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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–35–AD; Amendment 39–13756; AD 2004–15–22]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Model S–61L, S–61N, S–61–NM, and S–61R Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Sikorsky Aircraft Corporation (Sikorsky) model helicopters that requires installing a Number 5 bearing chip detector in each engine, installing an on-board chip detector annunciation system, and revising the Rotorcraft Flight Manual (RFM) to add procedures for crew response to an on-board chip detector annunciation. This amendment is prompted by reports of the failure of the engine's Number 5 bearing that resulted in erratic movement of the high-speed engine-to-transmission shaft (shaft), oil leakage, an in-flight fire and an emergency landing. The actions specified by this AD are intended to detect an impending engine bearing (bearing) failure, which, if undetected and not addressed by appropriate crew action, may result in oil leakage, severing of the shaft housing, an uncontained in-flight fire, and a subsequent emergency landing.

DATES: Effective September 7, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 7, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Tech Support, 6900 Main Street, Stratford, Connecticut 06614, phone (203) 386–3001, fax (203) 386–5983; and from GE Aircraft Engines Customer Support Center, M/D 285, 1 Neumann Way, Evendale, OH 45215, telephone (513) 552–3272; fax (513) 552–3329, email *GEAE.csc@ae.ge.com*. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

FOR FURTHER INFORMATION CONTACT: Kirk Gustafson, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7190, fax (781) 238–7170.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the specified model helicopters was published in the **Federal Register** on November 24, 2003 (68 FR 65857). That action proposed to require, within 60 days, installing a chip detector for the No. 5 bearing, installing an on-board chip detector annunciation system, and revising the RFM to add procedures for crew response to an on-board chip detector annunciation.

Prior to issuing the proposal, Sikorsky had issued Alert Service Bulletin (ASB) No. 61B30–15, dated June 9, 2003, which describes procedures for installing an on-board cockpit annunciation system that interfaces with the engine chip detectors, as a means to detect metallic chips if deterioration of the Number 5 bearing in either engine occurs. The FAA proposed to incorporate portions of that service information into the AD. Also, General Electric Aircraft Engines has issued GE Aircraft Engines CT58 Service Bulletin Number 72–0195, dated May 1, 2003, which describes procedures for installing an electrical chip detector (either part number 3018T72P01 or 3049T42P01) in the CT58 engine power turbine accessory drive assembly. Since issuing the proposal, Sikorsky has issued ASB No. 61B30–15, Revision A, dated October 20, 2003, which specifies the same procedure, but revises a part number, corrects the drawing, and clarifies the location for the warning light.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The one commenter, the manufacturer, submitted several comments regarding the NPRM. Because Sikorsky has issued a revised ASB to correct minor errors including a part number, a drawing, and installation instructions, they suggest the AD should reference the revised ASB rather than the previously issued ASB. They also suggest that we change the AD to allow use of later, FAA-approved revisions of the ASB to accomplish the AD.

The FAA partially agrees. The FAA will not include language that would allow compliance using "later FAA-approved revisions" of an ASB; however, individual owners and operators may request an alternate method of compliance (AMOC) that would allow use of future revisions of the ASB to comply with the AD. Regarding the revision to the current ASB, the FAA agrees the AD should reference the most recent, correct ASB, and the AD reflects that change.

The same commenter proposes that we change the unsafe condition language in the Summary and Discussion sections of the AD. The commenter states, "The installation of the chip detector and warning light will not PREVENT a bearing failure as stated. Its purpose is solely for the detection of a deteriorating bearing and to notify the crew such that appropriate action can be taken."

The FAA agrees that the chip detector and warning light do not prevent a bearing failure, in that the system inherently depends on early stages of bearing deterioration to trigger the warning system. However, the unsafe condition results from advanced stages of bearing deterioration (complete bearing failure), and this condition may be prevented by providing the crew with emergency procedures that include, if practical, shutting down the affected engine and transitioning to single engine flight when the bearing

experiences these early stages of deterioration.

The same commenter states the cost impact estimate stated in the NPRM is inaccurate. The commenter states the cost of parts is $2,600, resulting in a cost-per-helicopter of $7,897, or a total fleet cost of $165,847.

The FAA agrees with the revised costs and we have changed the economic analysis accordingly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will not increase the scope of the AD. Also, we have determined that an increase in estimated costs of $659 per helicopter does not constitute a substantial increase of the economic burden on any operator.

The FAA estimates that this AD will affect 21 helicopters of U.S. registry, and the required actions will take approximately 81.5 work hours per helicopter to accomplish at an average labor rate of $65 per work hour. Required parts will cost approximately $2,600 per helicopter. Based on these figures, the total estimated cost impact of the AD on U.S. operators is $7,897 per helicopter, or $165,847 for the entire fleet.

The regulations adopted herein will not have a substantial direct effect 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, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2004–15–22 Sikorsky Aircraft Corporation: Amendment 39–13756. Docket No. 2003–SW–35–AD.

Applicability: Model S–61L, S–61N, S–61NM, and S–61R helicopters, certificated in any category.

Compliance: Required within 60 days, unless accomplished previously.

To detect an impending engine bearing (bearing) failure, which, if undetected and not addressed by appropriate crew action, may result in oil leakage, severing of the shaft housing, an uncontained in-flight fire, and a subsequent emergency landing, accomplish the following:

(a) Install an engine chip detector, part number 3049T42P01 or 3018T72P01, in the engine power turbine accessory drive assembly using the Accomplishment Instructions, paragraphs 3.A. and 3.B., in General Electric Aircraft Engines CT58 Service Bulletin Number 72–0195, dated May 1, 2003.

(b) Install an on-board engine chip detector annunciation system using Sikorsky Aircraft Corporation Alert Service Bulletin No. 61B30–15, Revision A. dated October 20, 2003 (ASB). For helicopters with a master warning caution panel (MWCP) manufactured by United Controls or Sundstrand Data, install in accordance with paragraph 3.B. of the ASB. For helicopters with a MWCP manufactured by Grimes Mfg., install in accordance with paragraph 3.C. of the ASB.

(c) After accomplishing paragraph (b) of this AD, before further flight, perform a functional test of the engine chip detector system and repeat the functional test at intervals not to exceed 150 hours TIS using the Accomplishment Instructions, paragraph 3.D., of the ASB.

(d) Insert the emergency procedures for an on-board engine chip detector warning light illumination into the Emergency Procedures section of the applicable Rotorcraft Flight Manual using the Accomplishment Instructions, paragraph 3.E., of the ASB.

(e) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Boston Aircraft Certification Office, Engine and Propeller Directorate, FAA, for information about previously approved alternative methods of compliance.

(f) The actions, including installations, testing, and inserting information into the Rotorcraft Flight Manual, shall be done in accordance with General Electric Aircraft Engines CT58 Service Bulletin Number 72–0195, dated May 1, 2003; and Sikorsky Aircraft Corporation Alert Service Bulletin No. 61B30–15, Revision A. dated October 20, 2003. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Tech Support, 6900 Main Street, Stratford, Connecticut 06614, phone (203) 386–3001, fax (203) 386–5983; and from GE Aircraft Engines Customer Support Center, M/D 285, 1 Neumann Way, Evendale, OH 45215, telephone (513) 552–3272; fax (513) 552–3329, e-mail *GEAE.csc@ae.ge.com.* Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(g) This amendment becomes effective on September 7, 2004.

Issued in Fort Worth, Texas, on July 22, 2004.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 04–17370 Filed 7–30–04; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–SW–14–AD; Amendment 39–13755; AD 2004–15–21]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model A109K2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Agusta S.p.A. (Agusta) Model A109K2 helicopters. This action requires dye-penetrant inspecting the tail rotor trunnion (trunnion) assembly for a crack at specified intervals, replacing any cracked trunnion with an airworthy trunnion, and reporting any failed trunnion. This amendment is prompted by the report of an accident involving a tail rotor hub and blade assembly separating from the helicopter due to

fatigue failure of the trunnion. The cause for the crack in the trunnion has not been determined and is still under investigation. This condition, if not detected, could result in failure of the trunnion, loss of the tail rotor hub and blade assembly, and subsequent loss of control of the helicopter.

DATES: Effective August 17, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 17, 2004.

Comments for inclusion in the Rules Docket must be received on or before October 1, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2004–SW–14–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

The service information referenced in this AD may be obtained from Agusta, 21017 Cascina Costa di Samarate (VA) Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605–222595. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*

FOR FURTHER INFORMATION CONTACT: Richard Monschke, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD for Agusta Model A109K2 helicopters. This action requires dye-penetrant inspecting the trunnion assembly for a crack at specified intervals, replacing any cracked trunnion with an airworthy trunnion, and reporting any cracked trunnion. This amendment is prompted by the report of an accident involving a tail rotor hub and blade assembly separating from the helicopter due to fatigue failure of the trunnion. This condition, if not detected, could result in failure of the trunnion, loss of the tail rotor hub and blade assembly, and subsequent loss of control of the helicopter.

Ente Nazionale per l'Aviazione Civile (ENAC), the airworthiness authority for Italy, notified the FAA that an unsafe condition may exist on Agusta Model A109K2 helicopters with trunnion assembly, part number (P/N) 109–0131–05 (all dashes), installed. ENAC advises of the need to carry out checks and inspections of the cracked trunnion assembly as specified in the manufacturer's technical bulletin.

Agusta issued Alert Bollettino Tecnico No. 109K–37, dated February 13, 2004 (ABT). The ABT specifies inspecting the trunnion assembly, P/N 109–0131–05 (all dashes), for a crack within either 10 or 150 operating hours depending on the accumulated operating hours and subsequently every 150 operating hours. ENAC classified this ABT as mandatory and issued AD No 2004–068, dated February 18, 2004, to ensure the continued airworthiness of these helicopters in Italy.

This helicopter model is manufactured in Italy and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, ENAC has kept the FAA informed of the situation described above. The FAA has examined the findings of ENAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other helicopters of the same type design registered in the United States. Therefore, this AD is being issued to prevent failure of the trunnion and subsequent loss of control of the helicopter. This AD requires:

- Dye-penetrant inspecting the trunnion, P/N 109–0131–05 (all dash numbers):
- With 150 or more hours time-in-service (TIS), within the next 10 hours TIS; and
- With less than 150 hours TIS, at 150 hours TIS; and
- Thereafter, at intervals not to exceed 150 hours TIS.
- Replacing any cracked trunnion with an airworthy trunnion before further flight.
- Reporting information about any cracked trunnion to Richard Monschke, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5116, fax (817) 222–5961.

The cause for the crack in the trunnion has not been determined and is still under investigation. Therefore, the initial dye-penetrant inspection of the trunnion for a crack is required within the next 10 hours TIS, a very short compliance time interval. Additionally, based on the TIS utilization rate of these model helicopters, the 150-hour constitutes a very short compliance time. Therefore, the initial and repetitive inspections are deemed necessary as an emergency action to control the hazard until the cause of the cracks are identified because the previously described critical unsafe condition can adversely affect the controllability and structural integrity of the helicopter. Hence, this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that this AD will:

- Affect 4 helicopters;
- Take about 8 work hours at an average labor rate of $65 per work hour for 4 inspections yearly;
- Cost about $200 for consumable materials per helicopter; and
- Cost about $2320 for a trunnion assembly and $23 for a lock washer, assuming a one-time replacement. However, the manufacturer states in the ABT that it will replace one trunnion if the trunnion is scrapped.

Based on these figures, the total estimated cost impact of the AD on U.S. operators will be $18,492 or 9,212, assuming the manufacturer replaces the trunnion free as stated in the ABT.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2004–SW–14–AD. The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect 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, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2004–15–21 **Agusta S.p.A.:** Amendment 39–13755. Docket No. 2004–SW–14–AD.

Applicability: Model A109K2 helicopters, with tail rotor trunnion assembly (trunnion), part number 109–0131–05 (all dash numbers), installed, certificated in any category.

Compliance: Required as indicated.

To detect a crack and prevent fatigue failure of the trunnion, loss of the tail rotor hub and blade assembly, and subsequent loss of control of the helicopter, do the following:

(a) Using a qualified Level II Inspector and following the Compliance Instructions, paragraphs 1. through 8., of Agusta Bollettino Tecnico No. 109K–37, dated February 13, 2004, dye penetrant inspect the trunnion for a crack as follows:

(1) Unless accomplished previously, within 10 hours time-in-service (TIS) for trunnions with 150 or more hours TIS;

(2) Unless accomplished previously, on or before accumulating 150 hours TIS for trunnions with less than 150 hours TIS; and

(3) Thereafter, at intervals not to exceed 150 hours TIS.

(b) If a crack is found, before further flight, replace the cracked trunnion with an airworthy trunnion before further flight.

(1) Within 5 days, report the part number, serial number, total hours TIS, and a description of the crack to Richard Monschke, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5116, fax (817) 222–5961.

(2) Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Safety Management Group, Rotorcraft Directorate, FAA, for information about previously approved alternative methods of compliance.

(d) Do the inspection following Agusta Bollettino Tecnico No. 109K–37, dated February 13, 2004. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Agusta, 21017 Cascina Costa di Samarate (VA) Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605–222595. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(e) This amendment becomes effective on August 17, 2004.

Note: The subject of this AD is addressed in Ente Nazionale per l'Aviazione Civile (Italy) AD No. 2004–068, dated February 18, 2004.

Issued in Fort Worth, Texas, on July 22, 2004.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 04–17369 Filed 7–30–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 14

Advisory Committee; Pediatric Advisory Committee; Establishment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing the establishment of a Pediatric Advisory Committee in the Office of the Commissioner. Elsewhere in this issue of the **Federal Register**, FDA is publishing a document requesting nominations for the membership on this committee. This document adds the Pediatric Advisory Committee to the agency's list of standing advisory committees in 21 CFR 14.100.

DATES: This rule is effective August 2, 2004. Authority for the committee being established will end on June 18, 2006, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Jan Johannessen, Office of Science and Health Coordination (HF–33), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6687.

SUPPLEMENTARY INFORMATION: Under the Federal Advisory Committee Act of October 6, 1972 (Pubic Law 92–463) (5 U.S.C. app. 2); section 904 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 394), as amended by the Food and Drug Administration Revitalization Act (Public Law 101–635); section 14 of the Best Pharmaceuticals for Children Act (Public Law 107–109), as amended by section 3(b)(2) of the Pediatric Research Equity Act of 2003 (Public Law 108–155), and 21 CFR 14.40(b),

FDA is announcing the establishment of the Pediatric Advisory Committee by the Commissioner. The Best Pharmaceuticals for Children Act, as amended by the Pediatric Research Equity Act of 2003, provides for the establishment of this committee. This committee will provide advice and make recommendations to the Commissioner of Food and Drugs on matters relating to pediatric therapeutics, pediatric research, and any other matter involving pediatrics for which the Food and Drug Administration has regulatory responsibility. The committee will also advise and make recommendations to the Secretary of Health and Human Services under 45 CFR 46.407 on research involving children as subjects that is conducted or supported by the Department of Health and Human Services.

The Pediatric Advisory Committee will be composed of a core of 12 voting members including the chair. Members and the chair are selected by the Commissioner of Food and Drugs (the Commissioner) or designee from among the authorities knowledgeable in pediatric research, pediatric subspecialties, statistics, and/or biomedical ethics. The core of voting members shall also include one member from a relevant patient or patient family organization and may include one technically qualified member, selected by the Commissioner or designee who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. In addition to the voting members, the committee may include one nonvoting member who is identified with industry interests and one nonvoting member who represents a pediatric health organization.

Therefore, the agency is amending 21 CFR 14.100(a) as set forth below.

List of Subjects in 21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 14 is amended as follows:

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE:

■ 1. The authority citation for 21 CFR part 14 is revised to read as follows:

Authority: 5 U.S.C. App. 2; 15 U.S.C. 1451–1461, 21 U.S.C. 41–50, 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b 264; Pub. L. 107–109; Pub. L. 108–155.

■ 2. Section 14.100 is amended by adding paragraph (a)(3).

§ 14.100 List of standing advisory committees.

* * * * *

(a) * * *

(3) *Pediatric Advisory Committee.*

(i) Date established: June 18, 2004.

(ii) Function: Advises on pediatric therapeutics, pediatric research, and other matters involving pediatrics for which the Food and Drug Administration has regulatory responsibility.

Dated: July 27, 2004.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 04–17543 Filed 7–29–04; 10:30 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–04–137]

RIN 1625–AA00

Safety Zone; Fireworks Display, Potomac River, Charles County, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the waters of the Potomac River. This action is necessary to provide for the safety of life and property during a fireworks display on the Potomac River. The safety zone will allow for control of designated areas of the river and safeguard spectators and participants.

