surety company's underwriting agent who furnishes its bonds may or may not be its authorized process agent.)

SERVICE OF PROCESS: Process should be served on the Federal process agent appointed by a surety in a judicial district, except where the appointment of such agent is pending or during the absence of such agent from the district. Only in the event an agent has not been duly appointed, or the appointment is pending, or the agent is absent from the district, should process be served directly on the Clerk of the court pursuant to the provisions of 31 U.S.C. 9306.

(e) Companies holding Certificates of Authority as acceptable reinsuring companies are acceptable only as reinsuring companies on Federal bonds.

(f) Some companies may be approved surplus lines carriers in various states. Such approval may indicate that the company is authorized to write surety in a particular state, even though the company is not licensed in the state. Questions related to this may be directed to the appropriate State Insurance Department.

[FR Doc. 91-15494 Filed 6-28-91; 8:45 am]

BILLING CODE 4810-35-C

surety company's underwriting limit when completing its bonds may or may not be its authorized process agent.)

SERVICE OF PROCESS: Process should be served on the Federal process agent appointed by a surety in a judicial district, except where the appointment of such agent is pending or during the absence of such agent from the district. Only in the event an agent has not been duly appointed, or the appointment is pending, or the agent is absent from the district, should process be served directly on the clerk of the court pursuant to the provisions of 31 U.S.C. 9306.

Notes

(a) Companies holding certificates of authority as acceptable reinsuring companies are acceptable only as reinsuring companies on Federal bonds.

(b) Some companies may be approved [illegible] in various states. Such approval may indicate that the company is authorized to write surety in a particular state, even though the company is not licensed in that state. Questions relating to this may be directed to the appropriate State Insurance Department.

[illegible]

federal register

Monday
July 1, 1991

Part VI

Department of Housing and Urban Development

Office of Assistant Secretary for Public and Indian Housing

24 CFR Part 961

Public and Indian Housing Drug Elimination Program; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 961

[Docket No. R-91-1541; FR-2992-N-01]

RIN 2577-AA97

Public and Indian Housing Drug Elimination Program

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

ACTION: Proposed rule.

SUMMARY: This rule amends 24 CFR part 961, the Public Housing Drug Elimination Program, as authorized by chapter 2, substitle C, title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et seq.*), and amended by section 581 of the National Affordable Housing Act (NAHA) (approved November 28, 1990, Pub. L. 101-625). This rule also serves as the basis for a new subpart in 24 CFR part 905 that will establish the Drug Elimination Program within the context of the consolidated program regulations for Indian Housing. The program authorizes HUD to make grants to public housing agencies (PHAs), including Indian Housing Authorities (IHAs), for use in eliminating drug-related crime. To receive funding under the Drug Elimination Program, applicants are required to develop a plan for addressing drug-related crime, and to indicate how assisted activities will further the plan. Grant funds may be used for the following activities designed to eliminate drug-related crime in public and Indian housing projects:

(1) Employment of security personnel;

(2) Reimbursement of local law enforcement agencies for additional security and protective services (e.g., over and above the level of services the locality is already obligated to provide under its Cooperation Agreement with the PHA);

(3) Physical improvements designed to enhance security;

(4) The employment of one or more individuals to investigate drug-related crime on or about the real property comprising any public or Indian housing project and to provide evidence relating to such crime in any administrative or judicial proceeding;

(5) The provision of training, communications equipment, and other related equipment for use by voluntary tenant patrols acting in cooperation with local law enforcement officials;

(6) Programs designed to reduce use of drugs in and around public and Indian housing projects, including drug prevention, intervention, referral, and treatment programs; and

(7) Providing funding to nonprofit public housing resident management corporations and resident councils to develop security and drug abuse prevention programs involving site residents.

Comment Due Date: August 30, 1991.

FOR FURTHER INFORMATION CONTACT: Malcolm E. Main, Drug Free Neighborhoods Division, Office of Resident Initiatives, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10241, Washington, DC 20410, telephone (202) 708-1197 or 708-3502. A telecommunications device for deaf persons (TDD) is available at (202) 708-0850. (These are not toll-free telephone numbers.)

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

As a convenience to those submitting comments, the Rules Docket Clerk will accept brief public comments transmitted by facsimile (FAX) machine. The telephone number of the FAX receiver is (202) 708-4337. Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk ((202) 708-2084). Hearing-impaired individuals may reach the Rules Docket Clerk by calling the TDD number, (202) 708-3259. (These numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1980. Pending approval of these requirements by OMB and the assignment of an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements. Upon approval by OMB, a Notice containing the OMB approval number will be published in the **Federal Register.**

Public reporting burden for the collection of information requirements contained in this proposed 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 under the Preamble heading, *Other Matters.* 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 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3001, Washington, DC 20503, Attention: Wendy Sherwin Swire, Desk Officer for HUD. At the end of the public comment period, the Department may amend the information collection requirements to reflect the public comments received concerning the collection of information requirements.

Background

The Public Housing Drug Elimination Program was first authorized by chapter 2, subtitle C, title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901-11908). Implementing regulations for this program were issued by HUD at 55 FR 27598 (July 3, 1990), codified at 24 CFR part 961. Applicants eligible to receive grants under this program were public housing agencies, including Indian housing authorities.

Section 581 of the National Affordable Housing Act (NAHA) (approved November 28, 1990, Pub. L. 101-625) expanded the Drug Elimination Program to include private, for-profit and nonprofit owners of federally assisted low-income housing as eligible grant applicants and made some additional program changes, as discussed below. Because there were no funds appropriated in FY 91 for this new class of eligible assisted housing applicants, no awards in FY 1991 will be available for any owners of federally assisted low income housing. This rule only implements the NAHA amendments that affect PHAs and IHAs.

The present Drug Elimination Program at part 961 applies to both public and Indian Housing, and this proposed rule also addresses both. However, the Department intends that at the time a final rule is issued, part 961 will apply only to public housing. A rule establishing this program within the Consolidated Indian Housing Program Regulations at 24 CFR part 905 will also be issued. It is anticipated that the two rules will be very substantially similar, if not identical. Comments are specifically invited on the issue of what differences, if any, in the two rules would be appropriate and permissible under the authorizing statute.

Besides broadening the scope of eligible applicants, NAHA made a number of other significant changes in the Drug Elimination Program as it applies to public and Indian housing and they are being implemented in this rulemaking.

First, drug treatment programs designed to reduce use of drugs in an around public or Indian housing are made eligible for funding under the Drug Elimination Program. The New section dealing with drug treatment programs is found at § 961.10(f). Drug treatment funded under this section must be in or around the premises of housing projects to provide more tenants with more effective treatment. The President's 1989 National Drug Strategy states that "If drug treatment facilities are to be genuinely effective, they must be prepared to bring these services to the addict." For these reasons, and because effective treatment can help reduce the incidence of drug-related crime, funding under this program will be provided for contracting with drug treatment professionals for the treatment of residents in or around the premises of public and Indian housing projects.

The phrase "in and around" is used throughout this rule to delineate the area where eligible activities may be located. Following consultation with the Department of Health and Human Services (HHS), HUD has determined to define "in and around" as meaning, "within, or immediately adjacent to, the physical boundaries of a public or Indian housing project." This definition provides guidance for applicants to this program and is consistent with the scope of the drug treatment grants program administered by HHS for residents of public housing.

The rule provides for separate consideration of drug prevention, intervention and treatment programs. Each of these areas (prevention, intervention or treatment) may be the subject of an individual grant application.

HUD has determined that to be successful, prevention programs, must follow a comprehensive approach that takes into consideration the relationship of residents to their families, their peers, their communities and their own efforts to build better futures. Components of such a program would have to focus on not only drug education, but family counseling, youth services, and vocational and educational counseling and opportunities. In this way, a drug prevention program would address itself to the factors that lead to drug abuse. HUD recognizes that many community services are already in place that would address some of the necessary components of a successful drug prevention program, but that these services may not always be known to or accessible to public or Indian housing residents. For these reasons, the salary of a coordinator to identify relevant community services and arrange to make them available to the greatest extent possible to residents is an eligible expense under this program.

Drug intervention programs are meant to identify drug users and provide them with a positive opportunity to turn away from drug use. Eligible activities would include the training of residents and staff to recognize the signs of drug use and to intervene in a positive way to prevent drug problems from continuing once detected.

Treatment programs must be located in and around the premises of the grantee's housing or must provide for formal referrals to other programs in situations where a resident seeking treatment has other sources of funding for treatment. Grantees may use program funds to set aside special groups of drug-free housing units where residents in treatment can reside with their families and receive a full range of community and family support services while they are undergoing treatment. Grant funds may also be used to deliver necessary treatment-related services to residents and their families in their existing units.

HUD has determined that because of the limited resources of this program, the high costs involved, and the existence of other, more appropriate sources of funding, the expense of leasing, acquisition, construction or rehabilitation of a treatment facility is not eligible for funding under this program. The cost of staffing and the reasonable expense of furnishing and equipping a treatment facility are eligible activities. In addition, neither detoxification nor long-term, in-patient, residential treatment programs are eligible for funding.

Second, § 961.10(f), to be revised by this rule, dealt with "innovative programs" designed to reduce use of drugs. NAHA dropped the requirement that programs in this category be innovative, and revised § 961.10(f) which no longer makes reference to factors related to this requirement.

Third, NAHA added a requirement that tenants, along with the local government and the local community, participate in the design and implementation of activities for which applicants seek funding. Tenant participation is a component of one of the criteria by which funding applications are judged. The current drug elimination program at part 961 provides for tenant or resident participation in § 961.3 by permitting Resident Councils (RCs) and Resident Management Corporations (RMCs) to undertake specified management functions, encouraging PHAs and IHAs to make RCs and RMCs full partners in the drug elimination efforts, and where neither RMCs nor RCs exist, to share with residents the development and implementation of the program. This section is revised to include the participation of residents even where RMCs and RCs exist. In addition, § 961.18 requires that a reasonable opportunity be given for residents and their organizations to comment on an application and requires the applicant to give these comments serious consideration. This section will also require grantees to maintain for three years any written comments on the application submitted by residents or their organizations. To take into account the added emphasis in NAHA for tenant participation, § 961.3 of the proposed rule requires applicants to share with RMCs, RCs and residents, whether or not an RMC or RC exists, the development and implementation of the application and the program it proposes. In addition, § 961.20(a)(7) will require a certification by resident groups of their participation in the design and implementation of activities proposed to be funded. Certification by individual residents of an applicant's projects is not being required as impractical.

Although increasing the emphasis on the participation of individual residents in this program, HUD continues to recognize the importance of resident organizations. Wherever democratically elected tenant councils exist, the Department requires consultation with them. These forms of organized resident entities provides a vital link of resident involvement in ridding public housing communities of drug-related crime. However, the Department does not seek to penalize smaller PHAs where resident councils have not been formed, and is permitting other forms of resident input to be used by applicants.

Fourth, NAHA added as a factor that is to be considered for the purpose of making grant selections the extent to which a drug elimination plan includes initiatives that can be sustained over a period of several years. Because of this new statutory emphasis on projecting actions ahead into the future, the requirement for each applicant to submit a plan for addressing the problem of drug-related crime on the premises of the housing administered or owned by the applicant has been focused in this rule to include a timetable for actions to be taken under the plan. The initiatives that can be sustained over a number of years beyond the grant term must be specifically identified in the application.

Fifth, in evaluating the extent of the drug-related crime problem in housing projects proposed for assistance, HUD is permitted to consider whether they are located in a high intensity drug trafficking area designated pursuant to section 1005 of the Anti-Drug Abuse Act of 1988.

Also with regard to evaluating the extent of the drug-related crime problem for selecting applicants under this program, HUD has determined that successful applicants who manage to reduce drug-related crime in years that they have a program under this part in place should not be penalized for this reduction when subsequently applying for program funding. Revised § 961.25(a)(iv) states that such a reduction will not be considered to the disadvantage of the applicant.

Sixth, NAHA has added a requirement that HUD audit and monitor the funding that is provided under the Drug Elimination Program. The existing Drug Elimination rule published in the July 3, 1991 **Federal Register** provided for semi-annual and post-grant reporting by grantees. This provision is maintained in the proposed rule, but is amended by deleting the reference to the Mini-grants component of the program, which is being eliminated (see below). In response to requests for guidance and to simplify the reporting process, HUD has prepared a draft reporting form, included as an appendix to this rule, that will eliminate the need for grantees to provide essay-type monitoring and audit reports. The Department specifically invites comments on the format and utility of this draft reporting form.

The revision of the Drug Elimination Program in this rule gives HUD the opportunity to clarify areas of the Program based upon the Department's experience with it so far. One such area related to the reimbursement of local law enforcement agencies for the cost of providing additional security and protective services. HUD has determined that applicants may include the cost of equipment necessary to receive the full benefit of certain additional services as an eligible incidental expense. Specifically, the Department has in mind the equipping of local law enforcement substations on the housing project premises. These on-site substations are to be used to facilitate the additional presence of local law enforcement agencies on the property owned or administered by the applicant. The Department has received many inquiries for this kind of project and has decided that it would be appropriate under this program. Communications equipment, computers accessing local, state and national security networks and databases, facsimile machines, telephone equipment, bicycles and scooters may be eligible items as incidental costs of additional services if used primarily in connection with the provision of an on-site substation.

