) and (b) are revised and the OMB control number is added to the end of the section, 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 the 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 and verify Social Security Numbers, as provided by 24 CFR part 750.

(b) *Interim reexaminations.* The family must comply with the provisions of its lease regarding interim reporting of changes in income. If the owner receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the owner must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that result in an adjustment in Total Tenant Payment, Tenant Rent, and Housing Assistance Payment must be verified. See 24 CFR 750.10(d)(2)(i) for the requirements for the disclosure and verification of Social Security Numbers at interim reexaminations involving new family members.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2502–0204)

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

91. The authority citation for part 885 continues to read as follows:

Authority: 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)).

92. Part 885, subpart B, is amended by adding a new § 885.211, to read as follows:

§ 885.211 Disclosure and verification of Social Security and Employer Identification Numbers by owners.

To be eligible to become an owner of housing assisted under this subpart, the owner must meet the diclosure and verification requirements for Social Security and Employer Identification Numbers, as provided by 24 CFR part 750.

(Approved by the Office of Management and Budget under OMB control numbers 2502–0204 and 2502–0267)

92a. Part 885, subpart C, is amended by adding a new § 885.711 to read as follows:

§ 885.711 Disclosure and verification of Social Security and Employer Identification Numbers by owners.

To be eligible to become an owner of housing assisted under this subpart, the owner must meet the disclosure and verification requirements for Social Security and Employer Identification Numbers, as provided by 24 CFR part 750.

(Approved by the Office of Management and Budget under OMB control numbers 2502–0204 and 2502–0267)

92b. In § 885.950, paragraphs (a), (c)(1), (2), and (c)(3)(ii), and the introductory language of paragraph (b), are revised and the OMB control numbers are added at the end of the section, to read as follows:

§ 885.950 Selection and admission of tenants.

(a) *Application for admission.* The Borrower must accept applications for admission to the project in the form prescribed by HUD. Applicant families applying for assisted units (or residential spaces in a group home) must complete a certification of eligibility as part of the application for admission. Applicant families must meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750. Both the Borrower and the applicant family must complete and sign the application for admission. On request, the Borrower must furnish copies of all applications for admission to HUD.

(b) *Determination of eligibility and selection of tenants.* The Borrower is responsible for determining whether applicants are eligible for admission and for the selection of families. To be eligible for admission, an applicant family must be a handicapped family (as defined in § 885.5); must meet any project occupancy requirements approved by HUD under § 885.755(a)(1); must meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750; and must be a lower income family, as defined by § 813.102 (as modified by § 885.5). Under certain circumstances, HUD may permit the leasing of units (or residential space in a group home) to ineligible families under § 885.915.

* * * * *

(c) *Reexamination of family income and composition*—(1) *Regular reexaminations.* If the family occupies an assisted unit (or residential space in a group home), the Borrower must reexamine the income and composition of the family at least every 12 months.

Upon verification of the information, the Borrower must make appropriate adjustments in the total tenant payment in accordance with part 813, as modified by § 885.5, and must determine whether the family's unit size is still appropriate. The Borrower must adjust tenant rent and the project assistance payment, and must carry out any unit transfer in accordance with HUD standards. At the time of a reexamination under this paragraph (c)(1), the Borrower must require the family to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750.

(2) *Interim reexaminations.* If the family occupies an assisted unit (or residential space in a group home), the family must comply with the provisions in its lease regarding interim reporting of changes in income. If the Borrower receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the Borrower must consult with the family and make any adjustments determined to be appropriate. See 24 CFR 750.10(d)(2)(i) for the requirements for the disclosure and verification of Social Security Numbers at interim reexaminations involving new family members. Any change in the family's income or other circumstances that result in an adjustment in the total tenant payment, tenant rent, and project assistance payment must be verified.

(3) * * *

(ii) A family's eligibility for project assistance payment may also be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information, including information relating the disclosure and verification of Social Security Numbers, as provided by 24 CFR part 750.

(Approved by the Office of Management and Budget under OMB control numbers 2502–0204 and 2502–0267)

92c. In § 885.955, paragraph (a)(2) is revised, and the OMB control numbers are added at the end of the section, to read as follows:

§ 885.955 Obligations of the family.

(a) * * *

(2) Supply such certification, release, information, or documentation as the Borrower or HUD determines necessary, including information and documentation relating to the disclosure and verification of Social Security Numbers, as provided by 24 CFR part 750.