DATES: This rule is effective from 8 p.m. to 10:30 p.m. on August 14, 2004, with a rain date of August 28, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–04–137 and are available for inspection or copying at Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland 21226–1791, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Houck, Coast Guard Activities Baltimore, at (410) 576–2674.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing a NPRM and delaying its effective date would be contrary to public interest, since there is not sufficient time to publish a proposed rule in advance of the event and immediate action is needed to protect persons and vessels against the hazards associated with a fireworks display from a barge, such as premature detonation or falling burning debris.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This safety zone of short duration is needed to provide for the safety of persons and vessels on the Potomac River and the public at large.

Background and Purpose

On August 14, 2004, with a rain date of August 28, 2004, Crabmando Watersports Inc. in King George, Virginia, will sponsor an event that will include a fireworks display launched from a barge on the Potomac River. A fleet of spectator vessels is anticipated for these events. Due to the need for vessel control during the fireworks display, vessel traffic will be restricted to provide for the safety of spectators and transiting vessels.

The purpose of this regulation is to promote maritime safety, and to protect the environment and mariners transiting the area from the potential hazards due to a fireworks display from a barge. This rule establishes a safety zone on the waters of the Potomac River, enclosed within the arc of a circle with a radius of 600 feet and with its center located at position 38°20″30′ N, 077°14″30′ W.

Discussion of Rule

The Coast Guard is establishing a safety zone on specified waters of the Potomac River. The safety zone will be in effect from 8 p.m. to 10:30 p.m. on August 14, 2004, with a rain date of August 28, 2004. This safety zone will protect spectators and mariners transiting the area from the potential hazards associated with a fireworks display launched from a barge on the Potomac River. This rule limits access to the safety zone to those vessels authorized by the Captain of the Port Baltimore. Except for persons or vessels authorized by the Captain of the Port Baltimore, no person or vessel may enter or remain in the zone. The Captain of the Port will notify the maritime

community via marine broadcasts of the safety zone.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Potomac River from 8 p.m. to 10:30 p.m. on August 14, 2004 or August 28, 2004 if the rain date becomes necessary. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for less than three hours late in the evening when vessel traffic is low, vessel traffic not constrained by its draft can pass safely around the safety zone, and the Coast Guard will issue maritime advisories to users of the river before the effective period.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section

2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This rule establishes a safety zone.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T05–137 to read as follows:

§ 165.T05–137 Safety zone; Fireworks Display, Potomac River, Charles County, Maryland.

(a) *Location.* The following area is a safety zone: All waters of the Potomac River, surface to bottom, enclosed within a 600 foot radius around the position 38°20′30″ N, 077°14′30″ W. All coordinates reference Datum NAD 1983.

(b) *Regulations.* All persons are required to comply with the general regulations governing safety zones in 33 CFR 165.23 of this part.

(1) All vessels and persons are prohibited from entering this zone, except as authorized by the Coast Guard Captain of the Port, Baltimore, Maryland.

(2) Persons or vessels requiring entry into or passage within the zone must request authorization from the Captain of the Port or his designated representative by telephone at (410) 576–2693 or by radio on VHF–FM channel 16.

(3) All Coast Guard assets enforcing this safety zone can be contacted on VHF marine band radio, channels 13 and 16.

(4) The operator of any vessel within or in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign, and

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(c) *Definitions.*

Captain of the Port means the Commander, Coast Guard Activities Baltimore or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(d) *Effective period.* This section is effective from 8 p.m. to 10:30 p.m. on August 14, 2004, with a rain date of August 28, 2004.

Dated: July 22, 2004.

Jonathan C. Burton,

Commander, U.S. Coast Guard, Acting Captain of the Port, Baltimore, Maryland.

[FR Doc. 04–17530 Filed 7–30–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–03–116]

RIN 1625–AA87 (Formerly 1625–AA00)

Security Zone; Three Mile Island Generating Station, Susquehanna River, Dauphin County, PA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a security zone in the Captain of the Port, Philadelphia, PA zone, immediately adjacent to the nuclear power facility at Three Mile Island Generating Station. This zone is needed to ensure public safety and security from subversive or terrorist acts. This rule is intended to prevent future terrorist attacks against nuclear power facilities by denying entry into the zone unless authorized by the Captain of the Port or designated representative.

DATES: This rule is effective on August 1, 2004.

ADDRESSES: Comments and materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket CGD05–03–116, and are available for inspection or copying at Coast Guard Marine Safety Office Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania 19147 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Kevin Sligh or Ensign Jill Munsch, Coast Guard Marine Safety Office Philadelphia, at (215) 271–4889.

SUPPLEMENTARY INFORMATION:

Regulatory History

On September 16, 2003, we published a notice of proposed rulemaking (NPRM) entitled "Security Zone; Three Mile Island Generating Station, Susquehanna River, Dauphin County, PA" in the **Federal Register** (68 FR 54177). We received one letter commenting on the proposed rule. The letter requested clarification on the coordinates of the proposed security zone.

In addition the following temporary final rule was published in the **Federal Register:**

"Security Zone; Three Mile Island Generating Station, Susquehanna River, Dauphin County, PA" (68 FR 33399, June 4, 2003). This temporary final rule established a security zone around the Three Mile Island Generating Station, Susquehanna River, Dauphin County, PA. The original effective date of the temporary final rule was to expire at 5 p.m. (EST) on January 24, 2004. The effective date has been extended through July 31, 2004 (69 FR 10616, March 8, 2004).

Background and Purpose

Terrorist attacks on September 11, 2001, inflicted catastrophic human casualties and property damage. These attacks highlighted the terrorists' ability and desire to utilize multiple means in different geographic areas to increase their opportunities to successfully carry out their mission, thereby maximizing destruction using multiple terrorist acts.

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. The threat of maritime attacks is real as evidenced by the October 2002 attack on a tank vessel off the coast of Yemen and the prior attack on the USS COLE. These attacks manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September, 11, 2001 attacks and that such disturbances continue to endanger the international relations of the United States. *See also Continuation of the National Emergency with Respect to*

Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); *Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism,* (67 FR 59447, September 20, 2002). The U.S. Maritime Administration (MARAD) in Advisory 02–07 advised U.S. shipping interests to maintain a heightened state of alert against possible terrorist attacks. MARAD more recently issued Advisory 03–06 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States. The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

Due to increased awareness that future terrorist attacks are possible, the Coast Guard as lead federal agency for maritime homeland security, has determined that the Captain of the Port must have the means to be aware of, deter, detect, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while still maintaining our freedoms and sustaining the flow of commerce. A security zone is a tool available to the Coast Guard that may be used to limit vessel traffic in a specific area to help protect vessels from damage, injury, or terrorist attack.

The Captain of the Port of Philadelphia has determined that this security zone is necessary to protect the public, ports, and waterways of the United States from potential subversive acts. This security zone is similar to the existing temporary security zone established for waters around nuclear power facilities in Ocean County, NJ, (69 FR 5282, February 4, 2004) and Salem County, NJ, (69 FR 5277, February 4, 2004) which became effective final rules on March 5, 2004.

Discussion of Comments and Changes

During the public comment period we received one comment requesting clarification of the coordinates concerning this security zone. This information was provided prior to publication of the extended temporary final rule. It did not impact the need for a public meeting. The only change to the proposed rule was to add the contact information for the Security Manager at Three Mile Island Nuclear Power Plant. A public meeting was considered, however no requests for a public meeting were received and no public meeting was held.

The Captain of the Port met with representatives from Pennsylvania's Office of the Governor, Pennsylvania Office of Homeland Security, the Pennsylvania State Police and Pennsylvania Fish and Boat Commission regarding the patrol and enforcement feasibility by the state of Pennsylvania. The State has agreed in principle and signed a Memorandum of Agreement related to the security zone around Three Mile Island Generating Station, notify each agency of any proposed changes, periodic patrol assistance, enforcement and investigation into any security zone violations.

Federal, state and local agencies will assist the Coast Guard in enforcing this security zone.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS). No changes have been made to the rule.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. There is ample room for vessels to navigate around the security zone and the Captain of the Port may allow vessels to enter the zone on a case-by-case basis with the express permission of the Captain of the Port of Philadelphia or their designated representative.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The zone is limited in size and leaves ample room for vessels to navigate around the zone. The zone will not significantly impact commuter and passenger vessel traffic patterns; the vessels may be allowed to enter the zone on a case-by-case basis, with the express permission of the Captain of the Port of Philadelphia or their designated representative.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities, as none were identified that will be affected by the final rule.

Vessel traffic counts indicate the waterway users will continue to have the same access to the waterway as in the past, with the exception of a small remote area surrounding the waterfront near the Three Mile Island Generating Station.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Coast Guard Marine Safety Office Philadelphia in writing at the address under **ADDRESSES.**

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the order.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, from further environmental documentation.

We have considered waterside access constraints around the security zone and have determined the public can safely transit the affected waterways outside the security zone, without significant impact on the environment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.554 to read as follows.

§ 165.554 Security Zone; Three Mile Island Generating Station, Susquehanna River, Dauphin County, Pennsylvania.

(a) *Location.* The following area is a security zone: the waters of the Susquehanna River in the vicinity of the Three Mile Island Generating Station bounded by a line beginning at 40°09′14.74″ N, 076°43′40.77″ W; thence to 40°09′14.74″ N, 076°43′42.22″ W, thence to 40°09′16.67″ N, 076°43′42.22″ W, thence to 40°09′16.67″ N, 076°43′40.77″ W; thence back to the beginning point 40°09′14.74″ N, 076°43′40.77″ W. All coordinates reference Datum: NAD 1983.

(b) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones in § 165.33 of this part.

(2) No person or vessel may enter or navigate within this security zone unless authorized to do so by the Coast Guard or designated representative. Any person or vessel authorized to enter the security zone must operate in strict conformance with any directions given by the Coast Guard or designated representative and leave the security zone immediately if the Coast Guard or designated representative so orders.

(3) The Coast Guard or designated representative enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271–4807. The Security Manager at Three Mile Island can be contacted at (717) 948–8208 or (717) 948–8039.

(4) The Captain of the Port will notify the public of any changes in the status of this security zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(c) *Definitions.* For the purposes of this section, *Captain of the Port* means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia, Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act as a designated representative on his behalf.

Dated: July 20, 2004.

Jonathan D. Sarubbi,

Captain, U.S. Coast Guard, Captain of the Port Philadelphia.

[FR Doc. 04–17528 Filed 7–30–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NJ 67–274 FRL–7788–6]

Approval and Promulgation of Implementation Plans New Jersey Emission Statement Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the State Implementation Plan (SIP) revision submitted by the State of New Jersey on January 23, 2003, for the purpose of enhancing an existing Emission Statement Program for stationary sources in New Jersey. The SIP revision consists of amendments to the New Jersey Administrative Code (N.J.A.C.) title 7, chapter 27, subchapter 21, Emission Statements.

The SIP revision was submitted by New Jersey to satisfy the Clean Air Act requirements for stationary sources to report annually to the State on their emissions of volatile organic compounds (VOC), oxides of nitrogen (NO_X) and carbon monoxide (CO), in order for the State to make this data available to EPA and the public.

The rule enhances the reporting requirements of VOC and NO_X and expands the reporting requirement based on specified emission thresholds to include CO, sulfur dioxides (SO_2), total suspended particulate matter (TSP), particulate matter measuring 2.5 microns or less ($PM_{2.5}$), particulate matter measuring 10 microns or less (PM_{10}), ammonia (NH_3), lead (Pb), hazardous air pollutants (HAPs), and carbon dioxide (CO_2) and methane (CH_4). The intended effect is to provide improved information to plan for and attain the air quality standards.

EFFECTIVE DATE: This rule will be effective September 1, 2004.

ADDRESSES: Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours:

New Jersey Department of Environmental Protection and Energy, Office of Air Quality Management, Bureau of Air Quality Planning, 401 East State Street, CN418, Trenton, New Jersey 08625.

Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866.

FOR FURTHER INFORMATION CONTACT: Raymond K. Forde, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3716, *forde.raymond@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What Action Is EPA Taking Today?

EPA is approving a revision to New Jersey's ozone SIP submitted on January 23, 2003. New Jersey submitted a SIP revision which included an adopted Emission Statement Regulation. The regulation amends N.J.A.C. title 7, chapter 27, subchapter 21, Emission Statements. The amendments were adopted on January 23, 2003, by the New Jersey Department of Environmental Protection (NJDEP) and became effective on February 18, 2003. The reader is referred to the proposed rulemaking (December 9, 2003, 68 FR 68581) for additional details.

II. What Role Does This Action Play in the Ozone and CO SIP?

Section 182(a) of the Act establishes requirements for stationary sources of air pollution to prepare and submit to the state statements each year showing actual emissions of VOC and NO_X. Further, states with ozone nonattainment areas are required to submit a SIP revision establishing this Emission Statement Program.

Facilities are required to submit their first emission statement to a state within three years of promulgation of the Act and annually thereafter. If either VOC or NO_X is emitted at or above the minimum reporting level established in a state Emission Statement Program, the other pollutant (NO_X or VOC) from the same facility should be included in the emission statement, even if the pollutant is emitted at levels below the minimum reporting level.

Section 182(a)(3)(B)(ii) of the Act allows states to waive, with EPA approval, the requirement for an emission statement for classes or categories of sources with less than 25 tons per year of actual plant-wide NO_X and VOC emissions in nonattainment areas if the class or category is included in the base year and periodic inventories and emissions are calculated using emission factors established by EPA (such as those found in EPA publication AP–42) or other methods acceptable to EPA.

Consolidated Emission Reporting Rule (Annual Reporting for All Criteria Pollutants)

In order to consolidate federal reporting requirements, on June 10, 2002 (67 FR 39602), EPA published the final Consolidated Emissions Reporting rule. The purpose of the Consolidated Emissions Reporting rule is to simplify the states' annual reporting of criteria pollutants (SO_2, NO_X, $PM_{2.5}$, PM_{10}, CO and Pb) to EPA and their precursors (VOC, NO_X and NH_3) for which the National Ambient Air Quality Standards (NAAQS) have been established. The Consolidated Emissions Reporting rule also offers options for data collection and exchange and unifies reporting dates for various categories of criteria pollutant emission inventories. States are to report emissions from industrial point sources (based on specific emission thresholds) starting with calendar year (CY) 2001 and due June 1, 2003, and continuing every year thereafter (*i.e.*, CY 2002 emission inventory due June 1, 2004, CY 2003 emission inventory due June 1, 2005 * * * etc.). One important element of the Consolidated Emissions Reporting rule is a requirement that states collect $PM_{2.5}$ and NH_3 emissions data from industrial facilities. Reporting of $PM_{2.5}$ and NH_3 from point sources becomes effective June 2004, for emissions that occurred during calendar year 2002.

New Jersey's rule appropriately requires facilities anywhere in the State which emit or have the potential to emit 10 tpy or more of VOC or 25 tpy or more of NO_X to submit an annual emission statement. In accordance with the provisions to waive reporting requirements, New Jersey will continue to allow its previously established waiver from the Emission Statement Program for sources emitting less than 10 tpy of VOC and less than 25 tpy of NO_X. New Jersey has included these sources of emissions (calculated using emission factors established or approved by EPA) in the base year inventory and will continue to do so for the periodic inventories.

New Jersey's Emission Statement rule, enhances the reporting requirements of VOC and NO_X and expands the reporting requirement based on specified emission thresholds to include CO, SO_2, TSP, $PM_{2.5}$, PM_{10}, NH_3, Pb, 36 HAPs, CO_2 and CH_4. The intended effect is to provide improved information to plan for and attain the air quality standards.

New Jersey's Emission Statement rule, which requires facilities to report information for criteria pollutants, their associated precursors mentioned above and HAPs, will now enable the State to satisfy the federal Consolidated Emissions Reporting rule requirements for major sources and help the State to develop a HAPs emission inventory for use in National Air Toxics Assessment.

The State's Emission Statement program requires facilities to report on the following pollutants to assist the

State in air quality planning needs: hydrochloric acid, hydrazine, methylene chloride, tetrachloroethylene, 1,1,1 trichloroethane, CO_2 and CH_4. While EPA recognizes the value of this information, EPA will not take a SIP-related enforcement action should a facility not submit this information to the State in an emission statement because these substances do not cause or exacerbate exceedances of the NAAQS.

III. What Are EPA's Conclusions?

EPA has concluded that the New Jersey program contains the necessary applicability, compliance and reporting provisions necessary to meet the requirements for an Emission Statement Program. Accordingly, EPA is approving Subchapter 21, Emission Statements, as part of the SIP.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 1, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 30, 2004.

