be the only way to resist the load, it is not clear that diagonal ties would not be required at each vertical tie location along the mating line of multi section homes. This requirement needs further clarification.

Answer: Diagonal ties need not be provided at each vertical over-the-roof tie location along the marriage line of multiple section homes, if all design wind forces can be transferred across the mating line by the over-the-roof ties and site connections between the units specified in the manufacturer's instructions. Additional information on this subject is provided in our response to Question 26.

21. 24 CFR 3280.305(e)(2) —A new prescriptive requirement for steel strapping for brackets to fasten walls to floors or roof trusses, shall have a maximum spacing of 24 inches on center for Wind Zones II and 16 inches on center for Wind Zone III. From a practical standpoint, the fasteners generally must be placed over studs. Where trusses are not aligned over studs, please confirm that stud-to-truss connections do not have to be direct, provided that indirect load transfers are substantiated.

Answer: Trusses in homes designed for Wind Zones II and III must be aligned over studs for direct connection of the 26 gage metal strapping or brackets required by this section. Trusses may not be offset from studs except where they are added to provide reinforcement or as otherwise required by the design.

22. 24 CFR 3280.305(e)(2)—We want to advise you that since nails will be driven mechanically through the 26-gage straps, their rejection may result in severe injuries to the operator. Therefore, we may have to pre-drill holes through straps and ⅜" sheathing and hand drive fasteners, or use a stronger gun and bigger fasteners.

Answer: It would appear that it may be necessary to pre-drill holes or use larger sized guns or thicker fastener gages to penetrate the 26 gage strapping materials.

23. 24 CFR 3280.306(f)—Revised section 24 CFR 3280.306(d) requires manufactured homes designed for Wind Zones II and III have a supplemental vertical tie installed at each diagonal tie location. A written interpretation is needed to confirm the following:

A. The connection of the vertical strap to the home should be designed for the vertical component of the manufacturer's calculated diagonal tie load (which corresponds with its anchorage instructions). The connection to the home is not required to be designed for 3,150 pounds (4725 pounds ultimate). The vertical strap design on "Table" D2 of HUD's Regulatory Impact Analysis (RIA) agrees with this assumption. 10—#8 screws per strap calculates to approximately 1,500 pounds per vertical tie.

Answer: Connections of vertical ties to wall framing members need not be designed for the 3,150# working load requirements of the tie itself provided the fastening system and the member to which it is attached are capable of resisting the calculated design load imposed on the vertical tie.

B: The connection of the vertical strap may be located at the I-Beam, provided that the floor-to-frame connection is substantiated. In some designs this may be the preferred location (e.g. 5′ o.c. diagonal tie spacing with a 6′ patio door at sidewall).

Answer: Vertical ties may be provided under the main chassis beams provided the design has considered the transfer of all loads assuming the vertical tie to be positioned under the I beam.

24. 24 CFR 3280.306(f)—Since the Department will now require a vertical tie at each diagonal tie for Wind Zones II and III, how does HUD envision that ties will be properly secured to wall members so that the attachment point on the manufactured home is capable of resisting the tie allowable working load of 4,725 pounds?

Answer: Vertical ties can be installed as continuous ties or connected to wall framing members by mechanical fasteners. Additional information on this subject is provided in our response to Question 23.

25. 24 C.F.R. 3280.306(c)(2), (d) and (f)—Taken together 24 CFR 3280.306(c)(2), (d) and (f) could mean that HUD staff anticipates over-the-roof straps at each diagonal tie. If so, what is the purpose of 26-gauge uplift straps and stronger trusses?

Answer: Vertical ties are required to be positioned at each diagonal tie for gross stability against overturning. The ties between the roof and sidewall are required to resist the high localized uplift forces and to prevent roof system failures and separation from the wall system.

26. 24 CFR 3280.306 (f) —Please also confirm that a diagonal tie is not required at each vertical tie, both on the perimeter and along the marriage wall.

Answer: For anchoring systems used with multiple section units, vertical and diagonal ties may not be required at the marriage wall provided all wind forces can be designed to be transferred across the mating line without their use. However, diagonal and vertical ties are mandatory at the perimeter or exterior sidewall.

27. 24 CFR 3280.306 (f)—We would also like permission to fasten a vertical tie at the I-beam, provided that the floor-to-frame connection is substantiated.

Answer: Vertical ties may be provided under the main chassis beams provided the design has considered the transfer of all loads assuming the vertical tie to be positioned under the I beam.

28. 24 CFR 3280.403(f), 404(f) and 405(f): The manufacturer is to specify at least one method of protecting exterior openings, without taking the home out of conformance with the standards. How does the Department envision that a manufacturer might take the home out of conformance with the standards when it designs exterior walls surrounding exterior openings to allow for the installation of shutters or protective covers?

Answer: One example of how a home could be taken out of conformance with the Standards is to reduce the capacity of wall framing members due to excessive fastening patterns or large holes needed to install the shutters or protective covers.

Dated: April 15, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94–9689 Filed 4–18–94; 3:36 pm]

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Part V

Department of Housing and Urban Development

Office of the Secretary

NOFA for Lead-Based Paint Hazard Control in Priority Housing; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary—Office of Lead-Based Paint Abatement and Poisoning Prevention

[Docket No. N-94-3735; FR-3643-N-01]

NOFA for Lead-Based Paint Hazard Control in Priority Housing

AGENCY: Office of the Secretary—Office of Lead-Based Paint Abatement and Poisoning Prevention, HUD.

ACTION: Notice of funding availability.

SUMMARY: This notice announces the availability of funding of $142 million for a grant program for States and local governments to undertake lead-based paint hazard control in priority housing. Approximately 25–30 grants of $1 million–$6 million each will be awarded in FY 1994. The grant sum requested by applicants must be based on the total for all years of the proposed project. This document includes information concerning the following:

(1) The purpose of the NOFA, eligibility, available amounts, and selection criteria;

(2) Application processing, including how to apply and how selections will be made; and

(3) A checklist of steps and exhibits involved in the application process.

Appendices to the NOFA identify relevant regulations and guidelines referenced throughout the NOFA, define "administrative costs", provide a sample diagram for showing an applicant's sources and uses of the grant funds, set forth requirements for a State certification program, list eligible HUD housing programs, provide requirements for the Comprehensive Housing Affordability Strategy (CHAS), and set out a relevant statutory provision. (Note: Responsibility for Category II grants as described in the previous NOFA has been transferred to the Environmental Protection Agency.)

DATES: An original and two copies of the completed application must be submitted no later than 3:00 P.M. (Eastern Time) on July 5, 1994. The application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after its deadline. Applicants should take this factor into account and make early submission of their materials to avoid loss of eligibility brought about by unanticipated delays or other delivery-related problems. Section 5 of this NOFA provides further information on what constitutes proper submission of an application.

ADDRESSES: Application kits may be obtained from the Office of Lead-Based Paint Abatement and Poisoning Prevention, Department of Housing and Urban Development, room B-133, 451 Seventh Street, SW., Washington, DC 20410, or by phoning 1-800-RID-LEAD (1-800-743-5323). Completed applications should be submitted to this same address, and may not be faxed.

FOR FURTHER INFORMATION CONTACT: Ellis G. Goldman, Director, Program Management Division, Office of Lead-Based Paint Abatement and Poisoning Prevention, room B-133, 451 Seventh Street, SW., Washington, DC 20410, telephone 1-800-RID-LEAD (1-800-743-5323). TDD numbers for the hearing-impaired are: (202) 708-9300 (not a toll-free number), or 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

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Section 1. Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB), under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and assigned OMB control number 2539-0005.

Section 2. Definitions

The following definitions apply to this grant program:

Abatement—Any set of measures designed to eliminate lead-based paint hazards permanently in accordance with standards established by appropriate Federal agencies. The term includes:

(1) The removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-based painted surfaces or fixtures, and the removal or covering of lead contaminated soil; and

(2) All preparation, cleanup, worker protection, disposal, and post-abatement clearance testing activities associated with such measures.

Administrative Costs—(See Appendix B of this NOFA for a detailed definition.)

Applicant—A State or a unit of general local government with an approved Comprehensive Housing Affordability Strategy (CHAS) that applies for funding under this NOFA.

Certified Contractor—A contractor, inspector, or supervisor who has successfully completed a training program certified by the appropriate Federal agency and has met any other requirements for certification or licensure established by such agency or who has been certified by any State through a program which has been found by such Federal agency to be at least as rigorous as the Federal certification program outlined in Appendix E. All lead-hazard detection or reduction work shall be performed by workers and supervisors who have passed a Federal training program or a State training program found by such Federal agency to be at least as rigorous as the Federal program.

Certified Inspector—Included in the definition of "certified contractor," above.

Clearance Testing—A HUD-required testing procedure that must be passed before a dwelling unit may be reoccupied. The unit must undergo a wipe test showing that it has lead dust levels below HUD's maximum allowable standards for floors (200 μg/sq. ft.

(micrograms/square foot)), window sills (500 µg/sq. ft.), and window wells (800 µg/sq ft.).

Encapsulation—A method of abatement that involves the coating and sealing of surfaces with durable, surface coatings specifically formulated to be elastic, able to withstand sharp and blunt impacts, long-lasting, and resilient, while also resistant to cracking, peeling, algae, fungus, and ultraviolet light, so as to prevent any part of lead-containing paint from becoming part of house dust or otherwise accessible to children. Paint is not an encapsulant.

Enclosure—The resurfacing or covering of surfaces with durable materials such as gypsum board or paneling, and sealing or caulking the edges and joints so as to prevent or control chalking, flaking, peeling, scaling, or loose lead-containing substances from becoming part of house dust or otherwise accessible to children.

Federally Assisted Housing—Residential dwellings receiving project-based assistance under programs including:

(1) Section 221(d)(3) or section 236 of the National Housing Act;

(2) Section 1 of the Housing and Urban Development Act of 1965;

(3) Section 8 of the United States Housing Act of 1937; or

(4) Sections 502(a), 504, 514, 515, 516, and 533 of the Housing Act of 1949.

Hazardous Waste—Liquid or solid waste, or combination of solid wastes, which because of its quantity; concentration; or physical, chemical, or infectious characteristics may:

(1) Cause, or significantly contribute to, an increase in mortality or in serious, irreversible, or incapacitating illness; or

(2) Pose a substantial current or potential hazard to human health or the environment, when improperly treated, stored, transported, disposed of, or otherwise managed.

HEPA—(High efficiency particulate accumulator)—A vacuum cleaner fitted with a filter capable of filtering out particles of 0.3 microns or greater from a body of air at 99.97 percent efficiency or more.

Interim Controls—A set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

Interim Guidelines—HUD's manual of lead-hazard control practices: "Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing," published 55 FR 14556 (April 18, 1990), and revised 55 FR 39874 (September 28, 1990) and 56 FR 21556 (May 9, 1991).

Laboratory Accreditation—A laboratory that has been approved by a State or other accrediting agency to perform analyses of lead in paint and dust and whose approval is consistent with any criteria established by the Environmental Protection Agency.

Lead-Based Paint Hazard—Any condition that causes exposure to lead from:

(1) Lead-contaminated dust;

(2) Lead-contaminated soil;

(3) Lead-based paint that is deteriorated;

(4) Lead-based paint present in accessible protruding surfaces that can be chewed or mouthed by children under six;

(5) Lead-based paint present in friction surfaces; or

(6) Lead-based paint present in impact surfaces, such that the exposure would result in adverse human health effects as established by the Environmental Protection Agency.

Lead-Contaminated Soil—Bare soil on residential real property that contains lead at or in excess of the level determined to be hazardous to human health by the appropriate Federal agency.

Lead-in-dust—Interior house surface dust that contains an area concentration of lead that may pose a threat of adverse health effects in pregnant women or young children. A hazard exists if concentrations exceed the maximum acceptable standards: 200 µg/sq. ft. on floors, 500 µg/sq. ft. on window sills, and 800 µg/sq. ft. on window wells.

Priority Housing—Target housing that qualifies as affordable housing under section 215 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12745). (See Appendix D for a list of HUD's programs and their eligibility or ineligibility as priority housing.) The term does not include any public housing (whether Federal or locally supported), any federally owned housing, or any federally assisted housing except tenant-based housing that receives assistance under sections 8(b) or 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(b) or (o)).

Replacement—A strategy of abatement that removes components such as windows, doors, and trim that have lead-based painted surfaces, and installs new or de-leaded components free of lead-based paint.

Residential Dwelling—This term means either:

(1) A single-family dwelling, including attached structures, such as porches and stoops; or

(2) A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each unit is, or is intended to be, used or occupied, in whole or in part, as the home or residence of one or more persons.

Risk Assessment—An on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings, including:

(1) Information gathering regarding the age and history of the housing and occupancy by children under age 6;

(2) Visual inspection;

(3) Limited wipe sampling or other environmental sampling techniques;

(4) Other activity as may be appropriate; and

(5) Provision of a report explaining the results of the investigation.

State Certification Program—(See Appendix E for extended discussion.)

Substrate—The material to which a coating such as paint is applied. Residential substrates are usually wood, plaster, masonry, gypsum board, or metal, including components such as doors and door frames, windows and window trim, other trim, walls, ceilings, cabinets, and other built-in storage.

Surface—The outer or topmost boundary of a substrate.

Target Housing—Any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in the housing for the elderly or persons with disabilities) or any 0-bedroom dwelling. In the case of jurisdictions that banned the sale or use of lead-based paint prior to 1978, the Secretary, at the Secretary's discretion, may designate an earlier date.

Testing—The measurement of lead in painted surfaces by Federal- or State-certified personnel using a portable X-ray fluorescence analyzer, laboratory analysis of paint samples, or other method approved by HUD.

Title X—The Residential Lead-Based Hazard Reduction Act of 1992 (title X of Pub. L. 102–550, approved October 28, 1992).

Trained Worker—A worker who has successfully completed a Federal or State-accredited lead-based paint training program that is at least as protective as the Federal Certification Program Standards outlined in Appendix E.

Wipe Test—The testing of a surface for the presence of lead dust by the patterned wiping of the surface, followed by analysis of the wipe by atomic absorption spectroscopy, giving the result in micrograms of lead per square foot of surface. For clearance purposes, a sample of floors, window sills and window wells shall be tested in accordance with HUD's Interim Guidelines. The guidelines also require that for clearance all surfaces shall have less than the maximum allowable concentration standard of 200 µg/sq.ft on floors, 500 µg/sq.ft on window sills, and 800 µg/sq.ft on window wells. Also see the definition for "Clearance Testing."

XRF Analyzer—A portable instrument that determines lead concentration in milligrams per square centimeter (mg/cm2) using the principle of x-ray fluorescence. The instrument may measure mean lead content or lead content plus a spectrum of other elements. The instrument shall be used in accordance with the rules for interpretation of the XRF sampling data for multifamily or scattered-site housing, as provided in the HUD Interim Guidelines.

Section 3. Purpose and Description

3.1 Purpose and Authority

Hazard-control grants are to assist States and local governments in undertaking programs for the evaluation and reduction of lead-based paint hazards in priority housing for rental occupants and owner occupants. (Appendix D lists HUD-associated housing programs that may have dwellings that meet the definition of priority housing.) One-hundred forty-two million dollars ($142 million) will be available to fund 25–30 grants of $1 million to $6 million, each. The amounts are for the total, multiyear work of a proposed project. Grants are authorized under section 1011(a-f) of Title X.

The purposes of this program include: (a) Implementation of a national strategy, as defined in Title X, to build the infrastructure necessary to eliminate lead-based paint hazards in all housing, as widely and expeditiously as possible;

(b) Encouragement of effective action to prevent childhood lead poisoning by establishing a workable framework for lead-based paint hazard evaluation and reduction;

(c) Expeditious mobilization of national resources, involving cooperation among all levels of government and the private sector, to develop the most promising, cost-effective methods for evaluating and reducing lead-based paint hazards; and

(d) Promoting job training, employment, and other economic lift opportunities for lower income residents of the project neighborhoods.

3.2 Background

Lead is a powerful toxicant that attacks the central nervous system and is particularly damaging to the neurological development of young children. Pregnant women can transfer lead through the placenta to the fetus. Lead-based paint (LBP) is one of the major sources of lead in the environment. In addition to paint, lead may be found in dust, soil, drinking water, food, emissions from leaded gasoline combustion, and industrial emissions. Human exposure to lead is found by testing blood for the presence of lead.

Based upon a national survey conducted in 1990 for HUD's *Comprehensive and Workable Plan for the Abatement of Lead-Based Paint in Privately Owned Housing* report (see Appendix A), approximately 57 million privately owned and occupied housing units built before 1980 have some lead-based paint inside or outside the dwelling. The 57 million units represent just over half of the nation's existing housing stock, and 74 percent of the dwellings built before 1980. The figures for dwellings having lead-based paint rise to 80 percent of dwellings built before 1960, and to 90 percent of those built before 1940. In addition, the older homes show both a greater concentration of lead in the paint and more areas with lead-based paint.

An estimated 9.9 million of the 57 million units are occupied by families with children under the age of six, who are most at risk. Of these, about 3.8 million units have hazards requiring prompt attention, such as peeling lead-based paint, excessive amounts of lead dust, or both. Approximately half of these units are occupied by families with incomes lower than the national median.

HUD has been actively engaged in a number of activities relating to lead-based paint as a result of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4801–4846 (LBPPPA). The recently enacted Title X provides major new initiatives and more detailed requirements for this NOFA. (Appendix A identifies relevant Federal regulations and guidelines referred to in this NOFA.)

The *Comprehensive and Workable Plan* described the magnitude of the problem of lead hazards in private housing and set forth a comprehensive strategy for reducing this threat. Also in 1990, HUD developed the first set of guidelines to be used nationally for abating lead paint in public housing (see Interim Guidelines, Appendix A). The guidelines are now being used in the Department's public housing modernization program, and an update to account for new knowledge and technology is underway.

In April 1989, HUD and the Environmental Protection Agency (EPA) executed a Memorandum of Understanding (MOU) on Lead-Based Paint. This MOU has become the basis for interagency cooperation, including a HUD–EPA Interagency Task Force on Lead-Based Paint. As another result of interagency cooperation, EPA, with assistance from HUD and the Centers for Disease Control (CDC), operates a National Clearinghouse and Tollfree Hotline on lead poisoning 1–800–LEADFYI (1–800–532–3394).

3.3 Allocation Amounts

(a) *Amounts.* Under the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1994 (Pub. L. 103–124 approved October 28, 1993) (Appropriations Act), $150 million was appropriated for this program, including small set-asides for research and development.

(b) *Residual Funds.* In the selection process, once available funds have been allocated to meet the full requested amounts of the top eligible applicants, HUD reserves the right, successively, to offer any residual amount as partial funding to the next eligible applicant. Such applicant(s) shall have not more than 48 hours to accept, or to decline and reapply in the next round, provided HUD, in its sole judgment, is satisfied that the residual amount is sufficient to support a creditable, though reduced effort by such applicant(s).

(c) *Geographic Diversity.* Because lead-based paint is a national problem, it is critical that these funds be used in a manner that maximizes the number of housing units in which lead-hazard control occurs, that stimulates cost-effective State and local approaches that can be replicated in as many settings as possible, and that disperses the grants as widely as possible across the nation. HUD expects to award 25 to 30 grants of $1 million to $6 million each. Grantees shall be reimbursed, in accordance with a schedule to be included with the applicant's proposal and approved by HUD.

3.4 Eligibility

Title X specifies the following eligibility requirements for grants to evaluate and reduce lead-based paint hazards in priority housing:

(a) *Eligible Applicants.* A State or unit of local government that has an approved Comprehensive Housing Affordability Strategy (CHAS) under section 105 (42 U.S.C. 12705) of the Cranston-Gonzalez National Affordable Housing Act (NAHA) is eligible to apply for a grant. (See Appendix F) However, applicants are advised that in selecting grantees under this NOFA, the Secretary is unlikely to select applicants that were previously funded under the FY 1993 NOFA, issued June 4, 1993 (58 FR 31848). This selection decision will be pursuant to the Secretary's authority to ensure geographic distribution, to ensure available funds are used effectively to promote the purposes of Title X. (See Section 4.3, Rating Factors, for additional discussion of this consideration for selection.)

(b) *Certified Performers.* Funds shall be available only for projects conducted by contractors and inspectors who are certified, and workers who are trained, through a federally or State-accredited program that is at least as protective as the Federal certification program standards outlined in Appendix E to this NOFA.