Acquisition procedures for equipment purchased for this purpose with funding under this program must be in compliance with all HUD requirements and must remain the property of the grantee. For PHAs and IHAs, the procurement standards to be followed are found at 24 CFR 85.36. Moreover, an applicant should be conservative in its request for this type of equipment. Funding is not permitted under this program for the purchase or leasing of police cars, vans, buses, motorcycles, or motor bikes. The one exception to the above ruling is that funding is permitted for the leasing of vans and buses for drug prevention youth activities.

Also with respect to additional security and protective services, the rule amends the requirements of § 961.10(b) that eligible services for funding must represent an increase in services provided over the six month period immediately preceding the publication of a NOFA for this program. Services already funded under this program in accordance with part 961 in a preceding year may continue to be funded under this program and are not counted for purposes of determining an increase.

The Public Housing Drug Elimination Program and the modernization program under 24 CFR part 968 and 24 CFR part 905 each address the use of physical improvements for drug elimination purposes. The activities conducted under these programs should complement, and may not duplicate, each other. In general, it is expected that modernization program grant funds will be the primary source of funding for rehabilitation and other major physical improvements associated with the elimination of drug activities. PHAs are encouraged to apply for modernization funds for these purposes. Under no circumstances is the PHA or IHA to receive duplicate HUD funding for the same work item or activity from more than one funding source.

The types of related equipment or other expenses that may be provided for voluntary tenant patrols under the Drug Elimination Program is clarified in this rule. Funding is not permitted for the purchase of controlled substances for any purpose, including sting operations; for the purchase, contract for, or maintenance of security dogs for use by local law enforcement agencies; or to obtain ammunition, firearms or other weapons. Drug Elimination Program funds may not be used to compensate voluntary tenant patrol participants. Funding is also not permitted under § 961.10(e), voluntary tenant patrols, for the purchase or leasing of police cars, vans, buses, motorcycles, or motor bikes. Use of grant funds for the purchase of this equipment would represent an expense that is neither reasonably related to, nor necessary for the operation of the tenant patrols established under this part. Rather, the purchase of this equipment would be a capital expenditure benefitting the cooperating law enforcement agency, and hence would be ineligible.

Drug Elimination Program grant funds may not be used in any way to pay for expenses incurred in the preparation of a grant application. These expenses include, but are not limited to, such costs as the payment of consultants' fees for surveys related to the application or the actual writing of the application. Because they are not directly related to any Drug Elimination Program activity authorized in the statute, and they are incurred entirely by the applicant without any prior HUD approval or review, payment of such expenses out of grant funds would be inappropriate. The Department's consistent position in this program has been that grantees are to use program funds for the purpose of implementing program activities and not for the purpose of obtaining program funds.

With this rulemaking, HUD is also implementing Section 955 of NAHA, which allows an exemption from Davis-Bacon Act requirements of volunteers under housing programs. Section 955 exempts volunteers from Davis-Bacon Act requirements if they do not receive compensation for their voluntary services, or are paid only expenses, reasonable benefits, or a nominal fee, and they are not otherwise employed at any time in the work for which they volunteer. The implementation of this provision (which applies to all public and Indian housing, Section 8, and Community Development Block Grant programs) for the Drug Elimination Program at 24 CFR 961.29(a)(2)(iii) merely tracks the statutory language and does not involve the exercise of any discretion by HUD.

The Mini-grants component at subpart D of part 961, as published in the July 3, 1990, **Federal Register**, is being deleted in its entirety in this revision of part 961. HUD has determined that the Drug Elimination Program may be more effectively administered at this time without the Mini-grants component. The Grant administration component that occupied subpart E of the July 3, 1990, rule is being moved to subpart D. Subpart E of part 961 is being reserved for the Youth Sports Program that will be the subject of a separate rulemaking.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying from 7:30 to 5:30 weekdays in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20401.

Under 5 U.S.C. 605(b), (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule would provide grants to PHAs, including IHAs, to eliminate drug-related crime in public and Indian housing projects. In certain instances, the PHA can provide grant funds under the program to nonprofit Resident Management Corporations and Resident Councils for certain eligible program activities. Although small entities could participate in the program, the rule would not have a significant economic impact on them.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued on February 17, 1969. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises in domestic or export markets.

Family Impact. The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that the provisions of this rule have the potential for significant positive impact on family formation, maintenance and general well-being within the meaning of the Order. The proposed rule would implement a program that would encourage PHAs and IHAs to develop a plan for addressing the problem of drug-related crime, and to make available grants to help PHAs and IHAs to carry out this plan. As such, the program is intended to improve the quality of life of public housing project families and other residents by reducing the incidence of drug-related crime and should have a strong positive effect on family formation, maintenance and general well-being for PHAs and IHAs selected for funding.

Federalism Impact. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the provisions of this rule have "federalism implications" within the meaning of the Order. The rule would implement a program that would encourage PHAs and IHAs to develop a plan for addressing the problem of drug-related crime, and to make available grants to PHAs and IHAs to help them carry out their plans. As such, the program would help PHAs and IHAs combat serious drug-related crime problems in their developments, thereby strengthening their role as instrumentalities of the States. Further review under the Order is unnecessary, however, since the rule generally tracks the statute and involves little implementing discretion.

This proposed rule was listed as Item No. 1381 in the Department's Semiannual Agenda of Regulations published on April 22, 1991 (56 FR 17360) under Executive Order 12291 and the Regulatory Flexibility Act.

The Public Housing Drug Elimination Program is listed in the Catalog of Federal Domestic Assistance as number 14.854.

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

TABULATION OF ANNUAL REPORTING BURDEN.—PUBLIC AND INDIAN HOUSING DRUG ELIMINATION PROGRAM-PROPOSED RULE

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondents	Total annual responses	Hours per responses	Total hours
Plan for addressing drug-related crime problems(s) includes assessment, current activities, strategy	961.15	1,000	1	1,000	24	24,000
Request for resident comments on plan and application	961.18	5,000	1	5,000	1	5,000
Application requirements: SF-424, certifications, narratives, copies of resident comments	961.20	1,000	1	1,000	32	32,000
Periodic reports on fund expenditures, data tracking change in crime statistics, completion of strategy components, problems in implementing the plan	961.28(a)	1,000	2	2,000	24	48,000
Post-grant evaluation report within 90 days upon completion of plan	961.28(b)	1,000	1	1,000	8	8,000
Total reporting burden						117,000

List of Subjects in 24 CFR Part 961

Drug abuse, drug traffic control, Grant programs—Housing and community development, Grant programs—Indians, Grant programs—low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, title 24, chapter IX of the Code of Federal Regulations is proposed to be amended as set forth below:

1. 24 CFR part 961 is revised to read as follows:

PART 961—PUBLIC HOUSING DRUG ELIMINATION PROGRAM

Authority: Sec. 5127, Public and Assisted Housing Drug Elimination Act of 1988 (42 U.S.C. 11901 et. seq.); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General

§ 961.1 Purpose.

The purposes of the Public Housing Drug Elimination Program are to:

(a) Eliminate drug-related crime in and around the real property comprising public housing projects;

(b) Encourage public housing agencies (PHAs) and Indian Housing Authorities (IHAs) to develop a plan that includes initiatives that can be sustained over a period of several years for addressing the problem of drug-related crime in and around the premises of the public and Indian housing projects proposed for funding under this part; and

(c) Make available Federal grants to help PHAs and IHAs carry out their plans.

§ 961.3 Encouragement of resident participation.

(a) The elimination of drug-related crime in public and Indian housing projects requires the active involvement and commitment of public and Indian housing residents and their organizations. To enhance the ability of PHAs and IHAs to combat drug-related criminal activity in their projects, Resident Councils (RCs) and Resident Management Corporations (RMCs) will be permitted to undertake management functions specified in this part, notwithstanding the otherwise applicable requirements of 24 CFR part 964 and 24 CFR part 905. The Department encourages PHAs and IHAs to make Resident Management Corporations (RMCs) and Resident Councils (RCs) full partners in this effort. The Department requires PHAs and IHAs to work with RMCs and RCs, where they exist, and project residents in the development of the grant application and the implementation of the program. Areas in which this partnership can be particularly significant include (but are not limited to) the planning and execution of strategies and activities to eliminate drug-related crime in public and Indian housing projects, the institution of voluntary tenant patrols, and the development by RMCs and incorporated RCs of security and drug-abuse prevention programs involving site residents.

(b) To emphasize the importance that the Department attaches to full resident participation in activities assigned under this part, it requires applicants to:

(1) Give residents, as well as RMCs and RCs in the targeted projects, a reasonable opportunity to comment on the application, participate in the development of the application and the implementation of funded programs; and

(2) Give serious consideration to these comments in developing the application.

§ 961.5 Definitions.

Applicant means a PHA or an IHA that applies for a Drug Elimination Grant under this part.

Chief executive officer of a State or a unit of general local government means the elected official, or the legally designated official, who has the primary responsibility for the conduct of that entity's governmental affairs. Examples of the "chief executive officer" of a unit of general local government are: the elected mayor of a municipality; the elected county executive of a county; the chairperson of a county commission or board in a county that has no elected county executive; or the official designated pursuant to law by the governing body of the unit of general local government. The chief executive officer of an Indian tribe is the tribal governing official.

Confidential informant means a person who provides an investigator with confidential information concerning a past or projected crime and does not wish to be known as the source of the information.

Controlled substance means a drug or other substance or immediate precursor included in schedule I, II, III, IV, or V of section 102 of the Controlled Substances Act (21 U.S.C. 802). The term does not include distilled spirits, wine, malt beverages or tobacco as those terms are defined in Subtitle E of the Internal Revenue Code of 1954.

Drug-related crime means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, a controlled substance.

Drug intervention means a process to identify drug users and to assist them in modifying their behavior and/or refer them to early drug treatment to eliminate drug abuse.

Drug prevention means a process to provide goods and services designed to alter factors affecting individuals, including activities, environmental influences, risks and expectations, that lead to drug abuse.

Drug treatment means a program for the residents of an applicant's housing that strives to end abuse of drugs and to eliminate their negative effects through treatment, rehabilitation, and relapse prevention.

Governmental jurisidiction means the unit of general local government, State, or Indian tribe in which the public or Indian housing project administered by the applicant is located.

Grantee means an applicant that executes a grant agreement with HUD.

In and around means within, or immediately adjacent to, the physical boundaries of a public or Indian housing project.

Informant means a person who gives information to the investigator. The person may do this openly and even offer to be a witness, or the person may inform surreptitiously and request to remain anonymous.

High intensity drug trafficking areas means housing projects located in high intensity drug trafficking areas designated pursuant to section 1005 of the Anti-Drug Abuse Act of 1988.

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

Indian means any person recognized as being an Indian or Alaska Native by an Indian tribe, the Federal Government, or any State.

Indian Housing Authority (IHA) means any entity that:

(1) Is authorized to engage in or assist in the development or operation of lower income housing for Indians; and

(2) Is established either by exercise of the power of self-government of an Indian tribe independent of State law, or by operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.

Indian tribe means any tribe, band, pueblo, group, community, or nation of Indians or Alaska Natives.

Local law enforcement agency means a policy department, sheriff's office, or other entity of the governmental jurisdiction that has *law enforcement responsibilities* for the community at large, including the public or Indian housing projects administered by the applicant. In Indian jurisdictions, this also includes tribal prosecutors that assume law enforcement functions analogous to a police department of the BIA. More than one law enforcement agency may have these responsibilities for the jurisdiction that includes the applicant's projects.

Public housing agency (PHA) means any State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) that is authorized under the United States Housing Act of 1937 (other than under section 8) to engage in or assist in the development or operation of housing for low income families.

Public housing project or *project* means low income housing and all necessary appurtenances developed, acquired, or assisted by a PHA or an IHA under the United States Housing Act of 1937 (other than under section 8). A project encompasses those buildings indentified in the Annual Contributions Contract (ACC) that is executed beween HUD and the PHA or IHA.

Resident Council (RC) means an incorporated or unincorporated nonprofit organization or association that meets each of the following requirements:

(1) It must be representative of the residents it purports to represent;

(2) It may represent residents in more than one project or in all of the projects of a PHA or IHA, but it must fairly represent residents from each project that it represents;

(3) It must adopt written procedures providing for the election of specific officers on a regular basis (but at least once every three years);

(4) It must have a democratically elected governing board. The voting membership of the board must consist of residents of the project or projects that the resident organization or resident council represents.

Resident Management Corporation (RMC) means the entity that proposes to enter into, or that enters into, a management contract with a PHA under 24 CFR part 964 or a IHA under 24 CFR part 905, or with an IHA in accordance with the requirements of this part. The corporation must have each of the following characteristics:

(1) It must be a nonprofit organization that is incorporated under the laws of the State or Indian tribe in which it is located.

(2) It may be established by more than one resident organization or resident council, so long as each such organization or council:

(i) Approves the establishment of the corporation and;

(ii) Has representation on the Board of Directors of the corporation.

(3) It must have an elected Board of Directors.

(4) Its by-laws must require the Board of Directors to include representatives of each resident organization or resident council involved in establishing the corporation.

(5) Its voting members must be residents of the project or projects it manages.

(6) It must be approved by the resident council. If there is no council, a majority of the households of the project must approve the establishment of such an organization to determine the feasibility of establishing a corporation to manage the project.