Jane M. Kenny,

Regional Administrator, Region 2.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart FF—New Jersey

■ 2. Section 52.1570 is amended by adding new paragraph (c)(75) to read as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

(75) Revisions to the State Implementation Plan submitted on January 23, 2003 by the State of New Jersey Department of Environmental Protection for the purpose of enhancing an existing Emission Statement Program for stationary sources in New Jersey. The SIP revision was submitted by New Jersey to satisfy the Clean Air Act requirements for stationary sources to report annually to the State on their emissions of volatile organic compounds (VOC), oxides of nitrogen (NO_X) and carbon monoxide (CO), in order for the State to make this data available to EPA and the public.

(i) Incorporation by reference:

(A) Amended Regulation Subchapter 21 of Title 7, Chapter 27 of the New Jersey Administrative Code, entitled "Emission Statements," adopted on January 23, 2003 and effective on February 18, 2003.

(ii) Additional material:

(A) Letter from State of New Jersey Department of Environmental Protection dated January 23, 2003, requesting EPA approval of a revision to the Ozone and CO SIP which contains amendments to the Subchapter 21 "Emission Statements."

* * * * *

■ 3. Section 52.1605 is amended by revising the entry under Title 7, Chapter 27 for Subchapter 21 in the table to read as follows:

§ 52.1605 EPA-approved New Jersey regulations.

State regulation	State effective date	EPA approved date	Comments
* * * * * * *			
Title 7, Chapter 27			
* * * * * * *			
Subchapter 21, "Emission Statements."	Feb. 18, 2003	August 2, 2004, FR page citation.	Section 7:27–21.3(b)(1) and 7:27–21.3(b)(2) of New Jersey's Emission Statement rule requires facilities to report on the following pollutants to assist the State in air quality planning needs: hydrochloric acid, hydrazine, methylene chloride, tetrachloroethylene, 1, 1, 1 trichloroethane, carbon dioxide and methane. EPA will not take SIP-related enforcement action on these pollutants.
* * * * * * *			

[FR Doc. 04–17371 Filed 7–30–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[NV117a–OPP; FRL–7795–6]

Approval and Promulgation of Operating Permits Program; State of Nevada, Clark County Department of Air Quality Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Clark County Department of Air Quality Management (DAQM) Operating Permits (Title V) Program. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving a rule revision that addresses when a timely application for title V permit renewal must be submitted.

DATES: These rule revisions are effective on October 1, 2004, without further notice, unless EPA receives adverse comments by September 1, 2004. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that these revisions will not take effect.

ADDRESSES: Send comments to Gerardo Rios, Permits Office Chief (AIR–3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 or e-mail to *r9airpermits@epa.gov*. Comments may also be submitted at *http://www.regulations.gov*.

You can inspect copies of the submitted rule revision and other supporting documentation relevant to this action during normal business hours at Air Division, EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105.

You may also see copies of the State's submittal at the Nevada Division of Environmental Protection, 333 W. Nye Lane, Room 138, Carson City, Nevada or at the Clark County Department of Air Quality Management, 500 S. Grand Central Parkway, Las Vegas, Nevada 89155.

FOR FURTHER INFORMATION CONTACT: Roger Kohn, EPA Region IX, Air Division, Permits Office (AIR–3), at (415) 972–3973 or *kohn.roger@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. The Part 70 Operating Permits Program

A. What Is the Part 70 Operating Permits Program?

The Clean Air Act Amendments (CAA) of 1990 require all states to develop an operating permits program that meets federal criteria listed in 40 Code of Federal Regulations (CFR) part 70. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the part 70 operating permits program (also known as a Title V program) is to improve enforcement and compliance by issuing each source a single permit that consolidates all of the applicable CAA requirements into a federally-enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

B. What Is the Federal Approval Process for Revisions to an Operating Permits Program?

In order for state regulations to be incorporated into the federally-enforceable part 70 operating permits program, states must formally adopt regulations consistent with state and federal requirements. Once a state regulation is adopted, the state submits it to the EPA for inclusion into the approved operating permits program. The EPA must provide public notice and seek additional public comment regarding the proposed federal action on the state submission. If adverse comments are received, they must be addressed prior to any final federal action by EPA.

II. This Action

A. What Revision Is Being Approved?

EPA is approving a revision to DAQM Section 19, Part 70 Operating Permits, that addresses the submittal of timely permit applications. DAQM revised Section 19.3 to state that for the purposes of permit renewal, a timely and complete application is one that is submitted "between six (6) and eighteen

(18) months, prior to the date of permit expiration." This application deadline is consistent with the Part 70 requirement at 40 CFR 70.5(a)(1)(iii). Currently, the approved title V program requires applications for renewal to be submitted eighteen (18) months prior to the date of permit expiration. Since the rule does not specify whether the 18-month deadline is a minimum or maximum, EPA has interpreted it to be consistent with part 70, which states that eighteen months is the maximum. In cases in which a title V permit required a source to submit an renewal application in accordance with Section 19, but did not specify an amount of time, DAQM's interpretation has been the same as EPA's. However, if a permit specifically required a renewal application to be submitted 18 months prior to permit application, DAQM has interpreted this to mean no later than 18 months prior to the expiration of the permit. EPA is approving this title V program revision, which is the only change requested in DAQM's submittal, in order to clarify that in all cases eighteen months is the earliest date for submittal of a renewal application and six months is the latest date for a renewal application. After this latest date, the application would be considered late.

C. Public Comment and Final Action

EPA is fully approving the revision to DAQM's part 70 operating permits program because it is consistent with Title V of the Clean Air Act and 40 CFR part 70. We are processing this action as a direct final action because we believe the revision of Section 19 is noncontroversial. Therefore, we do not think anyone will object to this approval. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by September 1, 2004, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on October 1, 2004. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing state operating permits programs submitted pursuant to Title V of the CAA, EPA will approve state programs provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a Part 70 program revision for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a Part 70 program revision, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 1, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: July 16, 2004.

Keith Takata,

Acting Regional Administrator, Region IX.

■ Part 70, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

■ 1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Appendix A to part 70 is amended by adding under "Nevada" paragraph (c)(3) to read as follows:

APPENDIX A TO PART 70—APPROVAL STATUS OF STATE AND LOCAL OPERATING PERMITS PROGRAMS

* * * * *

Nevada

* * * * *

(c) * * *

(3) Revisions were submitted on February 23, 2004, effective October 1, 2004.

* * * * *

[FR Doc. 04–17497 Filed 7–30–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–2161, MB Docket No. 02–315, RM–10566]

Digital Television Broadcast Service; Moscow, ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of the State Board of Education, State of Idaho, substitutes TV channel *35 for TV channel *12— and DTV channel *12 for DTV channel *35 at Moscow, Idaho. *See* 67 FR 63873, October 16, 2002. TV channel *35 can be substituted for TV channel *12—with a minus offset consistent with Sections 73.610 and 73.611 of the Commission's Rules at coordinates 46–41–07 N. and 116–50–34 W. DTV channel *12 can be substituted for DTV channel *35 at Moscow in compliance with the principal community coverage requirements of Section 73.625(a) at reference coordinates 46–40–54 N. and 116–58–13 W. with a power of 128.5, HAAT of 339.7 meters and with a DTV service population of 243 thousand. With this action, this proceeding is terminated.

DATES: Effective September 13, 2004.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–315, adopted July 19, 2004, and released July 30, 2004. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

This document does not contain [new or modified] information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

The Commission will send a copy of this [Report & Order etc.] in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

■ 2. Section 73.606(b), the Table of Television Allotments under Idaho, is amended by removing TV channel *12— and adding TV channel *35—at Moscow.

§ 73.622 [Amended]

■ 3. Section 73.622(b), the Table of Digital Television Allotments under Idaho, is amended by removing DTV channel *35 and adding DTV channel *12 at Moscow.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 04–17244 Filed 7–30–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031125292–4061–02; I.D. 072704B]

Fisheries of the Exclusive Economic Zone Off Alaska; "Other Rockfish" in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Prohibition of retention.

SUMMARY: NMFS is prohibiting retention of "other rockfish" in the Central Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of "other rockfish" in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the "other rockfish" 2004 total allowable catch (TAC) in this area has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 28, 2004, until 2400 hrs, A.l.t., December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and at 50 CFR part 679.

The 2004 TAC of "other rockfish" in the Central Regulatory Area of the GOA was established as 300 metric tons (mt) by the final 2004 harvest specifications for groundfish in the GOA (69 FR 9261, February 27, 2004).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the "other rockfish" TAC in the Central Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that further catches of "other rockfish" in the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the prohibition of retention of "other rockfish" in the Central Regulatory Area of the GOA.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 27, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–17517 Filed 7–28–04; 3:57 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031125292–4061–02; I.D. 072704C]

Fisheries of the Exclusive Economic Zone Off Alaska; Shortraker and Rougheye Rockfish in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Prohibition of retention.

SUMMARY: NMFS is prohibiting retention of shortraker and rougheye rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of shortraker and rougheye rockfish in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the shortraker and rougheye rockfish 2004 total allowable catch (TAC) in this area has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 28, 2004, until 2400 hrs, A.l.t., December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

The 2004 TAC of shortraker and rougheye rockfish in the Western Regulatory Area of the GOA was established as 254 metric tons (mt) by the final 2004 harvest specifications for groundfish in the GOA (69 FR 9261, February 27, 2004).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the shortraker and rougheye rockfish TAC in the Western Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that further catches of shortraker and rougheye rockfish in the Western Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the prohibition of retention of shortraker and rougheye rockfish in the Western Regulatory Area of the GOA.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 27, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–17518 Filed 7–28–04; 3:57 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 147
Monday, August 2, 2004

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AH29

Risk-Informed Changes to Loss-of-Coolant Accident Technical Requirements

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Availability of draft rule conceptual basis, draft rule language and notice of public meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) is making available the draft rule conceptual basis and the draft rule language for a new § 50.46a, and conforming changes to §§ 50.34, 50.46, 50.46a (to be redesignated as § 50.46b), 50.109, and 10 CFR part 50, Appendix A, General Design Criterion 35, concerning emergency core cooling systems (ECCS) for light-water nuclear power reactors. The amended regulations would permit power reactor licensees to implement a voluntary risk-informed alternative to the current requirements for analysis of loss-of-coolant accidents and for ECCS in 10 CFR 50.46. The availability of the draft rule conceptual basis and draft rule language is intended to inform stakeholders of the current status of the NRC's activities to risk-inform 10 CFR 50.46, but the NRC is not soliciting formal public comments on the information at this time. The NRC has scheduled a public meeting for August 17, 2004, at which stakeholders are invited to inform the NRC of possible nuclear power plant modifications that might be sought under such a rule and their associated costs and benefits. The NRC plans to use this information in preparing the regulatory analysis for the rule.

DATES: A public meeting is scheduled on August 17, 2004, at 9 a.m. in the Auditorium of the NRC's offices located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. Should it become necessary to change the date or time of this meeting, the NRC will provide the revised information in a meeting notice posted on the NRC's public Web site at *http://www.nrc.gov/public-involve/public-meetings/meeting-schedule.html#NRR.*

ADDRESSES: The public meeting will be held in the Auditorium of the NRC's offices located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. The draft rule conceptual basis and draft rule language can be viewed and downloaded electronically via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Along with other publicly available documents related to this rulemaking, the draft information may be viewed electronically on public computers in the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Room O–1 F21, and open to the public on Federal workdays from 7:45 a.m. until 4:15 p.m. The PDR reproduction contractor will make copies of documents for a fee.

Publicly available NRC documents created or received in connection with this rulemaking are also available electronically via the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The draft rule conceptual basis and draft rule language are available under ADAMS accession number ML042080299. If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at (800) 397–4209, (301) 415–4737 or by e-mail at *PDR@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Dudley, Policy and Rulemaking Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: (301) 415–1116; Internet: *rfd@nrc.gov.*

SUPPLEMENTARY INFORMATION:

In a staff requirements memorandum dated July 1, 2004, the Commission directed the staff to propose a risk-informed alternative rule to the current requirements in 10 CFR 50.46. The NRC is making preliminary versions of the draft rule conceptual basis and draft rule language available to inform stakeholders of the current status of the NRC's activities to risk-inform 10 CFR 50.46. This draft rule conceptual basis may be subject to significant revisions during the rulemaking process. To meet the Commission's schedule, the NRC is not soliciting early public comments on this draft rule conceptual basis and draft rule language. No stakeholder requests for a comment period will be granted at this stage in the rulemaking process. Stakeholders will have an opportunity to comment on the rule conceptual basis and rule language when it is published as a proposed rule.

Under this risk-informed alternative, the NRC would establish requirements, in a new § 50.46a, which would divide the existing spectrum of LOCA pipe break sizes up to the double-ended rupture of the largest reactor coolant system pipe into two regions. Each region will be subject to different ECCS analysis requirements, commensurate with likelihood of the break. Loss-of-coolant accidents in the smaller break size region (up to and including a "transition break size") will be analyzed by the methods, assumptions and criteria currently used for LOCA analysis; accidents in the larger break size region (from the transition break size up to the double-ended rupture of the largest reactor coolant system pipe) may be analyzed by less stringent methods based on their lower likelihood. Although loss-of-coolant accidents for breaks larger than the transition break size will become beyond design-basis accidents, the NRC will promulgate regulations ensuring that licensees maintain the ability to mitigate pipe breaks up to the double-ended rupture of the largest reactor coolant system pipe. Since LOCAs in the larger break size region would be required to be mitigated, such accidents would remain separate from severe accidents, which are addressed by voluntary industry guidelines.

Licensees who perform new LOCA analyses using the new risk-informed alternative requirements may find that their plant designs are no longer limited by certain parameters associated with previous analyses. Changing these limitations could enable licensees to

propose a wide scope of design or operational changes up to the point of being limited by some other parameter on any of the required analyses. Potential changes might include increasing power, modifying core peaking factors, removing some accumulators from service, eliminating fast starting of one or more emergency diesel generators, etc. Some of these design and operational changes could increase plant safety. In order to ensure that any design and operational changes do not unacceptably reduce plant safety margins or unacceptably increase risk, the rule will require that any potential increase in risk associated with plant modifications is small and consistent with the Commission's Safety Goal Policy Statement (60 FR 42622, August 15, 1995). The risk-informed 10 CFR 50.46 option will also establish a design change evaluation process. The evaluation process will generally involve the criteria for risk-informed license amendments similar to those in Regulatory Guide 1.174 (ADAMS Accession No. ML023240437). The rule would require monitoring of plant risk to ensure that the bases for any facility changes made under this rule are maintained. The rule would require that proposed facility changes be reviewed and approved by the NRC via the routine license amendment process,[1] including any needed changes to the facility's technical specifications. Potential impacts of the plant changes on facility security will be evaluated during the process for license amendment reviews.

The NRC intends to periodically evaluate LOCA frequency information. If estimated LOCA frequencies significantly change, the NRC may revise the transition break size. In such a case, the backfit rule (10 CFR 50.109) would not apply. Similarly, if future evaluations of LOCA frequency invalidate the bases for a design change made by a licensee, that licensee would be required to change the facility and/or procedures or make other compensatory changes elsewhere to reduce facility risk to acceptable levels. In such cases, the backfit rule (10 CFR 50.109) also would not apply.

The NRC's current concept regarding the rule framework, the associated technical bases, and early draft rule language will be posted on the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. This draft rule conceptual basis and draft rule language are preliminary and may be incomplete in one or more respects. This early draft information is being released to inform stakeholders of the current status of the 10 CFR 50.46 rulemaking. Periodically, the NRC may post updates to the draft rule conceptual basis or draft rule language on the rulemaking Web site.

At the public meeting on August 17, 2004, the NRC would like to obtain information about the potential costs and benefits of the above rule changes in order to complete the regulatory analysis for the proposed rule. After licensees and other stakeholders review the draft rule conceptual basis and draft rule language posted on the NRC Web site (*http://ruleforum.llnl.gov*), the NRC would like to obtain information as described below.

1. Estimate the number and type of plants that might pursue this voluntary option. Estimate the costs of performing the ECCS reanalyses at these plants.

2. Provide the estimated number and types of plant design changes that would be permitted by the ECCS reanalyses at these plants (on a per unit basis) and the estimated costs of any decision analyses associated with such design changes.

3. Estimate the costs of additional analyses (apart from the ECCS reanalyses) required by the proposed rule to determine the acceptability of the above design changes. These costs could include but may not be limited to (1) updating probabilistic risk assessments (PRAs) to reflect the new design and to meet the PRA quality and scope requirements and (2) analyses to determine compliance with the risk acceptance criteria and the defense-in-depth criteria.

4. Estimate the number and types of plant design changes (on a per unit basis) that would meet the acceptance criteria for the additional analyses.

5. Estimate the costs of implementing the plant design changes that meet the acceptance criteria for the additional analyses.