(c) *Eligible Activities.* The following direct and support activities are eligible under this grant program:

(1) *Direct Project Elements* (whether activities of the grantee or subgrantees or other subrecipients):

• Inspection and testing of housing constructed prior to 1978 to determine the presence of lead-based paint, lead dust, or leaded soil through the use of portable X-ray fluorescence analyzers or approved laboratory analyses and lead dust through wipe testing.

• Abatement of lead-based paint hazards, including soil, by means of removal, enclosure, encapsulation, or replacement methods.

• Less-than-full-abatement techniques for programs that apply a differentiated set of resources to each unit, dependent upon conditions of the unit and the extent of hazards.

• Temporary relocation of families and individuals during the period in which hazard control is conducted and until the time the affected unit receives clearance for reoccupancy.

• Blood testing of children under the age of six residing in units undergoing inspection or hazard control.

• Blood testing and air sampling to protect the health of the hazard-control workers, supervisors, and contractors.

• Other housing rehabilitation activities under this program that are specifically required to carry out effective abatement and without which the abatement could not be effected. Grant funds from this program may also be used for the lead-based paint hazard-control component in conjunction with other housing rehabilitation programs.

• Pre- and post-hazard control dust-wipe testing and analysis.

• Engineering and architectural costs that are necessary to, and in direct support of, abatement.

• Interim control of lead-based paint hazards priority housing.

• Establishment of a community education program on lead hazards.

• Liability insurance for lead-hazard control activities.

• Data collection, analysis, evaluation, and preparation of a case study at the conclusion of grant activities. This direct project activity includes compiling and delivering such data as may be required by HUD's independent evaluation and research program. For estimating purposes, an applicant must devote 3 percent of the total grant sum for this purpose (this 3 percent does not include the testing costs required). Note that this function is *not* included in administrative costs, for which there is a separate 10 percent limit.

• Performing risk assessments and inspections in priority housing.

(2) *Support Elements:*

• Administrative costs of the grantee (maximum of 10%; (see Appendix B for definition).

• Program planning and management costs of subgrantees and other subrecipients.

• For Local Governments only (for States, the following activities may be undertaken as direct project elements):

(i) Contributions to the State for the establishment of State data collection mechanisms to collect and publish data on the extent of all public and private lead-hazard control activities in the State, including numbers and dollar volume of activities and number and kinds of certified performers;

(ii) Contributions to the State for the establishment of State funding mechanisms to assist testing and abatement efforts, with particular emphasis on assistance to priority housing; and

(iii) Contributions to the State and/or County for the State and/or County Government to design and develop standard land-record mechanisms to be used by county governments to record permanently, property-by-property, the completion and approval of lead-hazard testing and reduction activities, so that future occupants or purchasers may be better informed of the lead-hazard condition of the property. The land-record mechanism is likely to need some means of record compression, mass storage, and ease of user access, as well as an identification of the lead-hazard control method (permanent abatement, partial abatement, or interim control), and should trigger a notice to housing inspection officials upon the occurrence of the expected expiration of the effectiveness of a less-than-permanent abatement method.

(d) *Ineligible Activities.* Grant funds shall not be used:

(1) To purchase capital equipment, except for XRF analyzers when it can be demonstrated that there are no XRF analyzers available locally. If purchased, the XRF analyzers shall remain the property of the grantee at the conclusion of the project. Funds may be used, however, to rent equipment specifically for the abatement project. If leased equipment, other than XRF analyzers, becomes the property of the grantee as the result of a lease arrangement, the leased equipment becomes the property of the Federal government at the end of the grant period. However, that form of lease arrangement should be avoided whenever a less expensive, straight-lease arrangement is possible; or

(2) For chelation or other medical treatment costs. Funds used to cover these costs may be counted as part of the required local matching contribution, but must be obtained from other sources.

3.5 Limitations on the Use of Assistance

(a) Grant funds are to be used to evaluate and reduce the hazards of lead-based paint in residential units constructed prior to 1978. However, if the jurisdiction has banned the sale or use of lead-based paint prior to 1978, the applicant jurisdiction may request the Department to designate an earlier date. These units must be priority housing, as defined in this NOFA.

(b) Pursuant to the Coastal Barrier Resources Act (16 U.S.C. 3501), grant funds may not be used for properties located in the Coastal Barrier Resources System.

(c) Under the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), grant funds may not be used for construction, reconstruction, repair or improvement of a building or mobile home, including lead-based paint abatement that involves permanent containment or encapsulation of lead-based paint or replacement of lead-painted surfaces or fixtures or interim control measures that involve repairs, on properties located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless:

(1) The community in which the area is situated is participating in the National Flood Insurance Program in

accordance with the applicable regulations (44 CFR parts 59–79), or less than a year has passed since FEMA notification regarding these hazards; and

(2) Flood insurance on the property is obtained in accordance with section 102(a) of the Flood Disaster Protection Act (42 U.S.C. 4012a(a)). Applicants are responsible for assuring that flood insurance is obtained and maintained for the appropriate amount and term.

(d) The National Historic Preservation Act of 1966 (16 U.S.C. 470) (NHPA) and the regulations at 36 CFR part 800 apply to the abatement activities that are to be undertaken pursuant to this NOFA. HUD is responsible for satisfying the obligation to make a historic preservation finding under section 106 of the NHPA and the regulations. Recipients are to assist HUD in making the required findings by providing information to document the determination. This information includes the address of the property, and either a complete description of the activities to be carried out or an indication that no external changes are proposed and the property is not listed on the National Register of Historic Places or eligible for inclusion on the National Register (as required by section 106 of the NHPA). In the alternative, the recipients may provide evidence of consultation with the State Historic Preservation Officer (SHPO).

(e) The applicant shall comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201–4655). These policies are described in HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition. No displacement (a permanent, involuntary move) is anticipated. However, to preclude avoidable claims for relocation assistance, all occupants (owner and tenants) shall, as soon as feasible, be notified in writing that they will not be displaced by the lead-based paint hazard-control program. In most cases tenants and owner-occupants will be required to relocate *temporarily* to permit the lead-based paint hazard-control program to be carried out. All conditions of the temporary relocation must be reasonable. The policy regarding temporary relocation costs for owner-occupants who elect to participate in hazard-control is a matter of grantee discretion. With respect to tenants who will be required to relocate temporarily, at a minimum the tenant shall be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/utility costs at that housing; and

(2) Appropriate advisory services, including reasonable advance written notice of the date and approximate duration of the temporary relocation; the address of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period; the reimbursement provisions of paragraph (g)(5)(A) of this section; and information on a resident's rights under the Fair Housing Act.

(f) The Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 *et seq.*) (RCRA), administered by the EPA, shall govern all waste disposal resulting from abatement.

(g) The applicant shall observe the procedures for worker protection established in Chapter Eight of the Interim Guidelines. To the extent that the Occupational Health and Safety Administration (OSHA) requirements at 58 FR 26590 (May 4, 1993), or any other OSHA requirements published prior to the start of actual abatement work at any individual project site, are more stringent than the Interim Guidelines, those more stringent OSHA standards shall govern.

(h) Abatement methods that will not be allowed are: open-flame burning, dry scraping, uncontrolled abrasive blasting, machine sanding without HEPA attachments or use of chemicals containing methylene chloride. The applicant is cautioned that methods that generate high levels of lead dust, such as abrasive sanding, shall be undertaken only with requisite worker protection, containment of dust and debris, and suitable clean-up.

3.6 Environmental Review

Because it is likely for many applicants that at the time of application submission, only neighborhoods or other locators of the housing to be abated will be known, rather than specific properties, the Department has determined that it will perform an environmental review in accordance with 24 CFR part 50 at the time each property is proposed for abatement under the grant, rather than before HUD approval of the grant.

HUD's environmental review will be limited to satisfying its obligation to make an historic preservation finding under section 106 of the NHPA and the implementing regulations. HUD has determined that lead-based paint abatement falls within a categorical exclusion (see 24 CFR 50.20(c)) from review under the National Environmental Policy Act and is not subject to the remaining authorities listed in 24 CFR 50.4, with the exception of the funding limitations under the Coastal Barrier Resources Act and the flood insurance purchase requirements of the Flood Disaster Protection Act of 1973. The applicant is responsible for compliance with these funding limitations and flood insurance purchase requirements.

3.7 Objectives and Requirements

(a) *Generally.* Grantees will be afforded considerable latitude in designing and implementing the methods of lead-based paint hazard control to be employed in their jurisdictions. HUD is interested in promoting innovative and creative approaches that result in the reduction of this health threat for the maximum number of low- and moderate-income residents, and that demonstrate replicable techniques that are better, faster, less expensive, or more effective than current practices. Flexibility will be allowed within the parameters established below. *It is critical that procedures for all phases of testing and abatement be clearly established in writing in the planning stage, and then adhered to by all applicants, recipients, and their contractors.* It is only in this manner that research and evaluation of the safety and cost-effectiveness of the methods employed can be undertaken.

Proposed methods requiring a variance from the standards or procedures cited below will be considered on their merits in a separate HUD review and approval process after the grant award is made and a specific justification has been presented. If a grant application is dependant on a variation from the procedures cited below, but otherwise is of award quality, it will be made as a conditional grant, subject to approval of the request for variation. When such a request is made, either in the application or during the planning phase, HUD intends to consult with experts from both the public and private sector as part of its final determinations and will document its findings in an environmental assessment. Approval of any proposed modifications will not involve a lowering of standards that would have a potential to affect adversely the health of residents or workers.

(b) *Testing—data collection.* Grantees will be required to collect the data necessary to document the various methods employed in order to determine the relative cost and effectiveness of these methods in reducing lead-based paint hazards. Pre- and post-abatement environmental sampling and blood testing of children under the age of six shall be a major determinant of effectiveness.

(c) *Testing—schedule.* In developing the application cost proposal, applicants shall include costs for the testing cycle for each dwelling that will undergo lead-based paint detection and hazard control, as follows:

(1) *XRF on-site (or supplementary laboratory) testing:* Pretest every room or area in each dwelling unit planned for hazard abatement;

(2) *Blood testing:* Of each occupant who is a child under six years old, according to the following schedule:

(A) Pretest before abatement work begins;

(B) Test within 4 weeks of reoccupancy after completion of work, and at 6- and 12-months after reoccupancy is optional.

(3) *Dust testing:* Of every room or area in each unit, according to the following schedule:

(A) Pretest before abatement work begins;

(B) Clearance testing before reoccupying an abated unit; and

(C) Test at 12-months after the unit is reoccupied.

(d) *Testing—guidance.* (1) *Generally.* All testing and sampling shall conform to the HUD Interim Guidelines. Note that it is particularly important to provide this full cycle of testing for less-than-full-abatement hazard control, even though the testing itself may become a substantial part of the cost per unit. It will be from this testing that the Department will be able to establish standards and expectations for the effective period of lead-safe conditions before the potential recurrence of any active lead hazard.

(2) *Required Thresholds for Hazard control.* While the Department's Interim Guidelines (see Appendix A) employ two hazard-control thresholds, one milligram per square centimeter (1.0 mg/cm^2) or 0.5 percent by weight, applicants may utilize other thresholds, provided that the alternative threshold is justified adequately and is accepted by HUD. The justification must state why the applicant believes the proposed approach will provide satisfactory health protection for occupants, and must discuss cost savings and benefits expected to result from using the proposed approach.

(3) *Surfaces to be abated.* HUD's Interim Guidelines are under revision, but currently require the abatement of all interior and exterior painted or varnished surfaces having a lead content above the permitted threshold. In accordance with the new guidance from Title X, there are now six defined hazards: lead-contaminated dust, lead-contaminated soil, lead-based paint that is deteriorated, lead-based paint present in accessible surfaces that can be chewed or mouthed by children, lead-based paint present in friction surfaces, and lead-based paint present in impact surfaces. The applicant may choose to treat fewer surfaces or apply any other partial-abatement or hazard- control techniques, provided that an adequate rationale, including periodic monitoring, is presented to and accepted by HUD. The rationale must state why the applicant believes the proposed approach will provide satisfactory health protection for occupants and at the same time, provide cost savings or other benefits, and therefore would support the new Title X concept.

(4) *Clean-up.* The applicant may employ post-abatement clean-up procedures that differ from the procedures in the HUD Interim Guidelines, provided that an adequate justification is established and accepted by HUD. The justification must state why the applicant believes the proposed approach will provide satisfactory health protection for occupants, and must discuss cost savings and benefits expected to result from using the proposed approach.

(5) Grantees shall be required to meet the post-abatement wipe-test clearance thresholds contained in the HUD Interim Guidelines (see Appendix A). Wipe tests shall be conducted by a certified inspector who is independent of the abatement contractor. Dust-wipe samples must be analyzed by an accredited laboratory. Units shall not be reoccupied until acceptable clearance levels are achieved.

Section 4. Grant Application Process

4.1 Submitting Applications for Grants

To be considered for funding an original and two copies of the application must be physically received in the Office of Lead-Based Paint Abatement and Poisoning Prevention (OLBPAPP), Department of Housing and Urban Development, room B–133, 451 Seventh Street, SW., Washington, DC 20410, no later than 3 p.m. (Eastern Time) on July 5, 1994. Electronic (FAX or equivalent transmittal) application is *not* an acceptable transmittal mode.

The above-stated application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this factor into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays, equipment breakdown, or delivery-related problems.

HUD will review each application to determine whether it meets all of the threshold criteria established under Section 4.2 of this NOFA. Nonresponsive applications will be declared ineligible for further consideration. Applications that meet all of the threshold criteria will be eligible to be scored and ranked, based on the total number of points allocated for each of the rating factors in Section 4.3 of this NOFA.

HUD intends to fund the highest ranked applications within the limits of funding availability, but reserves the right to advance other eligible applicants in funding rank, if necessary, to assure geographic diversity, to promote the purposes of Title X, broaden the range of hazard-control alternatives to be tested, or enhance data reliability.

4.2 Threshold Requirements for Category I Grants

(a) *Purpose.* The application must be for funds to evaluate and reduce lead hazards in priority housing (see Appendix D for program-by-program listing of eligible HUD-associated housing programs).

(b) *Eligible Applicants.* An applicant must be a State or unit of local government that has an approved Comprehensive Housing Affordability Strategy (CHAS) under section 105 of the NAHA (42 U.S.C. 12705) that includes a lead-hazard control element. Current CHAS regulations were published in the **Federal Register** on September 1, 1992, at 57 FR 40038, as amended, in part, on March 12, 1993 at 58 FR 13686. Applicants under this NOFA are permitted to use an abbreviated housing strategy, as set forth in § 91.25 of the CHAS regulations). (See Appendix F for guidance on submitting an abbreviated CHAS.)

(c) *Matching Contribution.* Each applicant shall provide a matching contribution of at least 10 percent of the requested grant sum. This may be in the form of a cash or in-kind contribution.

(d) *Contractor certification program requirement.* Each applicant must carry out its hazard control program under an operational State-accredited or Federal certification/training program that is at least as protective as the Federal Certification Program standards outlined in Appendix E. The standard completion time for non-conditional grantees is 24 months. The following additional provisions apply to this requirement:

(1) To receive a grant an applicant must use contractors certified and workers trained within a State that currently has a lead-based paint certification/training program acceptable to HUD and the EPA. If the State in which the applicant is located has such a program, the applicant should furnish copies of the enabling statutes and regulations, as well as other appropriate documentation (e.g., certificates and licenses), as proof of the program.

(2) Other applicants may be approved for a conditional grant with funding subject to the following provisions:

(A) An applicant shall furnish at the time of application, letters of intent to establish and implement a certification program. The enabling legislation shall be enacted within 12 months of the Category I application deadline date, and the designated agency implementing the program shall have completed initial training sessions within 18 months from the deadline date of the Category I application date. Letters of intent shall be from the Governor of the State and an authorized representative of the legislative body in the State. The letters shall set forth their plans to make a good faith effort to enact, within 12 months of the Category I application deadline date, enabling legislation that would establish or designate an appropriate department or office; to put an operating staff in place; and to promulgate appropriate regulations and complete the initial training sessions within 18 months of the Category I application date. These letters of intent shall be carried over to the grant agreement and become part of the grantee's assurances under it. The maximum completion time for conditional grants is 36 months.

(B) There may be local government applicants in States that have furnished letters of intent and have made a good faith effort to carry out that intent, but whose State governments have been unable to comply with the 12-month or 18-month time table. These local governments may, with HUD approval, choose to use workers and contractors certified or licensed under accredited programs of other States. The maximum completion time for such conditional, local-government grantees is 42 months; the extra 6 months is made available to arrange for out-of-State certified performers.

(C) Except as provided in paragraph (d)(2)(B) of this section, if the commitment to establish a certification/training program is not fulfilled within the stated time, the conditional grant agreement shall immediately terminate.

(e) *Continued Availability of Hazard Reduced Housing to Lower Income Families.* Units in which lead hazards have been treated under this program shall then be occupied by and continue to be available to low- and moderate-income residents as defined under section 215 of the NAHA.

(f) *Cooperation With Related Research and Evaluation.* Applicants shall cooperate fully with any research or evaluation sponsored by HUD and associated with this grant program, including preservation of the data and records of the project and compiling requested information in formats provided by the researchers or evaluators. This cooperation may also include the compiling of certain relevant local demographic, dwelling unit, and participant data not contemplated in applicant's original proposal. Participant data shall be subject to Privacy Act protections. For estimating purposes, an applicant shall devote three percent of the total grant sum for data collection and evaluation purposes, as discussed in the Section 3.4, Eligibility, of this NOFA.

4.3 Rating Factors

HUD will use the following technical and financial criteria, subject to the qualification discussed in the second paragraph of this section, to rate and rank applications received in response to this NOFA. The technical quality of an application will be rated, and then the strength, quality, and completeness of the financial and resources plan will be used to assess how well the technical plan is likely to be carried out using the available resources. The total number possible for the rating factors is 120 points, including potential bonus points, if awarded.

Applicants are advised, however, that in selecting grantees under this NOFA, the Secretary is unlikely to select applicants who were previously funded under the FY 1993 NOFA, issued June 4, 1993 (57 FR 31848). This selection prerogative will be exercised under the Secretary's authority to ensure that available funds are used effectively and to promote the purposes of Title X. See, section 1011(d)(5) of Title X (42 U.S.C. 4852(d)(5)).

(a) *Strategy. (50 points)*—The quality and cost effectiveness of the proposed lead-based paint hazard control strategy. The strategy should include:

(1) The hazard-control program, including selection of subgrantees and other subrecipients, abatement/hazard control methods and levels of treatment, the quality of prior abatement experience, especially for recipients of previous hazard control grants, financing mechanisms, community education, temporary relocation, and the degree to which the strategy focuses on households in priority housing with children under the age of 6 years (20 points);

(2) A management and budget plan for the whole grant and for each major component funded directly from the grant. The plan shall include a year-by-year spreadsheet budget for the total grant, a task-by-task spreadsheet budget for the total grant, and an overall source and use of funds diagram. (See Appendix C for a sample; no form is provided because programs vary too widely.) The source and use diagram amounts for grant use must agree with spreadsheet totals. Provide a year-by-year spreadsheet for each major subtask shown on the diagram. The plan shall include an organization chart and a narrative describing how the parts of the grant program will be coordinated and managed. Provide a brief narrative for each major budget subtask and each functional cost element, explaining its planned use. (10 points);

(3) The identification, inspection, and testing of priority housing to be treated. Housing recently inspected (within 12 months of grant) and identified prior to the date of the grant as having lead-based paint may be included (8 points); and

(4) A program for education and outreach to the community on the hazards of lead-based paint, including blood screening of young children and, if necessary, referral for medical treatment (12 points).

(b) *Applicant Capacity and Commitment to Hazard control. (40 points)*—The capacity of the applicant to initiate and carry out the lead-based paint testing and hazard-control program successfully within the time frames set forth in this NOFA. Show that the proposed staff skills match the proposed program of work described. Elements to be considered include:

(1) Demonstrated knowledge and experience of the proposed project manager in planning and managing large and complex interdisciplinary programs involving housing rehabilitation, public health, and environmental management. The percentage of time of the project manager to be devoted to this project is a significant factor, and must be disclosed in the application. (15 points);

(2) Demonstrated knowledge and experience of the staff assigned to this project in carrying out these undertakings, including the percentage of time each person will devote to the project (15 points); and

(3) Institutional capacity, demonstrated by the experience and continuing capacity of the jurisdiction to initiate and implement similar environmental and housing projects. Applicant should describe previous related efforts and the current capacity of its agencies (10 points).