(7) It may serve as both the resident management corporation and the resident council, so long as the corporation meets the requirements of part 964 or part 905 of this chapter for a resident council. (In the case of a resident management corporation for an Indian Housing Authority, it may serve as both the RMC and the RC so long as the corporation meets the requirements of this part for a resident council.)

Single State Agency means an agency responsible for licensing and monitoring state drug abuse programs.

State means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.

Unit of general local government means any city, county, town, township, parish, village, or other general purpose political subdivision of a State.

Subpart B—Use of Grant Funds

§ 961.10 Eligible and ineligible activities.

Activities assisted under this part must be directed toward the elimination of drug-related crime in public and Indian housing projects, and may include one or more of the following activities. Incidental costs related to carrying out these activities are also eligible program costs, provided the PHA or IHA has in place a cost allocation plan. However, grant funds awarded under this part may not be used in any way to pay for expenses incurred in the preparation of a grant application.

(a) *Security personnel.* (1) Employment of security personnel in public and Indian housing projects is permitted under this program. Security personnel employed under this section shall be required as a condition of employment to meet all relevant State, tribal or local insurance, training, licensing, or other similar requirements.

(2) Security personnel shall not be employed under this section to provide any services except those over and above what the local government is contractually obligated to provide under its Cooperation Agreement with the PHA or IHA (as required by the grantee's Annual Contributions Contract). A PHA or IHA grantee must demonstrate and document that any security services funded under this section are over and above what the local government is contractually obliged to provide to the PHA or IHA.

(b) *Additional security and protective services.* (1) Reimbursement of local law enforcement agencies for the cost of providing additional security and protective services for public and Indian housing projects is permitted under this program. The security and protective services provided must be either:

(i) A service that no local law enforcement agency (or agencies) provided for public or Indian housing projects administered by the grantee within the six months immediately preceding the publication of a Notice of Funding Availability (NOFA) allocating assistance under this part, except for services funded under this part; or

(ii) A quantifiable increase in the level of an ongoing service above that which the local law enforcement agency (or agencies) provided for public or Indian housing projects administered by the grantee, within the six months immediately preceding the publication of a NOFA allocating assistance under this part, except for services funded under this part.

(2) Services to be funded under this section must be over and above those that the local government where the proposed project is located is contractually obligated to provide under its Cooperation Agreement with the PHA or IHA (as required by the grantee's Annual Contributions Contract). Grant funds shall only be used to pay for the cost of additional law enforcement services over and above those for which the local government is already contractually obligated to provide under the Cooperation Agreement. The additional services shall be verifiable through time sheets and written work assignments.

(3) Communications equipment, computers accessing local, State and national security networks and databases, facsimile machines, telephone equipment, bicycles, and scooters may be eligible items as incidental costs if used primarily in connection with the provision of additional services, such as the establishment of a law enforcement substation on the funded premises of the grantee. Acquisition procedures for equipment purchased with funding under this section must be in compliance with all HUD requirements and must remain the property of the grantee. For PHAs and IHAs, the procurement standards to be followed are found at 24 CFR 85.36.

(4) Funding is not permitted for the purchase of controlled substances for any purpose, including sting operations; or for the purchase, contract for or maintenance of security dogs for use by local law enforcement agencies.

(5) Funding is not permitted for compensating informants or confidential informants.

(6) Funding is not permitted under this section for the purchase or leasing of police cars, vans, buses, motorcycles, or motor bikes.

(7) Funding is not permitted to purchase or lease any clothing or equipment that would be normally provided by the law enforcement agency, i.e., uniforms, weapons, protective vests, etc.

(8) Funding under this section is only permitted if the grantee has executed a HUD-approved agreement for such additional law enforcement services.

(c) *Physical improvements to enhance security.* (1) Physical improvements that are specifically designed to enhance security are permitted under this program. These improvements may include (but are not limited to) the installation of lighting systems, fences, bolts, locks; the landscaping or reconfiguration of common areas so as to discourage drug-related crime; and other physical improvements in public and Indian housing projects that are designed to enhance security and discourage drug-related activities.

(2) An activity or project that is funded under any other HUD program, such as the modernization program at 24 CFR part 968 or 24 CFR part 905, shall not also be funded by the program under this section.

(3) Funding is not permitted for physical improvements that involve the demolition of any units in a project.

(4) Funding is not permitted for any physical improvements that would result in the displacement of persons.

(5) Funding is not permitted for the acquisition of real property.

(d) *Employment of investigators.* (1) Employment of one or more individuals is permitted under this program to:

(i) Investigate drug-related crime in or around the real property comprising any public or Indian housing project; and

(ii) Provide evidence relating to any such crime in any administrative or judicial proceedings.

(2) Investigators employed under this section are required as a condition of employment to meet all relevant State, tribal, or local training, insurance, licensing, or other similar requirements.

(3) Funding is not permitted for the purchase of controlled substances for any purpose, including use in sting operations.

(4) Funding is not permitted for compensating informants or confidential informants.

(e) *Voluntary tenant patrols.* (1) The provision of training, communications equipment, and other related equipment (including uniforms), for use by voluntary tenant partrols acting in cooperation with officials of local law enforcement agencies is permitted under this program. Members must be volunteers and must be tenants of the project that the tenant patrol represents. Patrols established under this section are expected to undertake surveillance for drug-related criminal activity in the projects proposed for assistance, and to report such activities to the cooperating local law enforcement agency. Grantees are required under § 961.26(b) to obtain liability insurance to protect themselves and the members of the voluntary tenant patrol against potential liability for the activities of the patrol under this section. The cost of this insurance will be considered an eligible program expense.

(2) The applicant, cooperating local law enforcement agency and the members of the tenant patrol are required, prior to putting the tenant patrol into effect, to enter into and execute a written agreement that describes the following:

(i) The nature of the activities to be performed by the tenant patrol, and the patrol's scope of authority;

(ii) The types of activities that a tenant patrol is expressly prohibited from undertaking, to include but not limited to, the carrying or use of firearms or other weapons, nightsticks, clubs, handcuffs, or mace in the course of their duties under this program;

(iii) The type of initial tenant patrol training and continuing training the members receive from the local law enforcement agency (training by the local law enforcement agency is required prior to putting the tenant patrol into effect);

(iv) Tenant patrol members must be advised that they may be subject to individual or collective liability for any actions undertaken outside the scope of their authority and that such acts are not covered under a PHA's or IHA's liability insurance.

(3) Tenant patrols established under this section are required to meet all relevant State, local or tribal training, insurance, licensing, or other similar, requirements.

(4) Communication equipment eligible for funding under this section shall be equipment that is reasonably related to the operation of the tenant patrol and that is otherwise permissible under State, local or tribal law.

(5) Related equipment eligible for funding under this section shall be equipment that is reasonably related to the operation of the tenant patrol and that is otherwise permissible under State, local or tribal law.

(6) Funding is not permitted to obtain ammunition, forearms or other weapons. Tenant patrols are expressly prohibited from carrying or using firearms or other weapons, nightsticks, clubs, handcuffs, or mace in the course of their duties under this program.

(7) Under this section, bicycles and uniforms (caps and other clothing items that identify voluntary tenant patrol members, including patrol t-shirts and jackets, to be worn by the members of the tenant patrol) may be eligible items.

(8) Funding is not permitted for the purchase of controlled substances for any purpose, including sting operations; or for the purchase, contract for, or maintenance of security dogs for use by local law enforcement agencies.

(9) Funding is not permitted under this section for the purchase or leasing of police cars, vans, buses, motorcycles or motor bikes, bullet-proof vests, e'c.

(10) Funding is not permitted for compensating informants or confidential informants.

(11) Drug Elimination Program funds may not be used for any type of compensation for voluntary tenant patrol participants.

(f) *Programs to reduce the use of drugs.* Programs that reduce the use of drugs in and around the premises of public and Indian housing projects, including drug abuse prevention, intervention, referral and treatment programs are permitted under this program.

(1) *Drug prevention.* Programs that will be considered for funding under this provision must provide a comprehensive drug prevention approach for public and Indian housing residents that will address the individual resident and his or her relationship to family, peers, and the community. Prevention programs should include activities designed to identify and change the factors prevent in public housing that lead to drug-related problems, and thereby lower the risk of drug usage. Many components of a comprehensive approach, such as refusal and restraint skills training programs or drug-related family counseling, may already be available in the community of which the housing project of the applicant is a part, and the applicant must act to bring those available program components onto the premises. The salary of a coordinator whose responsibilities would include finding out what community resources are already available and bringing these resources onto the premises, or providing residents referrals to them, as components of a comprehensive drug prevention program is an eligible activity under this paragraph. Activities that should be included in these programs are:

(i) *Drug education opportunities for public and Indian housing residents.* The causes and effects of illegal drug usage must be discussed in a formal setting to provide both young people and adults the working knowledge and skills they need to make informed decisions to confront the potential and immediate dangers of illegal drugs. Grantees may contract with drug education professionals to provide appropriate training or workshops. The drug education professionals contracted to provide these services shall be required to base their services upon the needs assessment and program plan of the grantee developed under § 961.15. These educational opportunities may be a part of resident meetings, youth activities, or other gathering of public and Indian housing residents.

(ii) *Family and other support services.* Programs under this paragraph must demonstrate that they will provide directly or otherwise make available services designed to distribute drug education information, to foster effective parenting skills, and to provide referrals for treatment and other available support services in the project or the community for public and Indian housing families.

(iii) *Youth services.* Programs under this paragraph must demonstrate that they have included groups composed of young people as a part of their prevention programs. These groups must be coordinated by adults with the active participation of youth to organize youth leadership, sports, recreational, cultural and other activities involving public and Indian housing youth. The dissemination of drug education information, the development of peer leadership skills and other drug prevention activities must be a component of youth services. Activities or services funded under this program may not also be funded under the Youth Sports Program.

(iv) *Economic/educational opportunities for residents and youth.* Programs under this section may demonstrate a capacity to provide public and Indian housing residents the opportunities for interaction with or referral to established higher education or vocational institutions with the goal of development or building on the residents' skills to pursue educational, vocational and economic goals. The program must also demonstrate the ability to provide public and Indian housing residents the opportunity to interact with private sector businesses in their immediate community for the same desired goals.

(2) *Intervention.* The aim of intervention is to identify and refer public and Indian housing resident drug users and to assist them in modifying their behavior or, if necessary, to obtain early treatment. The applicant must establish a program with the goal of preventing drug problems from continuing once detected. The training of housing staff and residents for this purpose is an eligible activity under this paragraph, as is the employment of a coordinator to establish and implement the program.

(3) *Drug treatment.* Drug treatment programs designed to reduce use of drugs in and around public and Indian housing are made eligible under this program. The cost of leasing, acquiring, constructing or rehabilitating the facility space for a drug treatment program is not an eligible expense, but the costs of staffing and reasonable expenses for furnishing and equipping a facility are eligible expenses.

(i) Treatment funded under this section shall be in or around the premises of housing projects to provide tenants more effective and economic treatment.

(ii) Treatment professionals hired under this section are required to meet all relevant State, tribal, or local training or continuing training, insurance, licensing, or other similar requirements.

(iii) Funds awarded under this announcement are targeted towards the development and implementation of new treatment programs, or the improvement of, or expansion of existing programs on-site in public housing developments.

(iv) Each proposed drug treatment program should address the following goals:

(A) Increase resident accessbility to drug treatment services;

(B) Decrease criminal activity in and around public and Indian housing projects by reducing illicit drug use among public and Indian housing residents, and

(C) Provide services designed for youth and/or maternal drug abusers, i.e., prenatal/postpartum care, specialized counseling in women's issues, parenting classes.

(v) Treatment programs should meet the following criteria:

(A) Applicants must be able to demonstrate the ability to provide comprehensive drug treatment programs which may include drug-free housing units specially set aside for residents in treatment and their families, if any, who normally reside with them, and intensive outpatient and aftercare components, all of which must be on-site. Grant funds may also be used to provide necessary treatment-related services to residents and thier families in their existing units. Applicants may provide the service of formal referral arrangements to other treatment programs not in or around the assisted projects in instances where the resident is able to obtain treatment costs from sources other than this program.

(B) Family/collateral counseling.

(C) Linkages to educational/vocational counseling.

(D) Therapeutic approaches which have proven effective with similar populations will be considered, e.g., therapeutic community approaches, cognitive restructuring approaches which empower residents to address their recovery, behavioral approaches with emphasis on educational and vocational accomplishments.

(E) Coordination of services to appropriate local drug, HIV-related service agencies, state mental health and public health programs.

(vi) Applicants must demonstrate a working partnership with the Single State Agency or current state licensure provider, to coordinate, develop and implement the drug treatment proposal.

(vii) The Single State Agency or state licensure provider must certify that the drug treatment provider(s) has provided drug treatment services to similar populations, identified in the application, for two prior years.

(viii) The Single State Agency must certify that the drug treatment proposal is consistent with the State treatment plan; and that the treatment provider(s) meets all State licensing requirements.

(4) Funding is not permitted for treatment of residents at long-term, in-patient treatment programs, or any programs not in or around the premises of the grantee's housing projects.

(5) Funding is not permitted for insurance for residents for drug treatment.

(6) Funding is not permitted for detoxification procedures, short term or long term, designed to reduce or eliminate the presence of toxic substances in the body tissues of a patient.