* * * * *

(Approved by the Office of Management and Budget under OMB control numbers 2502–0204 and 2502–0267)

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

93. The authority citation for 24 CFR part 886 continues 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)).

94. In part 886, subpart A, § 886.105 is amended by revising the heading, by adding a new undesignated paragraph at the end, and by adding the OMB control number to the end of the section, to read as follows:

§ 886.105 Content of application; Disclosure.

* * * * *

To be eligible to become an owner of housing assisted under this subpart, the owner must meet the disclosure and verification requirements for Social Security and Employer Identification Numbers, as provided by 24 CFR part 750.

(Approved by the Office of Management and Budget under OMB control number 2502–0204)

95. In § 886.119, paragraphs (a)(3) and (a)(7) are revised and the OMB control number is added at the end of the section, 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 and verifying Social Security Numbers submitted by 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 and verifying participant Social Security Numbers, as provided by 24 CFR part 750.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2502–0204)

96. Section 886.124 is 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 the 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 and verify Social Security Numbers, as provided by 24 CFR part 750.

(b) *Interim reexaminations.* The family must comply with provisions in its lease regarding the interim reporting of changes in income. If the owner receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the owner must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment to Total Tenant Payment, Tenant Rent, and Housing Assistance Payment must be verified. See 24 CFR 750.10(d)(2)(i) for the requirements for the disclosure and verification of Social Security Numbers for interim reexaminations involving new family members.

(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, 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 program requirements for such reasons as failure to submit requested verification information, including failure to meet the disclosure and verification requirement for Social Security Numbers, as provided by 24 CFR part 750.

(Approved by the Office of Management and Budget under OMB control number 2502–0204)

97. In part 886, subpart C, a new § 886.305 is added, to read as follows:

§ 886.313 Disclosure and verification of Social Security and Employer Identification Numbers by owners.

To be eligible to become an owner of housing assisted under this subpart, the owner must meet the disclosure and verification requirements for Social Security and Employer Identification Numbers, as provided by 24 CFR part 750.

(Approved by the Office of Management and Budget under OMB control number 2502–0204)

98. In § 886.318, paragraphs (a)(3) and (a)(6) are revised and the OMB control number is added at the end of the section, 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 and verifying Social Security Numbers submitted by 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 the amount of housing assistance payment in accordance with part 813 of the chapter; and obtaining and verifying Social Security Numbers submitted by participants, as provided by 24 CFR part 750.

(Approved by the Office of Management and Budget under OMB control number 2502–0204)

99. Section 886.324 is 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 the 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 and verify Social Security Numbers, as provided by 24 CFR part 750.

(b) *Interim reexaminations.* The family must comply with the provisions in its lease regarding interim reporting of changes in income. If the owner receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the owner must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment in Total Tenant Payment, Tenant Rent, and Housing Assistance Payment must be verified. See 24 CFR 750.10(d)(2)(i) for the requirements for the disclosure and verification of Social Security Numbers for interim reexaminations involving new family members.

(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, including failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750.

(Approved by the Office of Management and Budget under OMB control number 2502–0204)

PART 887—HOUSING VOUCHERS

100. The authority citation for part 887 continues 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)).

101. In § 887.105, paragraph (b)(1) is revised and the OMB control number is added to the end of the section, to read as follows:

§ 887.105 PHA responsibilities.

(b) * * *

(1) Publish and disseminate information concerning the availability and nature of housing assistance for lower income families (see § 887.107); invite owners to make units available for leasing in the program and develop working relationships with real estate associations and other appropriate groups (see § 887.109); explain program procedures to owners, including those who have been approached by housing voucher holders; obtain and verify Social Security Numbers submitted by families, as provided by 24 CFR part 750; comply with equal opportunity requirements, including efforts to provide opportunities for recipients to seek housing outside areas of economic and racial concentration.

(Approved by the Office of Management and Budget under OMB control number 2577–0083)

102. In § 887.355, paragraph (a) is revised and the OMB control number is added to the end of the section, to read as follows:

§ 887.355 Regular reexamination of family income and composition.

(a) The PHA must reexamine family income and family size and composition at least annually, and in accordance with part 813 of this chapter. At the time of the annual reexamination, the PHA must obtain and verify Social Security Numbers submitted by families, as provided by 24 CFR part 750.

(Approved by the Office of Management and Budget under OMB control number 2577–0083)

103. Section 887.357 is revised to read as follows:

§ 887.357 Interim reexamination of family income and composition.