(c) *Applicant's Matching Contribution and Other Resources (10 points)*—At a minimum, the applicant shall provide a matching contribution of at least 10 percent of the requested grant sum. That contribution may be in cash or in kind. In-kind contributions shall be given a monetary value. Community Development Block Grant funds may be considered part of the matching contribution, but only when they are specifically dedicated to an integral part of the project. This rating factor provides points only for additional resources that exceed the minimum required 10% match. Each source of contributions, both for the required minimum and additional amounts, shall be made in a letter of commitment from the funding entity, whether a public or private source, and shall describe the contributed resources that will be used in the program. Absence of required letters offering specific details will result in a reduced rating under this factor.

(d) *Community and Private Sector Participation (10 points)*—The extent to which the applicant has enlisted the broad participation of neighborhood, community, and nongovernmental organizations; the private sector; and other governmental units in the hazard control program through specific commitments of time, effort, and resources. These commitments include consultation, marketing, fund-raising, and other economic lift activities, such as employment of lower-income neighborhood residents in the hazard control work. Evidence of these commitments should include names and proposed roles of these participants, and plans for employment of lower-income residents. Absence of employment commitments and letters of participation will result in a reduced rating under this factor.

4.4 Bonus Points

(a) Five bonus points (5 points) will be awarded if the applicant is either: a State in which there has been no award of a lead hazard control grant in previous rounds, or a local government in a State in which there has been no previous award. These extra points are to encourage the broadest diversity of States and local governments to develop lead hazard control programs.

(b) The following five bonus points also may be awarded to applicants that propose credible and sustainable mechanisms to meet any of the following needs: (5 points)

(1) The establishment of stable, long-term public or private sources of funds for State/local testing and hazard control (see Section 3.4(c)(2)(ii) of this NOFA). (2 points);

(2) Land records tracking system. Applicants are encouraged to establish in their land records files a mechanism for recording and tracking in some detail the nature and location of prior lead-based paint hazard control activities by specific housing units (see Section 3.4(c)(2)(iii) of this NOFA). (2 points); and

(3) The establishment of a State-level data collection mechanism to track all lead-based paint testing and hazard-control activities in the State (see Section 3.4(c)(2)(i) of this NOFA). (1 point).

Section 5. Checklist of Application Submission Requirements

5.1 Applicant Data

Applicants must complete and submit applications in accordance with the instructions contained in the application kit. The following is a checklist of the application contents that will be specified in the application kit:

(a) The name, mailing address, telephone number, and principal contact person of the applicant. If the applicant has consortium associates, partners, major subcontractors, or joint venture participants contributing resources to the project, similar information shall also be provided for each of them.

(b) Proof of State accreditation requirements for lead-based paint certification/training programs applicable to the contractors, inspectors, and workers that will be used by the applicant, or letters of intent from both the Governor and an authorized representative of the legislative body stating that a good faith effort will be made to have a certification/training program authorized within 12 months, and operational within 18 months, of the Grant application deadline date (see section 4.2(g) of this NOFA regarding this requirement).

(c) Evidence of the applicant's commitment to eliminating or reducing significant lead-based paint hazards in housing as detailed in the applicant's strategy for lead-based paint hazard control (see the first rating factor, Strategy, in Section 4.3 of this NOFA).

(d) A detailed description of the funding mechanism, selection process, and other proposed activities that the applicant plans to use to assist the direct performers of hazard control activities under this grant.

(e) The management and task budget plan that includes a summary diagram (see Appendix C) showing the source and use of all grant funds. The plan shall detail the proposed costs and schedules for starting and completing each task or major subset of project activities. The budget shall provide for each task and major subtask that is funded by the grant. All major tasks and subtasks, including data collection (allow 3% of the total grant sum requested), should be estimated (even though not precisely known). There shall be a separate estimate for the overall grant management element, "Administrative Costs," which are more fully defined in Appendix B. The budget shall include not more than 10 percent for administrative costs and not less than 90 percent for direct project elements (including data collection; see paragraph (e), Eligible Activities, in Section 3.4 of this NOFA). Estimates are not required for activities fully funded by local matching funds, but those funding sources should be shown as lump-sum amounts in the Source and Use diagram (see Appendix C).

(f) Evidence of a continuing capacity of the applicant to undertake a lead-based paint testing and abatement program safely and effectively.

(g) Information itemizing what constitutes the applicant's matching contribution, including values placed on donated in-kind services; letters or other evidence of commitment from donors; and the amounts and sources of coordinated resources.

(h) Information on the names and proposed roles of local participating community- or neighborhood-based groups or organizations, including local businesses.

(i) Completed Forms HUD–2880, Applicant/Recipient Disclosure/Update Report, and SF–LLL, Disclosure of Lobbying Activities, where applicable (see section on Other Matters in this NOFA).

(j) Standard Forms SF–424 and 424–B, and other certifications and assurances listed in section 5.3 of this NOFA.

(k) A copy of the applicant's lead-hazard control element for its Comprehensive Housing Affordability Strategy (CHAS).

5.2 Proposed Activities

(a) *Affected population to be served.* The applicant shall describe the size and general characteristics of the target housing within its jurisdiction, including a description of the housing's location, condition, and occupants, and a current estimate of the number of children under the age of six in these units. Maps should be included. First preference shall be given to priority housing units. Vacant housing that subsequently will be occupied by low-income renters should also be included in this description. In addition, as a measure of its ongoing commitment to lead-based paint programs, the applicant shall provide information on the number of children diagnosed as being lead poisoned within the previous five years and the remedial measures that were taken to respond to these diagnoses.

(b) *Discussion of lead-based paint activities*. The applicant shall provide a reasoned discussion of the proposed hazard control activities, including, but not limited to, information on the following:

- Overall hazard control strategy, including priority setting;
- Specific neighborhoods, census tracts or other locators of the housing units targeted for abatement (area and local maps shall be included);
- Inspection and testing of all lead-based paint-hazard housing to be treated as part of this project;
- Blood testing of children under the age of six, and medical referral for children found to have elevated blood-lead levels;
- Hazard-control methods, including interim controls, in-place-management, less than full abatement and full abatement. Include lead-based paint hazard controls in housing undergoing renovation funded by other sources, but included as part of this project;
- Community education;
- Relocation;
- Coordination and integration with public health and housing programs to effect lead-based paint hazard control;
- Data collection, documentation, and evaluation;
- Mechanisms that the applicant proposes to employ to provide financial assistance to low- and moderate-income owners and low-income renters under this grant program for abatement. The applicant may provide the services through a variety of programs, including grants, equity, loans, investment or seed money for non-profit performers' revolving loan funds, loan funds, loan guarantees, interest write-downs, or other forms of assistance that may be approved by the Department. Program income from loan repayments may be used only for hazard-control related activities; and
- Management and staffing of the project, including the extent of time commitments and areas of specialization and expertise.

(c) *Identification of significant-hazard housing*. The applicant must demonstrate a commitment to focus its efforts on the identification of housing units with significant lead-based paint hazards, particularly among dwellings for lower income families, so as to concentrate its resources on the greatest needs first.

(d) *Safe and effective conduct of the abatement*. The applicant must demonstrate willingness and readiness to oversee the safe and effective conduct of the hazard-control work, as provided in the application kit.

5.3 Certifications and Assurances

The following certifications and assurances apply to all applications.

(a) The application shall contain an assurance that the applicant will comply with the environmental laws and authorities at 24 CFR 50.4, and that it will:

(1) Supply information necessary for HUD to perform any required environmental review of each property;

(2) Carry out mitigating measures required by HUD or select alternate eligible property; and

(3) Not commit HUD or local funds to, or carry out, any program activities for any property until HUD approval is received.

(b) The application shall contain a certification that the applicant will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; implementing regulations at 49 CFR part 24; and HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition.

(c) The application shall be in compliance with Federal civil rights laws and requirements.

(d) The application shall contain assurances that the applicant will comply with the requirements of the Fair Housing Act (42 U.S.C. 3601–19); Executive Order 11063; Title VI of the Civil Rights Act of 1964, pertaining to equal opportunity and nondiscrimination in housing; and all regulations issued in accordance with these authorities.

(e) The application shall include assurances of nondiscrimination on the basis of age or handicap, in compliance with the Age Discrimination Act of 1975, section 504 of the Rehabilitation Act of 1973, and all regulations issued pursuant to these authorities.

(f) The application shall contain a certification that the applicant will comply with the requirements of section 3 of the Housing and Urban Development Act of 1968, pertaining to the provision of economic opportunities for low- and very low- income persons, and implementing regulations at 24 CFR part 135.

(g) The applicant shall certify that its financial management system meets the standards for fund control and accountability as prescribed by 24 CFR 85.20.

(h) The applicant shall assure that it will conduct dust-wipe testing in all units in which lead-hazard control occurs, both prior to and immediately after the hazard-control treatment and clean up, and that the applicant will conduct dust-wipe testing 12-months after abatement.

(i) The applicant shall assure that it will test and record the blood-lead level of all children under the age of six occupying affected units prior to abatement. Children determined to have elevated blood-lead levels, using CDC, October 1991 Guidelines (see Appendix A to this NOFA), shall be provided appropriate medical treatment, as set forth by the CDC. If there is an existing, funded program, the costs of blood testing and medical follow-up are eligible for inclusion in the computation of the other resources contribution.

(j) The applicant shall assure that this application represents an expansion of the delivery of testing and abatement services and does not replace existing resources dedicated to any ongoing project.

(k) The application shall contain any other assurances that HUD has included in the application kit under this NOFA.

Section 6. Corrections to Deficient Applications

HUD will notify an applicant, in writing, shortly after the expiration of the NOFA response deadline, of any minor deficiencies in the application that are not of a substantive nature, such as an omitted certification or illegible signature. The applicant shall submit corrections, which must be received at the Office of Lead-Based Paint Abatement and Poisoning Prevention within 21 calendar days from the date of HUD's letter notifying the applicant of any minor deficiencies. Electronic (FAX) transmittal is not an acceptable transmittal mode. Corrections to minor deficiencies will be accepted within the 21-day time limit. Applicants that do not make timely response to requests for deficiency corrections shall be removed from further consideration for an award.

Applicants shall only be permitted to correct those deficiencies determined by HUD to be minor. Deficiencies determined by HUD to be substantive may not be corrected.

Section 7. Administrative Provisions

7.1 Obligation of Funds

(a) *Provision of funds.* Funding shall be provided on a cost-reimbursable basis not to exceed the amount of the grant, except as otherwise provided in Sections 7.2 and 7.3 of this NOFA. There shall be set aside from the final grant payment sufficient funds to pay for the 6-month and 12-month post-abatement testing for blood-lead levels and dust-wipe levels in the dwelling, as provided in paragraph (c) of this section.

(b) *Advance funds.* After a grant agreement has been executed with a grantee that has an acceptable, existing State certification program (in compliance with Appendix E requirements), HUD may, upon written request, provide to the grantee a cash advance that shall not exceed 10 percent of the grant amount and shall be limited to the minimum amount needed for the actual, immediate cash requirements of the grantee in carrying out the purposes of this NOFA. Similarly, those grantees whose awards are conditioned upon proof of newly executed executive or legislative authority to carry out the requirements of this NOFA may request advances of funds, not to exceed five percent (5%) of the total grant amount, for purposes of implementing certification or licensing requirements and preparing certain planning documents for HUD review and approval. Advance funds may be divided between administrative costs and direct project costs. The applicant shall provide justification for the division, and HUD may accept or modify the applicant's proposed division.

(c) *Availability of remaining funds.* HUD will not make additional payments, beyond the advance funds described in paragraph (b) of this section, from the amount awarded to a grantee until the grantee's proposed contractors and workers have met the certification and training requirements of a State-accredited program. All additional payments will be made on a cost-reimbursable basis, except that a 10 percent final payment shall be made upon completion of all tasks and delivery of an acceptable final report, subject to the set aside for post-testing described in paragraph (a) of this section. The grantee shall specify in its request for final payment the amount of funds to be set aside from the final 10 percent for the 6- and 12-month post-abatement dust-wipe and blood tests. When results of these tests are forwarded to HUD, the testing set-aside funds will be released by HUD to the grantee.

7.2 Increases of Awards

After the signing of the grant agreement and initial obligation of funds, HUD will not increase the grant sum or the total amount to be obligated based upon the original scope of work. Amounts awarded may only be increased as provided in section 7.3, Deobligation, of this NOFA.

7.3 Deobligation

(a) *Reasons for deobligation.* HUD may deobligate amounts for the advance or grant if proposed activities are not initiated or completed within the required time after selection. The grant agreement will set forth in detail other circumstances under which funds may be deobligated and other sanctions imposed.

(b) *Treatment of deobligated funds.* HUD may undertake any one, or a combination, of the following actions, with respect to deobligated funds:

(1) Readvertise the availability of funds that have been deobligated under this section in a new NOFA;

(2) Reconsider applications that were submitted in response to the most recently published NOFA, and select additional applications for funding with deobligated funds. These selections will be made in accordance with the selection process described in the applicable NOFA;

(3) Fund supplemental applications from existing grantees for the performance of expanded scopes of work that may be of benefit to the overall program; and

(4) For deobligated funds that total less than a minimum grant amount ($1 million), issue a solicitation to provide technical assistance or other program support services.

7.4 Reports

The grantee shall submit the following types of reports:

(a) *Annual reports.* The grantee shall submit to HUD a report for any fiscal year in which the grantee expends grant funds. Each report shall be due six weeks after the end of the Federal Fiscal Year (September 30). The report shall:

(1) Describe the use of the amounts received;

(2) State the number of risk assessments and the number of inspections conducted in residential dwellings;

(3) State the number of residential dwellings in which lead-based paint hazards have been abated, organized by method of abatement used;

(4) State the number of residential dwellings in which lead-based paint hazards have been reduced through interim controls; and

(5) Provide any other information that the Secretary determines to be appropriate.

(b) *Progress Reports.* The grantee shall submit regular progress reports in accordance with HUD's Management Reporting System. These progress reports shall consist of graphic reports showing expenditures and technical progress to date, compared with the original plan, and a narrative describing important events and problems encountered during the period. The progress reports:

(1) Shall be filed quarterly during the planning period (and during the waiting period for the establishment of a State Certification Program);

(2) Shall be filed monthly during the active abatement-work period; and

(3) May revert to being filed quarterly after completion of active abatement work.

(c) *Final Report/Case Study.* The grantee shall submit a final report/case study in accordance with the procedures of HUD's Management Reporting System. The report shall summarize the applicant's plans, execution of the plans, and lessons learned. The report need not be lengthy, but should be of a quality and detail to provide a free-standing description to any outside reader of all of the applicant's work and achievements under the grant.

Section 8. Other Matters

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implements Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street SW., room 10276, Washington, DC 20410.

Federalism Executive Order

The General Counsel, as the Designated Official under section 8(a) of Executive Order 12612, *Federalism*, has determined that the policies and procedures contained in this NOFA will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Under this NOFA, grants will be made for the abatement of significant lead-based paint and lead-dust hazards in low- and moderate-income owner-occupied units and privately owned low-income rental units. Although the Department encourages States and local governments to initiate or expand lead-based paint certification, testing, abatement, and financing programs, any action by a State or local government in these areas is voluntary. Because action is not mandatory, the NOFA does not impinge upon the relationships between the Federal government and State and local governments, and the notice is not subject to review under the Order.

Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this document will likely have a beneficial impact on family formation, maintenance and general well-being. This NOFA, insofar as it funds repairs to privately owned housing, will assist in preserving decent housing stock for resident families. Accordingly, since the impact on the family is beneficial, no further review is considered necessary.

Section 102 of the HUD Reform Act—Documentation and Public Access Requirements—Applicant/Recipient Disclosures

Documentation and public access requirements. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of Section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or 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 prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Procurement Standards

All grantees are governed by and should consult 24 CFR parts 85.36 and 85.37, which detail procedures for subcontracts and subgrants by States and local governments. Under § 85.36, which pertains to subcontracts, small purchase procedures can be used for contracts up to $25,000, and require price or rate quotations from several sources (three is acceptable); above that threshold, more formal procedures are required (note that § 85.36 treats States differently than local governments). Section 85.37 procedures apply to subgrants, and are not as restrictive. If States have more restrictive standards for contracts and grants, the State standards can be applied. All grantees should consult and become familiar with §§ 85.36 and 85.37 before issuing subcontracts or subgrants.

Davis-Bacon Act

The Davis-Bacon Act does not apply to this program. However, if grant funds are used in conjunction with other Federal programs in which the provisions of Davis-Bacon apply, then Davis-Bacon provisions would apply to the extent required under the other Federal programs.

Prohibition Against Lobbying of HUD Personnel

Section 112 of the Housing and Urban Development Reform Act of 1989 (Pub.L. 101–235, approved December 15, 1989) (Reform Act) added a new section 13 to the Department of Housing and Urban Development Act (42 U.S.C. 3531 *et seq.*). Section 13 contains two provisions concerning efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department, and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by regulations codified in part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of part 86.

Any questions concerning the rule should be directed to the Office of Ethics, Room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington DC 20410. Telephone: (202) 708–3815 (TDD/Voice). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

Prohibition Against Advance Information on Funding Decisions

Section 103 of the Reform Act proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance. HUD's regulation implementing Section 103 is codified at 24 CFR part 4 (see 56 FR 22088, May 13, 1991). In accordance with the requirements of Section 103, HUD employees involved in the review of applications and in the making of funding decisions are restrained by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted by 24 CFR part 4. Applicants who have questions should contact the HUD Office of Ethics: (202) 708–3815 (TDD/Voice). (This is not a toll-free number.)

The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters Counsel for the program to which the question pertains.

Authority: 42 U.S.C. 4821–4846; 42 U.S.C. 3535(d).

Dated: April 14, 1994.

Arthur S. Newburg,

Director, Office of Lead-Based Paint Abatement and Poisoning Prevention.

Appendix A—Relevant Federal Regulations and Guidelines

To secure any of the documents listed, call the listed telephone number (generally not toll-free).

Regulations

1. Worker Protection: OSHA regulations (phone (202) 755–1822):
   —General Industry Lead Standard, 29 CFR 1910.1025;
   —Lead Exposure in Construction, 29 CFR 1926.62, and appendices A, B, C, and D; published 58 FR 26590 (May 4, 1993).
2. Waste Disposal: 40 CFR parts 260–268 (EPA regulations); phone 1–800–424–9346.

Guidelines

1. Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing; HUD, revised May, 1991 (available for a charge; phone 800–245–2691):

Post Abatement Clearance, No More Than

200 Micrograms/Sq. Ft. (Floors)
500 Micrograms/Sq. Ft. (Window Sills)
800 Micrograms/Sq. Ft. (Window Wells)

2. HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition; phone (202) 708–0336.
3. Preventing Lead Poisoning in Young Children; Centers for Disease Control, October 1991 (phone (404) 488–4880.

Reports

1. Comprehensive and Workable Plan for the Abatement of Lead-Based Paint in Privately Owned Housing: Report to Congress (HUD, December 7, 1990) (available for a charge; phone 800–245–2691).

Information on Content of State-Accredited Contractor Certification and Worker Training Programs

Contact: EPA Office of Pollution Prevention and Toxics, Division of Environmental Assistance; phone (202) 260–3790.

CDC Classes of Blood Lead Levels in Children

Class	Concentration (μg/dL)	Comment
I	<9	Child is not considered to be lead-poisoned.
IIA	10–14	Large number or proportion of children with blood lead levels in this range should trigger community-wide childhood lead poisoning prevention activities. Children in this range may need to be rescreened more frequently.
IIB	15–19	Child should receive nutritional and educational interventions and more frequent screening. If the blood lead level persists, environmental investigation and intervention should be done.
III	20–44	Child should receive environmental evaluation and remediation and a medical evaluation; may need pharmacologic treatment of lead poisoning.
IV	45–69	Child will need both medical and environmental interventions, including chelation therapy.
V	>70	Child is a medical emergency. Medical and environmental management must begin immediately.

Appendix B—"Administrative Costs"

I. Purpose

The intent of this HUD grant program is to allow the Grantee to be reimbursed for the reasonable direct and indirect costs, subject to a top limit, for overall management of the grant. In most circumstances the Grantee, whether a state or a local government, is expected to serve principally as a conduit to pass funding to subgrantees, which are to be responsible for performance of the lead-hazard reduction work. Congress set a top limit of ten (10) percent of the total grant sum for the Grantee to perform the function of overall management of the grant program, including passing on funding to subgrantees. The cost of that function, for the purpose of this grant, is defined as the "administrative cost" of the grant, and is limited to ten (10) percent of the total grant amount. The balance of ninety (90) percent or more of the total grant sum is reserved for the subgrantee/direct-performers of the lead-hazard reduction work.