(7) Funding is not permitted for the leasing, acquisition, construction or rehabilitation of drug treatment facilities.

(8) Funding is not permitted for maintenance drug programs. Maintenance drugs are medications that are intended to be prescribed regularly over an extended period of supportive therapy (e.g. methadone maintenance), rather than for more immediate control of a disorder.

(9) Funding is not permitted to subgrantees until they obtain required insurance coverage.

(10) Funding is not permitted for T-shirts, caps, (except tenant patrol uniforms) buttons, advertising campaigns, rallies, marches, or community celebrations.

(11) The administrative costs related to screening or evicting residents for drug-related crime is not permitted.

(12) Funding is not permitted for the purchase of vehicles for youth activities.

(13) Funding is permitted for the leasing of vehicles for youth activities.

(g) *RMCs and RCs.* Funding under this program is permitted for PHAs and IHAs to contract with RMCs and incorporated RCs to develop security and drug abuse prevention programs involving site residents. Such programs may include (but are not limited to) voluntary tenant patrol activities, drug education, drug intervention, referral, and outreach efforts.

Subpart C—Application and Selection

§ 961.15 plan.

(a) *Requirement of plan.* (1) Each application for a grant under this part must include a plan for addressing the problem of a drug-related crime on the premises of the housing projects proposed for funding.

(2) None of the requirements contained in this part shall be interpreted to permit or encourage a PHA, IHA, RMC or RC from acting in violation of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations issued at 24 CFR part 8, or the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations issued at 24 CFR part 100, and the Indian Civil Rights Act (25 U.S.C. 1302).

(b) *Plan content.* The plan referred to in paragraph (a) of this section must contain the following elements:

(1) *Assessment of problem.* An assessment of the drug-related crime problem, and the problems associated with drug/related crime, in the projects administered by the applicant and that are proposed for funding under this part. This assessment, which must describe the nature and scope of these problems, is intended to serve as the basis and rationale for determining the applicant's drug elimination strategy for the proposed project. In addition, the assessment must identify the applicant's demonstrated need and indicate how the activities proposed for funding under this part will address that need. The assessment must include:

(i) *Objective data.* The best available objective data on the nature, source, and extent of the problem of drug-related crime, and the problems associated with drug-related crime. These data may include (but not necessarily be limited to) crime statistics from Federal, State, tribal or local law enforcement agencies, or information from the applicant's records on the types and sources of drug-related crime in the projects proposed for assistance; descriptive data as to the types of offenders committing drug-related crime in the applicant's projects (e.g., age, residence, etc.); the number of lease terminations or evictions for drug-related criminal activity; the number of emergency room admissions for drug use or drug-related crime; the number of police calls for drug-related criminal activity; the number of residents placed in treatment for substance abuse; and the school drop-out rate and level of absenteeism for youth. If crime statistics are not available at the project or precinct level, the applicant may use other reliable, objective data including those derived from its records or those of RMCs or RCs. The crime statistics should be reported both in real numbers, and as a percentage of the residents in each project (e.g., 20 arrests for distribution of heroin in a project with 100 residents reflects a 20% occurrence rate). The data should cover the past one-year period and, to the extent feasible, should indicate whether these data reflect a percentage increase or decrease in drug-related crime over the past several years. Applicants must address in their assessment how these crimes have affected the PHA's or IHA's targeted projects, and how the applicant's overall plan and strategy under paragraph (b)(3) of this section is specifically tailored to address these drug-related crime problems.

(ii) *Other data on the extent of drug-related crime.* The data provided under paragraph (b)(1)(i) of this section may, as necessary, be integrated with, and complemented by, information from other sources which have a direct bearing on drug-related crime problems in the projects proposed for assistance under this part. Examples of these data include: Resident/staff surveys on drug-related issues or on-site reviews to determine drug activity; the use of local government or scholarly studies or other research conducted in the past year that analyze drug activity in the targeted projects; vandalism costs and related vacancies attributable to drug-related crime; information from schools, health service providers, residents and police; and the opinions and observations of individuals having direct knowledge of drug-related crime problems concerning the nature and extent of those problems in the projects proposed for assistance. (These individuals may include law enforcement officials, resident or community leaders, school officials, community medical officials, drug treatment or counseling professionals, or other social service providers.

(iii) *Methodologies.* The assessments provided under paragraphs (b)(1)(i) and (b)(1)(ii) of this section can be accomplished through a variety of methods, using more than one existing source of information. Some examples of assessments include: surveys; onsite reviews/management reviews; statistical indicators (such as type of crimes, area where the offenders reside, age of offenders, school attendance, health service referrals, grade point averages, vandalism costs, vacancy rates, unemployment rates, library check out records, etc.); research or studies conducted by local officials; and analysis and critique of a particular drug-related crime problem.

(iv) *Program evaluation.* The applicant must specify the measures that it believes to be important in evaluating the success of the plan, including goals that relate back to the assessment data provided under paragraphs (b)(1)(i) and (b)(1)(ii) of this section; discuss the types of information the applicant will need to measure the plan's success; and indicate the method by which the applicant will gather and analyze this information.

(2) *Current and past activities to address problem.* The plan must include a narrative discussion of the applicant's current activities, if any, to eliminate drug-related crime in its targeted projects, including its efforts to implement screening procedures to determine an applicant's suitability for public housing (consistent with the requirements of 42 U.S.C. 3604(f) and 24 CFR 100.202, and 29 U.S.C. 794 and 24 CFR part 8.4 which deal with individuals with disabilities); its efforts to implement eviction procedures in accordance with 24 CFR part 966, subpart B, and section 503 of NAHA; its efforts to implement a plan to reduce vacancies; or its other management practices to eliminate drug-related crime in the applicant's projects; the applicant should also describe its experience, if any, in implementing and managing other HUD grant programs (e.g. CIAP, youth sports, child care, etc.), and other Federal anti-drug related crime programs; describe the current activities, if any, being undertaken by community and governmental entities, project residents, or RMCs or RCs, to address the problem of drug-related crime in the projects proposed for assistance; and provide a listing of the names of agencies or other entities (including the applicant), if any, currently providing assistance to address the drug-related crime problem in the targeted projects and describe what assistance they are providing;

(3) *Strategy for addressing problem.* A narrative discussion of the applicant's strategy for addressing the problem of drug-related crime in each of the projects proposed for assistance under this part must be included in the plan. At a minimum, the discussion must include the following information for each of the projects proposed for assistance:

(i) A narrative describing each major activity in the applicant's strategy and how these components interrelate. The applicant should specifically address whether it plans to implement a comprehensive drug elimination strategy that involves management practices, enforcement/security techniques, and a combination of drug abuse prevention, intervention, referral, and treatment programs. In addition, the applicant should indicate how its proposed activities will complement, and be coordinated with, current services.

(ii) The anticipated cost of each component of the strategy, and the financial and other resources (including funding under this part, and from other resources) that may reasonably be expected to be available to carry out each component;

(iii) A timetable for beginning and completing each component of the strategy;

(iv) The role of tenants, and RMCs and RCs where they exist, in planning and developing the grant application and strategy, and in implementing the applicant's plan. The applicant must provide the name of the RMC or incorporated RC that will develop any security and drug abuse prevention programs under § 961.10(g) involving site residents. The applicant must also describe the role of any other entities (e.g., local and State governments and community organizations) in planning and carrying out the strategy.

(v) The resources that the applicant may reasonably expect to be available at the end of the grant term to continue the anti-drug related effort and how they will be allocated to plan initiative that can be sustained over a period of years;

(vi) If grant amounts are to be used for physical improvements under § 961.10(c), a statement as to how these improvements will be coordinated with the applicant's modernization program under 24 CFR part 968 or 24 CFR part 905;

(vii) If grant amounts are to be used for prevention, intervention or treatment programs to reduce the use of drugs in and around the premises of public or Indian housing projects under § 961.10(f), a statement by the applicant as to the nature of the program, a discussion of how the program represents a prevention or intervention strategy, and how the program will further the PHA's or IHA's strategy to eliminate drug-related crime in the projects proposed for assistance.

§ 961.18 Resident comments on grant application.

The applicant must provide the residents of projects proposed for funding under this part, as well as any RMCs or RCs that represent those residents (including any PHA-wide RMC or RC), with a reasonable opportunity to comment on its application, including its plan in accordance with § 961.15, for funding under this program. The applicant must give these comments careful consideration in developing its plan and application as well as in the implementation of funded programs. Copies of all written comments submitted must be maintained by the grantee for three years.

§ 961.20 Application requirements.

(a) *Contents.* To qualify for a grant under this part, an applicant must submit an application to HUD that contains the following:

(1) Standard Grant Application Forms SF-424 and SF-424A with narrative showing breakdown by program and cost, to include all equipment.

(2) The plan prepared under § 961.15.

(3) Summaries of any written resident and resident organization comments submitted to the applicant on the design and implementation of the plan.

(4) A certification by the applicant that:

(i) The applicant's assessment of its drug-related crime problem is based upon the best available objective data; and that the description of current activities being undertaken by the applicant to address the problem of drug-related crime in its projects, and the information provided regarding the applicant's strategy for addressing the problem of drug-related crime in its projects, as required by § 961.15(b)(1), are both accurate and complete.

(ii) The applicant will maintain a drug-free workplace in accordance with the requirements of the Drug-Free Workplace Act of 1988, 24 CFR part 24, subpart F. (Applicants may submit a copy of their most recent drug-free workplace certification, which must be dated within the past year.)

(iii) The applicant must submit a certification and disclosure in accordance with the requirements of section 319 of the Department of the Interior Appropriations Act (Pub. L. 101-121, approved October 23, 1989), as implemented in HUD's interim final rule published in the **Federal Register** on February 26, 1990 (55 FR 6736). This statute generally prohibits recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific, contract, grant, or loan.

(5) A certification by the chief executive officer of a State or a unit of general local government (including an Indian tribe), in which the projects proposed for assistance are located that:

(i) Grant funds provided under this part will not substitute for activities currently being undertaken on behalf of the applicant by the jurisdiction to address the problem of drug-related crime in these projects;

(ii) Any additional security and protective services to be provided under § 961.10(b) meet the requirements of that section;

(iii) The relevant governmental jurisdiction will take the actions described in the applicant's strategy under § 961.15(b)(3);

(iv) That the locality is meeting its obligations under the Cooperation Agreement with the PHA or IHA, particularly with regard to law enforcement services. Whether or not a locality is meeting its obligations under the Cooperation Agreement with the applicant, the CEO for the locality must describe the current level of law enforcement services being provided to the projects proposed for assistance. If the jurisdiction is not meeting its obligations under the Cooperation Agreement, the CEO should identify any special circumstances relating to its failure to do so.

(6) If applying for voluntary tenant patrol funding, a certification from the chief of the local law enforcement agency that the law enforcement agency has entered into, or will enter into, an agreement with the voluntary tenant patrol and the applicant, in accordance with the requirements of § 961.10(e);

(7) A certification by the RMC or RC, or other involved resident group where an RMC or RC do not exist, for a project proposed for funding under this part that the grant application was jointly prepared with the applicant, and that the applicant's description of the activities that the resident group will implement under the program is accurate and complete.

(8) Letters of commitment from governmental or private entities that describe the financial or other resources (e.g., staff or in-kind resources) that the entity agrees to provide for the applicant's anti-drug related crime efforts under this part.

(9) If applying for treatment program funding, a certification that the applicant has notified and consulted with the relevant Single State Agency or authority with drug program coordination responsibilities concerning its application; that the drug treatment provider(s) has provided drug treatment to a similar population for two prior years; that the proposed drug treatment project is consistent with the State treatment plan; and that the treatment providers meet all State licensing requirements

(10) Such additional information as the Department determines to be necessary and appropriate.

(b) *Notice of funding availability.* HUD will publish Notices of Funding Availability (NOFAs) in the **Federal Register** as appropriate to inform the public of the availability of grant amounts under this part. The Notices will provide specific guidance with respect to the grant process, including the deadlines for the submission of grant applications, the limits (if any) on maximum grant amounts, the maximum number of points to be awarded for each selection criterion, and the process for ranking and selecting applicants. The Notices will also include any additional factors that the Secretary has determined to be necessary and appropriate to implement the selection criteria in this part.

§ 961.25 Application selection.

(a) *Selection criteria.* Each application submitted by a PHA or IHA for a grant under this part will be evaluated on the basis of the following selection criteria:

(1) *Factor 1: The extent of the drug-related crime problem in the applicant's project or projects proposed for assistance.* In assessing this criterion, HUD will consider the following factors:

(i) The severity of the drug-related crime problem, as reflected by:

(A) Crime statistics and other data provided under § 961.15(b)(1)(i) on the number and types of drug-related crimes committed within the applicant's targeted projects; trend data indicating an increase or decrease in drug-related crime over a period of time; and descriptive data on the types of offenders committing drug-related crime in the applicant's projects (such as age, residence, etc.).

(B) To the extent that data under § 961.15(b)(1)(i) are not available, HUD will also consider information derived from resident/staff surveys or on-site reviews, or from the applicant's own records or those of other local agencies, on the extent of drug-related crime and the problems associated with drug-related crime, in the applicant's projects. This information may include (but is not limited to) the number of lease terminations or evictions for drug-related criminal activity; emergency room admissions for drug use or drug-related crime; vandalism costs and vacancies attributable to drug related crime; the number of residents placed in treatment for substance abuse; the school drop-out rates and absenteeism rates for youth, etc.