A family may request a redetermination of the housing assistance payment at any time, based on a change in the family's income, adjusted income, size or composition. See 24 CFR 750.10(d)(2)(i) for the requirements for the disclosure and verification of Social Security Numbers for interim reexaminations involving new family members.

(Approved by the Office of Management and Budget under OMB control number 2577–0083)

104. In § 887.401, paragraph (a)(1) is revised and the OMB control number is added at the end of the section, to read as follows:

§ 887.401 Family responsibilities.

(a) A family must:

(1) Supply any certificate, release, information, or documentation that the PHA or HUD determines to be necessary in the administration of the program (including the disclosure and verification of Social Security Numbers (as provided by 24 CFR part 750)), and other information required for use by the

PHA in a regularly scheduled reexamination or interim reexamination of family income and composition in accordance with HUD requirements.

(Approved by the Office of Management and Budget under OMB control number 2577–0083)

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

105. The authority citation for part 900 continues 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)).

106. In § 900.103, paragraphs (i) and (j) are revised and the OMB control number is added at the end of the section, 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 and verifying Social Security Numbers, as provided by 24 CFR part 750.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2577–0083)

107. In § 900.202, paragraphs (d)(3) and (f)(2)(iii) are revised and the OMB control number is added at the end of the section, to read as follows:

§ 900.202 Project operation.

* * * * *

(d) * * *

(3) That the request cannot be approved because the family is not eligible (including ineligibility caused by the family's failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750), or the dwelling unit or the proposed lease does not meet program requirements.

* * * * *

(f) * * * (2) * * *

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

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2577–0083)

PART 904—LOW RENT HOUSING HOMEOWNERSHIP OPPORTUNITIES

108. The authority citation for part 904 continues 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)).

109. In § 904.104, paragraph (c) is revised and the OMB control number is added at the end of the section, 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 and verification 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.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2577–0083)

110. In § 904.107, paragraph (m)(1) is revised and the OMB control number is added at the end of the section, to read as follows:

§ 904.107 Responsibilities of homebuyer.

* * * * *

(m) *Termination by LHA.* (1) If the homebuyer breaches the Homebuyers Ownership Opportunity Agreement by failure to make the required monthly payment within 10 days after its due date, by misrepresenting or withholding information (including the failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750) 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. 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.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2577–0083)

PART 905—INDIAN HOUSING

111. The authority citation for 24 CFR part 905 continues to read as follows:

Authority: Secs. 201, 202, 203, 205, United States Housing Act of 1937 (42 U.S.C. 1437aa, 1437bb, 1437cc, 1437ee); 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)).

112. Section 905.302 is amended by adding a new paragraph (b)(2)(v) and the OMB control number to the end of the section, to read as follows:

§ 905.302 Admission policies.

* * * * *

(b) * * *

(2) * * *

(v) To achieve compliance with 24 CFR part 750, which requires applicants and participants to disclose and verify Social Security Numbers at the time eligibility is determined and at later income reexaminations.

(Approved by the Office of Management and Budget under OMB control number 2577–0083)

113. Section 905.406 is amended by adding a new paragraph (a)(3) and the OMB control number at the end of the section, to read as follows:

§ 905.406 Selection of MH homebuyers.

(a) *Admission policies.* * * *

(3) All admissions under this part are subject to the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2577–0083)

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

114. The authority citation for part 913 continues to read as follows:

Authority: Secs. 3, 6, 16, 201, 202, 203, 205, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437d, 1437n, 1437aa, 1437bb, 1437cc, 1437ee); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

115. In § 913.109, paragraph (a) is revised and the OMB control number is added to the end of the section, 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.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2577–0083)

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

116. The authority citation for 24 CFR part 960 continues 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)).

117. In § 960.204, paragraph (c)(5) is revised to read as follows:

§ 960.204 PHA tenant selection policies.

* * * * *

(c) * * *

(5) 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.

* * * * *

118. In § 960.206, paragraph (a) is revised and the OMB control number is added to the end of the section, 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.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2577–0083)

119. Section 960.209 is 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 and verify Social Security Numbers, as provided by 24 CFR part 750.

(b) *Interim reexaminations.* The family must comply with the provisions of its lease regarding interim reporting of changes in income. If the PHA receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the PHA must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in adjustment in the Total Tenant Payment or Tenant Rent must be verified. 24 CFR 750.10(d)(2)(i) for the requirements for the disclosure and verification of Social Security Numbers for interim reexaminations involving new family members.

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Dated: May 22, 1989.

Jack Kemp,

Secretary.

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