II. Administrative Costs: What They Are Not

For the purposes of this HUD grant program for States and local governments to provide support for the evaluation and reduction of lead-hazards in low and moderate-income, private target housing: the term "administrative costs" should not be confused with the terms "general and administrative cost", "indirect costs", "overhead", and "burden rate". These are accounting terms, usually represented by a government-accepted standard percentage rate. The percentage rate allocates a fair share of an organization's costs that cannot be attributed to a particular project or department (such as the chief executive's salary or the costs of the organization's headquarters building) to all projects and operating departments (such as the Fire Department; the Police Department; the Community Development Department, the Health Department or this program). Such allocated costs are added to those projects' or departments' direct costs to determine their total costs to the organization.

III. Administrative Costs: What They Are

For the purposes of this HUD grant program, "Administrative Costs" are the Grantee's allowable direct costs for the overall management of the grant program plus the allocable indirect costs. The allowable limit of such costs that can be reimbursed under this program is ten (10) percent of the total grant sum. Should the Grantee's actual costs for overall management of the grant program exceed ten (10) percent of the total grant sum, those excess costs shall be paid for by the Grantee. However, excess costs paid for by the Grantee may be shown as part of the requirement for cost-sharing funds to support the grant.

IV. Administrative Costs: Definition

A. General

Administrative costs, are the allowable, reasonable, and allocable direct and indirect costs related to the overall management of the HUD grant for lead-hazard reduction activities. Those costs shall be segregated in a separate cost center within the Grantee's accounting system, and they are eligible costs for reimbursement as part of the grant, subject to the ten (10) percent limit. Such administrative costs do not include any of the staff and overhead costs directly arising from specific subgrantee program activities eligible under FY 1992 NOFA Section II.e.(5) (a) and (b) (ii) through (vi), because those costs are eligible for reimbursement under a separate cost center as a direct part of project activities.

The Grantee may elect to serve solely as a conduit to subgrantees, who will in turn perform the direct program activities eligible under NOFA Section II.E.(5) (a) and (b) (ii) through (vi), or the grantee may elect to perform all or a part of the direct program activities in other parts of its own organization, which shall have their own segregated cost centers for those direct program activities. In either case, not more than 10 percent of the total HUD grant sum may be devoted to administrative costs, and not less than 90% of the total grant sum shall be devoted to direct program activities. Grantee shall take care not to mix or attribute administrative costs to the direct project cost centers.

B. Specific

Reasonable costs for the Grantee's overall grant management, coordination, monitoring, and evaluation are eligible administrative costs. Subject to the (10) percent limit, such costs include, but are not limited to, necessary expenditures for the following, goods, activities and services:

(1) Salaries, wages, and related costs of the Grantee's staff, the staff of affiliated public agencies, or other staff engaged in Grantee's overall grant management activities. In charging costs to this category the recipient may either include the entire salary, wages, and related costs allocable to the program for each person *whose primary responsibilities* (more than 65% of their time) with regard to the grant program involve direct overall grant management assignments, or the pro rata share of the salary, wages, and related costs of each person whose job includes *any overall grant management assignments*. The Grantee may use only one of these two methods during this program. Overall grant management includes the following types of activities:

(a) Preparing grantee program budgets and schedules, and amendments thereto;

(b) Developing systems for the selection and award of funding to subgrantees and other subrecipients;

(c) Developing suitable agreements for use with subgrantees and other subrecipients to carry out grant activities;

(d) Developing systems for assuring compliance with program requirements;

(e) Monitoring subgrantee and subrecipient activities for progress and compliance with program requirements;

(f) Preparing presentations, reports, and other documents related to the program for submission to HUD;

(g) Evaluating program results against stated objectives; and

(h) Providing local officials and citizens with information about the overall grant program. (However, a more general education program, helping the public understand the nature of lead hazards, lead hazard reduction, blood-lead screening, and the health consequences of lead poisoning is a direct project support activity, under NOFA Section II.E. (5) (b), and should not be attributed to administrative costs, but to its own cost center.)

(i) Coordinating the resolution of overall grant audit and monitoring findings;

(j) Managing or supervising persons whose responsibilities with regard to the program include such assignments as those described in paragraphs (a) through (i).

(2) Travel costs incurred for official business in carrying out the overall grant management;

(3) Administrative services performed under third party contracts or agreements, for services directly allocable to overall grant management such as overall-grant legal services, overall-grant accounting services, and overall-grant audit services;

(4) Other costs for goods and services required for and directly related to the overall management of the grant program, including such goods and services as telephone, postage, rental of equipment, renter's insurance for the program management space, utilities, office supplies, and rental and maintenance (but not purchase) of office space for the program.

(5) The fair and allocable share of Grantee's general costs that are not directly attributable to specific projects or operating departments such as: The Mayor's and City Council's salaries and related costs; the costs of the City's General Counsel's office, not charged off to particular projects or operating departments; and the costs of the City's Accounting Department not charged back to specific projects or operating departments. (If Grantee has an established burden rate it should be used; if not Grantee shall be assigned a negotiated provisional burden rate, subject to final audit.)

To repeat, all of the above activities goods and services: 1.a–j., 2., 3., 4., and 5. are subject to the ten (10) percent limit.

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APPENDIX C

HUD GRANT PROGRAM FOR LEAD-HAZARD REDUCTION
Sample Diagram: SOURCE AND USE OF FUNDS
$4,000,000 GRANT TO ANYTOWN, USA

SOURCE OF FUNDS				USE OF FUNDS			
SOURCE	AMOUNT	SUB SOURCE	AMOUNT	USER	USED FOR		AMOUNT USED
FEDERAL GRANT	$4,000,000	ADMINISTRATIVE COSTS (MAX. 10%)	NOT TO EXCEED $400,000	ANYTOWN, USA GRANT MANAGEMENT TASK FORCE	OVERALL GRANT MANAGEMENT	SALARIES, FRINGE BEN. OTHER DIRECT COSTS, INDIRECT COSTS	NOT TO EXCEED $400,000
		DIRECT PROJECT COSTS (MIN. 90%)	NOT LESS THAN $3,600,000	SOUTHSIDE INC., LEAD-HAZARD PREVENTION GRANT PROGRAM	GRANTS TO LOW-INCOME HOMEOWNERS FOR LEAD-HAZARD REDUCTION PROJECTS	GRANT MANAGEMENT STAFF EXPENSES / GRANT OUTLAYS	$800,000
				APARTMENT MANAGERS ASSOCIATION - - LEAD-HAZARD REDUCTION REVOLVING LOAN PROGRAM	3% LOANS TO LOW-INCOME APARTMENT LANDLORDS FOR LEAD-HAZARD REDUCTION PROJECTS	LOAN MANAGEMENT STAFF EXPENSES / PRINCIPAL FOR LOANS	$1,000,000
				ROW-HOUSE, LOW-INCOME HOUSING IMPROVEMENT GROUP, INC.	LEAD-REDUCTION SEGMENTS OF WORK ONLY- PROJECT TO BUY AND FIX UP ROW HOUSING FOR LOW-INCOME RENT	PROJECT MANAGEMENT STAFF, A&E CONTR., DETECT.CONTRACTOR, GENERAL CONTRACTOR	$930,000
				ANYTOWN, USA COMMUNITY DEVELOPMENT DEPARTMENT	REMOVE LEAD HAZARDS FROM SHELTER #3 FOR HOMELESS FAMILIES WITH CHILDREN (PART OF A SCHOOL CONVERSION PROJECT)	LEAD-PAINT SHARE OF PROJECT INLCUDING PROJECT MANAGEMENT	$750,000
				TO BE SELECTED	DATA COLLECTION, ANALYSIS CASE STUDY OF GRANT WORK	ANYTOWN SALARY OR CONTRACTOR	UP TO $120,000

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MATCHING CONTRIBUTION	$1,250,000	C A	ANYTOWN COUNCIL APPROPRIATION	$ 50,000	ANYSTATE, USA	LOCAL CONTRIBUTION TO ITS CERTIFICATION PROGRAM	CASH PAYMENT	$ 50,000
		S	ANYTOWN COUNCIL APPROPRIATION	$150,000	COMMUNITY DEVELOPMENT DEPARTMENT SHELTER #3 PROJECT	SHELTER #3 NON-LEAD REPAIRS	SUBCONTRACT PAYMENTS	$150,000
		H	ANYTOWN CDBG ALLOCATION	$100,000	COMMUNITY DEVELOPMENT DEPARTMENT SHELTER #3 PROJECT	SHELTER #3 WINDOW REPLACEMENT COST	PAYMENT TO WINDOW MANUFACTURER	$100,000
		I	ANYTOWN PUBLIC AFFAIRS DEPARTMENT	$200,000	ANYTOWN PUBLIC AFFAIRS DEPARTMENT	LEAD-HAZARDS PUBLIC EDUCATION PROGRAM	DEPARTMENT SALARIES	$200,000
		N	ANYTOWN MEDIA COMP.	$ 50,000	ANYTOWN PUBLIC AFFAIRS DEPARTMENT	FREE RADIO, TV SPOTS FOR PUBLIC EDUCATION PROGRAM	FREE AIR TIME	$ 50,000
		K I	ANYTOWN PUBLIC HEALTH DEPARTMENT	$250,000	ANYTOWN PUBLIC HEALTH DEPARTMENT	BLOOD-LEAD SCREENING PROGRAM CHILDREN UNDER 6	DEPARTMENT SALARIES	$250,000
		N	ANYTOWN MEDICAL FOUNDATION	$200,000	ANYTOWN PUBLIC HEALTH DEPARTMENT	CHELLATION TREATMENT PROGRAM CHILDREN UNDER 6	MEDICAL CARE AND SERVICE	$200,000
		D	ANYTOWN COMMUNITY DEVELOPMENT DEPARTMENT	$100,000	ANYTOWN COMMUNITY DEVELOPMENT DEPARTMENT	SHELTER #3 A&E SERVICES	STAFF SALARIES	$100,000
			ANYTOWN BUILDING INSPECTION DEPARTMENT	$ 50,000	ANYSTATE USA	TRAIN ANYTOWN BUILDING INSPECTORS	DEPARTMENT TRAVEL AND SALARIES	$ 50,000
			ANYTOWN BUILDING INSPECTION DEPARTMENT	$100,000	ANYSTATE USA BUILDING INSPECTION DEPARTMENT	1. LEAD-HAZARD DETECTION SERVICES 2. LEAD-HAZARD REMOVAL INSPECTIONS	DEPARTMENT SALARIES	$100,000
TOTALS:	$5,250,000			$5,250,000			TOTAL:	$5,250,000

APPENDIX D

NOFA III
ELIGIBILITY OF HUD-ASSOCIATED "PRIORITY" HOUSING UNITS TO PARTICIPATE UNDER HUD'S LEAD-HAZARD-CONTROL GRANTS PROGRAM

Program	Eligibility: Yes	Eligibility: No
Housing Components of Community Planning & Development Programs		
Community Development Block Grants (Entitlement)	X	
Community Development Block Grants (Non-Entitlement) for States and Small Cities	X	
Community Development Block Grants (Section 108 Loan Guarantee)	X	
Special Purpose Grants	X	
The Home Program: HOME Investment Partnerships	X	
HOPE for Homeownership of Single Family Homes	X	
Shelter Plus Care (by component)		
Sponsor-based Rental Assistance		X
Tenant-based Rental assistance	X	
Project-based Rental Assistance		X
SRO Rental Assistance		X
Single Family Property Disposition Homeless Initiative		X
Emergency Shelter Grants	X	
Housing Opportunities for Persons With Aids (HOPWA)	X	
Surplus Properties (Title V)		X
Supportive Housing Demonstration Program Transitional Housing Component	X	
Supportive Housing Demonstration Program Permanent Housing Component	X	
Supplemental Assistance for Facilities to Assist the Homeless (SAFAH)	X	
Supportive Housing Program	X	
Section 8 SRO Mod Rehab for Homeless Individuals		X
Innovative Demonstration Program	X	
Housing		
Single Family Programs		
One- to Four-Family Home Mortgage Insurance (Section 203(b) and (i))	X	
Rehabilitation Mortgage Insurance (Section 203(k))	X	
Homeownership Assistance for Low- and Moderate-Income Families (Section 221(d)(2))		X
Homes for Service Member (Section 222)	X	
Housing in Declining Neighborhoods (Section 223(e))	X	
Condominium Housing (Section 234)	X	
Housing in Military Impacted Areas (Section 238)	X	
	X	

Program	Eligibility: Yes	Eligibility: No
Single Family Home Mortgage Coinsurance (Section 244)	X	
Graduated Payment Mortgages (Section 245)	X	
Adjustable Rate Mortgages (ARMs)(Section 251)	X	
Manufactured Homes (Title I)	X	
Housing		
Multifamily Programs		
Rent Supplements (Section 101)		X
Multifamily Rental Housing (Section 207)	X	
Cooperative Housing (Section 213)	X	
Mortgage and Major Home Improvement Loan Insurance for Urban Renewal Areas (Section 220)	X	
Multifamily Rental Housing for Moderate-Income Families		
Section 221(d)(3)		X
Section 221(d)(4)	X	
Existing Multifamily Rental Housing (Section 223(f))	X	
Supplemental Loans for Multifamily Projects (Section 241)	X	
Supportive Housing for Persons with Disabilities (Section 811)		X
HOPE 2: Homeownership of Multifamily Units (Title IV)		X
Low-Income Housing Preservation and Resident Homeownership (Title VI)		X
Emergency Low-Income Housing Preservation (Title II)		X
Flexible Subsidy (Section 201)		X
Public and Indian Housing		
Section 8 Project-Based Certificate Program		X
Section 8 Tenant Based Certificate and Voucher Program	X	
Section 8 Moderate Rehabilitation Program		X
Public Housing Development		X
Public Housing Operating Subsidy		X
Public Housing Modernization (Comprehensive Grant Program)		X
Public Housing Modernization (Comprehensive Improvement Assistance Program)		X
		X

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Appendix E—Elements of a State Certification Program

Congress has assigned Federal responsibility to the Environmental Protection Agency (EPA) for the definition, implementation, and oversight of State Certification Programs for workers, contractors, and inspectors engaged in the detection and reduction of lead-based paint hazards. The Department of Housing and Urban Development (HUD) has a strong interest in the strength and rigor of the EPA program, because HUD must rely on the effectiveness of the EPA program to assure the safe detection and reduction of those lead-based paint hazards.

In October 1992, Congress passed the Residential Lead-Based Paint Hazard Reduction Act. This legislation requires EPA to promulgate regulations governing the accreditation of training programs, the certification of contractors and the training of workers engaged in lead-based paint activities. These regulations must contain work practice standards. Finally, EPA must develop a model State program containing procedures for States to gain EPA approval of their programs.

Under the statute, lead-based paint activities are defined as:

(a) In the case of target housing: risk assessment, inspection, and abatement; and

(b) In the case of any public building constructed before 1978, commercial building, bridge, or other structure or superstructure: identification of lead-based paint and materials containing lead-based paint, deleading, removal of lead from bridges, and demolition.

EPA is currently developing the regulations required under this new legislation. However, since EPA's regulations are not currently available, States that commit to develop appropriate accreditation and certification programs as required by this NOFA are encouraged to enact broad enabling statutes. Legislation that is overly prescriptive may need to be modified in order to be acceptable under EPA's upcoming regulations.

HUD and EPA can, however, at this time define a minimum set of basic elements that *must* be contained in the enabling legislation. They are enumerated in #1 below. HUD and EPA also believe that additional elements should be included in legislation. These are identified in #2 below.

1. The enabling statute, at a minimum, shall contain the following elements:

a. *Agency*. Establish an agency, or agencies, or designate an existing State agency, or agencies, to implement the State program.

b. *Certification*. Authorize and direct the agency, or agencies, to promulgate regulations requiring the certification of contractors, that offer to perform lead-hazard detection or lead-hazard reduction services.

c. *Worker Training*. Authorize and direct the agency, or agencies to promulgate regulations setting training requirements for workers, inspectors, and other persons directly and substantially involved in the performance of lead-based paint activities. Such regulations shall establish minimum acceptable levels of training, and periodic refresher training for each class of workers and require that training shall be provided by accredited training providers.

d. *Accreditation of Training Providers*. Authorize and direct the agency, or agencies, to promulgate regulations to establish the accreditation of training programs. The legislation shall require that the regulation cover the following: (1) Minimum requirements for the accreditation of training providers; (ii) minimum training curriculum requirements; (iii) minimum training hour requirements; (iv) minimum hands-on training requirements; (v) minimum trainee competency and proficiency requirements; and (vi) minimum requirements for training program quality control.

e. *Standards*. Authorize and direct the agency, or agencies, to promulgate regulations establishing standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety.

f. *Compliance*. Authorize and direct the agency, or agencies, to promulgate regulations that will require any activity, involving lead-hazard detection or lead-hazard reduction procedures, to comply with agency regulations and to use certified and accredited personnel.

g. *Enforcement*. Authorize and direct the agency, or agencies, to promulgate regulations that provide for the enforcement of the State Certification Program, and that establish suitable sanctions, for those who fail to comply with program requirements. The regulations shall include provisions for the decertification and deaccreditation of programs and personnel.

h. *Federal Funding Eligibility*. Authorize and direct the agency, or agencies, to revise its regulations and procedures from time to time to assure that State lead-hazard activities continue to be eligible for Federal funding, by meeting the State certification program standards and other requirements that may from time to time be promulgated by EPA, HUD, and such other Federal agencies as may have jurisdiction over lead hazards;

i. *Reciprocity*. Authorize the agency, or agencies, to establish liaison with the other states having a State Certification Program to assure the maximum consistency of program requirements, in order to facilitate reciprocity of certification and accreditation among the several States;

2. In addition to the mandatory elements present in #1 above, HUD and EPA strongly recommend that the enabling legislation include:

a. *Staffing*. Authorize and direct the agency, or agencies, to dedicate suitable staff and to acquire suitable space, equipment, supplies and other items necessary for the operations of the program.

b. *Fees*. Authorize the agency, or agencies, to collect such fees for certification, accreditation, and other reviews as State policy may determine to be necessary to help support the activities of the agency or agencies.

c. *Laboratory Oversight*. Authorize and direct the agency, or agencies, to cooperate with EPA in any joint oversight procedures EPA may propose for laboratories accredited under the EPA laboratory accreditation program for laboratories that offer to provide lead analysis services.

d. *Data Collection*. Authorize the agency, or agencies, to establish a unit for the collection and analysis of data on lead-hazard detection and lead-hazard reduction activities in the State, and on the certification, accreditation, and enforcement activities of the agency.

e. *Public Education*. Authorize the agency, or agencies, in cooperation with other relevant agencies of the State, to conduct programs of public education on the nature and consequences of lead hazards and on the need for lead-hazard reduction activities to be conducted under careful supervision and by certified and accredited personnel in order to assure the public safety.

Appendix F—Statement of Requirements: Lead-Based Paint Element for Comprehensive Housing Affordability Strategy

Section 1011 of the Housing and Community Development Act of 1992 established the requirement that, to be considered an eligible applicant for Lead-Based Paint Grant Program funds, a State or unit of general local government must have a Comprehensive Housing Affordability Strategy (CHAS) that has been approved by HUD. States and units of local government that receive direct allocations of HOME Program or Community Development Block Grant Program funds are required to submit a full CHAS that includes a lead-based paint element. The instructions for developing a CHAS for Fiscal Year 1994 (including the lead-based paint element) are set out in CPD Notices 93–02 (for units of general local government) and 93–03 (for States). The deadline for submission of a FY 1994 CHAS was December 31, 1993.

Any otherwise eligible jurisdiction that does not have an approved Fiscal Year 1994 CHAS for the purposes of HOME, CDBG or other funding sources, but wishes to apply for funds pursuant to this NOFA, may develop an abbreviated strategy for the purposes of meeting the CHAS requirement, in accordance with Section 91.25 of the CHAS final rule and CPD Notice 94–04, January 21, 1994. Prospective applicants that plan to prepare an abbreviated strategy should note that these strategies must be received by HUD not later than the deadline established for applications pursuant to this NOFA. Failure to submit the abbreviated strategy by this deadline will result in disqualification of the jurisdiction's application.

Applicants must include a separate copy of their CHAS lead-based paint element or abbreviated strategy as part of the grant application. The Lead-Based Paint Grant Program does not require the submission of a certification of consistency with a CHAS.