6. Estimate any operational costs and/or savings resulting from implementing the above design changes.

7. Estimate any anticipated changes in licensee information collection, reporting, and retention burden that could result if this rulemaking is implemented.

Dated in Rockville, Maryland, this 26th day of July, 2004.

For the Nuclear Regulatory Commission.

Catherine Haney,

Program Director, Policy and Rulemaking Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 04–17477 Filed 7–30–04; 8:45 am]

BILLING CODE 7590–01–P

[1] Requirements for this process are specified in 10 CFR 50.90. They include public notice of all amendment requests in the **Federal Register**, an opportunity for affected persons to request a public hearing, preparation of an environmental analysis, and a detailed NRC technical evaluation to ensure that the facility will continue to provide adequate protection of public health and safety after the amendment is implemented.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 708a

Conversion of Insured Credit Unions to Mutual Savings Banks

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule with request for comments.

SUMMARY: NCUA proposes to update its rule regarding conversion of insured credit unions to mutual savings banks. The proposal requires a converting credit union to provide its members with additional disclosures about the conversion before conducting a member vote. The proposal also requires vote be by secret ballot and be conducted by an independent entity. Finally, the proposal requires a federally-insured state credit union to provide NCUA with conversion related information about the law of the state under which the credit union is chartered.

DATES: Comments must be received on or before October 1, 2004.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- NCUA Web site: *http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html*. Follow the instructions for submitting comments.
- E-mail: Address to *regcomments@ncua.gov*. Include "[Your name] Comments on Proposed Rule 708a, Conversion of Insured Credit Unions to Mutual Savings Banks" in the e-mail subject line.
- Fax: (703) 518–6319. Use the subject line described above for e-mail.
- Mail: Address to Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- Hand Delivery/Courier: Same as mail address.

FOR FURTHER INFORMATION CONTACT: Frank S. Kressman, Staff Attorney, at

the above address, or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

The Credit Union Membership Access Act (CUMAA) was enacted into law on August 7, 1998. Public Law 105–21. Section 202 of CUMAA amended the provisions of the Federal Credit Union Act concerning conversion of insured credit unions to mutual savings banks. 12 U.S.C. 1785(b). CUMAA required NCUA to promulgate final rules regarding charter conversions that were: (1) Consistent with CUMAA; (2) consistent with the charter conversion rules promulgated by other financial regulators; and (3) no more or less restrictive than rules applicable to charter conversions of other financial institutions. NCUA issued rules in compliance with this mandate. 63 FR 65532 (November 27, 1998); 64 FR 28733 (May 27, 1999).

Since the enactment of CUMAA, NCUA has grown concerned that many credit union members do not appreciate the effect a conversion may have on their ownership interests in the credit union and voting power in the mutual savings bank. In February 2004, NCUA amended part 708a to require a converting credit union to disclose additional information to its members to better educate them regarding the conversion. 69 FR 8548 (February 25, 2004). NCUA solicited public comment as part of that rulemaking. Some commenters suggested that, among other things, NCUA should have imposed more disclosures and requirements on converting credit unions. Many offered specific suggestions. NCUA noted at that time that many of those suggestions deserved further consideration but were beyond the scope of the proposal and would have to be considered in a future rulemaking. This proposal considers some of those suggestions and further addresses NCUA's ongoing concerns about protecting members' interests in the conversion process.

B. Discussion

CUMAA provides that an insured credit union may convert to a mutual savings bank without the prior approval of NCUA, but it also requires NCUA to administer the member vote on conversion and review the methods and procedures by which the vote is taken. This is reflected in NCUA's conversion rule. The rule requires a converting credit union to provide its members with written notice of its intent to convert. 12 CFR § 708a.4. It also specifies that the member notice must adequately describe the purpose and subject matter of the vote on conversion. *Id.* In addition, a converting credit union must notify NCUA of its intent to convert. 12 CFR § 708a.5. The credit union must provide for NCUA's review a copy of its member notice, ballot, and all other written materials it has provided or intends to provide to its members in connection with the conversion. *Id.*

A converting credit union has the option of submitting these materials to NCUA before it distributes them to its members. *Id.* This enables the credit union to obtain NCUA's preliminary determination on the methods and procedures of the member vote based on NCUA's review of the written materials. NCUA believes its review of these materials is a practical and unintrusive way of fulfilling, at least part of, its congressionally mandated responsibility to review the methods and procedures of the vote.

If NCUA disapproves of the methods and procedures of the member vote, after the vote is conducted, then NCUA is authorized to direct a new vote be taken. 12 CFR § 708a.7. NCUA interprets its responsibility to review the methods and procedures of the member vote to include determining that the member notice and other materials sent to the members are accurate and not misleading, all required notices are timely, and the membership vote is conducted in a fair and legal manner.

A charter conversion is a sophisticated transaction with consequences that may not surface for a number of years and that are often not recognizable at the time of conversion to even the most astute members. As a result, members cannot make an informed decision about how the conversion will affect them unless their credit union provides them with this information.

NCUA is aware that credit unions are not providing some important conversion related information effectively to their members. This limits members' ability to make informed decisions about a conversion. NCUA also has become aware that many credit unions may not be equipped to conduct a proper member vote on conversion. Accordingly, as discussed more fully below, NCUA proposes to amend the conversion rule to require a converting credit union to provide additional disclosures to its members. Also, as mentioned in the February 2004 amendments to the conversion rule, NCUA proposes to provide guidelines to help converting credit unions better understand how they can satisfy the regulatory standard that the member vote be conducted in a fair and legal manner. In addition to the guidelines, NCUA also proposes to amend the rule to require the vote be conducted using secret ballots and an independent teller to protect the privacy of each member's vote. Finally, NCUA proposes to require a federally-insured state credit union to provide NCUA with information about how the law of the state under which it is chartered relates to NCUA's conversion rule so that NCUA's review of the methods and procedures of the vote includes ensuring compliance with applicable state law.

C. Disclosures

A converting credit union can provide information to its members regarding any aspect of the conversion in any format it wishes, provided all communications are accurate and not misleading. NCUA only requires certain, minimal information to be provided in the notice to members. Most converting credit unions choose to provide a great deal more information and, while NCUA recognizes this is a way to educate members, NCUA is concerned that members may be overwhelmed by the volume of information and choose to ignore some or all of the information rather than reading through all of it. NCUA does not, however, wish to dissuade converting credit unions from communicating with their members or limit those communications.

To balance these competing interests, NCUA will continue to allow a converting credit union to communicate with its members as it sees fit, but will require that members receive a short, simple disclosure prepared by NCUA. This disclosure addresses: (1) Ownership and control of the credit union; (2) operating expenses and their effect on rates and services; (3) the effect of a subsequent conversion to a stock institution; and (4) the costs of conversion. NCUA believes members need to be particularly aware of these topics. NCUA recognizes these topics might be discussed elsewhere in a credit union's communications with its members, but NCUA is concerned that this information may get buried in the great volume of other information being provided. Accordingly, a converting credit union must include this disclosure in a prominent place with each written communication it sends to its members regarding the conversion and must take specific steps to ensure that the disclosure is conspicuous to the member.

Officials of many converting credit unions indicate in their conversion materials that they are unable to raise capital quickly enough to operate their credit unions as they see fit, which often

includes a desire to pursue rapid growth. These credit unions encourage their members to support the conversion to a mutual savings bank as a way to overcome this capital restraint. They do not, however, inform their members that the conversion process can be expensive and further deplete a credit union's capital. NCUA believes members deserve to know how much of their money will be spent on the conversion effort. Accordingly, as noted, NCUA proposes to require converting credit unions to disclose the costs of conversion as part of the above disclosure requirements. An accurate cost estimate must take into account a host of expenses including printing fees, postage fees, advertising, consulting and professional fees, legal fees, staff time, the cost of holding a special meeting, conducting the vote, and other related expenses.

D. Guidelines for Conducting a Member Vote

A converting credit union must conduct its member vote on conversion in a fair and legal manner. This is not necessarily an easy task given that it often requires staff, resources and expertise beyond that of many credit unions. A vote that does not satisfy this standard denies members their democratic right to decide the fate of their credit union and could result in a charter change without the true support of the members. NCUA proposes guidelines to avoid these kinds of undesirable results. The guidelines address topics such as: (1) Understanding the relationship between federal and state law; (2) determining voter eligibility; (3) conducting the vote and properly tabulating the ballots; (4) third party tellers; and (5) holding a special meeting.

NCUA does not purport these guidelines are an exhaustive checklist that guarantees a fair and legal vote. Rather, the guidelines are suggestions that provide a framework that, if followed, will help a credit union fulfill its regulatory obligations. A converting credit union should use these guidelines in conjunction with its own independent analysis and planning to tailor the member vote to its particular circumstances.

E. Relationship Between State and Federal Law

Although NCUA's conversion rule applies to all conversions of federally-insured credit unions, federally-insured state credit unions may also be subject to state law on conversions. As stated in previous rulemakings, NCUA's position is that a state legislature or state supervisory authority may impose conversion requirements more stringent or restrictive than NCUA's. This position is included in the proposed rule. In fact, NCUA understands over half the states do not specifically permit conversions of credit unions to mutual savings banks. Reflecting NCUA's support of the dual chartering system, NCUA will defer to a state regulator when appropriate on questions involving interpretation of state law.

When state law applies to a conversion, it can change the procedural and substantive requirements a converting credit union must satisfy. NCUA needs to understand how state law affects those requirements to fulfill its responsibility to review the methods and procedures of the member vote. Accordingly, NCUA proposes to require a federally-insured state credit union to notify NCUA if the state law under which it is chartered permits it to convert to a mutual savings bank. The credit union also must inform NCUA if it relies for its authority to convert on a state law parity provision, a provision permitting a state credit union to operate with the same or similar authority as a federal credit union, and if its state regulatory authority agrees that it may rely on the parity provision for that purpose. Finally, if a federally-insured state credit union relies on a state parity provision for authority to convert, NCUA proposes to require it to indicate its state regulatory authority's position as to whether federal law and regulations or state law will control internal governance issues in the conversion such as the requisite membership vote for conversion and the determination of a member's eligibility to vote.

F. Other

NCUA understands that members, including those that are employees of the credit union, may be intimidated by or otherwise uncomfortable with a voting process that does not protect the privacy of their votes. NCUA is concerned this will lead some members to choose not to vote or to vote in a manner inconsistent with their true wishes. Accordingly, NCUA proposes to protect members' privacy by requiring a converting credit union to use a secret ballot and an independent entity to conduct the vote. NCUA is proposing that converting credit unions use third party tellers to conduct the vote meaning that a third party teller will be responsible for sending ballots, receipt and safe keeping of ballots, verification of ballots, and tabulation of the vote. Use of a third party teller heightens not only the integrity of the voting process but the confidence that members, including employees, will have that their votes will remain confidential.

The current conversion rule requires a converting credit union to provide NCUA with copies of all written materials it sends or intends to send to its members in connection with the conversion proposal. NCUA is not changing that requirement but wishes to clarify it applies to all written materials, including electronic communications posted on web sites.

Finally, commenters to previous amendments to the conversion rule have recommended NCUA require converting credit unions provide members a meaningful way to share their opinions on the conversion and to disclose the views and concerns of the credit union's directors and officers who oppose the conversion. NCUA is not inclined to propose a regulatory change based on these suggestions but wishes to receive public comment on if doing so would be practical and valuable to members. NCUA is also open to comments on how this may be accomplished with minimal regulatory burden.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions, defined as those under ten million dollars in assets. This proposed rule amends the procedures an insured credit union must follow to convert to a mutual savings bank. Twenty-two credit unions have converted since 1995. NCUA anticipates no more than five credit unions per year will convert in the future and it is unlikely that any will have less than ten million dollars in assets. Accordingly, the amendments would not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

Part 708a contains information collection requirements. As required by the Paperwork Reduction Act of 1995, (44 U.S.C. 3507(d)), NCUA has submitted a copy of this proposed regulation as part of an information collection package to the Office of Management and Budget (OMB) for its review and approval of a revision to Collection of Information, Conversion of Insured Credit Unions to Mutual Savings Banks, Control Number 3133–0153.

The proposed part 708a ensures that a credit union member receives sufficient information to enable him or her to make an informed decision regarding a vote on conversion to mutual savings bank and promotes the likelihood that the vote will be conducted in a fair and legal manner. The proposal also provides NCUA with sufficient information to fulfill its statutory obligation to administer the member vote on conversion.

NCUA previously estimated that ten insured credit unions would convert to mutual savings banks each year and the annual burden on each to comply with the requirements of part 708a would be an average of 15 to 20 hours. Accordingly, NCUA estimated the total annual collection burden would be no more than 200 hours. NCUA estimates the proposal will increase the average annual burden per converting credit union to between 20 and 23 hours but estimates the number of converting credit unions will decrease to no more than five per year. As a result, NCUA estimates the total annual collection burden will decrease to no more than 115 hours.

Organizations and individuals that wish to submit comments on this information collection requirement should direct them to the Office of Information and Regulatory Affairs, OMB, Attn: Mark Menchik, Room 10226, New Executive Office Building, Washington, DC 20503.

The NCUA considers comments by the public on this proposed collection of information in—

—Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the NCUA, including whether the information will have a practical use;

—Evaluating the accuracy of the NCUA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhancing the quality, usefulness, and clarity of the information to be collected; and

—Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

The Paperwork Reduction Act requires OMB to make a decision concerning the collection of information contained in the proposed regulation between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the NCUA on the proposed regulation.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive.

List of Subjects in 12 CFR part 708a

Charter conversions, Credit unions.

By the National Credit Union Administration Board on July 22, 2004.

Becky Baker,

Secretary of the Board.

For the reasons stated above, NCUA proposes to amend 12 CFR part 708a as follows:

PART 708a—CONVERSION OF INSURED CREDIT UNIONS TO MUTUAL SAVINGS BANKS

1. The authority citation for part 708a continues to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1785(b).

2. Section 708a.4 is amended by adding a sentence at the end of paragraph (a) and adding paragraph (e) to read as follows:

§ 708a.4 Voting procedures.

(a) * * * The vote on the conversion proposal must be by secret ballot and conducted by an independent entity. The independent entity must be a company with experience in conducting corporate elections. No official or senior manager of the credit union, or the immediate family members of any official or senior manager, may have any ownership interest in, or be employed by, the entity.

* * * * *

(e) A converting credit union must include the following disclosures with each written communication it sends to its members regarding the conversion. The disclosures must be offset from the other text by use of a border and at least one font size larger than any other text (exclusive of headings) used in the communication. Certain portions of the disclosures must be capitalized and bolded, as follows:

> The National Credit Union Administration, the federal government agency that supervises credit unions, requires [insert name of credit union] to provide the following disclosures.
>
> 1. **OWNERSHIP AND CONTROL.** In a credit union, every member has an equal vote in the election of directors and other matters concerning ownership and control. In a mutual savings bank, **ACCOUNT HOLDERS WITH LARGER BALANCES USUALLY HAVE MORE VOTES AND, THUS, GREATER CONTROL.**
>
> 2. **EXPENSES AND THEIR EFFECT ON RATES AND SERVICES.** Credit union directors and committee members serve on a volunteer basis. Directors of a mutual savings bank are compensated. Credit unions are exempt from federal tax and most state taxes. Mutual savings banks pay taxes, including federal income tax. If [insert name of credit union] converts to a mutual savings bank, these **ADDITIONAL EXPENSES MAY CONTRIBUTE TO LOWER SAVINGS RATES, HIGHER LOAN RATES, OR ADDITIONAL FEES FOR SERVICES.**

3. **SUBSEQUENT CONVERSION TO STOCK INSTITUTION.** Conversion to a mutual savings bank is often the first step in a two-step process to convert to a stock-issuing bank or holding company. In a typical conversion to the stock form of ownership, the **EXECUTIVES OF THE INSTITUTION PROFIT BY OBTAINING STOCK FAR IN EXCESS OF THAT AVAILABLE TO THE INSTITUTION'S MEMBERS.**

4. **COSTS OF CONVERSION.** The costs of converting a credit union to a mutual savings bank are paid from the credit union's current and accumulated earnings. Because accumulated earnings are capital and represent members' ownership interests in a credit union, the conversion costs reduce members' ownership interests. As of [insert date], [insert name of credit union] estimates **THE CONVERSION WILL COST [INSERT DOLLAR AMOUNT] IN TOTAL.** That total amount is further broken down as follows: [itemize the costs of all expenses related to the conversion including printing fees, postage fees, advertising, consulting and professional fees, legal fees, staff time, the cost of holding a special meeting, conducting the vote, and any other expenses incurred].