(C) In awarding points under paragraphs (a)(1)(i)(A) and (a)(1)(i)(B) of this section, HUD will evaluate the extent to which the applicant has provided raw data that reflects a severe drug-related crime problem, both in terms of the frequency and nature of the drug-related crime incidents and the problems associated with drug-related crime in the projects proposed for funding; the extent to which such data are meaningfully grouped by the variables listed under paragraphs (a)(1)(i)(A) and (a)(1)(i)(B) of this section; and the extent to which such data reflect an increase in drug-related crime over a period of time in the projects proposed for assistance.

(ii) The relative severity of the drug-related crime in the applicant's projects, as reflected by the statistics submitted under paragraph (a)(1)(i)(A) of this section, in comparison to other applications submitted in the region for funding under this part.

(iii) The extent to which the applicant has analyzed the data compiled under paragraphs (a)(1)(i)(A) and (a)(1)(i)(B) of this section and has clearly articulated its needs for reducing drug-related crime in the projects proposed for assistance.

(iv) A reduction in drug-related crime in the housing of an applicant for years during which the applicant had in place a program under this part will not be considered to the disadvantage of the applicant.

(v) Such additional factors as the Department determines to be necessary and appropriate.

(2) *Factor 2: The quality of the plan to address the crime problem in the public housing projects proposed for assistance, including the extent to which the plan includes initiatives that can be sustained over a period of several years.* In assessing this criterion, HUD will consider the following factors:

(i) The extent to which the applicant establishes a relationship between its drug-related crime program (as identified in its plan assessment under § 961.15(b)(1)(i) and (b)(1)(ii)) and its strategy for eliminating drug-related crime under § 961.15(b)(3); the extent to which the applicant has considered and articulated its strategy goals and objectives; the extent to which the applicant's strategy provides for a comprehensive approach to eliminating drug-related crime in its projects (e.g., the strategy includes management practices, enforcement/security techniques, and a combination of intervention, referral, treatment and prevention programs); and the extent to which funding under this part will be targeted to the applicant's identified needs.

(ii) The extent to which the applicant's strategy is realistic, given the amount of funding requested under this part in relation to the overall strategy, and the timetable indicated by the applicant for beginning and completing each component of the strategy; and the extent to which the applicant provides a cost analysis for each component of its strategy and describes the financial and other resources (under this part and other sources) that may reasonably be expected to be available to carry out each component; describes the activities to be funded under this part and indicates how such activities will be coordinated with, and complemented by, current services; and describes how funding decisions were reached.

(iii) The extent to which the applicant has developed an evaluation process that includes measures it believes to be critical in evaluating the success of the plan; the extent to which the applicant has described in its plan the information to be gathered, and the method to be used to gather this information; and the extent to which the applicant relates the evaluation process to its assessment of the drug-related crime problem in the targeted projects (e.g. tracking of changes in identified crime statistics).

(iv) The extent to which the plan identifies non-HUD resources that the applicant reasonably expects to be available for the continuation of the program at the end of the grant term; and the extent to which the plan includes initiatives that can be sustained over a period of years and identifies resources that the applicant may reasonably expect to be available at the end of the grant term to continue the anti-drug related effort.

(v) Such additional factors as the Department determines to be necessary and appropriate.

(3) *Factor 3: The capability of the applicant to carry out the plan.* In assessing this criterion, HUD will consider the following factors:

(i) The extent of the applicant's administrative capability to manage its projects, as measured by its performance with respect to operative requirements under the ACC and HUD regulations. In evaluating administrative capability under his factor, HUD will also consider whether there are any unresolved findings from prior HUD reviews or audits undertaken by the Inspector General, the General Accounting Office, or Independent Public Accountants; whether the applicant is operating under court order; for public housing, the process made by a Troubled PHA in achieving goals established under a Memorandum of Agreement executed with HUD: and, for Indian housing, progress made toward completing its management improvement plan will be considered.

(ii) The extent to which the applicant has implemented effective screening procedures to determine an individual's suitability for public and Indian housing (consistent with the requirements of 42 U.S.C. 3604(f) and 24 CFR 100.202, and 29 U.S.C. 794 and 24 CFR 8.4); implemented a plan to reduce vacancies; implemented eviction procedures in accordance with 24 CFR part 966, subpart B, and section 503 of the National Affordable Housing Act (Pub. L. 101–625); or undertaken other management practices to eliminate drug-related crime in its projects.

(iii) The extent of, and degree of success reflected by, the applicant's prior track record in implementing and managing HUD grant programs (including funding under this part or other grant programs such as CIAP, youth sports, child care, resident management, etc.), and other Federal drug-related grant programs.

(iv) The extent to which the applicant has already undertaken successful anti-drug related crime efforts that will serve as the foundation for the proposed grant under this part.

(v) Such additional factors as the Department determines to be necessary and appropriate.

(4) *Factor 4: The extent to which tenants, the local government and the local community support and participate in the design and implementation of the activities proposed to be funded under the application.* In assessing this criterion, HUD will consider the following factors:

(i) The extent to which community representatives and local government officials will be actively involved in the implementation of the applicant's plan; and the extent to which the applicant has leveraged funds and other resources from other public and private sources, as evidenced by letters of commitment to provide funding, staff, or in-kind resources.

(ii) The extent to which the relevant governmental jurisdiction has met its law enforcement obligations under the Cooperation Agreement with the applicant (as required by the grantee's Annual Contributions Contract with HUD).

(iii) The extent to which project tenants, and an RMC or RC, where they exist, are involved in the planning and development of the grant application and plan strategy, and support and participate in the design and implementation of the activities proposed to be funded under the application as reflected by information provided by the applicant in accordance with § 961.15(b)(3)(vi), augmented with information concerning tenants, the applicant's response to tenant and RMC/RC comments under § 961.18, and the certification of resident involvement provided at § 961.20(a)(7).

(iv) Such additional factors as the Department determines to be necessary and appropriate.

(b) *Environmental review.* Grants under this part are categorically excluded from review under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321). However, prior to an award of grant funds under this part, HUD will perform an environmental review to the extent required under the provisions of NEPA, applicable related authorities at 24 CFR 50.4, and HUD's implementing regulations at 24 CFR part 50.

Subpart D—Grant Administration

§ 961.26 Grant administration

(a) *General.* The duty to use grant funds to eliminate drug-related crime in public and Indian housing projects in accordance with the requirements of this part will be incorporated in a grant agreement executed by HUD and the grantee. Each grantee is responsible for ensuring that grant funds are administered in accordance with the requirements of this part and applicable laws and regulations.

(b) *Insurance.* Each grantee is required to obtain adequate insurance coverage to protect itself against any potential liability arising out of the eligible activities under this part. In particular, applicants are required to assess their potential liability arising out of the employment or contracting of security personnel, law enforcement personnel, investigators, drug treatment providers and the establishment of the voluntary tenant patrols; to evaluate the qualifications and training of the individuals or firms undertaking these functions; and to consider any limitations on liability under State, local or tribal law. Grantees are required to obtain liability insurance to protect the members of the voluntary tenant patrol against potential liability as a result of the patrol's activities under § 961.10(e). These insurance costs are eligible program expenses. Subgrantees are required to obtain their own liability insurance.

(c) *Subgrants (Subcontracting).* (1) A grantee may directly undertake any of the eligible activities under this part or it may contract with a qualified third party, including local law enforcement agencies, Resident Management Corporations (RMCs) and incorporated

Resident Councils (RCs). Resident organizations that are neither RMCs or incorporated RCs may share with the grantee in the implementation of the program, but may not receive funds as subgrantees. A PHA's or IHA's Housing Development Corporation or other PHA or IHA non-profit corporation is not eligible to receive a subgrant under this part.

(2) Subgrants or cash contributions to RMCs or incorporated RCs may be made only under a written agreement executed between the grantee and the RMC or RC. The agreement must include a project budget that is acceptable to the grantee, and that is otherwise consistent with the PHA's grant application budget. The agreement must obligate the RMC or incorporated RC to permit the grantee to inspect and audit the RMC or RC financial records related to the agreement, and to account to the grantee on the use of grant funds, and on the implementation of project activities. In addition, the agreement must describe the nature of the activities to be undertaken by the subgrantee, and the scope of the subgrantee's authority; and the amount of insurance to be obtained by the grantee and the subgrantee to protect their respective interests.

(3) The *grantee shall be responsible for monitoring,* and for providing technical assistance to, any subgrantee to ensure compliance with HUD program requirements, including OMB Circular Nos. A–110 and A–122, which apply to the acceptance and use of assistance by private nonprofit organizations. The procurement requirements of Attachment O of Circular A–110 apply to RMCs and RCs. The grantee must also ensure that subgrantees have appropriate insurance liability coverage.

(d) *Employment preference.* A grantee under this program shall give preference to the employment of public housing residents, in accordance with section 3 of the Housing and Urban Development Act of 1968 and 24 CFR part 135, to carry out any of the eligible activities under this part, so long as such residents have comparable qualifications and training as nonpublic housing resident applicants. For Indian housing, the Indian preference in accordance with 25 U.S.C. 450(e) must be used first before resident preference may be allowed. Except where the labor standards requirements of § 961.29(a)(1) are applicable, a public housing resident employed under this section may choose to receive compensation for his or her services either in the form of payment, as a credit to the resident's account, or as payment of back rent owed to the grantee. Voluntary tenant patrol participants are not eligible for compensation from Drug Elimination Program funds.

(e) *Applicability of OMB Circulars and HUD fiscal and audit controls.* The policies, guidelines, and requirements of 24 CFR part 85 and OMB Circular A–87 apply to the acceptance and use of assistance by grantees under this part; and OMB Circulars Nos. A–110 and A–122 apply to the acceptance and use of assistance by private nonprofit organizations (including RMCs and RCs). In addition, grantees and subgrantees must comply with fiscal and audit controls and reporting requirements prescribed by HUD, including the system and audit requirements under the Single Audit Act, OMB Circular No. A–128 and HUD's implementing regulations at 24 CFR part 44); and OMB Circular No. A–133).

(f) *Grant term and obligation of grant funds.* Grantees are required to use grant amounts under this part according to their approved workplan, which generally shall not exceed 24 months.

(g) *Sanctions.* If HUD determines that a grantee is not complying with the requirements of this part or of other applicable Federal law, or if a grantee fails to make satisfactory progress toward its drug elimination goals, as specified in its plan strategy under § 961.15(b)(3) and as reflected in its progress reports under § 961.28, or if a grantee files a false certification, for example, as to the services provided under the Cooperation Agreement by the local jurisdiction, HUD may (in addition to any remedies that may otherwise be available) take any of the following sanctions, as appropriate:

(1) Issue a warning letter that further failure to comply with such requirements will result in a more serious sanction;

(2) Conditions a future grant;

(3) Direct the grantee to stop the incurring of costs with grant amounts;

(4) Require that some or all of the grant amounts be remitted to HUD;

(5) Reduce the level of funds the grantee would otherwise be entitled to receive; or

(6) Elect not to provide future grant funds to the grantee until appropriate actions are taken to ensure compliance.

§ 961.28 Periodic reports.

Grantees are required to provide periodic reports that include the obligation and expenditure of grant funds, the progress made by the grantee in implementing the plan described and any change in the incidence of drug-related crime in projects assisted.

(a) *Semi-annual progress reports.* Grantees must provide the Field Office with semi-annual progress reports that evaluate the grantee's progress against its plan, as outlined in Appendix A. These reports will be submitted 120 calendar days after the Drug Elimination Program budget has been approved to the Field Office or Office of Indian Programs, as appropriate. These reports must also include in summary form (but are not limited to) the following: any change or lack of change in crime statistics or other indicators drawn from the applicant's plan assessment (such as vandalism, etc.) and an explanation of any difference; successful completion of any of the strategy components identified in the applicant's plan; a discussion of any problems encountered in implementing the plan and how they were addressed; an evaluation of whether the rate of progress meets expectations; a discussion of the grantee's efforts in encouraging resident participation; a description of any other programs that may have been initiated or expanded as a result of the plan, with an identification of the resources and the number of people involved in the programs and their relation to the plan.

(b) *Post-grant report.* A post-grant evaluation must be submitted to the Field Office or Office of Indian Programs, as appropriate, within 90 days upon completion of the plan, using at a minimum the evaluation criteria for the semi-annual reports.

§ 961.29 Other Federal requirements.

Use of grant funds requires compliance with the following additional Federal requirements:

(a) *Labor standards.* (1) Where grant funds are used to undertake physical improvements to increase security under § 961.10(c), the following labor standards apply:

(i) The grantee and its contractors and subcontractors must pay the following prevailing wage rates, and must comply with all related rules, regulations and requirements:

(A) For laborers and mechanics employed in the development of the project, the wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trades;

(B) For laborers and mechanics employed in carrying out non-routine maintenance in the project, the HUD-determined prevailing wage rate. As used in this subsection, non-routine maintenance means work items that ordinarily would be performed on a regular basis in the course of upkeep of a property, but have become substantial in scope because they have been put off, and that involve expenditures that would otherwise materially distort the level trend of maintenance expenses. Non-routine maintenance may include replacement of equipment and materials rendered unsatisfactory because of normal wear and tear by items of substantially the same kind. Work that constitutes reconstruction, a substantial improvement in the quality or kind of original equipment and materials, or remodeling that alters the nature or type of housing units is not non-routine maintenance.