Appendix G—Sec. 215 of the National Affordable Housing Act (Pub. L. 101–625): Qualification as Affordable Housing

(a) Rental Housing.—

(1) Qualification.—Housing that is for rental shall qualify as affordable housing under this title only if the housing—

(A) bears rents not greater than the lesser of (i) the existing fair market rent for comparable units in the area as established by the Secretary under section 8 of the United States Housing Act of 1937, or (ii) a rent that does not exceed 30 percent of the adjusted income of a family whose income equals 65 percent of the median income for the area, as determined by the Secretary, with adjustment for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 65 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes;

(B) has not less than 20 percent of the units (i) occupied by very low-income families who pay as a contribution toward rent (excluding any federal or State rental subsidy provided on behalf of the family) not more that 30 percent of the family's monthly adjusted income as determined by the Secretary, or (ii) occupied by very low-income families and bearing rents not greater than the gross rent for rent-restricted residential units as determined under section 42(g)(2) of the Internal Revenue Code of 1986;

(C) is occupied only by households that qualify as low-income families;

(D) is not refused for leasing to a holder of a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as a holder of such voucher or certificate of eligibility;

(E) will remain affordable, according to binding commitments satisfactory to the Secretary, for the remaining useful life of the property, as determined by the Secretary, without regard to the term of the mortgage or to transfer of ownership, or for such other period that the Secretary determines is the longest feasible period of time consistent with sound economics and the purposes of this Act; and

(F) if newly constructed, meets the energy efficiency standards promulgated by the Secretary in accordance with section 109 of this Act.

(2) Adjustment of Qualifying Rent—The Secretary may adjust the qualifying rent established for a project under subparagraph (A) of paragraph (1), only if the Secretary finds that such adjustment is necessary to support the continued financial viability of the project and only by such amount as the Secretary determines is necessary to maintain continued financial viability of the project.

(3) Increases in Tenant Income—Housing shall qualify as affordable housing despite a temporary noncompliance with subparagraph (B) or (C) of paragraph (1) if such noncompliance is caused by increases in the incomes of existing tenants and if actions satisfactory to the Secretary are being taken to ensure that all vacancies are filled in accordance with paragraph (1) until such noncompliance is corrected. Tenants who no longer qualify as low-income families shall pay as rent not less than 30 percent of the family's adjusted monthly income, as recertified annually.

(4) Mixed-Income Project—Housing that accounts for less than 100 percent of the dwelling units in a project shall qualify as affordable housing if such housing meets the criteria of this section.

(5) Mixed-Use Project—Housing in a project that is designed in part for uses other than residential use shall qualify as affordable housing if such housing meets the criteria of this section.

(b) Homeownership—Housing that is for homeownership shall qualify as affordable housing under this title only if the housing—

(1) has an initial purchase price that does not exceed 95 percent of the median purchase price for the area, as determined by the Secretary with such adjustments for differences in structure, including whether the housing is single-family or multifamily, and for new and old housing as the Secretary determines to be appropriate;

(2) is the principal residence of an owner whose family qualifies as a low-income family at the time of purchase;

(3) is made available for initial purchase only to first-time homebuyers;

(4) is made available for subsequent purchase only—

(A) to persons who meet the qualifications specified under paragraph (2), and

(B) at a price consistent with guidelines that are established by the participating jurisdiction and determined by the Secretary to be appropriate—

(i) to provide the owner with a fair return on investment, including any improvements, and

(ii) to ensure that the housing will remain affordable to a reasonable range of low-income homebuyers; and

(5) if newly constructed, meets the energy efficiency standards promulgated by the Secretary in accordance with section 109 of this Act.

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Thursday
April 21, 1994

Part VI

Department of Housing and Urban Development

24 CFR Parts 50, 55, 58, and 200

HUD Procedure for the Implementation of Executive Order 11988; Revision of HUD Minimum Property Standards for One- and Two-Family Dwellings; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 50, 55, 58, and 200

[Docket No. R-94-1436; FR-865-F-05]

RIN 2501-AA23

HUD Procedure for the Implementation of Executive Order 11988; Revision of HUD Minimum Property Standards for One- and Two-Family Dwellings

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: HUD is adopting procedures to implement Executive Order 11988 on floodplain management. The purpose of these procedures is to provide direction for compliance with the executive order for all HUD programs (except those explicitly excluded) both by HUD and by certain state and local grant recipients, before their respective decisions to approve a proposed action that involves HUD financial assistance; and would affect a floodplain. The rule is designed as a balanced rule that implements the executive order while cutting costs and review time for HUD-related housing and other actions by reducing or eliminating processing steps where appropriate. In addition to the implementation procedures, HUD is revising the Department's Minimum Property Standards for One- and Two-Family Dwellings to accord with the executive order on floodplain management, and with WRC Guidelines, FEMA regulations, and current HUD mortgage underwriting practices. HUD environmental review regulations also are being revised in this rule, to cross-reference to the decision making process under this rule.

EFFECTIVE DATE: May 23, 1994.

FOR FURTHER INFORMATION CONTACT: Concerning 24 CFR parts 50, 55, and 58: Richard H. Broun, Director, Office of Environment and Energy, room 7240, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. For telephone communications, contact Truman Goins, Water Resources Coordinator, Office of Environment and Energy, at (202) 708-2894, TDD (202) 708-2565. With respect to 24 CFR part 200, contact John E. Bonkoski, Office of Housing, at (202) 708-1740, TDD (202) 708-2566. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule's amendments to 24 CFR part 55 have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). The paperwork approval number(s), when assigned, will be published in a separate **Federal Register** document.

The public reporting burden for each of these collections of information is 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, Attention Desk Officer for HUD, Washington, DC 20503.

I. Background

On January 4, 1990, HUD published in the **Federal Register** (55 FR 396) a Notice of Proposed Rulemaking to add 24 CFR part 55 and to amend 24 CFR parts 50, 58 and 200 to implement Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands (42 FR 26951, 26961, May 25, 1977). A correction to the Table in proposed § 55.11(c) was published on January 25, 1990 (55 FR 2533). The executive orders establish Federal policy to assure that Federal programs avoid adverse impact on wetlands and floodplains; minimize destruction, loss or degradation of wetlands; preserve and enhance the natural and beneficial values of wetlands; reduce risk of flood loss; minimize the impact of floods on human safety, health, and welfare; and to the extent possible, restore the natural and beneficial values served by floodplains.

This final rule implements Executive Order 11988 only and has been revised to eliminate references in the proposed rule to coverage of wetlands. The Department is not proceeding with a final rule that would apply to wetlands under Executive Order 11990 because the Administration is currently revising Federal policy concerning wetlands. HUD personnel will continue to follow outstanding instructions in implementing Executive Order 11990.

The final rule fulfills the requirement of the Floodplain Management executive order to issue implementing procedures and provides essential, overdue guidance to program participants and HUD staff that is tailored to HUD programs. The rule reduces the impact of the order's decision making procedures on housing and other program costs by: (1) Excluding from review types of actions that have no real floodplain impact; and (2) simplifying decision making procedures, *e.g.*, contemplating the use of existing data sources and meshing necessary reviews under the order with other required environmental processing. The final rule does not contain significant changes from the proposed rule, other than the deletion of wetlands coverage. Specific comments received on the proposed rule, HUD responses, and changes from the proposed rule are discussed below in part II of this preamble.

Under Executive Order 11988, Federal agencies should avoid directly or indirectly supporting floodplain development or otherwise adversely affecting floodplain areas unless there are no practicable alternatives to such actions. Federal agencies are required to implement Executive Order 11988 with respect to acquiring, managing and disposing of Federal property; providing Federally undertaken, financed, or assisted construction and improvements; and conducting Federal activities and programs affecting land use. The executive order also provides certain requirements for the proposed disposition of properties owned by Federal agencies and the creation of leases, easements, and rights-of-way on Federally owned properties.

The proposed rule set out procedures by which HUD (and state and local grantees that assume environmental responsibilities under 24 CFR part 58) would implement both executive orders. Principally, it set out the eight-step decision making procedure described in the U.S. Water Resource Council's Floodplain Management Guidelines for Implementing Executive Order 11988 (43 FR 6030, February 10, 1978), set out the applicability of that procedure to HUD actions by type of action (critical or non-critical) and location, proposed the inapplicability of the procedure and other requirements of the executive orders to certain types of proposed actions, and linked the procedure to the Department's environmental review procedures under 24 CFR parts 50 and 58. The proposed rule also proposed the revision of the HUD Minimum Property Standards (MPS) regulations for new construction of one- and two-family dwellings to conform to the 100-year base flood standard for new construction and substantial improvement of residential structures with basements under regulations of the National Flood Insurance Program (NFIP); comparable standards were proposed for residential structures that are without basements, are located in coastal high hazard areas, or contain critical actions.

In the preamble to the proposed rule, the Department also specifically requested comment on an alternative standard, not set out in the proposed rule, that would amend the MPS to require that (1) the elevation of the lowest floor in one- and two-family residential structures without basements in special flood hazard areas be at or above one foot above the FEMA established 100-year base flood (one-foot free board); and (2) that the underside of the lowest floor of one- and two-family structures in coastal high hazard areas and their horizontal supports be at least one foot above the base flood level where FEMA has determined that level without establishing stillwater elevation.

II. Comments and Responses

This proposed rule was published in the **Federal Register** for public comment within 60 days. The Department received six responses within this comment period and two after the March 5, 1990 comment period deadline. These late comments generally repeated or supplemented comments previously received. Public comments were received from eight sources: Four U.S. governmental agencies, one professional individual, one national trade association and two national professional associations. The Department is responding to all comments and suggestions that concern those portions of the proposed rule that implement Executive Order 11988. Because of the decision not to proceed at this time with those provisions of the rule that would implement Executive Order 11990, the following discussion does not address comments relating to protection of wetlands.

In reference to the proposed prohibition on HUD financial assistance in floodways except for functionally dependent uses (§ 55.1(c)(1)), a commenter suggested that HUD include the definitions and procedural requirements of 44 CFR 60.3(d)(3) of the National Flood Insurance Program (NFIP) regulations regarding prohibitions of encroachments that would increase flood levels.

The rule prohibits support for project development in a floodway unless it meets the criteria of a functionally dependent use (§ 55.2(b)(5)) and also generally requires a determination of no practicable alternative to location in the floodplain. Notwithstanding this review, all projects, before HUD action, are subject to local review and approval for compliance with the NFIP regulations in accordance with the locality's contract with FEMA. HUD, therefore, does not believe it is necessary to repeat the NFIP requirements in its regulations, and has not adopted this suggestion.

A commenter suggested that the Areawide compliance procedures (§ 55.25) be revised to require HUD to undertake a periodic review to assure that initial conclusions remain valid and that floodplain management criteria of the NFIP regulations are being applied. The commenter raised a concern that individual structures might be built at less than the 100-year flood elevation (base flood) if a periodic review is not undertaken.

HUD will only enter into an Areawide process where communities are agreed participants in the procedure and its floodplain management goals and objectives. Further, HUD will only execute this process with communities that are participating members in good standing with NFIP. The objective of the Areawide process is to eliminate delays, duplication, costly publications, etc. from project-by-project reviews, where it is agreed, demonstrated and documented that all actions to be undertaken in a specific area of a floodplain are and will be in compliance with the locality's floodplain management plan and the full extent of the NFIP regulations. For HUD programs and projects, all appropriate design drawings, plot plans, etc. would need to demonstrate compliance with local requirements and acceptance under the NFIP. The Department notes that under the rule, individual actions that fit within the types of proposed HUD actions specifically addressed under the areawide compliance require a determination by HUD (or a grant recipient under 24 CFR part 58) as to whether the action accords with areawide strategy; where the individual action does not accord with the areawide strategy, specific development and mitigation measures will be a condition of HUD's approval of the action. (See § 55.25(c).) Periodic spot checking of individual structures would also come under the regulatory code enforcement procedures of the local government authority. Beyond these enforcement mechanisms, questions concerning a community's fulfillment of its legal and contractual obligations to FEMA and the NFIP are the responsibility of FEMA to pursue. HUD will respond appropriately to any notices issued by FEMA concerning participating communities. The final rule will remain unchanged, except for the deletion of references to wetlands and wetland protection.

A commenter suggested that in the definition of "substantial improvement" (§ 55.2(b)(9)), the "50 percent of market value test" contained in paragraph (A) should be applied also to projects that meet the criteria of increased unit density or increased project use in paragraph (B).

The language of paragraph (B) stands by itself. It is consistent with criteria relating to rehabilitation projects in HUD environmental regulations at 24 CFR 50.20(c)(1) and 58.35(a)(4)(i)(A) and (ii)(B)(*1*). HUD does not believe it is necessary or desirable to apply the increase-in-value test of paragraph (A) to actions that will increase unit density or project use to the extent set out in paragraph (B).

Two commenters discussed HUD procedures for disposing of foreclosed properties. One commented that under § 55.22 (conveyance restrictions), HUD should list the third alternative of withholding properties from conveyance. Two other comments expressed concern that these properties may be subject to repeated flooding or pose safety hazards, or the properties may, after purchase, be converted to less compatible uses. One suggested that, as a minimum, one- to four-family properties, which the proposed rule excluded from the eight-step decision making process, should be subject to the five steps applicable to multifamily and bulk sales dispositions; the other recommended that disposition of HUD properties be subject to the public notification requirements (*i.e.*, Steps 2 and 7) and that criteria for evaluating potential impacts of the disposition be developed.

As explained in the preamble to the proposed rule, HUD is obligated to dispose of properties in its inventory and return the proceeds to the insurance fund as quickly as possible so as to retain the integrity and security of the fund. Therefore, withholding properties from conveyance is not an available option. HUD does not believe going through the entire eight-step process for the disposition of foreclosed properties located in a floodplain would further floodplain management objectives. In these cases, there is no locational alternative to the action and in any event the prospective purchaser of the property is notified of its floodplain location. Moreover, in the vast majority of cases, these properties have never been flood damaged. If previously damaged properties pose a potential for repeated damage or a safety hazard, community enforcement of the NFIP requirements and public health and safety laws, and FEMA assistance (purchasing properties deemed to create a permanent hazard or liability), are the appropriate means of addressing this issue. This is also the case regarding possible future "conversion" to less compatible uses. The local community regulates land use controls and in its NFIP contract with FEMA, a floodplain management plan/program identifies permitted and compatible uses. Therefore, HUD does not feel the need to change its proposed provisions regarding the disposition of foreclosed property (except to delete the reference to wetlands).

Section 55.12(c)(6) of the proposed rule would exclude HUD approval of a project site from the eight-step decision making process where an "incidental" portion of the site is in an adjacent floodplain or wetland, if the proposed construction and landscaping activities (except for certain minor activities) do not occupy or modify the floodplain or wetland; appropriate provision is made for site drainage; and a restriction is placed on the use of the property to preserve the floodplain or wetland. A commenter recommended defining or clarifying the terms "incidental" and "appropriate" and expressed concern that the regulation allowed drainage of wetlands. The commenter also suggested that sites that are described in § 55.12(c)(6) should be subject to an analysis of cumulative and indirect impacts and should not be excluded from the eight-step decision making process. Another commenter also noted the lack of definitions for "appropriate" and "minor" and suggested that all or part of the decision making process should be applied in order to allow only unavoidable impacts.

As expressed in the preamble and text of the proposed rule, § 55.12(c)(6) would only have been applicable to projects that "do not occupy or modify the wetland [or] * * * floodplain". This final rule does not apply to wetlands as such. In any event, HUD does not believe any stronger explanation is necessary as to the intent or objective not to affect or harm a wetland or floodplain through construction or development activity. Therefore, no further benefit will be gained by completing a procedural eight-step process. Cumulative and indirect impacts may be addressed under applicable NEPA assessment requirements. The term "incidental" refers to an area that is incidental in direct proportion to the overall size of a site under HUD review. The term "minor" is self-explanatory in the context in which it is used. Further, due to HUD's specifically imposed constraint that activities may "not occupy or modify the * * * floodplain", the floodplain cannot, except as passive open or green space, be utilized in the development or support of any project activity. HUD also notes that the requirement for "appropriate provision * * * for site drainage" in § 55.12(c)(6)(ii) cannot be read to conflict with the prohibition in § 55.12(c)(6)(i) against modifying the floodplain.

Section 55.12(c)(9) of the proposed rule states that part 55 would not apply to "HUD's acceptance of a housing subdivision approval action by the Department of Veterans Affairs or Farmers Home Administration in accordance with section 535 of the Housing Act of 1949 (42 U.S.C. 1490o)". The Department of Veterans Affairs expressed concern that this provision implies that the VA approves subdivisions.

Section 55.12(c)(9) merely acknowledges HUD's obligation under section 535 to accept any VA subdivision approvals without performing further reviews. HUD acknowledges that shortly after section 535 was enacted, the VA unilaterally determined to discontinue processing and approving subdivisions. Whether or not VA approves subdivisions, however, this section will have no effect on VA's loan guarantee program. HUD believes it must reference the statute. It is also possible that sometime in the future, the VA could resume processing subdivisions.

One commenter suggested that HUD consider expanding the definition of critical actions in § 55.2(b)(2) to include housing for independent living for the elderly in an initial evaluation, and that the 100-year floodplain protection should only be permitted when all residents are relatively mobile and there is sufficient warning time for evacuation. The commenter also suggested that housing in flash flood areas should be considered a critical action.

HUD believes that the condition of relative mobility is more than met under the basic requirements of the elderly program. That is, all residents must be self sufficient and capable of independent living without support assistance. The commenter failed to understand the intent of HUD's proposed rule on program implementation. HUD will not blindly support development in a special flood hazard area if it has been identified on a FEMA flood hazard area map. As with all HUD actions that are subject to the decision making process of the rule, if a project or site in a flood hazard area is not rejected outright, the decision making process of this rule will be followed before any decision to proceed. HUD also sees no basis to single out housing in flash flood areas as a critical action. This suggestion is impractical since FEMA does not identify flash flood areas on its maps or define what constitutes a flash flood area. Moreover, any HUD approved activity will provide protection and security not only for the improvements but also for the potential residents, within the parameters of the locality's floodplain management agreements with FEMA and the NFIP.

This commenter also raised the issue of housing for the hearing and sight impaired, developmentally disabled and chronically mentally ill as types of housing that should be considered a critical action. The commenter also expressed concern that projects for handicapped persons under the Supportive Housing Demonstration Program were not treated as critical actions under the final rule for that program (see 54 FR 47023–47054, November 8, 1989), as originally proposed.

The preamble to that final rule provided a discussion of HUD's original intent to include all generically designated handicapped housing as a critical action and the explanation of why it was being deleted in the final rule. Since then, no additional information or data on the subject has been presented to the Department. Therefore, HUD declines to adopt this suggestion.

A commenter suggested that presentation of the decision making process set forth in § 55.20 be expanded to include some of the discussion contained in the Water Resources Council (WRC) Floodplain Management Guidelines for each of the eight steps.

HUD considered this issue when preparing the Proposed Rule and determined not to include any narrative discussion from the WRC Guidelines in its regulations. It is HUD's intent to issue a Departmental Handbook on procedures for implementing the eight step process. The Handbook would include specific and detailed procedures and examples, sample notices, distribution systems, review methods, project and source documentation, etc., oriented to the type of projects eligible for HUD program assistance. Accordingly, HUD has not adopted this comment.

The National Association of Home Builders (NAHB) objected to the application of the decision making process under this rule to HUD's approval of new subdivisions for purposes of issuing home mortgage insurance under the National Housing Act, and to the issuance of HUD commitments to insure more than four home mortgages in a new subdivision. The NAHB contended that these actions are not, or at least need not be considered, major Federal actions that significantly affect the quality of the human environment as this term is used in the National Environmental Policy Act of 1969 (NEPA), because HUD commitments to insure mortgages are not essential to the development of the subdivision. Accordingly, the NAHB asserted that HUD subdivision approval procedures should be listed in § 55.12 as categorically excluded from the decision making process.

HUD does not agree with these comments. The Department has consistently considered HUD "subdivision approval" as being a Federal action that is subject to NEPA environmental review under HUD regulations at 24 CFR part 50. This view is in accord with the CEQ regulatory definition of major Federal action, which includes "actions with effects that may be major and which are potentially subject to Federal control and responsibility." 40 CFR 1508.18. HUD also notes that, contrary to this comment's assumption, there is nothing in the executive orders that requires actions covered thereunder to be delineated in the same manner as those covered under NEPA. In fact, the Floodplain Management Guidelines define "action" in terms of the Federal activities listed in section 1 of Executive Order 11988, including "conducting Federal activities and programs affecting land use." Moreover, section 4 of Executive Order 11988 and section 2(b) of Executive Order 11988 and section 2(b) of Executive Order 11990 specifically require procedures for early public review of Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under NEPA. Accordingly, HUD is not making any change in the rule in response to this comment. In any event, on August 3, 1993, HUD issued a final rule (58 FR 41328) that discontinued HUD's subdivision processing and approval requirements, effective September 2, 1993. Thus, the concerns raised by the commenter (NAHB) have become moot.