3. Section 708a.5 is amended by redesignating paragraph (b) as paragraph (b)(1), adding a sentence at the end of paragraph (b)(1), and adding paragraph (b)(2) to read as follows:

§ 708a.5 Notice to NCUA.

* * * * *

(b)(1) * * * The term "written materials" includes written documentation or information of any sort, including electronic communications posted on a web site.

(b)(2) A federally-insured state chartered credit union must include in its notice to NCUA a statement as to whether the state law under which it is chartered permits it to convert to a mutual savings bank and include a legal citation to the state law providing this authority. A federally-insured state chartered credit union will remain subject to any state law requirements for conversion that are more stringent than those this chapter imposes, including any internal governance requirements, such as the requisite membership vote for conversion and the determination of a member's eligibility to vote. If a federally-insured state chartered credit union relies for its authority to convert to a mutual savings bank on a state law parity provision, meaning a provision in state law permitting a state chartered credit union to operate with the same or similar authority as a federal credit union, it must include in its notice a statement that its state regulatory authority agrees that it may rely on the state law parity provision as authority to convert. If a federally-insured state chartered credit union relies on a state law parity provision for authority to convert, it must indicate its state regulatory authority's position as to whether federal law and regulations or state law will control internal governance issues in the conversion such as the requisite membership vote for conversion and the determination of a member's eligibility to vote.

* * * * *

4. Add section 708a.11 to read as follows:

§ 708a.11 Voting Guidelines.

A converting credit union must conduct its member vote on conversion in a fair and legal manner. These guidelines are not an exhaustive checklist that guarantees a fair and legal vote but are suggestions that provide a framework to help a credit union fulfill its regulatory obligations.

1. *Understanding the relationship between federal and state law.*

While NCUA's conversion rule applies to all conversions of federally-insured credit unions, federally-insured state chartered credit unions (FISCUs) are also subject to state law on conversions. NCUA's position is that a state legislature or state supervisory authority may impose conversion requirements more stringent or restrictive than NCUA's. States that permit this kind of conversion could have substantive and procedural requirements that vary from federal law. For example, there could be different voting standards for approving a vote. While NCUA's rule requires a simple majority of those who vote to approve a conversion, some states have higher voting standards requiring two-thirds or more of those who vote. A FISCU should be careful to understand both federal and state law to navigate the conversion process and conduct a proper vote.

2. *Determining voter eligibility.*

Determining who is eligible to cast a ballot is fundamental to any vote. No conversion vote can be fair and legal if some members are improperly excluded. A converting credit union should be cautious to identify all eligible members and make certain they are included on its voting list. NCUA recommends that a converting credit union establish internal procedures to manage this task.

A converting credit union should be careful to make certain its member list is accurate and complete. For example, when a credit union converts from paper record keeping to computer record keeping, some members' names may not transfer unless the credit union is careful in this regard. This same problem can arise when a credit union converts from one computer system to another where the software is not completely compatible.

Problems with keeping track of who is eligible to vote can also arise when a credit union converts from a federal charter to a state charter or vice versa. NCUA is aware of an instance where a federal credit union used membership materials that allowed two or more individuals to open a joint account and also allowed each to become a member. The federal credit union later converted to a state chartered credit union that, like most other state chartered credit unions in its state, used membership materials that allowed two or more individuals to open a joint account but only allowed the first person listed on the account to become a member. The other individuals did not become members as a result of their joint account. To become members, those individuals were required to open another account where they were the first or only person listed on the account. Over time, some individuals who became members of the federal credit union as the second person listed on a joint account were treated like those individuals who were listed as the second person on a joint account opened directly with the state chartered credit union. Specifically, both of those groups were treated as non-members not entitled to vote. This example makes the point that a credit union must be diligent in maintaining a reliable membership list.

3. *Holding a special meeting.*

NCUA's conversion rule requires a converting credit union to permit members to vote by written mail ballot or in person at a special meeting held for the purpose of voting on the conversion. Although most members may choose to vote by mail, a significant number may choose to vote in person. As a result, a converting credit union should be careful to conduct its special meeting in a manner conducive to accommodating all members that wish to attend. That includes selecting a meeting location that can accommodate

the anticipated number of attendees and is conveniently located. The meeting should also be held on a day and time suitable to most members' schedules. A credit union should conduct its meeting in accordance with applicable federal and state law, its bylaws and Robert's Rules of Order and determine before the meeting the nature and scope of any discussion to be permitted.

[FR Doc. 04–17463 Filed 7–30–04; 8:45 am]
BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA 2004–17738; Airspace Docket No. 04–AWP–5]

Proposed Establishment of Class D Airspace; Riverside March Field, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class D airspace at Riverside March Field, CA. March Field currently has Class C airspace that is effective only when the March Ground Control Approach (GCA) is open, usually 2300 local to 0700 local. The March Airport Traffic Control Tower (ATCT) is open continuously. Class D airspace is necessary when the ATCT is open, and the GCA is closed, to contain and protect Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action would establish Class D airspace extending upward from the surface to and including 4,000 feet Mean Sea Level (MSL) within a 5-mile radius of the airport.

DATES: Comments must be received on or before September 1, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–17738/ Airspace Docket No. 04–AWP–5, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 2010, 15000 Aviation Boulevard, Lawndale, California 90261.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Airspace Specialist, Airspace Branch, Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California; telephone (310) 725–6613.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2004–17738/Airspace Docket No. 04–AWP–5." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*. Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace at Riverside March Field, CA. Class D airspace designations for airspace areas extending upward from the surface of the earth are published in Paragraph 5000 of AAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AWP CA D Riverside March Field, CA [NEW]

Riverside March Field, CA
(Lat. 33°52′50″ N., long. 117°15′34″ W.)

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Riverside March Field. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Dated: Issued in Los Angeles, California, on May 18, 2004.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 04–17531 Filed 7–30–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2003–15411 Airspace Docket No. 02–ANM–15]

RIN 2120–AA66

Proposed Establishment of Restricted Area 4601 A, B, C, and D; Bearpaw, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice proposing to establish four new restricted areas (R–4601 A, B, C, and D) in the vicinity of Bearpaw, MT, as part of a Montana Air National Guard (MANG) training initiative (68 FR 6433; November 17, 2003). This action is being taken because the MANG has been unable to gain control of the surface area needed for an air-to-ground training range.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules, Office of System Operations and Safety, ATO–R, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

On November 17, 2003, an NPRM was published in the **Federal Register** proposing to amend Title 14 Code of Federal Regulations (14 CFR) part 73 (part 73) to establish R–4601 A, B, C, and D, in the vicinity of Bearpaw, MT, as part of a MANG training initiative (68 FR 64833). The MANG has been unable to gain control of the surface area needed for an air-to-ground training range.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Withdrawal of Proposed Rule

In consideration of the foregoing, the NPRM, FAA Docket No. FAA–2003–15411/Airspace Docket No. 02–ANM–15, as published in the **Federal Register** on November 17, 2003 (68 FR 64833), is hereby withdrawn.

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

* * * * *

Issued in Washington, DC, July 23, 2004.

Reginald C. Matthews,

Manager, Airspace and Rules.

[FR Doc. 04–17406 Filed 7–30–04; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Chapter II

[Release Nos. 33–8451, 34–50094, 35–27877, 39–2422, IA–2268, IC–26521; File No. S7–31–04]

List of Rules To Be Reviewed Pursuant to the Regulatory Flexibility Act

AGENCY: Securities and Exchange Commission.

ACTION: Publication of list of rules being reviewed.

SUMMARY: The Securities and Exchange Commission is today publishing a list of rules it is reviewing pursuant to Section 610 of the Regulatory Flexibility Act. The list is published to provide the public with notice that these rules are being reviewed by the agency and to invite public comment on them.

DATES: Comments should be received on or before September 1, 2004.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–31–04 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number S7–31–04. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/other.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Anne H. Sullivan, Office of the General Counsel, at 202–942–0954, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act ("RFA"), *codified at* 5 U.S.C. 600–611, requires agencies every year to review those rules it adopted ten years ago that have a significant economic impact upon a substantial number of small entities. The purpose of the review is "to determine whether such rules should be continued without change, or should be amended or rescinded * * * to minimize any significant economic impact of the rules upon a substantial number of such small entities" (5 U.S.C. 610(a)). The RFA sets forth specific considerations that must be addressed in the review of each rule:

- The continued need for the rule;

- The nature of complaints or comments received concerning the rule from the public;
- The complexity of the rule;
- The extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and
- The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule (5 U.S.C. 610(c)).

The Commission, as a matter of policy, reviews all rules which it publishes for notice and comment to assess not only their continued compliance with the RFA, but also to assess generally their continued utility. When the Commission implemented the Act in 1980, it stated that it "intend[ed] to conduct a broader review [than that required by the RFA], with a view to identifying those rules in need of modification or even rescission." Securities Act Release No. 6302 (Mar. 20, 1980), 46 FR 19251. The list below is therefore broader than that required by the RFA (and may include rules that do not have a substantial impact on a significant number of small entities). Where the Commission has previously made a determination of a rule's impact on small businesses, the determination is noted on the list.

Pursuant to the RFA, the rules and forms listed below are being reviewed by the staff of the Commission during 2004. The rules are grouped according to which Division or Office of the Commission will review each rule:

Rules and Forms To Be Reviewed by the Division of Corporation Finance

1. Safe Harbor for Public Announcement of Unregistered Offerings

Citation: 17 CFR 230.135c.

Authority: 15 U.S.C. 77a *et seq.*

Description: The rule created a safe harbor for certain company announcements regarding exempt offerings or unregistered offshore offerings.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 33–7053, which was approved by the Commission on April 19, 1994. Any comments to the proposing release were considered at that time. The amendments were designed to minimize costs to small business issuers, without sacrificing important concerns of investors.

Rules and Forms To Be Reviewed by the Divisions of Corporation Finance and Market Regulation

2. Exemptive Relief and Simplification of Filing Requirements for Debt Securities To Be Listed on a National Securities Exchange

Citation: 17 CFR 240.3a12–11, 240.12d1–2

Authority: 15 U.S.C. 77a *et seq.*, 15 U.S.C. 78a *et seq.*

Description: These rules were adopted to reduce regulatory distinctions between debt securities listed on a national securities exchange and those traded in the over-the-counter market by exempting listed debt securities from restrictions on borrowing and from most of the proxy and information statement rules.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 34–34922, which was approved by the Commission on November 1, 1994. Any comments to the proposing release were considered at that time. The rules were designed to decrease costs and compliance burdens on small entities.

3. Municipal Securities Disclosure

Citation: 17 CFR 240.15c2–12

Authority: 15 U.S.C. 77a *et seq.*, 15 U.S.C. 78a *et seq.*, 15 U.S.C. 79q, 15 U.S.C. 79t, 15 U.S.C. 80a *et seq.*

Description: These rules prohibit the underwriting and subsequent recommendation of securities for which adequate information is not available.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 34–34961, which was approved by the Commission on November 10, 1994. Any comments to the proposing release were considered at that time. The rules were drafted to decrease costs and compliance burdens on small entities.

4. Limited Partnership Roll-up Transactions

Citation: 17 CFR 240.3b–11, 240.14a–15, 240.14e–7

Authority: 15 U.S.C. 77a *et seq.*, 15 U.S.C. 78a *et seq.*

Description: These rules were adopted to implement provisions of the Limited Partnership Rollup Reform Act of 1993.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 33–7113, which was approved by the Commission on December 1, 1994. Any comments to the proposing release were considered at that time. The rules were drafted to decrease costs and compliance burdens on small entities.

Rule To Be Reviewed by the Division of Investment Management

5. Rule 486

Citation: 17 CFR 230.486

Authority: 15 U.S.C. 77a *et seq.*, 15 U.S.C. 78a *et seq.*, 15 U.S.C. 79t, 15 U.S.C. 80a *et seq.*

Description: Rule 486 under the Securities Act of 1933 establishes procedures for post-effective amendments to registration statements filed by closed-end interval funds.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 33–7083, which was approved by the Commission on August 17, 1994. The Commission stated that proposed Rule 486 would have no significant economic impact on any small entity.

Rules and Forms To Be Reviewed by the Division of Market Regulation

6. Customer Account Statements

Citation: 17 CFR 240.11Ac1–3

Authority: 15 U.S.C. 77a *et seq.*, 15 U.S.C. 78a *et seq.*, 15 U.S.C. 79q, 79t, 15 U.S.C. 80a *et seq.*

Description: The rule requires enhanced disclosure of payment for order flow practices on customer confirmations, and account statements, as well as upon opening new accounts.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 34–34902, which the Commission approved on October 27, 1994. Any comments to the proposing release were considered at that time.

7. Notice of Assumption or Termination of Transfer Agent Services

Citation: 17 CFR 17Ad–16

Authority: 15 U.S.C. 78a *et seq.*

Description: The rule requires a registered transfer agent to provide written notice to a registered securities depository when terminating or assuming transfer agent services on behalf of an issuer or when changing its name or address.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory

Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 34–35039, which the Commission approved on December 1, 1994. No comments concerning regulatory flexibility matters were received.

The Commission invites public comment on both the list and on the rules to be reviewed. The Commission particularly solicits public comment on whether the listed rules affect small businesses in new or different ways than when they were first adopted.

Dated: July 27, 2004.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–17459 Filed 7–30–04; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310 and 341

[Docket No. 2004N–0289]

RIN 0910–AF34

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Proposed Amendment of Final Monograph for Over-the-Counter Nasal Decongestant Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the final monograph for over-the-counter (OTC) nasal decongestant drug products (drug products used to relieve nasal congestion due to a cold, hay fever, or other upper respiratory allergies) to remove the indication "for the temporary relief of nasal congestion associated with sinusitis" and to prohibit use of the terms "sinusitis" and "associated with sinusitis" elsewhere on the labeling. This proposal is part of FDA's ongoing review of OTC drug products.

DATES: Submit written or electronic comments on the document and comments on the agency's economic impact determination by November 1, 2004. See sections V and X of this document for the proposed effective and compliance dates of any final rule that may publish based on this proposal.

ADDRESSES: You may submit comments, identified by [Docket No. 2004N–0289 and/or RIN number 0910–AF34], by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.
- E-mail: *fdadockets@oc.fda.gov*. Include [Docket No.2004N–0289 and/or RIN number 0910–AA01] in the subject line of your e-mail message.
- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and Docket No. or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.fda.gov/dockets/ecomments*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/dockets/ecomments* and/or the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Michael T. Benson, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

A. Advance Notice of Proposed Rulemaking

In the **Federal Register** of September 9, 1976 (41 FR 38312), the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products (the Panel) recommended the following as one of 13 labeling indications for OTC nasal decongestant drug products: "For temporary relief of nasal congestion associated with sinusitis." (See 41 FR 38312 at 38422.) The Panel recommended 13 indications for OTC nasal decongestant drug products (41 FR 38312 at 38403 to 38404). Only one of these indications involved the term "sinusitis," i.e., "For temporary relief of nasal congestion associated with sinusitis." The Panel did not provide any explanation for this indication in its general discussion of OTC nasal decongestants (41 FR 38312 at 38396 to 38397) or in its Category I labeling discussion.

B. Tentative Final Monograph

In the **Federal Register** of January 15, 1985 (50 FR 2220), FDA concurred with the Panel's recommendation and proposed a similar indication in the tentative final monograph for OTC nasal decongestant drug products. That indication in proposed § 341.80(b)(1) (50 FR 2220 at 2238) stated: "For the temporary relief of nasal congestion due to the common cold (cold), hay fever" (which may be followed by any of the following: "(allergic rhinitis)," "or other upper respiratory allergies," or "or other upper respiratory allergies (allergic rhinitis")) "or associated with sinusitis."

C. Final Monograph

In the **Federal Register** of August 23, 1994 (59 FR 43386), FDA published a final monograph with a similar indication included in § 341.80(b)(1)(iii). The complete indication for OTC nasal decongestant drug products in § 341.80(b)(1) states:

(Select one of the following: "For the temporary relief of nasal congestion" or "Temporarily relieves nasal congestion") (which may be followed by any of the following in paragraphs (b)(1)(i), (ii), and (iii) of this section):

(i) "due to" (select one of the following: "the common cold" or "a cold").

(ii) "due to" (select one of the following: "hay fever," "hay fever (allergic rhinitis)," "hay fever or other upper respiratory allergies," or "hay fever or other upper respiratory allergies (allergic rhinitis)"); and

(iii) "associated with sinusitis."