(ii) The employment of laborers and mechanics is subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333).

(2) The provisions of paragraph (a)(1) of this section shall not apply to labor contributed under the following circumstances:

(i) Upon the request of any resident management corporation, HUD may, subject to applicable collective bargaining agreements, permit residents of a project managed by the resident management corporation to volunteer a portion of their labor;

(ii) A family selected for housing under the Indian Mutual Help Homeownership Opportunity Program may contribute labor toward the development cost of the project;

(iii) An individual may volunteer to perform services if:

(A) The individual does not receive compensation for the voluntary services, or, is paid expenses, reasonable benefits, or a nominal fee for voluntary services; and

(B) Is not otherwise employed at any time in the work subject to paragraph (a)(1)(i) (A) or (B) of this section.

(b) *Nondiscrimination and equal opportunity.* The following nondiscrimination and equal opportunity requirements apply to this program:

(1) The requirements of The Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations issued at 24 CFR part 100; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;

(3) The requirements of Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR chapter 60;

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects); and

(5) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

(c) *Use of debarred, suspended or ineligible contractors.* Use of grant funds under this program requires compliance with the provisions of 24 CFR part 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in eligibility status.

(d) *Flood insurance.* Grants will not be awarded for proposed projects that involve acquisition, construction, reconstruction, repair or improvement of a building or mobile home located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless:

(1)(i) The community in which the area is situated is participating in the National Flood Insurance Program in accordance with 44 CFR parts 59–79; or

(ii) Less than a year has passed since FEMA notification to the community regarding such hazards; and

(2) Flood insurance on the structure is obtained in accordance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001).

(e) *Lead-based paint.* The provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4821–4846, and implementing regulations at 24 CFR part 965, subpart H (51 FR 27789–27791, August 1, 1986) apply to activities under this program as set out below. This section is promulgated pursuant to the authority granted in 24 CFR 35.24(b)(4) and supersedes, with respect to all housing to which it applies, the requirements (not including definitions) prescribed by subpart C of 24 CFR part 35.

(1) *Applicability.* The provisions of this section shall apply to all projects constructed or substantially rehabilitated before January 1, 1978, and for which assistance under this part is being used for physical improvements to enhance security under § 961.10(c).

(2) *Definitions.* The term *applicable surfaces* means all intact and nonintact interior and exterior painted surfaces of a residential structure.

(3) *Exceptions.* The following activities are not covered by this section:

(i) Installation of security devices;

(ii) Other similar types of single-purpose programs that do not involve physical repairs or remodeling of applicable surfaces of residential structures; or

(iii) Any non-single purpose rehabilitation that does not involve applicable surfaces and that does not exceed $3,000 per unit.

(f) *Conflicts of interest.* In addition to the conflict of interest requirements in 24 CFR part 85, no person, as described in paragraphs (f) (1) and (2) of this section, may obtain a personal or financial interest or benefit from an activity funded under this program, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure, or for one year thereafter:

(1) Who is an employee, agent, consultant, officer, or elected or appointed official of the grantee, that receives assistance under the program and who exercises or has exercised any functions or responsibilities with respect to assisted activities; or

(2) Who is in a position to participate in a decision making process or gain inside information with regard to such activities.

(g) *Drug Free Workplace Act of 1988.* The requirements of the Drug-Free Workplace Act of 1988 at 24 CFR part 24, subpart F apply to this program.

(h) *Anti-lobbying provisions under section 319.* On February 26, 1990, the Department published an interim final rule at 55 FR 6736 advising recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans of a new prohibition recently mandated by Congress. Section 319 of the Department of the Interior Appropriations Act, Public Law 101–121, approved October 23, 1989, generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The interim final rule generally prohibits the awarding of contracts, grants, cooperative agreements, or loans unless the reciepient has made an acceptable certification regarding lobbying. In addition, the recipient must also file a disclosure if it has made or has agreed to make any payment with nonappropriated funds that would be prohibited, if paid with appropriated funds.

(2) The certification and disclosure requirements apply to all grants in excess of $100,000. However, since grantees sometimes may expect to receive additional grant funds through reallocations, all potential grantees are required to submit the certification, and to make the required disclosure if the grant amount exceeds $100,000. Potential grantees should refer to 55 FR 6737 (February 26, 1990) for the language for the certification and disclosure. The law provides substantial monetary penalties for failure to file the required certification or disclosure.

(i) *Intergovernmental review.* The requirements of Executive Order 12372 and the regulations issued under the order at 24 CFR part 52, to the extent provided by **Federal Register** notice in accordance with 24 CFR 52.3 apply to this program.

(j) *Indian preference.* The provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(e)), and the Indian preference rules in the IHA procurement regulations at 24 CFR part 905, subpart B, apply to IHAs. These provisions require, to the greatest extent feasible, that preference and opportunities for training and employment be given to Indians and that preference in the award of subcontracts and subgrants be given to Indian Organizations and Indian Owned Economic Enterprises.

Appendix A to 24 CFR Part 961—Public Housing Drug Elimination Grant Program Semi-Annual Report

HUD Region: ______
Field Office: ______
PHA/IHA Location: ______
No. Units ______
Duration of Grant: ______
Date Budget Approved: ______
Amount of Grant: $ ______
Total Drawdown: $ ______

WORKPLAN

Task/activity	Original timetable begin date	Original timetable end date	On schedule? Yes/No	Budget expenditures	Equipment	Itemized cost of equipment/activity	Ineligible activity? Yes/No
(Example) #1 Tenant Patrol	01/01/91	01/01/93	Yes	$10,000	Radio	$2,000	No.

Comments/Observations:

REVIEWER: ______
TITLE: ______
DATE OF REVIEW: ______

Subpart E—[Reserved]

Dated: June 5, 1991.

Michael B. Janis

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 91-15482 Filed 6-28-91; 8:45 am]

BILLING CODE 4210-33-M

federal register

Monday
July 1, 1991

Part VII

Environmental Protection Agency

40 CFR Parts 261 et al.

Identification and Listing of Hazardous Waste; Wood Preserving; Technical Corrections

Environmental Protection Agency

40 CFR parts 261, 262, 264, 265, and 270

[FRL-3968-8]

Identification and Listing of Hazrdous Waste; Wood Preserving; Corrections

AGENCY: Environmental Protection Agency.

ACTION: Technical correction.

SUMMARY: The Environmental Protection Agency (EPA) is correcting errors in the hazardous waste regulations that appeared in the **Federal Register** on December 6, 1990 (55 FR 50450). In that rule, EPA promulgated regulations under the Resource Conservation and Recovery Act (RCRA) to add three categories of wastes to the list of hazardous wastes from non-specific sources (40 CFR 261.31). These wastes, designated F032, F034, and F035, are generated from wood preserving processes that use or have previously used chlorophenolic formulations, facilities that use creosote formulations, and facilities that use inorganic preservatives containing arsenic or chromium, respectively. EPA also promulgated standards for permitting an interim status for drip pads used to assist in the collection of treated wood drippage. This notice corrects errors and clarifies language in the preamble and regulations of the December 6, 1990 final rule.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline at (800) 424-9346 (toll-free) or (703) 920-9810 in the Washington, DC metropolitan area. For technical information, contact Mr. Edward L. Freedman, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4770.

SUPPLEMENTARY INFORMATION:

I. Reasons and Basis for Today's Notice

The Agency has received numerous comments from the regulated community and State agencies identifying typographical errors in the December 6, 1990 final rule, and requesting clarification on certain aspects of the preamble and regulations. Today's notice corrects these errors and responds to other concerns raised by commenters.

II. Summary of Corrections and Clarifications to the Wood Preserving Wastes Final Rule

Below is a brief explanation of substantive changes to the preamble and regulations in the December 6, 1990 final rule, as well as clarifications of several issues.

Note: The corrections discussed below reflect the renumbering of the part 264, subpart W regulations (see part IV below). In addition, the substantive corrections to sections in part 264 listed here have been incorporated in the reprinted text of part 264, subpart W, later in this notice.

1. In the December 6, 1990 final rule, EPA amended section 261.4 by adding paragraph (a)(9). This paragraph excluded from the definition of solid waste, spent wood preserving solutions that have been reclaimed and are reused for their intended purpose. The exclusion applies after the spent preserving solutions are reclaimed. It was the Agency's intent to also exclude wastewaters containing spent preservative, when they are reclaimed and reused at the plant to treat wood. The exclusion would apply whether the waters are applied directly or indirectly to the wood being treated. For example, wastewaters that are reclaimed and then used in a boiler to generate steam that is reused in the process would be excluded, as would waters reused as makeup water in the work tank to dilute concentrated commercial formulations.

The exclusion from the definition of solid waste would take effect after the wastewaters are reclaimed (see § 261.3 (c)(2) final sentence, materials normally stop being a waste after they are reclaimed). This is also true of the spent preservatives. EPA is adjusting the language of the exclusion (§ 261.4(a)(9)) to make clear that both spent preserving solutions and wastewater are solid and hazardous wastes until they are reclaimed (normally by filtration), but cease being solid wastes once reclamation is completed if the reclaimed material is used to treat wood.

In addition, the wording of paragraph (a)(9) in § 261.4 is redundant in that it refers to "spent wood preserving solutions that have been used." A "spent material" is defined as a material that has been used. Therefore, for the reasons discussed above, § 261.4, paragraph (a)(9) is being amended today.

EPA has also received questions regarding the status of other wastewaters which are reused beneficially at wood preserving plants but do not come into contact with the treated wood itself. These uses are addressed by current regulations (40 CFR 261.2), which should be consulted for specific situations. However, under these rules, wastewaters put to direct use normally are not solid wastes, nor are wastewaters that are reused after being reclaimed, provided that the subsequent reuse does not involve placement on the land or combustion. Thus, reclaimed waters used as vacuum pump seal water, or as scrubbing water in an odor scrubber, would not be solid wastes (§ 261.3(c)(2)(i)). Process water that is used directly as cooling tower makeup water, and which is then cooled and reused, also would not normally be a solid waste. (See § 261.2(e)(1)(ii).)

2. The December 6, 1990 final rule added § 261.35, which provides a process by which generators who previously used chlorophenolic preservatives may have the F032 waste code deleted from their wastes if they follow certain equipment cleaning or replacement steps. However, the language in this section does not communicate the options available to the generator in the way the Agency intended. EPA originally intended that a generator of cross-contaminated waste be given three options to follow in order to have the F032 code deleted. These were as follows: (1) Clean equipment; (2) replace equipment; or (e) document that previous cleaning and/or replacement occurred after termination of use of chlorophenolic formulations (55 FR 50457). The way § 261.35 was promulgated, these three options are not clearly set forth. Consequently, § 261.35 is being amended by revising paragraph (b) to clarify the Agency's intent. It is important to note that Method 8290, which is referenced in § 261.35 as the method to use in determining whether equipment is "clean," has not yet been approved and formally incorporated into SW-846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods. However, although it has not been so incorporated, Method 8290 is a valid method and it must be used for purposes of compliance with § 261.35. Method 8290 will be part of the Second Update to the Third Edition of SW-846, to be proposed later this summer.

3. The final rule amended § 262.34 by adding a new paragraph (a)(2) and renumbering paragraphs (a)(2) through (a)(4). The final rule did not amend paragraph (d)(4) of § 262.34, however, which requires compliance with paragraphs (a)(2) and fat (3) of that section. As a result, paragraph (d)(4) no longer refers to the correct paragraphs for compliance with container marking and container/tank labeling requirements. The January 31, 1991

Federal Register (56 FR 3877) amended § 262.34 paragraph (d)(4), but failed to correct the erroneous reference to paragraph (a)(2). For this reason, § 262.34 is amended today by redesignating paragraphs (a)(3) through (a)(5) as (a)(2) through (a)(4) and revising the language in paragraph (a)(1).

4. In the December 6, 1990 final rule, the definition of drip pad states that drip pads are designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system (40 CFR 260.10, 55 FR 50482). However, the applicability of the subpart W drip pad standards refers to facilities that use drip pads to convey treated wood drippage only. This was an error of omission on the part of the Agency. Precipitation and surface water run-on should also be included as materials that may be conveyed using a drip pad subject to subpart W standards, as drip pads are routinely and appropriately used to convey such waters. Therefore, the Agency is amending the applicability sections, 40 CFR 264.570 and 265.440, to include the terms "precipitation" and "surface water run-on." Surface water run-on includes wash waters that may be used for periodic cleaning of the drip pad.

5. Section 264.573, paragraph (b) begins "A drip pad must have:" The comparable language in part 265 (§ 265.443(b)) addresses new and existing drip pads separately and refers to the deadlines for upgrading pads. This language was inadvertently omitted from part 264. Consequently, § 264.573 is being amended to add this language.

6. Section 264.573(b)(2) contains a subsection (ii) that reads "Designed and operated to function without clogging through the scheduled closure of the drip pad." The corresponding language in Part 265 was inadvertently omitted. The Agency intended that both permitted and interim status drip pads be maintained with leakage detection systems that function without clogging. Therefore, § 265.443 is being amended to add this language.