One commenter wanted further clarification of the term "comparative risk" as used in the preamble to the proposed rule in connection with modifying requirements of the executive orders. The reference was to the "comparative risks arising from various Federal programs and projects" as a criterion for initiatives approved by Federal authorities for modifying requirements in the executive orders, *i.e.*, to an expectation that agencies would implement the executive orders while giving necessary consideration to their mission for administering various programs and projects. HUD believes the narrative in the preamble to the proposed rule directly following the words "comparative risk" adequately indicates the Department's intent in using the term. Also, in table I, § 55.11(c), the commenter suggested that the types of "non-critical actions" category allowable in coastal high hazard areas be changed. The suggestion was to require actions to be both designed for the hazardous area and a "functionally dependent use" instead of either/or as proposed. Further, the commenter wanted HUD to limit all actions in a 100-year floodplain or wetland outside a high hazard area to those which are functionally dependent uses.

HUD has not accepted either of these comments. HUD believes that in coastal high hazard areas, the "either/or" criterion in conjunction with the decision making process is appropriate for assuring responsible Federal actions. In non-high hazard areas, to accept a restriction to only "functionally dependent uses" as a basis for limiting proposed actions in a 100-year floodplain would exceed the mandate of the executive order and the Water Resources Council's Floodplain Management Guidelines. Such an approach, which would allow only water-dependent uses such as marinas and waterfront parks, would effectively red-line housing assistance to entire communities that have been established in 100-year floodplains.

A commenter recommended that three items under the eight step process in § 55.20 be changed. First, the commenter recommended that the time period for comment under the first public notice under § 55.20(b)(2) be increased from 15 days to 30 days. HUD believes that 15 days is sufficient time for a reviewer to determine if it has an interest in a proposed action and to submit comments. It is important to note that the decision making process for activity affecting the floodplain and the specific project does not end at 15 days. It does establish a point after which the remaining procedural elements can be pursued and technical work may proceed. Second, in § 55.20(c)(1)(ii) the commenter recommended changing "identical objective" to "overall project purpose". HUD does not see any need to change the rule as proposed. Finally, in § 55.20 (d) and (f), the commenter recommended adding requirements for identification and evaluation of cumulative impacts. HUD believes the procedures as written comply with the Floodplain Management Guidelines. If any further elaboration is necessary, it will be included in a Handbook on working procedures, definitions, documentation, etc. HUD does not believe any change is required and these sections will remain as written in the proposed rule (except for the deletion of references to wetlands).

A commenter suggested that HUD review other agencies' compliance with the executive orders when HUD accepts VA or FmHA subdivision approvals under § 55.12(c)(9) or adopts Executive Order reviews by other agencies under § 55.26.

HUD believes the rule as proposed properly addresses a statutory requirement, in the first instance, and provides adequate procedural safeguards to protect HUD's interest, in the second. The exclusion of VA and FmHA subdivision approval actions from HUD re-review is required by section 535 of the Housing Act of 1949, which states in part that each of the three agencies "shall each accept an administrative approval of any housing subdivision made by any of the others." With regard to adoption of another agency's review under § 55.26, HUD believes that conditions outlined in the rule provide sufficient assurances with respect to any review accepted through this adoption process. HUD does not accept these recommendations and no changes are made in response to this comment.

In response to a comment, HUD has made a minor change for consistency of terminology in § 55.1(c)(3)(i). The term "substantial rehabilitation" has been changed to "substantial improvement" to be consistent with the terminology defined in § 55.2.

A commenter suggested that in § 55.20(a), Step 1 of the decision making process, and in the corresponding discussion in the preamble to the proposed rule, the language be revised to reflect that the decision to allow the proposed action to take place in a floodplain or wetland will be based on the determination that such a site is the only practicable alternative for such an action. This comment has not been adopted since the suggested language is not germane to Step 1 of the decision making process (determining whether the action is located in a floodplain) and the topic is covered in Steps 3 and 7 (§ 55.20 (c) and (g)) as set out in the proposed rule.

A commenter suggested that a definition of the term "practicable" which is similar to that provided in guidelines under the Clean Water Act 404 program and in the Executive Order be included in § 55.2. HUD has not adopted this suggestion. While neither Executive Order contains a definition of "practicable", the Floodplain Management Guidelines do contain a definition of this term, and the definitions contained in the Guidelines are explicitly incorporated by reference into part 55 under § 55.2(a).

A commenter stated that under § 55.20(g)(3) (Step 7), mitigation should be required and not left as an option, and suggested that additional language consistent with EPA/Corps mitigation procedures be added that would refer to measures designed to compensate for any unavoidable adverse impacts remaining after appropriate and practicable minimization.

HUD has not adopted this suggestion. Section 55.20(g)(3), which refers to "mitigation measures to be taken to minimize adverse impacts and to restore and preserve natural and beneficial values", does not imply that such measures are optional. Moreover, to the extent that the additional language suggested by the commenter would require more than practicable minimization, along with restoration and preservation, the suggested language goes beyond what is required by the floodplain management executive order.

HUD has made additional changes from the proposed rule. Section 55.1(b) of the proposed rule set out the prohibition in section 202(a) of the Flood Disaster Protection Act of 1973 (FDPA) against financial assistance for acquisition or construction purposes in special flood hazard areas in communities that are not participating in the National Flood Insurance Program. Section 55.1(b) also listed three HUD programs involving formula grants to states to which this prohibition does not apply. The prohibition is inapplicable to those programs because section 3(a)(3) of the FDPA defines "financial assistance" to which the prohibition applies as any form of Federal assistance "other than general or special revenue sharing or *formula grants made to States*" (emphasis added). After the publication of the proposed rule, title II of the Cranston-Gonzalez National Affordable Housing Act (Pub.L. 101–625) enacted the HOME Investment in Affordable Housing (or HOME) program, under which funds will be provided to states (as well as local governments) by formula. Accordingly, HUD is revising the third sentence in § 55.1(b) of this final rule to add a reference to HOME funds provided to a state as one of the programs to which the prohibition does not apply. In addition, the sentence is being revised to indicate in more general terms that the prohibition does not apply to HUD financial assistance in the form of formula grants to states, including the programs listed. HUD has determined that public comment on these changes is unnecessary since the changes merely reflect the provisions of the FDPA and the enactment of an additional HUD program that falls within the FDPA exception for formula grants to states.

In the definition of "substantial improvement" in § 55.2(b)(9)(i), the word "modernization" has been added to the proposed rule's reference to "repair, reconstruction, or improvement" in paragraphs (A) and (B). This change merely adds a term often used in HUD assisted housing programs and does not change the scope of the definition.

In § 55.12(a), which lists programs to which certain decision making steps will not apply, paragraph (2) lists HUD's actions under section 223(f) of the National Housing Act for the purchase or refinancing of existing multifamily housing projects. The final rule has been revised to explicitly indicate that such projects include hospitals, nursing homes, board and care facilities, and intermediate care facilities. This change is made to clarify the Department's intent that all types of projects that may be insured under authority of section 223(f) would be covered by § 55.12(a)(2).

The final rule also includes a new paragraph (3) in § 55.12(a). Paragraph (3) indicates that Steps 2, 3, and 7 of the decision making process will not apply to certain HUD mortgage insurance actions for the repair, rehabilitation, modernization or improvement of existing multifamily housing projects (including nursing homes, board and care facilities and intermediate care facilities) and existing one- to four-family properties, just as these steps will not apply to Section 223(f) actions and certain property disposition actions. The housing mortgage insurance actions listed in paragraph (3) include actions that are in communities in good standing in the Regular Program of the NFIP, and that involve work which does not increase the number of units more than 20 percent, involve a conversion from nonresidential to residential land use, or significantly increase the footprint of the structure or paved areas. HUD has determined that these types of repair, rehabilitation, modernization and improvement projects have a *de minimis* impact on floodplain development and that the decision making steps involving public notices and identification of alternatives would serve no practical purpose in the context of this work on existing housing projects and units.

The final rule revises paragraph (1) of § 55.12(b), which lists categories of proposed actions to which the decision making process under the Order will not apply. Paragraph (1), as contained in the proposed rule, listed HUD's mortgage insurance actions for the purchasing, mortgaging or refinancing of existing one- to four-family properties in communities in good standing in the regular program of the NFIP, other than critical actions and properties in a floodway or coastal high hazard area. The final rule lists mortgage insurance actions and other financial assistance for the purchasing, mortgaging or refinancing of such properties. HUD has determined not to limit this provision to mortgage insurance actions, when activities under other HUD programs, such as the HOME Investment Partnerships Program (see 24 CFR part 92), may include assistance for the purchase of existing one- to four-family properties, with equally *de minimis* impacts on floodplain development.

The final rule also includes a revision to § 55.12(b)(3). As originally proposed, this section excluded from the decision making process those HUD actions involving the disposition of individual HUD-acquired one- to four-family properties, in communities that are in good standing under the NFIP. On April 16, 1992, as part of a proposed rule eliminating HUD's subdivision review process, HUD proposed a revision to § 55.12(b)(3) that would eliminate the condition that the properties be in communities in good standing under the NFIP (57 FR 13592). This final rule contains the April 16, 1992 revision. A second proposed part 55 revision contained in the April 16, 1992 proposal would have added a paragraph (13) to § 55.12(c), which would have excluded from part 55 HUD's endorsement of mortgage insurance on one- to four-family properties located in a wetland and processed by a Direct Endorsement lender without prior HUD review. That revision is not adopted because this final rule does not address wetlands.

In § 55.12(c), which lists HUD actions to which part 55 does not apply, paragraph (7) of the proposed rule listed actions for interim assistance or emergency activities involving imminent threats to health and safety. The final rule revises paragraph (7) to also list assistance under the Fire Safety Equipment Loan Insurance Program under section 232(i) of the National Housing Act as an activity to which part 55 does not apply. This program provides loans to existing nursing homes, intermediate care facilities and board and care facilities for the limited purpose of purchasing and installing fire safety equipment necessary for compliance with the 1987 edition of the Life Safety Code of the National Fire Protection Association or other codes approved by the Secretary of Health and Human Services or mandated by a State under the Social Security Act. Because this assistance is for improvements limited to fire safety equipment and is provided to existing facilities, it has little or no impact on floodplain development. Accordingly, HUD finds that, as with the other programs listed in § 55.12 (b) and (c), compliance with the Executive Order would serve no functional purpose for this program.

Section 55.20(e), which sets out Step 5 of the eight step decision making process, has been revised in the second sentence to indicate that all critical actions in the 500-year floodplain shall, in the case of new construction, be designed and built at or above the 100-year floodplain. This language is not a new requirement, but is merely added to clarify that critical actions, like non-critical actions, must be built at the 100-year level, and that there is no additional requirement that they be elevated to the 500-year flood level.

Finally, § 55.23 of the proposed rule has been removed as unnecessary. Section 55.23 would have required that any HUD document notifying the public of the availability of funds for a program (*e.g.*, Notices of Funding Availability (NOFAs) published in the Federal Register) indicate that all proposed sites in a floodplain or wetland are subject to compliance with part 55, and that grant recipients also comply with this requirement. HUD has determined that specific reference to part 55 in all such documents is duplicative. HUD intends that its NOFAs and/or the relevant HUD regulations or program guidelines will set forth the requirements, as applicable, for compliance with HUD's environmental procedures in 24 CFR part 50 or 58. Parts 50 and 58 will, with this final rule, specifically require compliance with part 55 along with a number of other environmental laws and authorities. Grant recipients that assume responsibility for compliance with environmental requirements under part 58 are responsible for assuring that the procedures required under part 55 are carried out. Accordingly, a specific requirement that compliance with part 55 be singled out for reference in all such HUD and grantee documents is unnecessary.

Comments on Part 200 (Minimum Property Standards)

As indicated above, the preamble to the proposed rule also requested comment on an alternative standard, not set out in the proposed rule, that would amend the MPS to require a one-foot freeboard above the FEMA 100-year flood level for one- and two-family dwellings without basements and in coastal high hazard areas. This standard would exceed the FEMA-required minimum elevation of these types of structure by one foot. As reflected in lower National Flood Insurance premiums for the higher elevation, discussed in the preamble to the proposed rule, this standard would reduce the chances that a home located in a special flood hazard area or coastal high hazard area would be flooded and would also reduce property damage to the structure and danger to the residents where elevation of a particular flood somewhat exceeds the base flood level, but it would increase the cost of constructing homes.

This alternative standard would require an increase in construction cost due to the necessity for one additional foot of fill in the case of slab construction, but lower flood insurance premiums over the period of homeownership would generally result in net savings for the homeowner.

The decreased chance of flooding and property damage would also result in a reduction in risks of loss to the FHA insurance funds from such damage for houses that are acquired by HUD following defaults by mortgagors, since HUD self-insures against flood and other losses during the period it holds such properties.

Two commenters supported the higher MPS elevation requirement, citing the additional protection from flood damage and the hardships of flooding for the homeowner, as well as the potential reduction of costs to the Federal Government in the areas of income tax casualty loss deductions and Federal individual family grants and temporary housing costs provided to persons affected by flooding. However, three of the four Federal Government agencies that commented on the proposed rule did not address the one-foot freeboard proposal, and the fourth agency, while generally supportive of the proposal, did not specifically prefer it over the 100-year flood elevation proposal.

In view of the apparent absence of a broad base of support for this proposal, along with the fact that it is not an explicit requirement of Executive Order 11988 and exceeds the requirements of the National Flood Insurance Program, HUD has determined not to proceed with the adoption of a one-foot freeboard requirement in this rulemaking. HUD may propose the adoption of a freeboard requirement in a separate rulemaking. Accordingly, the text of § 200.926d as proposed will be adopted, with only technical corrections in response to FEMA comments. This Final Rule will not contain a freeboard requirement.

In response to a comment, HUD has made a minor change in the MPS for consistency with NFIP requirements in 44 CFR 60.3(e). Section 200.296d(c)(4)(iii)(B) has been changed to require that "the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) and its horizontal supports"—rather than "the underside of the lowest floor of the structure and its horizontal supports"—shall be at or above the base flood level.

With regard to the proposed MPS language in § 200.926d(c)(4)(iii) regarding properties in coastal high hazard areas, a commenter suggested that if HUD is referring to the "stillwater" base flood elevations in coastal numbered A-zones, HUD should consider a greater level of protection for those structures in A-zones closer to the V-zones, where velocity and wave conditions would exist.

HUD has not adopted this comment. While there are some coastal high hazard areas that are based on stillwater elevations, it is HUD's understanding that eventually 100-year flood elevation levels for all coastal high hazard areas will be based on consideration of velocity and wave conditions rather than stillwater elevations. In the interim, in those coastal high hazard areas where only stillwater elevations are indicated on FEMA maps, it is not practicable, in HUD's view, to establish MPS elevation requirements that vary from the elevations shown on the FEMA maps.

One commenter commended HUD for supporting recognition of the 100-year flood standard and the NFIP regulations, but suggested that there was no benefit to the citation, in the MPS for residential structures with basements (§ 200.926d(c)(4)(i)), of NFIP regulations allowing variances and exceptions (44 CFR 60.6 (a) & (c)), since false expectations might be raised that variances are easily obtained.

It is not HUD's objective to raise false expectations of easily obtainable variances or exceptions. However, HUD believes that this reference is necessary to provide a basis for HUD to except properties from the MPS elevation requirement where a community has previously approved new construction with either a variance or an exception. Without this provision, HUD would be placed in the position of rejecting properties at elevations approved by local governments in the exercise of their authority under the NFIP. The final rule will leave the references as proposed.

III. Other Matters

Paperwork Reduction Act

Both reporting and recordkeeping requirements exist in 24 CFR 55.27. That section, "Documentation", sets out the several areas of part 55 that require information collections.

Collectively, the reporting and recordkeeping requirements contained in this rule will affect an estimated 3200 applicants and grantees, each with an estimated .40 hours required to respond to the required questions. Accordingly, the total estimated additional information collection burden represented by the rule is 1280 hours.

Executive Order 12606

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule will not have a potential significant impact on the formation, maintenance, and general well-being of families.

Executive Order 12612

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that some of the policies contained in the rule have federalism implications. The regulation implements an eight-step decision making process under Executive Order 11988 for considering locational alternatives and design modifications to lessen risk and impact for HUD-assisted actions proposed for floodplains, and for choosing sites outside the floodplain where practicable. While HUD carries out this process for most HUD programs, the regulation will require states and units of general local government to carry out the eight-step process and other requirements of the rule if they are applicants that assume environmental review responsibilities under section 104(g) of the Housing and Community Development Act of 1974 (HCD Act of 1974) or under section 288 of the Cranston-Gonzalez National Affordable Housing Act (NAHA) and HUD's implementing regulations in part 58. However, further review under Executive Order 12612 is not considered necessary because HUD has little or no discretion in requiring states and units of general local government to carry out the requirements of the rule where they assume other responsibilities under section 104(g) or section 288. Section 9 of E.O. 11988 provides that the responsibilities under the order may be assumed by applicants that assume environmental review responsibilities under the National Environmental Policy Act of 1969 (NEPA), for projects covered by section 104(h) (now 104(g)) of the HCD of 1974. The executive order thus contemplates state and local assumption of responsibilities under the orders whenever responsibilities under NEPA (and, under later amendment to section 104, responsibilities under other provisions of law to be specified by the Secretary) are assumed. As a practical matter, bifurcation of NEPA and Executive Order 11988 responsibilities would not be feasible. The language of section 288 of NAHA clearly is patterned on section 104(g) and contemplates state and local assumption of the same responsibilities. Review under Executive Order 12612 is also unnecessary because HUD's regulations at 24 CFR part 58, implementing section 104(g) of the HCD Act of 1974, have long provided for state and local governmental assumption of NEPA, Executive Order, and other environmental review responsibilities. State and local governments thus already have been assuming and carrying out these responsibilities for many years. Part 55 merely describes and codifies more specifically the implementing policies and procedures under Executive Order 11988.

Executive Order 12866

This rule was reviewed as a significant rule and approved by the Office of Management and Budget (OMB) under Executive Order 12866, Regulatory Planning and Review, which was signed by the President on September 30, 1993.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Secretary, by approving this rule, certifies that the rule does not have a significant economic impact on a substantial number of small entities. This rule does not prohibit HUD support of activities in floodplains (except for certain activities in floodways and coastal high hazard areas), but rather it creates a consistent departmental policy governing such support. The revision of § 200.926d(c)(4) of the HUD MPS regulations merely maintains the current Federal standard under Executive Order 11988 and FEMA's NFIP regulations, in addition to incorporating current HUD mortgage underwriting standards and Field Office floodplain engineering standards.

NEPA

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, room 10276, 451 Seventh Street SW., Washington, DC 20410.

Semiannual Agenda of Regulations

This rule is listed as item number 1468 in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402, 56415) under Executive Order 12291 and the Regulatory Agenda.

Catalog of Federal Domestic Assistance

The programs affected by this rule are listed in the Catalog of Federal Domestic Assistance under program numbers 14.103 through 14.852.

List of Subjects

24 CFR Part 50

Environmental protection, Environmental assessments, Environmental impact statements, Environmental policies and review procedures.

24 CFR Part 55

Environmental protection, Floodplain management and the protection of wetlands.

24 CFR Part 58

Environmental protection, Community development block grants, Environmental impact statements, Grant programs—housing and community development, Reporting and recordkeeping requirements.

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum Property Standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

Accordingly, 24 CFR parts 50, 58, and 200 are amended, and a new part 55, consisting of §§ 55.1 through 55.27, is added, as follows:

PART 50—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

1. The authority citation for part 50 is revised to read as follows:

Authority: 42 U.S.C. 3535(d), 4332; and Executive Order 11991, 42 FR 26967 (May 24, 1977).

2. In § 50.4, paragraph (b)(3) is removed, and paragraphs (b) (1) and (2) are revised to read as follows:

§ 50.4 Other environmental statutes, Executive orders and HUD standards.

* * * * *

(b) *Floodplain management and wetland protection.* (1) Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128).

(2) Executive Order 11988 (Floodplain Management), 42 FR 26951 (May 25, 1977), as interpreted in HUD regulations at 24 CFR part 55, and Executive Order 11990 (Protection of Wetlands), 42 FR 26961 (May 25, 1977). (For an explanation of the relationship between the decision making process in this 24 CFR part 55 and in this part, see § 55.10 of this chapter.)