II. Sinusitis

A. General Discussion

Sinusitis is characterized by inflammation of the paranasal passages (Ref. 1). Primary care providers and subspecialists often recommend antibiotics for the management of acute sinusitisand chronic sinusitis because these conditions often have a bacterial etiology (Refs. 1 through 4). Other nasal diseases may have symptoms similar to those of sinusitis. These include allergic and nonallergic rhinitis, the common cold or influenza, Wegener's granulomatosis, acquired and congenital immunodeficiency diseases, nasal polyposis, sarcoidosis, fungal sinusitis, or neoplasm (Refs. 1 and 3). Further, sinusitis and asthma often occur together in the same person. As many as 40 to 70 percent of people with asthma

have accompanying sinusitis (Ref. 1). Moreover, complications of acute bacterial sinusitis include infections of the orbit (bony cavity that contains the eyeball), the central nervous system, or both. These complications are rare, but have the potential to result in blindness or death (Ref. 2).

B. Recent Developments

Recent publications (Refs. 1 and 2) indicate that prospective studies on the role of nasal decongestants in the treatment of sinusitis are lacking, and the data on their use as an adjunct in the treatment of sinusitis are limited and controversial. Despite the lack of evidence for their use, nasal decongestants are recommended or prescribed by health care providers as adjunctive therapy for sinusitis. This treatment occurs within a physician-patient relationship and should not be construed as evidence that consumers should self-diagnose and self-manage sinusitis. In addition, there is preclinical evidence that topical nasal decongestants may have a negative effect on the resolution of sinusitis, as they may increase the degree of sinus inflammation (Ref. 3).

Sinusitis develops in approximately 31 million Americans each year. Acute sinusitis typically follows a viral infection of the upper respiratory tract or occurs as a complication of allergic rhinitis. Swelling of the nasal mucous membranes may obstruct the sinus ostia (openings), resulting in retained secretions, impaction of mucus, decreased oxygenation, and changes in pressure within the sinus cavities. Retained secretions and impacted mucus may become infected and produce increased congestion and inflammation of the sinus mucosa, and may lead to the clinical symptoms associated with acute sinusitis, such as nasal discharge containing pus, postnasal drip, facial pain and headache, and nasal congestion. Treatment is directed towards curing the infection and restoring normal sinus openings and drainage. Health care providers often recommend nasal decongestants as adjunctive therapy for acute sinusitis (Ref. 1).

III. FDA's Concerns

Due to the current labeling, FDA is concerned that consumers use OTC nasal decongestant drug products (both oral and topical) to treat symptoms associated with sinusitis, rather than seeking medical evaluation and definitive treatment. The delay in medical evaluation could also result in a lost opportunity for early diagnosis of another serious medical condition in patients who have symptoms similar to those of sinusitis. Consumers who have bacterial sinusitis could potentially have their condition worsen by delaying treatment with appropriate antibiotic medications, possibly resulting in serious complications. Consumers who have both sinusitis and accompanying asthma could have complications from both diseases if there is a delay in appropriate evaluation and treatment of their asthma. Due to the data contained in recent publications and the potential medical harms described in this section, FDA now considers the indication "for the temporary relief of nasal congestion associated with sinusitis" inappropriate and potentially misleading in the labeled uses for OTC nasal decongestant drug products. Consumers could interpret this indication to mean that the product can be used for self-treating sinusitis. Likewise, use of the term "sinusitis" on the product's principal display panel could cause the same misunderstanding.

IV. FDA's Proposal

A. What is Included?

FDA is proposing to remove the partial labeling indication "associated with sinusitis" from the monograph for OTC nasal decongestant drug products by removing § 341.80(b)(1)(iii). FDA is also including both "sinusitis" and "associated with sinusitis" as nonmonograph conditions in proposed § 310.545(a)(6)(ii)(C).

B. What Is Not Included?

This proposal does not affect other "sinus" claims in the monograph. These claims include:

- "Helps decongest sinus openings and passages" (§ 341.80(b)(2)(iv)),
- "Temporarily relieves sinus congestion and pressure" (§ 341.80(b)(2)(iv) and (b)(2)(v)), and
- "Promotes nasal and/or sinus drainage" (§ 341.80(b)(2)(v)).

V. Analysis of Impacts

FDA has examined the impacts of this proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity).

Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year."

FDA believes that this proposed rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. FDA has determined that the proposed rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order. As discussed later in this section, FDA believes that the proposed rule, if finalized, will not have a significant economic impact on a substantial number of small entities. The Unfunded Mandates Reform Act of 1995 does not require FDA to prepare a statement of costs and benefits for this proposed rule, because the proposed rule is not expected to result in any 1-year expenditure that would exceed $100,000,000 adjusted for inflation. The current inflation adjusted statutory threshold is about $110,000,000.

The purpose of this proposed rule is to remove a labeling claim for OTC nasal decongestantdrug products. Removal of this claim should reduce possible misuse and improve consumers' self-use of these products. FDA does not anticipate that removal of this claim will significantly affect OTC sales of these products.

The proposed rule would require relabeling of some OTC nasal decongestant drug products, i.e., those products that currently have a claim for sinusitis in their labeling. FDA's drug listing system identifies about 1,121 manufacturers and 381 marketers of approximately 1,960 stockkeeping units (SKUs) (individual products, packages, and sizes) of OTC nasal decongestant drug products. These numbers include some products marketed under a new drug application (NDA) or abbreviated new drug application (ANDA). In addition, there may be a few additional marketers and products that are not identified in the sources FDA reviewed. FDA is using 2,000 SKUs as an approximate number of products in the marketplace that would be affected by this proposed rule.

FDA has reviewed the labeling of some of these nasal decongestant drug products and found that 74 of 100 products did not have a sinusitis claim. Extrapolating these numbers to approximately 2,000 SKUs of these products, the agency estimates that approximately 520 products (26 percent) would have to be relabeled. FDA estimates (based on information provided by OTC drug manufacturers) that the proposed rule would impose total one-time compliance costs on industry for relabeling of about $3,000 to $4,000 per SKU, for a total cost for 520 SKUs of $1,560,000 to $2,080,000.

FDA believes the actual cost could be lower for several reasons. First, as FDA explained in the final rule for OTC drug product labeling requirements (64 FR 13254 at 13280, March 17, 1999), most of the labeling changes will be made by private label small manufacturers that tend to use simpler and less expensive labeling. Second, FDA is proposing a period of 18 months (24 months for products with annual sales less than $25,000) after the date of publication of a final rule based on this proposal for manufacturers to implement the new labeling. Thus, manufacturers should be able to use up existing labeling stocks and to make the labeling changes in the normal course of business. Further, manufacturers will not incur any expenses determining how to state the product's labeling because the proposed amendment (and any final rule based on this proposal) provides that information. Any final rule that publishes based on this proposal will not be expected to require any new reporting and recordkeeping activities. Therefore, no additional professional skills would be needed.

FDA considered, but rejected several labeling alternatives: (1) A shorter or longer implementation period and (2) an exemption from coverage for small entities. While FDA believes that consumers would benefit from having this proposed labeling in place as soon as possible, FDA also acknowledges that a shorter implementation period could significantly increasethe compliance costs and these costs could be passed through to consumers. A longer time period would unnecessarily delay the benefit of new labeling to consumers who self-medicate with these drug products. FDA rejected an exemption for small entities because the new labeling information is also needed by consumers who purchase products marketed by those entities. However, a longer compliance date (24 months) is being provided for products with annual sales less than $25,000.

OTC nasal decongestant drug products are not the sole products produced by manufacturers affected by this rule. FDA believes the incremental costs of this proposed rule will be less than 1 percent of any manufacturer's total sales. Thus, this economic analysis, together with other relevant sections of this document, serves as FDA's initial regulatory flexibility analysis, as required under the Regulatory Flexibility Act.

VI. Paperwork Reduction Act of 1995

FDA tentatively concludes that the labeling requirement proposed in this document is not subject to review by the Office of Management and Budget because it does not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Rather, the proposed removal of a labeling claim is a "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

VII. Environmental Impact

FDA has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule does not contain policies that 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. Accordingly, FDA tentatively concludes that the proposed rule does not contain policies that have federalism implications as defined in the Executive order, and consequently, a federalism summary impact statement has not been prepared.

IX. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit one paper copy of electronic comments or three paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

X. Proposed Effective and Compliance Dates

FDA is proposing that any final rule based on this proposal become effective 18 months after the date of its publication in the **Federal Register**. FDA is proposing the following compliance dates for nasal decongestant drug products marketed under the monograph:

- 24 months after the date of publication of a final rule in the **Federal Register** for products with annual sales less than $25,000 and
- 18 months after the date of publication in the **Federal Register** for all other such drug products.

XI. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Parameters for the Diagnosis and Management of Sinusitis, supplement to *The Journal of Allergy and Clinical Immunology*, 102 (6 Part 2): S107–S144, December 1998.

2. American Academy of Pediatrics Subcommittee on Management of Sinusitis and Committee on Quality Improvement, "Clinical Practice Guideline: Management of Sinusitis," *Pediatrics*, 108(3): 798–808, 2001.

3. "Report of the Rhinosinusitis Task Force Committee Meeting," *Otolaryngology-Head and Neck Surgery*, 117 (3 Part 2): S1–S68, 1997.

4. Snow, V., et al., "Principles of Appropriate Antibiotic Use for Acute Sinusitis in Adults," *Annals of Internal Medicine*, 134 (6): 495–497, 2001.

List of Subjects

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 341

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 310 and 341 be amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b-360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b-263n.

2. Section 310.545 is amended by adding paragraph (a)(6)(ii)(C) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(6) * * *

(ii) * * *

(C) Approved as of [Date 18 months after date of publication of the final rule in the Federal Register]; [date 24 months after date of publication of the final rule in the Federal Register], for products with annual sales less than $25,000. Any ingredient(s) labeled with claims or directions for use for sinusitis or for relief of nasal congestion associated with sinusitis.

* * * * *

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

3. The authority citation for 21 CFR part 341 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

4. Section 341.80 is amended by removing paragraph (b)(1)(iii).

Dated: July 23, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–17445 Filed 7–30–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–04–135]

RIN 1625–AA00

Safety Zone; Upper Chesapeake Bay, Patapsco and Severn Rivers, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on portions of the upper Chesapeake Bay and its tributaries during the movement of the U.S.S. *Constellation*. This action is necessary to provide for the safety of life on navigable waters during the dead ship tow of the vessel from its berth in Baltimore, Maryland to the United States Naval Academy seawall in Annapolis, Maryland, and return. This action will restrict vessel traffic in portions of the Patapsco River (including the Inner Harbor and the Northwest Harbor), Chesapeake Bay and Severn River.

DATES: Comments and related material must reach the Coast Guard on or before September 16, 2004.

ADDRESSES: You may mail comments and related material to Commander, U.S. Coast Guard Activities, 2401 Hawkins Point Road, Building 70, Waterways Management Branch, Baltimore, Maryland, 21226–1791. Coast Guard Activities Baltimore, Waterways Management Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander, U.S. Coast Guard Activities, 2401 Hawkins Point Road, Building 70, Port Safety, Security and Waterways Management Branch, Baltimore, Maryland 21226–1791 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Houck, at Coast Guard Activities Baltimore, Port Safety, Security and Waterways Management Branch, at telephone number (410) 576–2674 or (410) 576–2693.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–04–135), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Coast Guard Activities Baltimore, Waterways Management Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The U.S.S. *Constellation* Museum is celebrating the 150th anniversary of the launch of the U.S.S. *Constellation* in 2004, and to commemorate this occasion, is sponsoring a dead ship tow of the historic sloop-of-war U.S.S. *Constellation* on October 26, 2004, from Baltimore, Maryland to Annapolis, Maryland. The event will mark the 23 years that the ship was stationed at the Naval Academy as a training vessel, from 1871 to 1893. Planned events include an eight-hour dead ship tow of the U.S.S. *Constellation* with an onboard salute with navy pattern cannon while off Fort McHenry National Monument and Historic Site. A return dead ship tow of the U.S.S. *Constellation* to Baltimore, Maryland is expected to occur on November 1, 2004.

The Coast Guard anticipates a large recreational boating fleet during this event. Operators should expect significant vessel congestion along the planned route.

The purpose of this rule is to promote maritime safety and protect participants and the boating public in the Port of Baltimore, in the approaches to Baltimore Harbor, and the Severn River immediately prior to, during, and after the scheduled event. The rule will provide for a clear transit route for the participating vessels, and provide a safety buffer around the participating vessels while they are in transit. The rule will impact the movement of all vessels operating in the specified areas of the upper Chesapeake Bay and its tributaries.

Interference with normal port operations will be kept to the minimum considered necessary to ensure the safety of life on the navigable waters immediately before, during, and after the scheduled event.

Discussion of Proposed Rule

The historic sloop-of-war U.S.S. *Constellation* is scheduled to be towed "dead ship" on October 26, 2004. The U.S.S. *Constellation* is scheduled to be towed from its berth at Pier 1, Baltimore, Maryland to the Naval Academy seawall, Annapolis, Maryland, to take place along a route of approximately 30 nautical miles one-way, that includes specified waters of the Patapsco River (including the Inner Harbor and the Northwest Harbor), Chesapeake Bay and Severn River. On

November 1, 2004, a dead ship tow of the U.S.S. *Constellation* to return to Pier 1, Baltimore, Maryland from the Naval Academy seawall, Annapolis, Maryland is expected to occur.

The safety of dead ship tow participants requires that persons and vessels be kept at a safe distance from the intended route during this evolution. The Coast Guard proposes to establish a temporary moving safety zone around the U.S.S. *Constellation* dead ship tow participants on October 26, 2004 and on November 1, 2004, to ensure the safety of participants immediately prior to, during, and following the dead ship tow.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate or anchor in portions of the Patapsco River (including the Inner Harbor and the Northwest Harbor), Chesapeake Bay and Severn River, Maryland. Because the zone is of limited size and duration, it is expected that there would be minimal disruption to the maritime community. Before the effective period, the Coast Guard would issue maritime advisories widely available to users of the river to allow mariners to make alternative plans for transiting the affected areas. In addition, smaller vessels not constrained by their draft, which are more likely to be small entities, may transit around the zone and request permission from the COTP Baltimore on a case-by-case basis to enter the zone.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency

provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because this rule establishes a safety zone.

A draft "Environmental Analysis Check List" and a draft "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add temporary § 165.T05–135 to read as follows:

§ 165.T05–135 Safety Zone; Upper Chesapeake Bay, Patapsco and Severn Rivers, MD.

(a) *Definitions.*

Captain of the Port. The Captain of the Port means the Commander, Coast Guard Activities Baltimore or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf.

U.S.S Constellation dead ship tow participants. Includes the U.S.S Constellation, and its accompanying towing and pre-designated emergency egress vessels.

(b) *Location.* The following area is a moving safety zone: all waters of the Patapsco River (including the Inner Harbor and the Northwest Harbor), Chesapeake Bay and Severn River, surface to bottom, within 200 yards ahead of and 100 yards outboard and aft of the historic sloop-of-war U.S.S Constellation, while operating from Baltimore, Maryland to Annapolis, Maryland, and return.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing safety zones found in § 165.23 of this part.

(2) Persons or vessels requiring entry into or passage through a safety zone must first request authorization from the Captain of the Port or his designated representative. The Coast Guard vessels enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at (410) 576–2693.

(3) No vessel movement is allowed within the safety zone unless expressly authorized by the Captain of the Port or his designated representative.

(d) *Enforcement period.* This section will be enforced from 7 a.m. to 5 p.m. on October 26, 2004, and from 7 a.m. to 5 p.m. on November 1, 2004.

Dated: July 22, 2004.

Jonathan C. Burton,

Commander, U.S. Coast Guard, Acting Captain of the Port, Baltimore, Maryland.

[FR Doc. 04–17529 Filed 7–30–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[MD160–3107; FRL–7795–5]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Redesignation of Kent and Queen Anne's Counties Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a redesignation request and a State Implementation Plan (SIP) submitted by the State of Maryland. The SIP revision establishes a maintenance plan for Kent and Queen Anne's Counties that provides requirements for continued attainment of the one-hour ozone National Ambient Air Quality Standard (NAAQS) for the next 10 years.

DATES: Written comments must be received on or before September 1, 2004.

ADDRESSES: Submit your comments, identified by MD160–3107 by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. E-mail: *morris.makeba@epa.gov*.

C. Mail: Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. MD160–3107. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of

encryption, and be free of any defects or viruses.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland, 21230.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov*.

SUPPLEMENTARY INFORMATION: On February 9, 2004, the Maryland Department of the Environment (MDE) formally submitted a redesignation request for Kent and Queen Anne's Counties ozone nonattainment area to attainment of the one-hour NAAQS for ozone. At the same time, Maryland submitted a maintenance plan for Kent and Queen Anne's Counties as a SIP revision, to assure continued attainment over the next 10 years.