7. Sections 264.573 and 265.443, paragraph (m), set out the procedures to be followed in the event an owner/operator detects a drip pad condition that requires repair. The current language refers to "a condition that could lead to or has caused a release of hazardous waste * * *" The Agency believes this language is overly broad, encompassing many non-threatening drip pad conditions, since almost any condition could eventually "lead to a release." The Agency did not intend for conditions that merely "could lead" to a release to trigger automatic repairs. Therefore, the language in paragraph (m) in these two sections is being amended to narrow the scope of drip pad conditions requiring action to those situations where the condition has caused or could have caused a release.

It was not the Agency's intent to require reporting to the Regional Administrator for each repair made to a drip pad. It is EPA's concern, however, that owner/operators of drip pads practice preventive maintenance in order to avoid releases of hazardous waste to the environment. If a condition has led to a release of hazardous waste, or there has been a release and a particular condition (e.g., cracks or deterioration) may have caused that release, notifying the RA of the condition and the steps taken to repair it will be required. However, if a condition that could potentially lead to a release in the future is detected (e.g., a hairline crack), no notification is necessary if that condition is not associated with any releases of hazardous waste. In such a case, however, the procedures in paragraph (m) for making repairs in a timely fashion are still applicable.

8. The Agency has been informed that the Subpart W operating standards have been interpreted to require weekly water washing of drip pads (existing § 264.572(i)). This was not EPA's intent. Rather, the Agency requires that a drip pad be cleaned in a manner and frequency sufficient to allow weekly inspections of the pad, as required under existing § 264.573(b). However, such cleaning need not involve water washing. For example, weekly sweeping is sufficient if the pad is clean enough to inspect. EPA also plans to revisit the issue of weekly cleaning in a proposed rule to be published in the near future.

Note: Existing section numbers were used in this discussion for ease of reference. Sections 264.572 and 264.573 will become §§ 264.573 and 264.574, respectively.

9. Some members of the regulated community are interpreting the standards for cleanup of drip pad leakage to require digging up the drip pad in all situations. This is not the case. Pursuant to § 264.573(m)(1)(iii), an owner/operator who detects a drip pad condition that may have caused or has caused a release of hazardous waste must determine how to repair the drip pad and clean up any leakage from below the pad. If the drip pad has a leakage collection system below the pad, or a drainage system leading to a sump, the owner/operator need not dig up the pad. EPA considers a leakage collection or drainage system to satisfy the requirement for cleanup beneath the pad. However, if the drip pad has no such system, or a leakage collection system fails, resulting in a release of hazardous waste to the environment, then the drip pad must be removed to the extent that underlying contamination can be cleaned up.

10. There is one final issue that requires clarification regarding the listings for wood preserving wastes promulgated on December 6, 1990. Concerns have been raised regarding the generation of waste at shutdown or abandoned wood preserving plants with respect to the new listings. For example, if a cleanup operation is conducted at a closed plant that used preservatives covered by the listings, and this cleanup takes place after the effective date of the listings, the preservative-contaminated soil and materials removed from the site would be regulated as hazardous wastes. Hazardous waste listings under RCRA apply to wastes whose management ceased prior to the effective date of the rule listing or identifying them as hazardous. This is because the material meets the listing description, or is derived from the listed waste, or is contained in environmental media. This does not mean that wastes that have been previously disposed must be exhumed for proper management once a rule listing them as hazardous is promulgated. However, if such wastes are being actively managed (e.g., excavated, stored) after the effective date of a rule identifying them as hazardous, they must be managed in accordance with all applicable listings and any other requirements under RCRA. (For a more detailed discussion of this issue, see the August 17, 1988 **Federal Register**, 53 FR 31148. The Agency's approach to this issue was upheld by the D.C. Circuit in *Chemical Waste Management* v. *EPA*, 869 F. 2d 1526 (D.C. Cir. 1989).)

In our example of a cleanup operation at a closed wood preserving plant, the soil and materials removed from the site would "contain" one or more listed hazardous wastes, and therefore, would be regulated as hazardous waste after the effective date of the listings. (See June 19, 1989 letter from EPA to the New York State Department of Environmental Conservation for a discussion of the "contained-in" policy.)

III. Issues Concerning the Applicability of Subpart W

There has been confusion in the regulated community over several issues concerning the applicability of the subpart W drip pad standards.

Clarifications of these issues are provided in this section. First, the final rule is unclear as to whether the subpart W drip pad standards apply to drip pads used to manage preservative drippage that exhibits a characteristic of hazardous waste, or if they apply only to drip pads managing drippage meeting the F032, F034, or F035 listing descriptions. If an owner/operator of a wood preserving plant is subject to subpart W (i.e., if he uses a drip pad to convey treated wood drippage, precipitation, and/or surface water run-on to an associated collection system), Subpart W applies, whether the material being conveyed exhibits a hazardous waste characteristic or meets a hazardous waste listing.

A drip pad is not to be used for the management of materials other than drippage, precipitation, or surface water run-on. For example, sludges or spent preservative other than drippage are not to be managed on drip pads. Wash waters applied by the owner/operator for cleaning of the drip pad do fall within the meaning of surface water run-on. Section 262.34 authorizes accumulation of hazardous waste for 90-days or less provided that the waste is placed on drip pads and the generator complies with Subpart W. Because the applicability of Subpart W is limited to drip pads managing treated wood drippage, precipitation, and/or surface water run-on (including wash waters), other types of hazardous waste may not be accumulated on drip pads for purposes of § 262.34. Accumulation in containers or tanks is possible for these other hazardous wastes.

Secondly, questions have been raised regarding the applicability of the subpart W standards to wood preserving plants that hold treated wood in the treatment cylinder until all drippage ceases. The subpart W requirements apply to owners and operators of facilities that use drip pads to convey treated wood drippage, precipitation, and/or surface water run-on to an associated collection system. Facilities that do not generate drippage in a process or kick-back area are not subject to subpart W.

Another issue regarding the applicability of subpart W involves wastewater treatment systems at wood preserving plants. Some members of the regulated community have interpreted the subpart W standards to require drip pads under wastewater treatment trains downstream of initial collection systems. This was not the Agency's intent. Again, subpart W applies to owners/operators of facilities that use drip pads to convey drippage, precipitation, and/or surface run-on to a collection system. "Drippage" is defined in the preamble to the final rule (55 FR 50452) as "excess preservative that is kicked back from the wood following treatment." It is at this point, in a process or "kick-back" area, where a subpart W drip pad is used.

IV. Renumbering of Sections in Part 264, Subpart W

In the December 6, 1990 final rule, the order of the sections in parts 264 and 265, subpart W does not correspond. The part 265 sections are ordered and numbered correctly. In part 264, the section entitled "Design and installation of new drip pads" should follow § 264.571—Assessment of existing drip pad integrity, as it does in part 265. However, this section on new drip pads was placed at the end of the subpart in part 264, in § 264.575. Today, the Agency is correcting this misplacement by redesignating § 264.575—Design and installation of new drip pads, as § 264.572. As a result, § 264.572 is redesignated as § 264.573; § 264.573 as § 264.574; and § 264.574 as § 264.575. By reordering the sections in part 264, the last numbers of the sections in both parts 264 and 265 will correspond, easing cross-reference between parts and providing a more logical order of regulatory requirements.

For the convenience of the reader, we have printed the entire renumbered part 264, subpart W below, with all the citations corrected to correspond with the renumbered sections. The reader is reminded to cross-reference this revised set of part 264 regulations when reading the preamble to the December 6 final rule, so as not to be confused by preamble references to the old section numbers.

V. Rationale for Immediate Effective Date

Today's notice does not create any new regulatory requirements; rather, it restates and clarifies existing requirements by correcting a number of errors in the December 6, 1990 final rule (55 FR 50450). For these reasons, EPA finds that good cause exists under section 3010(b)(3) of RCRA, 42 U.S.C. 9903(b)(3), to provide for an immediate effective date. In addition, there already was full opportunity to comment on all of these issues during the rulemaking, so that further comment is unnecessary. For the same reasons, EPA finds that there is good cause under 5 U.S.C. 553(b)(3)(B) to promulgate today's corrections in final form and that there is good cause under 5 U.S.C. 553(d)(3) to waive the requirement that regulations be published at least 30 days before they become effective. Finally, EPA notes that although it is not withdrawing any existing regulatory language, all of today's revisions operate prospectively.

VI. Regulatory Impact Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. Due to the nature of this regulation (technical correction), the amendment is not "major;" therefore, no Regulatory Impact Analysis is required.

VII. Paperwork Reduction Act

The information collection requirements in the December 6, 1990 final rule were submitted to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. OMB has reviewed the Information Collection Request and has approved the recordkeeping and reporting requirements in the final rule. The OMB authorization number for these requirements is 2050–0115.

List of Subjects

40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

40 CFR Part 262

Administrative practice and procedure, Hazardous materials, Reporting and recordkeeping.

40 CFR Part 264

Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal.

40 CFR Part 265

Air pollution control, Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal, Water supply.

40 CFR Part 270

Administrative practice and procedure, Air pollution control, Hazardous materials, Reporting requirements, Waste treatment and disposal, Water pollution control, Water supply, Confidential business information.

Dated: June 21, 1991.

Don R. Clay,

Assistant Administrator.

The following corrections are made in the preamble to FRL–3856–7, Identification and Listing of Hazardous Waste; Wood Preserving; Final Rule.

published in the **Federal Register** on December 6, 1990 (55 FR 50450).

1. On page 50450, in the **DATES SECTION**, change "§ 270.22 (a), (b), and (c)" to "§ 270.26 (a), (b), and (c)."

2. On page 50455, in the first column, change "§ 265.34" to "§ 262.34."

3. On page 50455, in the third column, second full paragraph, change the sentence "Drip pads must have run-on and run-off control to prevent contamination or surface water * * *" to read "Drip pads must have run-on and run-off control to prevent contamination of surface water * * *"

4. On page 50460, third column, third full paragraph, change "§ 261.4(c)(2)(i)" to "§ 261.4(a)(9)."

The following corrections are made to the rules in FRL–3856–7, Identification and Listing of Hazardous Waste; Wood Preserving; final rule, published in the **Federal Register** on December 6, 1990 (55 FR 50450).

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

5. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, and 6939.

6. Section 261.4, paragraph (a)(9) is revised to read as follows:

§ 261.4 Exclusions.

(a) * * *

(9)(i) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

(ii) wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.

* * * * *

7. Section 261.35 is amended by revising paragraph (b) to read as follows:

§ 261.35 Deletion of certain hazardous waste codes following equipment cleaning and replacement.

* * * * *

(b) Generators must either clean or replace all process equipment that may have come into contact with chlorophenolic formulations or constituents thereof, including, but not limited to, treatment cylinders, sumps, tanks, piping systems, drip pads, fork lifts, and trams, in a manner that minimizes or eliminates the escape of hazardous waste or constituents, leachate, contaminated drippage, or hazardous waste decomposition products to the ground water, surface water, or atmosphere.

(1) Generators shall do one of the following:

(i) Prepare and follow an equipment cleaning plan and clean equipment in accordance with this section;

(ii) Prepare and follow an equipment replacement plan and replace equipment in accordance with this section; or

(iii) Document cleaning and replacement in accordance with this section, carried out after termination of use of chlorophenolic preservations.

(2) Cleaning Requirements.

(i) Prepare and sign a written equipment cleaning plan that describes:

(A) The equipment to be cleaned;

(B) How the equipment will be cleaned;

(C) The solvent to be used in cleaning;

(D) How solvent rinses will be tested; and

(E) How cleaning residues will be disposed.

(ii) Equipment must be cleaned as follows:

(A) Remove all visible residues from process equipment;

(B) Rinse process equipment with an appropriate solvent until dioxins and dibenzofurans are not detected in the final solvent rinse.

(iii) Analytical requirements.

(A) Rinses must be tested in accordance with SW–846, Method 8290.

(B) "Not detected" means at or below the lower method calibration limit (MCL) in Method 8290, Table 1.

(iv) The generator must manage all residues from the cleaning process as F032 waste.

(3) Replacement requirements.

(i) Prepare and sign a written equipment replacement plan that describes:

(A) The equipment to be replaced;

(B) How the equipment will be replaced; and

(C) How the equipment will be disposed.

(ii) The generator must manage the discarded equipment as F032 waste.

(4) Documentation requirements.

(i) Document that previous equipment cleaning and/or replacement was performed in accordance with this section and occurred after cessation of use of chlorophenolic preservatives.

* * * * *

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

8. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922, 6923, 6924, 6925, and 6937.

9. Section 262.34 is amended by redesignating paragraphs (a)(3) through (a)(5) as (a)(2) through (a)(4) and revising paragraph (a)(1) to read as follows:

§ 262.34 Accumulation time.

(a) Except as provided in paragraphs (d), (e), and (f) of this section, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that:

(1) The waste is placed:

(i) in containers and the generator complies with subpart I of 40 CFR part 265; and/or

(ii) In tanks and the generator complies with subpart J of 40 CFR part 265, except § 265.197(c) and § 265.200; and/or

(iii) On drip pads and the generator complies with subpart W of 40 CFR part 265 and maintains the following records at the facility;

(A) A description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and

(B) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.

In addition, such a generator is exempt from all requirements in subparts G and H of 40 CFR part 265, except for § 265.111 and § 265.114.