* * * * *

3. A new part 55 (consisting of §§ 55.1 through 55.27) is added to title 24, to read as follows:

PART 55—FLOODPLAIN MANAGEMENT

Subpart A—General

Sec.

Subpart B—Application of Executive Order on Floodplain Management

Subpart C—Procedures for Making Determinations on Floodplain Management

Authority: 42 U.S.C. 3535(d) and 4001–4128; E.O. 11988, 42 FR 26951, 3 CFR, 1977 Comp., p. 117.

Subpart A—General

§ 55.1 Purpose and basic responsibility.

(a) This part implements the requirements of Executive Order 11988, Floodplain Management, and employs the principles of the Unified National Program for Floodplain Management. It covers the proposed acquisition, construction, improvement, disposition, financing and use of properties located in a floodplain for which approval is required either from HUD under any applicable HUD program or from a grant recipient subject to 24 CFR part 58. This part does not prohibit approval of such actions (except for certain actions in high hazard areas), but provides a consistent means for implementing the Department's interpretation of the executive order in the project approval decision making processes of HUD and of grant recipients subject to 24 CFR part 58. The implementation of Executive Order 11988 under this part shall be conducted by HUD, for Department-administered programs subject to environmental review under 24 CFR part 50, and by authorized recipients of HUD financial assistance subject to environmental review under 24 CFR part 58.

(b) Under section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), proposed HUD financial assistance (including mortgage insurance) for acquisition or construction purposes in any "area having special flood hazards" (a flood zone designated by the Federal Emergency Management Agency (FEMA)) shall not be approved in communities identified by FEMA as eligible for flood insurance but which are not participating in the National Flood Insurance Program. This prohibition only applies to proposed HUD financial assistance in a FEMA-designated area of special flood hazard one year after the community has been formally notified by FEMA of the designation of the affected area. This prohibition is not applicable to HUD financial assistance in the form of formula grants to states, including financial assistance under the State-administered CDBG Program (24 CFR part 570, subpart I) and the State-administered Rental Rehabilitation Program (24 CFR 511.51), Emergency Shelter Grant amounts allocated to States (24 CFR parts 575 and 576), and HOME funds provided to a state under Title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701–12839).

(c) Except with respect to actions listed in § 55.12(c), no HUD financial assistance (including mortgage insurance) may be approved after May 23, 1994 with respect to:

(1) Any action, other than a functionally dependent use, located in a floodway;

(2) Any critical action located in a coastal high hazard area; or

(3) Any non-critical action located in a coastal high hazard area, unless the action is designed for location in a coastal high hazard area or is a functionally dependent use. An action will be considered to be designed for location in a coastal high hazard area if:

(i) In the case of new construction or substantial improvement, the work meets the current standards for V zones in FEMA regulations (44 CFR 60.3(e)) and, if applicable, the Minimum Property Standards for such construction in 24 CFR 200.926d(c)(4)(iii); or

(ii) In the case of existing construction (including any minor improvements):

(A) The work met FEMA elevation and construction standards for a coastal high hazard area (or if such a zone or such standards were not designated, the 100-year floodplain) applicable at the time the original improvements were constructed; or

(B) If the original improvements were constructed before FEMA standards for the 100-year floodplain became effective or before FEMA designated the location of the action as within the 100-year floodplain, the work would meet at least the earliest FEMA standards for construction in the 100-year floodplain.

§ 55.2 Terminology.

(a) With the exception of those terms defined in paragraph (b) of this section, the terms used in this part shall follow the definitions contained in section 6 of Executive Order 11988 and in the Floodplain Management Guidelines for Implementing Executive Order 11988 (43 FR 6030, February 10, 1978) issued by the Water Resources Council; and the terms "criteria" and "Regular Program", shall follow the definitions contained in FEMA regulations at 44 CFR 59.1.

(b) The definitions of the following terms in Executive Order 11988 and related documents affecting this part are modified for purposes of this part:

(1) *Coastal high hazard area* means the area subject to high velocity waters, including but not limited to hurricane wave wash or tsunamis. The area is designated on a Flood Insurance Rate Map (FIRM) under FEMA regulations as Zone V1–30, VE, or V. (FIRMs as well

as Flood Hazard Boundary Maps (FHBM) shall also be relied on for the delineation of "100-year floodplains" (§ 55.2(b)(8)), "500-year floodplains" (§ 55.2(b)(3)), and "floodways" (§ 55.2(b)(4)).

(2)(i) *Critical action* means any activity for which even a slight chance of flooding would be too great, because such flooding might result in loss of life, injury to persons, or damage to property. Critical actions include activities that create, maintain or extend the useful life of those structures or facilities that:

(A) Produce, use or store highly volatile, flammable, explosive, toxic or water-reactive materials;

(B) Provide essential and irreplaceable records or utility or emergency services that may become lost or inoperative during flood and storm events (e.g., data storage centers, generating plants, principal utility lines, emergency operations centers including fire and police stations, and roadways providing sole egress from flood-prone areas); or

(C) Are likely to contain occupants who may not be sufficiently mobile to avoid loss of life or injury during flood or storm events, e.g., persons who reside in hospitals, nursing homes, convalescent homes, intermediate care facilities, board and care facilities, and retirement service centers. Housing for independent living for the elderly is not considered a critical action.

(ii) Critical actions shall not be approved in floodways or coastal high hazard areas.

(3) *500-year floodplain* means the minimum floodplain of concern for Critical Actions and is the area subject to inundation from a flood having a 0.2 percent chance of occurring in any given year. (See § 55.2(b)(1) for appropriate data sources.)

(4) *Floodway* means that portion of the floodplain which is effective in carrying flow, where the flood hazard is generally the greatest, and where water depths and velocities are the highest. The term "floodway" as used here is consistent with "regulatory floodways" as identified by FEMA. (See § 55.2(b)(1) for appropriate data sources.)

(5) *Functionally dependent use* means a land use that must necessarily be conducted in close proximity to water (e.g., a dam, marina, port facility, water-front park, and many types of bridges).

(6) *High hazard area* means a floodway or a coastal high hazard area.

(7) *100-year floodplain* means the floodplain of concern for this part and is the area subject to a one percent or greater chance of flooding in any given year. (See § 55.2(b)(1) for appropriate data sources.)

(8)(i) *Substantial improvement* means either:

(A) Any repair, reconstruction, modernization or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

(*1*) Before the improvement or repair is started; or

(*2*) If the structure has been damaged, and is being restored, before the damage occurred; or

(B) Any repair, reconstruction, modernization or improvement of a structure that results in an increase of more than twenty percent in the number of dwelling units in a residential project or in the average peak number of customers and employees likely to be on-site at any one time for a commercial or industrial project.

(ii) *Substantial improvement* may not be defined to include either:

(A) Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications that is solely necessary to assure safe living conditions, or

(B) Any alteration of a structure listed on the National Register of Historical Places or on a State Inventory of Historic Places.

(iii) Structural repairs, reconstruction, or improvements not meeting this definition are considered "minor improvements".

§ 55.3 Assignment of responsibilities.

(a)(1) *The Assistant Secretary for Community Planning and Development* (CPD) shall oversee: (i) The Department's implementation of the order and this part in all HUD programs, and

(ii) The implementation activities of HUD program managers and grant recipients for HUD financial assistance subject to 24 CFR part 58.

(2) In performing these responsibilities, the Assistant Secretary for CPD shall make pertinent policy determinations in cooperation with appropriate program offices and provide necessary assistance, training, publications, and procedural guidance.

(b) *Other HUD Assistant Secretaries, the General Counsel, and the President of the Government National Mortgage Association (GNMA)* shall: (1) Ensure compliance with this part for all actions under their jurisdiction that are proposed to be conducted, supported, or permitted in a floodplain;

(2) Ensure that actions approved by HUD or grant recipients are monitored and that any prescribed mitigation is implemented;

(3) Ensure that the offices under their jurisdiction have the technical resources to implement the requirements of this part; and

(4) Incorporate in departmental regulations, handbooks, and project and site standards those criteria, standards, and procedures necessary to comply with the requirements of this part.

(c) *Recipient Certifying Officer*. In accordance with section 9 of Executive Order 11988, Certifying Officers of grant recipients administering activities subject to 24 CFR part 58 shall: (1) Comply with this part in carrying out HUD-assisted programs, and

(2) Monitor approved actions and ensure that any prescribed mitigation is implemented.

Subpart B—Application of Executive Order on Floodplain Management

§ 55.10 Environmental review procedures under 24 CFR parts 50 and 58.

(a) Where an environmental review is required under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332, and 24 CFR part 50 or part 58, compliance with this part shall be completed before the completion of an environmental assessment (EA) including a finding of no significant environmental impact (FONSI), or an environmental impact statement (EIS), in accordance with the decision points listed in 24 CFR 50.17 (a) through (h), or before the preparation of an EA under 24 CFR 58.40 or an EIS under 24 CFR 58.36. For types of proposed actions that are categorically excluded from National Environmental Policy Act (NEPA) requirements under 24 CFR part 50 (or part 58), compliance with this part shall be completed before the Department's initial (SAMA, conditional, etc.) approval (or the conditional commitment or approval by a grant recipient subject to 24 CFR part 58) of proposed actions in a floodplain.

(b) The categorical exclusion of certain proposed actions from environmental review requirements under NEPA and 24 CFR parts 50 and 58 (see 24 CFR 50.20 and 58.35) does not exclude those actions from compliance with this part.

§ 55.11 Applicability of subpart C decision making process.

(a) Before reaching the decision points described in § 55.10(a), HUD (for Department-administered programs) or the grant recipient (for HUD financial assistance subject to 24 CFR part 58) shall determine whether Executive Order 11988 and this part apply to the proposed action.

(b) If Executive Order 11988 applies, the approval of a proposed action or initial commitment shall be made in accordance with this part. The primary purpose of Executive Order 11988 is to "avoid direct or indirect support of floodplain development."

(c) The following table indicates the applicability, by location and type of action, of the decision making process for implementing Executive Order 11988 under subpart C of this part.

TABLE 1

Type of proposed action (new reviewable action or an amendment)	Type of proposed location			
	Floodways	Coastal high hazard areas	100-year floodplain outside high hazard area	Area between 100- and 500-year floodplain
Critical actions as defined in §55.2(b)(2).	Critical actions not allowed ...	Critical actions not allowed.	Allowed if the proposed critical action is processed under §55.20[1].	Allowed if the proposed critical action is processed under §55.20[1].
Non-critical actions not excluded under §55.12 (b) or (c).	Allowed only if the proposed action is a functionally dependent use and processed under §55.20[1].	Allowed only if the proposed action: (1) Is either (a) designed for location in a coastal high hazard area or (b) a functionally dependent use; and (2) is processed under §55.20[1].	Allowed if the proposed action is processed under §55.20[1].	Any non-critical action is allowed without processing under this part.

[1] Or those paragraphs of §55.20 that are applicable to an action listed in §55.12(a).

§55.12 Inapplicability of 24 CFR part 55 to certain categories of proposed actions.

(a) The decision making steps in §55.20(b), (c) and (g) (steps 2, 3 and 7) shall not apply to the following categories of proposed actions: (1) HUD actions involving the disposition of HUD-acquired multifamily housing projects or "bulk sales" of HUD-acquired one- to four-family properties in communities that are in the Regular Program of the National Flood Insurance Program (NFIP) and in good standing (*i.e.*, not suspended from program eligibility or placed on probation under 44 CFR 59.24).

(2) HUD's actions under section 223(f) of the National Housing Act (12 U.S.C. 1715n(f)) for the purchase or refinancing of existing multifamily housing projects (including hospitals, nursing homes, board and care facilities, and intermediate care facilities) in communities that are in good standing under the NFIP.

(3) HUD mortgage insurance actions for the repair, rehabilitation, modernization or improvement of existing multifamily housing projects (including nursing homes, board and care facilities and intermediate care facilities) and existing one- to four-family properties, in communities that are in the Regular Program of the NFIP and are in good standing, provided that the number of units is not increased more than 20 percent, the action does not involve a conversion from nonresidential to residential land use, and the footprint of the structure and paved areas is not significantly increased.

(b) The decision making process in §55.20 shall not apply to the following categories of proposed actions: (1) HUD's mortgage insurance actions and other financial assistance for the purchasing, mortgaging or refinancing of existing one- to four-family properties in communities that are in the Regular Program of the National Flood Insurance Program (NFIP) and in good standing (*i.e.*, not suspended from program eligibility or placed on probation under 44 CFR 59.24), where the action is not a critical action and the property is not located in a floodway or coastal high hazard area;

(2) Financial assistance for minor repairs or improvements on one- to four-family properties that do not meet the thresholds for "substantial improvement" under §55.2(b)(9);

(3) HUD actions involving the disposition of individual HUD-acquired, one- to four-family properties.

(c) This part shall not apply to the following categories of proposed HUD actions:

(1) HUD-assisted exempt activities described in 24 CFR 58.34;

(2) Policy level actions described at 24 CFR 50.16 that do not involve site-based decisions;

(3) HUD's implementation of the full disclosure and other registration requirements of the Interstate Land Sales Disclosure Act (15 U.S.C. 1701—1720);

(4) An action involving a repossession, receivership, foreclosure, or similar acquisition of property to protect or enforce HUD's financial interests under previously approved loans, grants, mortgage insurance, or other HUD assistance;

(5) A minor amendment to a previously approved action with no additional adverse impact on or from a floodplain;

(6) HUD's approval of a project site, an incidental portion of which is situated in an adjacent floodplain, but only if: (i) The proposed construction and landscaping activities (except for minor grubbing, clearing of debris, pruning, sodding, seeding, etc.) do not occupy or modify the 100-year floodplain or the 500-year floodplain (for Critical Actions);

(ii) Appropriate provision is made for site drainage; and

(iii) A covenant or comparable restriction is placed on the property's continued use to preserve the floodplain;

(7) An action for interim assistance, assistance under the section 232(i) Fire Safety Equipment Loan Insurance Program, or emergency activities involving imminent threats to health and safety, and limited to necessary protection, repair or restoration activities to control the imminent risk or damage;

(8) HUD's approval of financial assistance for a project on any site in a floodplain for which FEMA has issued:

(i) A final Letter of Map Amendment (LOMA) or final Letter of Map Revision (LOMR) that removed the property from a FEMA-designated floodplain location; or

(ii) A conditional LOMA or conditional LOMR if the HUD approval is subject to the requirements and conditions of the conditional LOMA or conditional LOMR;

(9) HUD's acceptance of a housing subdivision approval action by the Department of Veterans Affairs or Farmers Home Administration in

accordance with section 535 of the Housing Act of 1949 (42 U.S.C. 1490o);

(10) An action that was, on May 23, 1994, already approved by HUD (or a grant recipient subject to 24 CFR part 58) and is being implemented (unless approval is requested for a new reviewable action), provided that §§ 55.21 and 55.22 apply where the covered transactions under those sections have not yet occurred, and that any hazard minimization measures required by HUD (or a grant recipient subject to 24 CFR part 58) under its implementation of Executive Order 11988 before May 23, 1994 shall be completed;

(11) Issuance or use of Housing Vouchers, Certificates under the Section 8 Existing Housing Program, or other forms of rental subsidy where HUD, the awarding community, or the public housing agency that administers the contract awards rental subsidies that are not project-based (*i.e.*, do not involve site-specific subsidies); and

(12) Secondary mortgage operations of the Government National Mortgage Association (GNMA).

Subpart C—Procedures for Making Determinations on Floodplain Management

§ 55.20 Decision making process.

The decision making process for compliance with this part contains eight steps, including public notices and an examination of practicable alternatives. The steps to be followed in the decision making process are:

(a) *Step 1.* Determine whether the proposed action is located in a 100-year floodplain (or a 500-year floodplain for a Critical Action). If the proposed action would not be conducted in one of those locations, then no further compliance with this part is required.

(b) *Step 2.* Notify the public at the earliest possible time of a proposal to consider an action in a floodplain (or in the 500-year floodplain for a Critical Action), and involve the affected and interested public in the decision making process.

(1) The public notices required by paragraphs (b) and (g) of this section may be combined with other project notices wherever appropriate. Notices required under this part must be bilingual if the affected public is largely non-English speaking. In addition, all notices must be published in an appropriate local printed news medium, and must be sent to federal, state, and local public agencies, organizations, and, where not otherwise covered, individuals known to be interested in the proposed action.

(2) A minimum of 15 calendar days shall be allowed for comment on the public notice.

(3) A notice under this paragraph shall state: the name, proposed location and description of the activity; the total number of acres of floodplain involved; and the HUD official and phone number to contact for information. The notice shall indicate the hours and the HUD office at which a full description of the proposed action may be reviewed.

(c) *Step 3.* Identify and evaluate practicable alternatives to locating the proposed action in a floodplain (or the 500-year floodplain for a Critical Action).

(1) The consideration of practicable alternatives to the proposed site or method may include:

(i) Locations outside the floodplain (or 500-year floodplain for a Critical Action);

(ii) Alternative methods to serve the identical project objective; and

(iii) A determination not to approve any action.

(2) In reviewing practicable alternatives, the Department or a grant recipient subject to 24 CFR part 58 shall consider feasible technological alternatives, hazard reduction methods and related mitigation costs, and environmental impacts.

(d) *Step 4.* Identify the potential direct and indirect impacts associated with the occupancy or modification of the floodplain (or 500-year floodplain for a Critical Action).

(e) *Step 5.* Where practicable, design or modify the proposed action to minimize the potential adverse impacts within the floodplain (including the 500-year floodplain for a Critical Action) and to restore and preserve its natural and beneficial values. All critical actions in the 500-year floodplain shall be designed and built at or above the 100-year floodplain (in the case of new construction) and modified to include:

(1) Preparation of and participation in an early warning system;

(2) An emergency evacuation and relocation plan;

(3) Identification of evacuation route(s) out of the 500-year floodplain; and

(4) Identification marks of past or estimated flood levels on all structures.

(f) *Step 6.* Reevaluate the proposed action to determine:

(1) Whether it is still practicable in light of its exposure to flood hazards in the floodplain, the extent to which it will aggravate the current hazards to other floodplains, and its potential to disrupt floodplain values; and

(2) Whether alternatives preliminarily rejected at Step 3 (paragraph (c)) of this section are practicable in light of the information gained in Steps 4 and 5 (paragraphs (d) and (e)) of this section.

(g) *Step 7.* (1) If the reevaluation results in a determination that there is no practicable alternative to locating the proposal in the floodplain (or the 500-year floodplain for a Critical Action), publish a final notice that includes:

(i) The reasons why the proposal must be located in the floodplain;

(ii) A list of the alternatives considered; and

(iii) All mitigation measures to be taken to minimize adverse impacts and to restore and preserve natural and beneficial values.

(2) In addition, the public notice procedures of § 55.20(b)(1) shall be followed, and a minimum of 7 calendar days for public comment before approval of the proposed action shall be provided.

(h) *Step 8.* Upon completion of the decision making process in Steps 1 through 7, implement the proposed action. There is a continuing responsibility to ensure that the mitigating measures identified in Step 7 are implemented.

§ 55.21 Notification of floodplain hazard.

For HUD programs under which a financial transaction for a property located in a floodplain (a 500-year floodplain for a Critical Action) is guaranteed, approved, regulated or insured, any private party participating in the transaction and any current or prospective tenant shall be informed by HUD (or by HUD's designee, e.g., a mortgagor) or a grant recipient subject to 24 CFR part 58 of the hazards of the floodplain location before the execution of documents completing the transaction.

§ 55.22 Conveyance restrictions for the disposition of real property.

(a) In the disposition (including leasing) of properties acquired by HUD that are located in a floodplain (a 500-year floodplain for a Critical Action), the documents used for the conveyance must: (1) Refer to those uses that are restricted under identified federal, state, or local floodplain regulations; and

(2) Include any land use restrictions limiting the use of the property by a grantee or purchaser and any successors under state or local laws.

(b)(1) For disposition of properties acquired by HUD that are located in a 500-year floodplain and contain Critical Actions, HUD shall, as a condition of approval of the disposition, require by covenant or comparable restriction on the property's use that the property owner and successive owners provide written notification to each current and prospective tenant concerning: (i) The hazards to life and to property for those persons who reside or work in a structure located within the 500-year floodplain, and

(ii) The availability of flood insurance on the contents of their dwelling unit or business.

(2) The notice shall also be posted in the building so that it will be legible at all times and easily visible to all persons entering or using the building.

§ 55.23 [Reserved]

§ 55.24 Aggregation.