I. Background

Kent and Queen Anne's Counties were designated as marginal ozone nonattainment areas on November 6, 1991. Under section 107(d)(3)(E) of the CAA, the following five criteria must be met for an ozone nonattainment area to be redesignated to attainment:

1. The area must meet the ozone NAAQS;
2. The area must have a fully approved SIP under section 110(k);
3. The area must show improvement in air quality due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable regulations;
4. The area must have a fully approved maintenance plan under section 175A of the CAA; and
5. The area must meet all requirements applicable under section 110 and part D.

II. Summary of Maryland's Submittal

The following is a brief description of how the State of Maryland's February 9, 2004 submittal fulfills the five requirements of section 107(d)(3)(E). EPA will discuss its evaluation of the maintenance plan under its analysis of the redesignation request. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

A. Attainment of the Ozone NAAQS in Kent and Queen Anne's Counties

Section 181(b)(2)(A) of the CAA states that the EPA Administrator shall determine whether the area has achieved the standard based on the design value of that area. There is one ozone monitor that measures the air quality in Kent and Queen Anne's Counties that is located in the Millington Wildlife Management area near Massey in Kent County. The ozone monitor is a regional scale monitor for the determination of regional background concentrations of ozone. According to the Code of Federal Regulations, 40 CFR part 50, appendix H, Kent and Queen Anne's Counties have attained the ozone standard for the most recent three-year period, 2001–2003. The State of Maryland's request for redesignation for Kent and Queen Anne's Counties indicates that the data was quality assured in accordance with 40 CFR part 58. MDE uses regular precision checks, calibrations, and audits to ensure the validity of the data. MDE also uses the Aerometric Information Retrieval System (AIRS) as the permanent database to maintain its data and quality assures the data transfers and content for accuracy.

B. Fully approved SIP Under Section 110(k) of the CAA

The State of Maryland SIP submittals fall into two general categories: pre-amendment and post-amendment submittals. Pre-amendment submittals consist of SIP modifications made to meet requirements in existence prior to the enactment of the 1990 CAA amendments. These submittals are fully approved as applicable to Kent and Queen Anne's Counties. Post-amendment submittals made by MDE meet EPA criteria for approval.

The following are post-amendment requirements delineated under section 182(a) of the CAA for marginal areas and section 184(b) of the CAA for areas included in the ozone transport region (OTR) for Kent and Queen Anne's Counties:

1. A 1990 base year inventory;
2. A periodic inventory every three years after 1990 until attainment;
3. Regulations designating any 50 tons per year (tpy) volatile organic compounds (VOC) or 100 tpy for nitrogen oxides (NO_X) stationary source as a major source;
4. Regulations requiring stationary sources with potential to emit above the major source threshold to undergo new source review (NSR) requirements including 1.15 to 1 offsets;
5. Regulations requiring stationary sources that emit above 25 tpy VOC or NO_X to file a certified emissions statement annually;
6. Regulations requiring reasonably available control technology (RACT) on VOC and NO_X sources; and
7. The inclusion of Queen Anne's County in the Enhanced Inspection and Maintenance (I/M) program because it is a part of a metropolitan statistical area greater than 200,000 population in the OTR.

MDE has met these requirements for Kent and Queen Anne's Counties through the development and implementation of the following regulations and technical documents that have been submitted to EPA as SIP submittals:

a. Expansion of RACT rules statewide (COMAR 26.11.19.02G);

b. Emissions certification requirements (COMAR 26.11.01.05–1);

c. New source review requirements (COMAR 26.11.17);

d. Enhanced I/M (COMAR 11.14.08—jointly adopted by MDE and Motor Vehicle Administration); and

e. The 1990 base year inventory.

EPA approved the 1990 base year inventory for Kent and Queen Anne's Counties along with inventories for other nonattainment areas on September 27, 1996 (61 FR 50715). MDE has supplied the following inventories to EPA through a combination of written and electronic documentation: the 1993, 1996, and 1999 periodic inventories. Additionally, Maryland exercised its option to voluntarily require Federal reformulated gasoline in all ozone nonattainment areas, including Kent and Queen Anne's Counties (COMAR 03.03.05.01—Comptroller of the Treasury, Motor Fuel Inspection Regulation). The State has approved the VOC and NO_X RACT rules for sources in Kent and Queen Anne's Counties.

C. Permanent and Enforceable Reductions

A number of permanent and enforceable measures have caused emission reduction and lowered concentrations in Kent and Queen Anne's Counties. These reductions are from all source sectors:

1. Federal Motor Vehicle Control Program (FMVCP) Tier 1 tailpipe standards.

2. Maximum Reid Vapor pressure (RVP) of 7.8 psia for gasoline sold in Maryland in 1992 and beyond.

3. Federal reformulated gasoline program.

4. Study of growth in mobile source emissions using HPMS module of the PPSuites modeling software.

5. New emissions standards for non-road mobile sources: farm equipment, lawn and garden equipment and recreational boats.

6. Additional Tier 3 standards for non-road mobile sources: (1) Tiers 1, 2, and 3 compression-ignition standards for diesel engines greater than 50 horsepower; (2) Tiers 1 and 2 compression-ignition standards for diesel engines below 50 horsepower; (3) Phases 1 and 2 of the spark-ignition standards for gasoline engines less than 25 horsepower; and (4) Recreational spark-ignition marine engines controls.

7. Total emissions from area sources: (1) Tank truck unloading; (2) degreasing; (3) architectural surface coatings; and (4) commercial and consumer solvents.

8. Growth in point sources will be controlled through the new source review requirements for offsets.

D. Maintenance Plan for Kent and Queen Anne's Counties

1. Maintenance Plan Requirements

A maintenance plan is a SIP revision that provides maintenance of the relevant NAAQS in the area for at least 10 years after redesignation. A maintenance plan consists of the following requirements as outlined in section 175A of the CAA: (a) An attainment inventory, (b) a maintenance demonstration, (c) a monitoring network, (d) verification of continued attainment and (e) a contingency plan.

a. Attainment Inventory

Attainment inventory should include the emissions during the time period associated with the monitoring data showing attainment. MDE determined that the appropriate attainment inventory year is 2002. That year establishes a reasonable year within the three-year period block of 2001–2003 as a baseline and accounts for reductions attributable to implementation of the CAA requirements to date. This inventory is based on actual emissions for a typical peak ozone season days, which occur during the months of June, July and August.

b. Maintenance Demonstration

MDE's calculations of future emissions of VOCs and NO_X from stationary and mobile sources demonstrate that future emissions will not exceed the level of the attainment inventory (see Tables 1 and 2). Future emissions levels must continue to remain at or below attainment levels for a period of 10 years after EPA redesignates the nonattainment to attainment. MDE's planning horizon for the maintenance plan is 2014..

TABLE 1.—ATTAINMENT YEAR AND PROJECTED VOC EMISSIONS INVENTORIES FOR THE KENT AND QUEEN ANNE'S COUNTIES NONATTAINMENT AREA

Source Category	2002 VOC Emissions (Tons per day)	2014 Projected VOC Emissions (Tons per day)
On-road Mobile	4.91	2.09
Non-road Mobile	5.91	6.59
Area	4.33	5.34
Point	0.12	0.16
Total	15.27	14.18

TABLE 2.—ATTAINMENT YEAR AND PROJECTED NO_X EMISSIONS INVENTORIES FOR THE KENT AND QUEEN ANNE'S COUNTIES NONATTAINMENT AREA

Source Category	2002 NO_X Emissions (Tons per day)	2014 Projected NO_X Emissions (Tons per day)
On-road Mobile	7.7	2.92
Non-road Mobile	3.22	4.15
Area	1.46	1.75
Point	0.07	0.09
Total	12.45	8.91

c. Monitoring Network

MDE will continue to operate the current air quality monitor in Millington in accordance with 40 CFR part 58.

d. Verification of Continued Attainment

Section 187(a)(5) of the CAA requires periodic inventories every three years for ozone nonattainment areas. These inventories will be statewide because Maryland is a part of the Northeast Ozone Transport Region. Maryland expects to compile a VOC and NO_X inventory for Kent and Queen Anne's Counties every three years. MDE will be able to consult these inventories to make sure that the emissions levels remain at or below attainment inventory levels. In addition, MDE will compare actual inventories to projected emissions levels. If there are significant differences between actual and projected growth, then MDE will examine its projected methods. If warranted, MDE will revise its methods and again compare inventories. If these inventories, actual or projected, reveal that emissions actually exceed the attainment inventory, then MDE will consider implementing contingency measures.

e. Contingency Measures

According to the CAA, states that wish to redesignate nonattainment areas to attainment must include in their submittal to EPA, contingency measures which will automatically take effect should violations of the NAAQS occur in the former nonattainment area. Contingency plan measures to be considered for implementation for Kent

and Queen Anne's Counties include three VOC model rules as additional measures that are currently adopted in Maryland. The rules are part of a Memorandum of Understanding (MOU) and resolutions signed on March 28, 2001 by the states participating in the Ozone Transport Commission (OTC). The rules have the potential to reduce emissions from consumer products, portable fuel containers, and Architectural and Industrial Maintenance (AIM) coatings.

2. Requirement for Continued Maintenance

Section 175A(b) of the CAA will also require Kent and Queen Anne's Counties to submit a revision of the SIP eight years after the original redesignation request is approved to provide for maintenance of the NAAQS for an additional 10 years following the first 10-year period.

E. Section 110 and Part D Requirements

1. Section 110 Requirements

Section 110(a)(2) of the CAA contains general requirements for nonattainment plans. Most of the provisions of this section are the same as those contained in the pre-amended CAA. The State of Maryland has fulfilled all pre-amendment CAA requirements pertaining to Kent and Queen Anne's Counties and the two nonattainment areas of Baltimore and Washington.

2. Part D Requirements

Under part D, an area's classification determines the requirements to which it is subject. Kent and Queen Anne's Counties was classified as marginal ozone nonattainment.

Part D subpart 2, entitled "Additional Provisions for Ozone Nonattainment Areas," requires that marginal nonattinment areas, which have design values between 120–140 ppb, achieve attainment by November 23, 1993. However, a one-year extension of the deadline can be granted under certain conditions (section 181(a)(5)). Kent and Queen Anne's Counties attained the standards by the fall of 1994.

Section 182(a)(1) under part D requires the development of a "comprehensive, accurate, and current inventory of actual emissions from all sources, and a permit program for new and modified major stationary sources." MDE submitted its 1990 base year emissions inventory on September 30, 1993 for Kent and Queen Anne's Counties and was approved by EPA on September 27, 1996 (61 FR 50715). The last inventory update was the 1999 periodic inventory. In addition, MDE has a fully implemented new source review program on February 12, 2001 (66 FR 9766).

Conformity Process

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirements to determine conformity applies to transportation plans, programs and projects developed, funded or approved. Section 176 further provides that state conformity revisions must be consistent with the Federal conformity regulations that the CAA required EPA to promulgate. Although Federal conformity rule changes are still pending, EPA believes that it is reasonable to interpret conformity requirements as not applying for purposes of evaluating a redesignation request under section 107(d) so that EPA may approve an ozone redesignation request notwithstanding the lack of a fully approved conformity SIP. The rationale for this is based on a combination of two factors. First, Federal conformity rules require performance of conformity analyses even in the absence of Federally approved states rules. Second, conformity provisions of the CAA continue to apply after redesignation because areas are subject to a maintenance plan which requires compliance with mobile budgets. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if state rules are not approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request.

Kent and Queen Anne's Counties are not members of any metropolitan planning organization (MPO). Currently, the Maryland Department of Transportation (MDOT) acts on behalf of the counties to include projects in the two counties in the State Transportation Improvement Program (STIP). Under 40 CFR 51.448 as part of the SIP process, this maintenance plan will establish an emission budget to be used for transportation conformity purposes. This motor vehicle emissions budget (MVEB) establishes a cap on emissions that cannot be exceeded by predicted highway and transit vehicle emissions. For the period from 2002 until 2014, the MVEB for Kent and Queen Anne's Counties combined is 4.91 tpd VOC and 2.92 tpd NO_X. Some projects may help to reduce mobile source ozone precursor emissions by leading to fewer vehicle trips in Kent and Queen Anne's Counties. These types of projects include increased commuter bus service and additional park and ride lot spaces.

III. Proposed Action

EPA is proposing to approve the State of Maryland's February 9, 2004 request for Kent and Queen's Counties ozone nonattainment area to attainment of the one-hour NAAQS for ozone because the requirements for approval have been satisfied. EPA is also proposing to approve the associated maintenance plan for this area submitted by Maryland, as required under section 175A of the CAA, as a revision to the Maryland SIP, which was submitted on February 9, 2004. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pup. L. 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order.

This rule proposing to approve the redesignation of Kent and Queen Anne's Counties ozone nonattainment area to attainment and to approve the associated maintenance plan, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 26, 2004.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 04–17499 Filed 7–30–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[NV117b–OPP; FRL–7795–7]

Approval and Promulgation of Operating Permits Program; State of Nevada, Clark County Department of Air Quality Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Clark County Department of Air Quality Management (DAQM) Operating Permits (Title V) Program. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving a rule revision that addresses when a timely application for title V permit renewal must be submitted.

DATES: Any comments on this proposal must arrive by September 1, 2004.

ADDRESSES: Send comments to Gerardo Rios, Permits Office Chief (AIR–3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 or e-mail to *rios.gerardo@epa.gov*. Comments may also be submitted at *http://www.regulations.gov*.

You can inspect a copy of the submitted Title V program revision and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted title V program revision by appointment at the following locations: Nevada Division of Environmental Protection, 333 W. Nye Lane, Room 138, Carson City, Nevada; Clark County Department of Air Quality Management, 500 S. Grand Central Parkway, Las Vegas, Nevada 89155. A copy of the rule may also be available via the Internet at *http://www.co.clark.nv.us/air_quality/regs.htm*. Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Roger Kohn, EPA Region IX, (415) 972–3973, or *kohn.roger@epa.gov*.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rule: DAQM Section 19. In the Rules and Regulations section of this **Federal Register**, we are approving this Title V program revision in a direct final action without prior proposal because we believe it is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: July 16, 2004.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 04–17498 Filed 7–30–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–2252, MB Docket No. 04–265, RM–10439]

Television Broadcast Service and Digital Broadcast Service; Seattle, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by KCTS Television proposing the substitution of DTV channel *53 for analog channel *62 at Seattle, Washington. DTV Channel *53 can be allotted to Seattle, Washington, at reference coordinates 47–30–17 N. and 121–58–06 W. with a power of 240, a height above average terrain HAAT 714 of meters. Since the community of Seattle is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government must be obtained for this allotment.

DATES: Comments must be filed on or before September 20, 2004, and reply comments on or before October 5, 2004.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in broadcast allotment proceedings). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight

U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Todd D. Gray, Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, NW., Suite 800, Washington, DC 20036 (Counsel for KCTS Television).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 04–265, adopted July 21, 2004, and released July 30, 2004. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 301–816–2820, facsimile 301–816–0169, or via-e-mail: *joshir@erols.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Washington is amended by removing TV channel *62 at Seattle.

§ 73.622 [Amended]

3. Section 73.622(b), the Table of Digital Television Allotments under Washington is amended by adding DTV channel *53 at Seattle.

Federal Communications Commission.

Clay Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. 04–17246 Filed 7–30–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 229

[DFARS Case 2003–D031]

Defense Federal Acquisition Regulation Supplement; Tax Procedures for Overseas Contracts

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to tax relief for acquisitions conducted in certain foreign countries. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before October 1, 2004, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003–D031, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web Site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil*. Include DFARS Case 2003–D031 in the subject line of the message.
- Fax: Primary: (703) 602–7887; Alternate: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Mr. Euclides Barrera, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Mr. Euclides Barrera, (703) 602–0296.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dp/dars/transf.htm*.

This proposed rule is a result of the DFARS Transformation initiative. The proposed changes revise DFARS Subpart 229.70 to remove procedures

that DoD contracting officers use in obtaining tax relief and duty-free import privileges for acquisitions conducted in Spain and the United Kingdom. This text will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI). A proposed rule describing the purpose and structure of PGI was published at 69 FR 8145 on February 23, 2004. The draft PGI text related to this proposed rule is available at *http://www.acq.osd.mil/dpap/dfars/changes.htm*.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule relocates DoD procedural information related to tax relief, with no change to policy. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003–D031.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 229

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR Part 229 as follows:

1. The authority citation for 48 CFR Part 229 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 229—TAXES

2. Subpart 229.70 is revised to read as follows:

Subpart 229.70—Special Procedures for Overseas Contracts

To obtain tax relief for overseas contracts, follow the procedures at PGI 229.70.