(2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(3) While being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste"; and

(4) The generator complies with the requirements for owners or operators in Subparts C and D in 40 CFR Part 265, with § 265.16, and with 40 CFR 268.7(a)(4).

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

10. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

11. Part 264 is amended by revising subpart W to read as follows:

Subpart W—Drip Pads

Sec.

Subpart W—Drip Pads

264.570 Applicability.

(a) The requirements of this subpart apply to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation, and/or surface water run-on to an associated collection system. Existing drip pads are those constructed before December 6, 1990 and those for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 6, 1990. All other drip pads are new drip pads.

(b) The owner or operator of any drip pad that is inside or under a structure that provides protection from precipitation so that neither run-off nor run-on is generated is not subject to regulation under § 264.573(e) or § 264.573(f), as appropriate.

§ 264.571 Assessment of existing drip pad integrity.

(a) For each existing drip pad as defined in § 264.570 of this subpart, the owner or operator must evaluate the drip pad and determine that it meets all of the requirements of this subpart, except the requirements for liners and leak detection systems of § 264.573(b). No later than the effective date of this rule, the owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an independent, qualified registered professional engineer that attests to the results of the evaluation. The assessment must be reviewed, updated and re-certified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all of the standards of § 264.573 of this subpart are complete. The evaluation must document the extent to which the drip pad meets each of the design and operating standards of § 264.573 of this subpart, except the standards for liners and leak detection systems, specified in § 264.573(b) of this subpart, and must document the age of the drip pad to the extent possible, to document compliance with paragraph (b) of this section.

(b) The owner or operator must develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of § 264.573(b) of this subpart, and submit the plan to the Regional Administrator no later than 2 years before the date that all repairs, upgrades, and modifications will be complete. This written plan must describe all changes to be made to the drip pad insufficient detail to document compliance with all the requirements of § 263.573 of this subpart and must document the age of the drip pad to the extent possible. The plan must be reviewed and certified by an independent qualified registered professional engineer. All upgrades, repairs, and modifications must be completed in accordance with the following:

(1) For existing drip pads of known and documentable age, all upgrades, repairs, and modifications must be completed within two years of the effective date of this rule, or when the drip has reached 15 years of age, whichever comes later.

(2) For existing drip pads for which the age cannot be documented, within 8 years of the effective date of this rule, but if the age of the facility is greater than 7 years, all upgrades, repairs and modifications must be completed by the time the facility reaches 15 years of age or by two years after the effective date of this rule, whichever comes later.

(3) If the owner or operator believes that the drip pad will continue to meet all of the requirements of § 264.573 of this subpart after the date upon which all upgrades, repairs and modifications must be completed as established under paragraphs (b)(1) and (2) of this section, the owner or operator may petition the Regional Administrator for an extension of the deadline specified in paragraph (b)(1) or (2) of this section. The Regional Administrator will grant the petition for extension based on a finding that the drip pad meets all of the requirements of § 264.573, except for those for liners and lead detection systems specified in § 264.573(b), and that it will continue to be protective of human health and the environment.

(c) Upon completion of all upgrades, repairs, and modifications, the owner or operator must submit to the Regional Administrator or State Director, the as-built drawings for the drip pad together with a certification by an independent qualified registered professional engineer attesting that the drip pad conforms to the drawings.

(d) If the drip pad is found to be leaking or unfit for use, the owner or operator must comply with the provisions of § 264.573 (m) of this subpart or close the drip pad in accordance with § 264.575 of this subpart.

§ 264.572 Design and installation of new drip pads.

Owners and operators of drip pads must ensure that the pads are designed, installed, and operated in accordance with all of the applicable requirements of §§ 264.573, 264.574 and 264.575 of this subpart.

§ 264.573 Design and operating requirements.

(a) Drip pads must: (1) Be constructed of non-earthern materials, excluding wood and non-structurally supported asphalt:

(2) Be sloped to free-drain treated wood drippage, rain and other waters, or solutions of drippage and water or other wastes to the associated collection system;

(3) Have a curb or berm around the perimeter;

(4) Be impermeable, e.g., concrete pads must be sealed, coated, or covered with an impermeable material such that the entire surface where drippage occurs or may run across is capable of containing such drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system; and

(5) Be of sufficient structural strength and thickness to prevent failure due to physical contact, climatic conditions, the stress of daily perations, e.g., variable and moving loads such as vehicle traffic, movement of wood, etc.

Note: EPA will generally consider applicable standards established by professional organizations generally recognized by the industry such as the American Concrete Institute (ACI) or the American Society of Testing and Materials (ASTM) in judging the structural integrity requirement of this paragraph.

(b) A new drip pad or an existing drip pad, after the deadline established in § 264.571(b) of this subpart, must have:

(1) A synthetic liner installed below the drip pad that is designed, constructed, and installed to prevent leakage from the drip pad into the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the drip pad. The liner must be constructed of materials that will prevent waste from being absorbed into the liner and to prevent releases into the adjacent subsurface soil or groundwater or surface water during the active life of the facility. The liner must be:

(i) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or drip pad leakage to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation (including stresses from vehicular traffic on the drip pad);

(ii) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression or uplift; and

(iii) Installed to cover all surrounding earth that could come in contact with the waste or leakage; and

(2) A leakage detection system immediately above the liner that is designed, constructed, maintained and operated to detect leakage from the drip pad. The leakage detection system must be:

(i) Constructed of materials that are:

(A) Chemically resistant to the waste managed in the drip pad and the leakage that might be generated; and

(B) Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying materials and by any equipment used at the drip pad;

(ii) Designed and operated to function without clogging through the scheduled closure of the drip pad; and

(iii) Designed so that it will detect the failure of the drip pad or the presence of a release of hazardous waste or accumulated liquid at the earliest practicable time.

(c) Drip pads must be maintained such that they remain free of cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the drip pad.

Note: See § 264.573(m) for remedial action required if deterioration or leakage is detected.

(d) The drip pad and associated collection system must be designed and operated to convey, drain, and collect liquid resulting from drippage or precipitation in order to prevent run-off.

(e) Unless protected by a structure, as described in § 264.570(b) of this subpart, the owner or operator must design, construct, operate and maintain a run-on control system capable of preventing flow onto the drip pad during peak discharge from at least a 24-hour, 25-year storm, unless the system has sufficient excess capacity to contain any run-off that might enter the system.

(f) Unless protected by a structure or cover as described in § 264.570(b) of this subpart, the owner or operator must design, construct, operate and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(g) The drip pad must be evaluated to determine that it meets the requirements of paragraphs (a) through (f) of this section and the owner or operator must obtain a statement from an independent, qualified registered professional engineer certifying that the drip pad design meets the requirements of this section.

(h) Drippage and accumulated precipitation must be removed from the associated collection system as necessary to prevent overflow onto the drip pad.

(i) The drip pad surface must be cleaned thoroughly at least once every seven days such that accumulated residues of hazardous waste or other materials are removed, using an appropriate and effective cleaning technique, including but not limited to, rinsing, washing with detergents or other appropriate solvents, or steam cleaning. The owner or operator must document the date and time of each cleaning and the cleaning procedure used in the facility's operating log.

(j) Drip pads must be operated and maintained in a manner to minimize tracking of hazardous waste or hazardous waste constituents off the drip pad as a result of activities by personnel or equipment.

(k) After being removed from the treatment vessel, treated wood from pressure and non-pressure processes must be held on the drip pad until drippage has ceased. The owner or operator must maintain records sufficient to document that all treated wood is held on the pad following treatment in accordance with this requirement.

(l) Collection and holding units associated with run-on and run-off control systems must be emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system.

(m) Throughout the active life of the drip pad and as specified in the permit, if the owner or operator detects a condition that may have caused or has caused a release of hazardous waste, the condition must be repaired within a reasonably prompt period of time following discovery, in accordance with the following procedures:

(1) Upon detection of a condition that may have caused or has caused a release of hazardous waste (e.g., upon detection of leakage in the leak detection system), the owner or operator must:

(i) Enter a record of the discovery in the facility operating log;

(ii) Immediately remove the portion of the drip pad affected by the condition from service;

(iii) Determine what steps must be taken to repair the drip pad and clean up any leakage from below the drip pad, and establish a schedule for accomplishing the repairs;

(iv) Within 24 hours after discovery of the condition, notify the Regional Administrator of the condition and, within 10 working days, provide written notice to the Regional Administrator with a description of the steps that will be taken to repair the drip pad and clean up any leakage, and the schedule for accomplishing this work.

(2) The Regional Administrator will review the information submitted, make a determination regarding whether the pad must be removed from service completely or partially until repairs and clean up are complete and notify the owner or operator of the determination and the underlying rationale in writing.

(3) Upon completing all repairs and clean up, the owner or operator must notify the Regional Administrator in writing and provide a certification signed by an independent, qualified registered professional engineer, that the repairs and clean up have been completed according to the written plan submitted in accordance with paragraph (m)(1)(iv) of this section.

(n) Should a permit be necessary, the Regional Administrator will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

(o) The owner or operator must maintain, as part of the facility operating log, documentation of past operating and waste handling practices. This must include identification of preservative formulations used in the past, a description of drippage management practices, and a description of treated wood storage and handling practices.

§ 264.574 Inspections.

(a) During construction or installation, liners and cover systems (e.g., membranes, sheets, or coatings) must be inspected for uniformity, damage and imperfections (e.g., holes, cracks, thin spots, or foreign materials). Immediately after construction or installation, liners must be inspected and certified as meeting the requirements of § 264.573 of this subpart by an independent qualified, registered professional engineer. This certification must be maintained at the facility as part of the facility operating record. After installation, liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

(b) While a drip pad is in operation, it must be inspected weekly and after storms to detect evidence of any of the following:

(1) Deterioration, malfunctions or improper operation of run-on and run-off control systems;

(2) The presence of leakage in and proper functioning of leak detection system.

(3) Deterioration or cracking of the drip pad surface.

Note: See § 264.573(m) for remedial action required if deterioration or leakage is detected.

§ 264.575 Closure.

(a) At closure, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (pad, liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leakage, and manage them as hazardous waste.

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in paragraph (a) of this section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he must close the facility and perform post-closure care in accordance with closure and post-closure care requirements that apply to landfills (§ 264.310). For permitted units, the requirement to have a permit continues throughout the post-closure period. In addition, for the purpose of closure, post-closure, and financial responsibility, such a drip pad is then considered to be landfill, and the owner or operator must meet all of the requirements for landfills specified in subparts G and H of this part.

(c)(1) The owner or operator of an existing drip pad, as defined in § 264.570 of this subpart, that does not comply with the liner requirements of § 264.573(b)(1) must:

(i) Include in the closure plan for the drip pad under § 264.112 both a plan for complying with paragraph (a) of this section and a contingent plan for complying with paragraph (b) of this section in case not all contaminated subsoils can be practicably removed at closure; and

(ii) Prepare a contingent post-closure plan under § 264.118 of this part for complying with paragraph (b) of this section in case not all contaminated subsoils can be practicably removed at closure.

(2) The cost estimates calculated under §§ 264.112 and 264.144 of this part for closure and post-closure care of a drip pad subject to this paragraph must include the cost of complying with the contingent closure plan and the contingent post-closure plan, but are not required to include the cost of expected closure under paragraph (a) of this section.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

12. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

13. Section 265.440 is amended by revising paragraph (a) to read as follows:

§ 265.440 Applicability.

(a) The requirements of this subpart apply to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation, and/or surface water run-on to an associated collection system. Existing drip pads are those constructed before December 6, 1990, and those for which the owner or operator has generated a design and has entered into binding financial or other agreements for construction prior to December 6, 1990. All other drip pads are new drip pads.

* * * * *

14. Section 265.443 is amended by redesignating paragraph (b)(2)(ii) as paragraph (b)(2)(iii), and adding paragraph (b)(2)(ii), to read as follows:

§ 265.443 Design and operating requirements.

* * * * *

(b) * * *

(2) * * *

(ii) Designed and operated to function without clogging through the scheduled closure of the drip pad.

* * * * *

15. Section 265.443 is amended by revising paragraphs (m) introductory text, and (m)(1) introductory text to read as follows:

§ 265.443 Design and operating requirements.

* * * * *

(m) Throughout the active life of the drip pad, if the owner or operator detects a condition that may have caused or has caused a release of hazardous waste, the condition must be repaired within a reasonably prompt period of time following discovery, in accordance with the following procedures:

(1) Upon detection of a condition that may have caused or has caused a release of hazardous waste (e.g., upon detection of leakage by the leak detection system), the owner or operator must:

* * * * *

16. Section 265.443(m)(3) is amended by revising the reference "(m)(3)" to read "(m)(1)(iv)".

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

17. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6925, 6927, 6939, and 6974.

§ 270.22 [Redesignated as § 270.26]

18. Section 270.22 added on 12–6–90 at 56 FR 50450 is redesignated as § 270.26; the heading is revised to read "Special Part B Information Requirements for Drip Pads"; in paragraph (c) of redesignated § 270.26, revise "§ 264.572" to read "§ 264.573"; in paragraph (c)(14), revise "§ 264.572" to read "§ 264.573"; in paragraph (c)(15), revise "§ 264.571" to read "§ 264.573"; and in paragraph (c)(16), revise "§ 264.573(a)" to read "§ 264.575(a)".

[FR Doc. 91-15340 Filed 6-28-91; 8:45 am]
BILLING CODE 6560-50-M