Where two or more actions have been proposed, require compliance with subpart C of this part, affect the same floodplain, and are currently under review by the Department (or by a grant recipient subject to 24 CFR part 58), individual or aggregated approvals may be issued. A single compliance review and approval under this section is subject to compliance with the decision making process in § 55.20.

§ 55.25 Areawide compliance.

(a) A HUD-approved areawide compliance process may be substituted for individual compliance or aggregated compliance under § 55.24 where a series of individual actions is proposed or contemplated in a pertinent area for HUD's examination of floodplain hazards. In areawide compliances, the area for examination may include a sector of, or the entire, floodplain—as relevant to the proposed or anticipated actions. The areawide compliance process shall be in accord with the decision making process under § 55.20.

(b) The areawide compliance process shall address the relevant executive orders and shall consider local land use planning and development controls (e.g., those enforced by the community for purposes of floodplain management under the National Flood Insurance Program (NFIP)) and applicable state programs for floodplain management. The process shall include the development and publication of a strategy that identifies the range of development and mitigation measures under which the proposed HUD assistance may be approved and that indicates the types of actions that will not be approved in the floodplain.

(c) Individual actions that fit within the types of proposed HUD actions specifically addressed under the areawide compliance do not require further compliance with § 55.20 except that a determination by the Department or a grant recipient subject to 24 CFR part 58 shall be made concerning whether the individual action accords with the areawide strategy. Where the individual action does not accord with the areawide strategy, specific development and mitigation measures shall be prescribed as a condition of HUD's approval of the individual action.

(d) Areawide compliance under the procedures of this section is subject to the following provisions: (1) It shall be initiated by HUD through a formal agreement of understanding with affected local governments concerning mutual responsibilities governing the preparation, issuance, implementation, and enforcement of the areawide strategy;

(2) It may be performed jointly with one or more Federal departments or agencies, or grant recipients subject to 24 CFR part 58 that serve as the responsible Federal official;

(3) It shall establish mechanisms to ensure that: (i) The terms of approval of individual actions (e.g., concerning structures and facilities) will be consistent with the areawide strategy;

(ii) The controls set forth in the areawide strategy are implemented and enforced in a timely manner; and

(iii) Where necessary, mitigation for individual actions will be established as a condition of approval.

(4) An open scoping process (in accordance with 40 CFR 1501.7) shall be used for determining the scope of issues to be addressed and for identifying significant issues related to housing and community development for the floodplain;

(5) Federal, state and local agencies with expertise in floodplain management, flood evacuation preparedness, land use planning and building regulation, or soil and natural resource conservation shall be invited to participate in the scoping process and to provide advice and comments; and

(6) Eligibility for participation in and the use of the areawide compliance must be limited to communities that are in the Regular Program of the National Flood Insurance Program and in good standing (*i.e.*, not suspended from program eligibility or placed on probation under 44 CFR 59.24), thereby demonstrating a capacity for and commitment to floodplain management standards sufficient to perform responsibilities under this part.

(7) An expiration date (not to exceed ten years from the date of the formal adoption by the local governments) for HUD approval of areawide compliance under this part must be stated in the agreement between the local governments and HUD. In conjunction with the setting of an expiration date, a mechanism for HUD's reevaluation of the appropriateness of areawide compliance must be provided in the agreement.

§ 55.26 Adoption of another agency's review under the executive orders.

If a proposed action covered under this part is already covered in a prior review performed under the executive order by another agency, that review may be adopted by HUD or by a grant recipient authorized under 24 CFR part 58, provided that:

(a) There is no pending litigation relating to the other agency's review for floodplain management;

(b) The adopting agency makes a finding that:

(1) The type of action currently proposed is comparable to the type of action previously reviewed by the other agency; and

(2) There has been no material change in circumstances since the previous review was conducted; and

(c) As a condition of approval, mitigation measures similar to those prescribed in the previous review shall be required of the current proposed action.

§ 55.27 Documentation.

(a) For purposes of compliance with § 55.20, the responsible HUD official who would approve the proposed action (or the Certifying Officer for a grant recipient subject to 24 CFR part 58) shall require that the following actions be documented: (1) Under § 55.20(c), practicable alternative sites have been considered outside the floodplain, but within the local housing market area, the local public utility service area, or the jurisdictional boundaries of a recipient unit of general local government (as defined in 24 CFR 570.3), whichever geographic area is more appropriate to the proposed HUD action. Actual sites under review must be identified and the reasons for the non-selection of those sites as practicable alternatives must be described; and

(2) Under § 55.20(e), measures to minimize the potential adverse impacts of the proposed action on the affected floodplain as identified in § 55.20(d) have been applied to the design for the proposed action.

(b) For purposes of compliance with § 55.24, § 55.25, or § 55.26 (as appropriate), the responsible HUD official (or the Certifying Officer for a grant recipient subject to 24 CFR part 58) who would approve the proposed action shall require documentation of compliance with the required conditions.

(c) Documentation of compliance with this part (including copies of public notices) must be attached to the environmental assessment, the environmental impact statement or the compliance record and be maintained as a part of the project file. In addition, for environmental impact statements, documentation of compliance with this part must be included as a part of the record of decision (or environmental review record for grant recipients subject to 24 CFR part 58).

PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT, RENTAL REHABILITATION AND HOUSING DEVELOPMENT GRANT PROGRAMS

4. The authority citation for part 58 continues to read as follows:

Authority: 42 U.S.C. 1437o(i)(1) and (2), 3535(d), 4332 and 5304(g).

5. In § 58.5, paragraph (b)(1) is revised to read as follows:

§ 58.5 Related Federal laws and authorities.

* * * * *

(b) *Floodplain management and wetland protection.* (1) Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951 *et seq.*), as interpreted in HUD regulations at 24 CFR part 55, particularly section 2(a) of the Order. (For an explanation of the relationship between the decision making process in 24 CFR part 55 and this part, see § 55.10.)

* * * * *

PART 200—INTRODUCTION

6. The authority citation for part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715z–18; 42 U.S.C. 3535(d).

7. Section 200.926d is amended by revising paragraphs (c)(4)(i) through (iii); by redesignating paragraph (c)(4)(iv) as paragraph (c)(4)(vii); and by adding paragraphs (c)(4)IV, (v) and (vi), to read as follows:

§ 200.926d Construction requirements.

* * * * *

(c) * * *

(4) *Drainage and flood hazard exposure.*—(i) *Residential structures with basements located in FEMA-designated areas of special flood hazard.* The elevation of the lowest floor in structures with basements shall be at or above the base flood level (100-year flood level) required for new construction or substantial improvement of residential structures under regulations for the National Flood Insurance Program (NFIP) (see 44 CFR 60.3 through 60.6), except where variances from this standard are granted by communities under the procedures of the Federal Emergency Management Agency (FEMA) at 44 CFR 60.6(a) or exceptions from this NFIP standard for basements are approved by FEMA in accordance with procedures at 44 CFR 60.6(c).

(ii) *Residential structures without basements located in FEMA-designated areas of special flood hazard.* The elevation of the lowest floor in structures without basements shall be at or above the FEMA-designated base flood elevation (100-year flood level).

(iii) *Residential structures located in FEMA-designated "coastal high hazard areas".* (A) Basements or any permanent enclosure of space below the lowest floor of a structure are prohibited.

(B) Where FEMA has determined the base flood level without establishing stillwater elevations, the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) and its horizontal supports shall be at or above the base flood level.

(iv) *"Critical Actions" as defined in 24 CFR 55.2(b)(2).* The lowest floor of a structure (including the basement and all mechanical, electrical, and service equipment) shall be at or above the FEMA-designated 500-year frequency flood elevation. "Critical Actions" located in FEMA-designated "floodways" (as defined in 24 CFR 55.2(b)(4)) and "coastal high hazard areas" (as defined in 24 CFR 55.2(b)(1)) are prohibited.

(v) *Streets.* Streets must be usable during runoff equivalent to a 10-year return frequency. Where drainage outfall is inadequate to prevent runoff equivalent to a 10-year return frequency from ponding over 6 inches deep, streets must be made passable for commonly used emergency vehicles during runoff equivalent to a 25-year return frequency, except where an alternative access street not subject to such ponding is available.

(vi) *Crawl spaces.* Crawl spaces must not pond water or be subject to prolonged dampness.

* * * * *

Dated: April 14, 1994.

Henry G. Cisneros,

Secretary.

[FR Doc. 94–9606 Filed 4–20–94; 8:45 am]

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Thursday
April 21, 1994

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 21

Type Certificates for Surplus Aircraft of the Armed Forces; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. 27699; Notice No. 94–12]

RIN 2120–AE41

Type Certificates for Surplus Aircraft of the Armed Forces

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to remove the regulations for issuing type certificates for surplus aircraft of the Armed Forces. The purpose of the proposed removal is to eliminate references to obsolete airworthiness standards that are no longer appropriate for type certification of surplus military aircraft. Surplus aircraft of the Armed Forces may still be certificated in the normal, utility, acrobatic, commuter, transport, and restricted categories when compliance with the applicable regulations is shown. This proposal if adopted as final would become effective on April 21, 1994 and is intended to provide a greater level of assurance that the appropriate airworthiness standards are met before standard airworthiness certificates are issued for surplus military aircraft.

DATES: Comments must be received on or before June 20, 1994.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–10), Docket No. 27699, 800 Independence Avenue SW., Washington, DC 20591. Comments may be examined in the Rules Docket, room 915–G, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: George Kaseote, Aircraft Engineering Division (AIR–100), Policy and Procedures Branch, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–8541.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on any portion of this rule by submitting written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document are invited. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action. Anyone wishing the FAA to acknowledge receipt of their comments submitted in response to this proposed rule must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27699." The postcard will be date/time stamped and returned to the commenter. All comments submitted will be available, both before and after the closing dates for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center (APA–430), 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRMs should also request a copy of Advisory Circular 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

The practice of issuing type certificates and airworthiness certificates for surplus aircraft of the Armed Forces became effective on November 21, 1946, with the adoption of Civil Air Regulation (CAR) Part 09 (later changed to Part 9), Aircraft Airworthiness, Limited Category. The promulgation of that rule occurred when there was a substantial number of surplus military airplanes being offered for sale to the public, accompanied by an increasing need for aircraft in civil use, but at a time when the civil aircraft industry was not capable of meeting those needs. CAR Part 9 permitted airworthiness certification of surplus military aircraft in the limited category only if the Administrator found that the aircraft's service history was satisfactory, the particular aircraft was in a good state of preservation and repair, and the aircraft was in a condition for safe operation. The carriage of cargo or passengers for hire was not permitted in these aircraft.

Because CAR Part 9 was based on conditions in the aviation industry in 1946 which were believed to be of a temporary nature, the regulations required that type certificate applications had to be made prior to December 31, 1947, and that no airworthiness certificates were to be issued after August 31, 1948. Those time limits were established so that the development of postwar civilian-type aircraft would not be stifled by an extended overloading of the market with surplus war aircraft. The August 31, 1948 time limit for the issuance of airworthiness certificates was removed on November 20, 1950, as a consequence of the increased demand for military-type aircraft (Korean War), with the resultant conversion of civilian aircraft manufacturing facilities to the production of military-type aircraft, and an increased demand for war surplus aircraft that could be used as executive-type transports.

Part 9 was amended on January 10, 1964, to reimpose a time limit for the issuance of airworthiness certificates in the limited category. The new time limit for issuance of "original" airworthiness certificates was June 30, 1965. That time limit was subsequently rescinded indefinitely on July 23, 1965, due to the interest of individuals and groups in surplus military aircraft (Warbirds) preservation. The term "original" airworthiness certificates was necessary because an aircraft that had a Limited airworthiness certificate could be issued another kind of airworthiness certificate ("experimental" or "restricted") and then be re-issued a limited airworthiness certificate.

Still, surplus military aircraft for which an application for a type certificate was made after 1947 were no longer eligible for certification under CAR Part 9. A purchaser of one of those aircraft was confronted with the fact that the only way to certificate the aircraft was in the normal, utility, acrobatic, and transport categories in accordance with the provisions of CAR Parts 3, 4b, 6 or 7, or in the restricted category under the provisions of CAR Part for special purpose operations only. The provisions of those parts prescribe that compliance be shown with the requirements of those parts effective on the date of application for the type certificate. Since the regulations are amended as the state of the art progresses in the aviation industry, demonstration of compliance with many of the current airworthiness requirements by an aircraft which was designed many years previously could be prohibitively burdensome and costly. As a consequence, CAR Part 9a was adopted effective January 10, 1964. This allowed military aircraft to be certificated in the normal, utility, acrobatic, and transport categories if the aircraft was found to conform *not* to the certification requirements in effect on the date of application for a type certificate, but to specified earlier versions of CAR Parts 3, 4b, 6, or 7. Under CAR Part 9a, aircraft that were military models of previously type certificated civil aircraft could be certificated upon compliance with the regulations governing the original type certificate. These aircraft were eligible to conduct the same type of operations as other civil aircraft for which a standard type of airworthiness certificate had been issued; for example, they could be used to carry cargo and passengers for hire. CAR Part 9a made no mention of limited category aircraft. When the CAR was recodified in 1965, § 21.27 replaced CAR Part 9A.

FAR Section 21.27 allows compliance with the applicable certification requirements of either the CAR or FAR that was appropriate on the date the aircraft was accepted for operational use by the Armed Forces of the United States. Since § 21.27 was first adopted, changes have been made to the FAR to upgrade the level of safety required for civilian aircraft and to incorporate certification standards for modern state-of-the-art technology. Consequently, the CAR's are obsolete and no longer appropriate as certification standards for the issuance of new type certificates for modern aircraft.

Discussion

This proposed rulemaking is intended to remove § 21.27, "Issue of type certificate: surplus aircraft of the Armed Forces." This action would not preclude a surplus military aircraft of the Armed Forces from being type certificated under the provisions of § 21.21, "Issue of type certificate: normal, utility, acrobatic, commuter, and transport category aircraft; manned free balloons; special classes of aircraft; aircraft engines; propellers," or § 21.25, "Issue of type certificate: Restricted category aircraft."

Currently, to obtain a type certificate for an aircraft under § 21.21, an applicant must apply for the certificate and submit descriptive data, substantiating data, and test results that show compliance with the appropriate regulations governing the type of certificate for which he or she is applying, i.e., normal, utility, acrobatic, commuter, or transport. The FAA then evaluates that data and may conduct additional testing. After all data are submitted and tests are completed, and if the results show compliance with the regulations, then a type certificate is issued. This practice assures that the aircraft is thoroughly evaluated and meets the appropriate safety standards. On the other hand, § 21.27 is less stringent and allows a greater degree of flexibility in the application of the rules. It provides for relief from strict compliance with specific provisions of the applicable requirements if the alternative method of compliance proposed by the applicant provides substantially the same level of airworthiness and if a severe burden would otherwise be incurred. Since military aircraft have become increasingly complex and sophisticated, the practice of allowing normal or transport category certification under § 21.27 (relief from strict compliance) is no longer acceptable for military surplus aircraft. It is the FAA's position that surplus military aircraft should be certificated only under the provisions of § 21.21 or § 21.25.

Accordingly, the FAA has determined that § 21.27 has outlived its intent and usefulness. Since § 21.27 does not provide an adequate level of certitude that the appropriate airworthiness standards have been met for the different categories of airworthiness certification, the FAA is proposing that it be removed, effective April 21, 1994. The FAA specifically request comments on the proposed effective date for the removal of § 21.27. Also, the proposed removal of § 21.27 from the FAR affects § 21.21. That section would be revised to accommodate the removal of § 21.27. Aircraft that have existing type certificates and those that have applications for type certificates based on § 21.27 dated as of April 21, 1994 would not be affected. Also, aircraft in the limited category would not be affected by this rulemaking action.

Preliminary Regulatory Evaluation, Initial Regulatory Flexibility Determination, and Trade Impact Assessment

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule: (1) Would generate benefits that justify its costs and is not a "significant regulatory action" as defined in the Executive Order; (2) is not "significant" as defined in DOT's Regulatory policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; and (4) would not constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

Costs and Benefits

A. Costs

The incremental costs of the proposed rule would consist of the difference between the costs to certificate aircraft under FAR § 21.21 or § 21.25 as opposed to those under § 21.27. As a basis for evaluating this differential, the FAA examined certification records for the past 10 years. This examination revealed that only one type certification was completed by the FAA pursuant to § 21.27 (in 1983). The costs expended by the applicant to certify the military transport airplane under § 21.27 essentially equaled the costs typically incurred for certification under § 21.21 or § 21.25. If this experience were to continue, the proposed rule would impose no incremental costs.

The FAA recognizes the potential for increased type certification applications for surplus military aircraft in the future, due to possible downsizing of the nation's investment in military equipment and other factors. However, future applications may not increase to any great extent despite the potential downsizing of the military. The substantial surplus of military aircraft following World War II and the Korean War occurred at a time when the civilian aircraft industry was not capable of meeting the increased need for civilian aircraft. Industrial capacity had been shifted to military production in a relatively short time period. However, the military buildup of the 1980's occurred over a longer period of time and did not significantly affect the nation's capacity to produce civilian aircraft. Consequently, future type certifications of surplus military aircraft may not approach the levels reached following World War II and the Korean war. Nevertheless, the FAA is unable to reasonably forecast the future number of type certifications of surplus military aircraft and the potential variability in costs from case to case. Therefore, the FAA invites interested persons to submit such estimates during the public comment period specified in this NPRM.

B. Benefits

The benefits of this proposed rule would be the accident risk differential between aircraft certificated to the more stringent standards of §§ 21.21 and 21.25 as compared to the standards of § 21.27. While the FAA is not aware of any surplus military aircraft that has experienced certification-related safety problems, it believes that continued certification to the less stringent requirements of § 21.27 is unacceptable. Based on the continuance of negligible incremental costs to certificate aircraft under §§ 21.21 and 21.25, the benefits associated with the prevention of only one accident would easily make this proposed rule cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a proposed rule would have "a significant economic impact on a substantial number of small entities." FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, outlines FAA's procedures and criteria for implementing the RFA.

The small entities potentially affected by the proposed rule are operators that own 9 or few aircraft, which is the size threshold for aircraft operators. The cost thresholds (in 1993 dollars) are approximately $119,500 for scheduled operators whose entire fleets have a seating capacity of over 60; $66,800 for other scheduled operators; and $4,700 for unscheduled operators. A substantial number of small entities is a number which is not less than 11 and which is more than one-third of the small entities subject to the rule. Given the historically small number of applications for certification under § 21.27 and the finding of no incremental costs incurred by operators certificating surplus military aircraft under § 21.21 or § 21.25 compared to certification under § 21.27, the FAA does not expect that 11 or more entities would experience a significant economic impact in any one year. Therefore, the proposed rule would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The proposed rule would not constitute a barrier to international trade, including the export of American goods and services to foreign countries and the import of foreign goods and services to the United States. This assessment is based on the finding of no incremental costs as well as the small number of applications for type certification pursuant to § 21.27.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12866, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation in not major under Executive Order 12866. In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered not significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A draft regulatory evaluation of the proposal, including an initial Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 14 CFR Part 21

Aircraft, Aviation safety, Exports, Imports, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 21 of the Federal Aviation Regulations (14 CFR part 21) as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

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

Authority: 49 U.S.C. App. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 7572; E.O. 11514, 35 FR 4247, 3 CFR 1966–1970 Comp., p. 902; 49 U.S.C. 106(g).

2. Section 21.21 is revised to read as follows:

§ 21.21 Issue of type certificate: normal, utility, acrobatic, commuter, and transport category aircraft; manned free balloons; special classes of aircraft; aircraft engines; and propellers.

An applicant is entitled to a type certificate for an aircraft in the normal, utility, acrobatic, commuter, or transport category, or for a manned free balloon, special class of aircraft, or an aircraft engine or propeller, if the applicant submits the type design, test reports, and computations necessary to show that the product to be certificated meets the applicable airworthiness, aircraft noise, fuel venting, and exhaust emission requirements of the Federal Aviation Regulations and any special conditions prescribed by the Administrator, and the Administrator finds—

(a) Upon examination of the type design, and after completing all tests and inspections, that the type design and the product meet the applicable aircraft noise, fuel venting, and emissions requirements of the Federal Aviation Regulations, and further finds that they meet the applicable airworthiness requirements of the Federal Aviation Regulations or that any airworthiness provisions not complied with are compensated for by factors that provide an equivalent level of safety; and

(b) For an aircraft, that no feature or characteristic makes it unsafe for the category in which certification is requested.

§ 21.27 [Removed]

3. Section 21.27 is removed and reserved.

Issued in Washington, DC, on April 11, 1994.

Thomas E. McSweeny,

Director, Aircraft Certification Service.

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