[FR Doc. 04–17471 Filed 7–30–04; 8:45 am]

BILLING CODE 5001–08–P

Notices

Federal Register
Vol. 69, No. 147
Monday, August 2, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—School Nutrition Dietary Assessment Study-III

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Food and Nutrition Service's intention to request Office of Management and Budget approval for the collection of data for the School Nutrition and Dietary Assessment Study-III.

DATES: Written comments must be received on or before October 1, 2004.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Alberta Frost, Director, Office of Analysis, Nutrition and Evaluation, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Alberta Frost at 703–305–2576 or via e-mail to *Alberta.Frost@fns.usda.gov.*

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia 22302, Room 1014.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Alberta Frost at 703–305–2017.

SUPPLEMENTARY INFORMATION:

Title: School Nutrition Dietary Assessment Study-III.

OMB Number: Not yet assigned.

Form Number: N/A.

Expiration Date: N/A.

Type of Request: New Collection of Information.

Abstract: The School Nutrition Dietary Assessment Study-III will collect and analyze data from a nationally representative sample of public schools participating in the National School Lunch Program (NSLP), and students in those schools. Data will be collected so as to provide sufficient information to examine the school environment, food service operating practices, student participation and other characteristics of schools and School Food Authorities (SFAs) in the NSLP and School Breakfast Program (SBP); examine school meal participation, participant/nonparticipant characteristics; determine the nutrient content and types of food offered and served to students; determine student dietary intakes and the impact of USDA meals on meal specific and total intake—at school and over twenty-four hours; and compare findings to previously conducted studies on school meals.

Estimate of Burden: Public reporting burden is estimated to be 60 minutes for SFA directors completing the mail questionnaire and assisting the kitchen managers in the menu survey; 25 minutes for the school principal completing the in-person interview; 20 minutes for the kitchen manager completing the in-person interview, plus 510 minutes for completing the mail menu survey; 125 minutes for elementary students completing the in-person interview alone and with a parent; 90 minutes for middle/high school students completing the in-person interview; 80 minutes for parents of elementary school students completing the in-person interview; and, 20 minutes for parents of middle/high school students completing the telephone interview.

Respondents: SFA directors, school principals and kitchen managers of public schools participating in the NSLP and elementary, middle and high school students attending those schools who may or may not be participants in the NSLP.

Estimated Number of Respondents: One hundred thirty-five SFA directors will complete a mail questionnaire and assist kitchen managers in a mail menu survey; 405 school principals will be interviewed in-person; 405 kitchen managers will be interviewed in-person and will complete a mail menu survey; 700 elementary students will be interviewed in-person initially with a subset of 175 to be interviewed a second time; 1720 middle/high school students will be interviewed in-person initially with a subset of 430 to be interviewed a second time; 700 parents of elementary school students will be interviewed in-person with a subset of 175 to be interviewed a second time; and, 1720 parents of middle/high school students will be interviewed by telephone.

Number of Responses per Respondent: SFA directors, school principals, and kitchen managers will respond one time; 75 percent of the students will respond one time and 25 percent will respond twice; 75 percent of parents of elementary school students will respond one time and 25 percent will respond twice; and, parents of middle/high school students will respond once.

Estimated Time per Response:

Respondents	Number	Minutes	Total minutes
SFA Director: mail survey	135	60	8100
Principals: in-person	405	25	10,125

Respondents	Number	Minutes	Total minutes
Kitchen Manager: In-person interview	405	20	8100
Mail menu survey	405	510	206,550
Elementary students:			
Initial in-person interview	700	70	49,000
Second in-person interview	175	55	9,625
Middle/HS students:			
Initial in-person interview	1720	55	94,600
Second in-person interview	430	35	15,050
Elementary School Parents:			
Initial in-person interview	700	50	35,000
Second in-person interview	175	30	5,250
Middle/High School Parents: Phone interview	1720	20	34,400
Total Respondent Burden			475,800

Estimated Total Annual Burden on Respondents: 7,930 hours.

Dated: July 27, 2004.

Roberto Salazar,

Administrator.

[FR Doc. 04–17484 Filed 7–30–04; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comment; Public Attitudes, Beliefs, and Values About National Forest Systems Land Management

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the new information collection, Public Attitudes, Beliefs, and Values about National Forest Systems Land Management.

DATES: Comments must be received in writing on or before October 1, 2004, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Fred P. Clark, Human Dimensions Program Manager, Forest Service, USDA, 626 East Wisconsin Ave., Milwaukee, WI 53202.

Comments also may be submitted via facsimile to (414) 944–3974 or by e-mail to: *fclark@fs.fed.us.*

The public may inspect comments received at the first floor information desk at the Forest Service, USDA, 626 East Wisconsin Avenue, Milwaukee, Wisconsin, during normal business hours. Visitors are encouraged to call ahead to Fred Clark at (414) 297–1181 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Fred Clark, Human Dimensions Program Manager for Region 9 at (414) 297–1181.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Public Attitudes, Beliefs, and Values about National Forest Systems Land Management.

OMB Number: 0596–New.

Expiration Date of Approval: New.

Type of Request: New.

Abstract: As a steward of public lands the USDA Forest Service must use public attitudes, beliefs, and values (ABV) information to inform resource allocation and land management decisions. Several tests will be done at a state level over the next three years. This series of tests will be used to develop a set of questions that will be pre-approved by OMB to facilitate on-time data collection and ease of use by forest level social scientists and contractors.

The need for this information is stated in various legislative acts, regulatory documents, laws and executive orders that define and guide the mission and conduct of the Forest Service, including MUSY, NEPA, RPA, NFMA, HFRA, Environmental Justice Executive Order, Civil Rights Act, and Government Performance and Results Act. The authority, objectives, and responsibilities associated with this guide are outlined in the Forest Service Handbook, Forest Service Strategic Plan.

The information will be collected using a standard multiple response collection instrument. Trained interviewers will ask the questions on the telephone or paper questionnaires. will be mailed to respondents. Information collection will be done by contract with a proven data collection manager. Information collected will include attitudes, beliefs, and values ABVs about fire management and associated treatments, vegetation management, recreation demand and recreation use. ABV Information will be collected from a statistically representative random sample of the population to enable contrasts at a local level, State level and national level. This information will be used to inform decisionmakers and as input to the forest planning process. Information will be analyzed by Forest Service subject matter experts and statisticians.

The consequence to Forest Service Planning and Management if the collection is not conducted would be significant. Managers are required to make decisions which consider public opinion. Without the ability to use this standard design which includes statistically valid and documented methods for the collection of ABV information, data collection and the incorporation of that information into decisions may not happen. Managers may be forced to write forest plans and make resource allocation decisions without the benefit of knowing public values and beliefs about the issues and resources under consideration.

Estimate of Annual Burden: 15 minutes.

Type of Respondents: Respondents will be a random sample of the population of a State for these tests.

Estimated Annual Number of Respondents: 2000.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 30,000 minutes.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance

the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request for Office of Management and Budget approval.

Dated: July 21, 2004.

Frederick R. Norbury,

Associate Deputy Chief, National Forest System.

[FR Doc. 04–17462 Filed 7–30–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Southwest Idaho Resource Advisory Committee Meeting

AGENCY: USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393), the Boise and Payette National Forests' Southwest Idaho Resource Advisory Committee will meet for a business meeting.

DATES: Wednesday, August 18, 2004, beginning at 10:30 a.m.

ADDRESSES: The meeting will be held at the American Legion Hall, Cascade, Idaho.

FOR FURTHER INFORMATION CONTACT: Randy Swick, Designated Federal Officer, at (208) 634–0401 or electronically at *rswick@fs.fed.us*.

SUPPLEMENTARY INFORMATION: Agenda topics include review and approval of project proposals, and an open public forum. The meeting is open to the public.

Dated: July 26, 2004.

Mark J. Madrid,

Forest Supervisor, Payette National Forest.

[FR Doc. 04–17480 Filed 7–30–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Mendocino Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Mendocino County Resource Advisory Committee will meet August 20, 2004, (RAC) in Covelo, California. Agenda items to be covered include: (1) Approval of minutes, (2) Public Comment, (3) Sub-committees (4) Discussion/approval of projects (5) Matters before the group (discussion/action), (6) Next agenda and meeting date.

DATES: The meeting will be held on August 20, 2004, from 9 a.m. to 12 noon.

ADDRESSES: The meeting will be held at the Covelo Ranger District Office, 78150 Covelo Road, Covelo, California.

FOR FURTHER INFORMATION CONTACT: Roberta Hurt, Committee Coordinator, USDA, Mendocino National Forest, Covelo Ranger District, 78150 Covelo Road, Covelo CA 95428. (707) 983–8503; E-mail *rhurt@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff by August 13, 2004. Public comment will have the opportunity to address the committee at the meeting.

Dated: July 26, 2004.

Blaine Baker,

Designated Federal Official

[FR Doc. 04–17526 Filed 7–30–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for emergency clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Export and Reexport Controls for Iraq.

Agency Form Number: BIS–748P.

OMB Approval Number: 0694-none.

Type of Request: Extension of a currently approved collection of information.

Burden: 93 hours.

Average Time Per Response: 3 to 3½ hours per response.

Number of Respondents: 25 respondents.

Needs and Uses: The primary purpose of this proposed collection of information is to establish a new and expedited export license type developed specifically for exports and reexports of controlled items destined to civil infrastructure rebuilding projects in Iraq. The information furnished by U.S. exporters provides the basis for decisions to grant licenses for export, reexport, and classifications of commodities, goods and technologies that are controlled for reasons of national security and foreign policy.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, DOC Forms Clearance Officer, (202) 482–3129, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 10 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: July 27, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–17456 Filed 7–30–04; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Special Comprehensive License and the Special Intra-Company License

ACTION: Proposed collection; request for comments.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 1, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental

Paperwork Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230, or via e-mail at *dHynek,@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to George Ipock, BIS ICB Liaison, Department of Commerce, Room 6622, 14th & Constitution Avenue, NW Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

Section 752 of the Export Administration Regulations (EAR) outlines the SCL Procedure which authorizes multiple shipments of items from the U.S. or from approved consignees abroad who are approved in advance by BIS to conduct the following activities: servicing, support services, stocking spare parts, maintenance, capital expansion, manufacturing, support scientific data acquisition, reselling and reexporting in the form received, and other activities as approved on a case-by-case basis. Section 753 of the EAR outlines requirements, procedures, and policies for the Special Intra-company License (SIL), whereby exporters with a proven record of conformance with the EAR can eliminate numerous individual licenses for technology exports, reexports, and in-country transfers within the corporate structure of a company, *e.g.*, from a U.S. corporation to its wholly-owned subsidiaries, from one wholly-owned subsidiary to another, and from the U.S. corporation to its foreign national employees in the U.S. or abroad.

II. Method of Collection

Submitted on forms.

III. Data

OMB Number: 0694–0089.

Form Number: BIS–748P and BIS–752P.

Type of Review: Regular submission for extension of a currently approved collection for the purpose of adding additional activities to the collection authority.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 176.

Estimated Time Per Response: 5 minutes to 40 hours per response.

Estimated Total Annual Burden Hours: 1,375.

Estimated Total Annual Cost: No start-up or capital expenditures.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: July 27, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–17457 Filed 7–30–04; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year ("Sunset") Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of five-year ("sunset") reviews.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating five-year ("sunset") reviews of certain antidumping duty orders. The International Trade Commission ("the Commission") is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers these same orders and suspended investigations.

FOR FURTHER INFORMATION CONTACT: Hilary Sadler, Esq., Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce at (202) 482–4340, or Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of sunset reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Initiation of Reviews

In accordance with 19 CFR 351.218(c), we are initiating the second sunset reviews of the following antidumping duty orders:

DOC case No.	ITC case No.	Country	Product
A–588–056	AA1921–162	Japan	Melamine in Crystal Form.
A–570–504	731–TA–282	People's Republic of China	Petroleum Wax Candles.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the Department's regulations regarding sunset reviews (19 CFR 351.218) and *Sunset Policy Bulletin*, the Department's schedule of sunset reviews, case history information (*i.e.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists available to the public on the Department's sunset Internet Web site at the following address: *http://ia.ita.doc.gov/sunset/.*

All submissions in these sunset reviews must be filed in accordance

with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303. Also, we suggest that parties check the Department's sunset Web site for any updates to the service list before filing any submissions. The Department will make additions to and/or deletions from the service list provided on the sunset Web site based on notifications from parties and participation in these reviews. Specifically, the Department will delete from the service list all parties that do not submit a substantive response to the notice of initiation.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties (defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b) of the Department's regulations) wishing to participate in these sunset reviews must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the orders without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the sunset review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: July 27, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–17567 Filed 7–30–04; 8:45 am]

BILLING CODE 3510–DS–P

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072604B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico; Red Snapper; Scoping Hearing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of scoping hearing; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) announces its 10th hearing on a scoping document to solicit public input on the alternative that should be used for an amendment that will create an individual fishing quota (IFQ) program for the commercial red snapper fishery.

DATES: The meeting will be held on August 31, 2004. See **ADDRESSES** for location and time.

Public comments on the draft amendment that are received in the Council's office by 5 p.m., September 3, 2004, will be presented to the Council.

ADDRESSES: The 10th scoping hearing will be held from 7 p.m. to 10 p.m. on Tuesday, August 31, 2004, at the Radisson Bay Harbor Hotel, 7700 Courtney Campbell Causeway, Tampa, FL 33607; telephone: 813–281–8900.

Written comments on, and requests for, the scoping document should be addressed to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, FL 33619; telephone: (813) 228–2815. Comments may be sent by e-mail to *gulfcouncil@gulfcouncil.org*. A copy of the scoping document can also be obtained from the Council's web page: *http://www.gulfcouncil.org*.

FOR FURTHER INFORMATION CONTACT: Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: Please refer to the July 26, 2004 (69 FR 44512) **Federal Register** notice for additional information. That notice announced the times, dates, and locations of nine scoping hearings; this notice announces the 10th such hearing.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dawn Aring at the Council (see **ADDRESSES**) by August 6, 2004.

Dated: July 27, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–17523 Filed 7–30–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071904F]

Endangered Species; File No. 1227

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit modification.

SUMMARY: Notice is hereby given that NMFS Southwest Fisheries Science Center has been issued a modification to scientific research Permit No. 1227.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach,

CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On April 8, 2004, notice was published in the **Federal Register** (69 FR 18549) that a modification of Permit No. 1227, issued May 1, 2000 (65 FR 25312), had been requested by the above-named organization. The requested modification has been granted under the authority of the Endangered Species Act (ESA) of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The modification authorizes the permit holder to attach satellite transmitters using the harness backpack method allowed in the current permit on up to an additional 40 of the remaining leatherbacks that they are already permitted to capture in the eastern Pacific Ocean nearshore to California and Oregon. Twenty of these animals will also have VHF/TDR (time depth recorder)/sonic tag units attached to them by suction cup. The permit modification also authorizes the permit holder to attach VHF/TDR (time depth recorder)/sonic tag units with suction cups to 20 additional leatherbacks in the Monterey Bay area without having to capture them. The information from the satellite transmitters is part of studies on the migration and habitat use of this species in the Pacific Ocean. The VHF/TDR/sonic tag units will be used to study the fine-scale movements and diving behavior of leatherbacks in the vicinity of Monterey Bay and give important information regarding the foraging ecology of this species off the coast of California.

Issuance of this modification, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 27, 2004.

Patrick Opay,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–17524 Filed 7–30–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. 2004–C–042]

Public Advisory Committees

AGENCY: United States Patent and Trademark Office.

ACTION: Notice and request for nominations.

SUMMARY: On November 29, 1999, the President signed into law the Patent and Trademark Office Efficiency Act (the "Act"), Pub. L. 106–113, Appendix I, Title IV, Subtitle G, 113 Stat. 1501A–572, which, among other things, established two Public Advisory Committees to review the policies, goals, performance, budget and user fees of the United States Patent and Trademark Office (USPTO) with respect to patents, in the case of the Patent Public Advisory Committee, and with respect to trademarks, in the case of the Trademark Public Advisory Committee, and to advise the Director on these matters. The USPTO is requesting nominations for three (3) members to each Public Advisory Committee for terms that begin November 27, 2004.

DATES: Nominations must be postmarked or electronically transmitted on or before September 3, 2004.

ADDRESSES: Persons wishing to submit nominations should send the nominee's resume to Chief of Staff, Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, Post Office Box 1450, Alexandria, Virginia, 22313–1450; by electronic mail to: *PPACnominations@uspto.gov* for the Patent Public Advisory Committee or *TPACnominations@uspto.gov* for the Trademark Patent Public Advisory Committee; by facsimile transmission marked to the Chief of Staff's attention at (703) 305–8664; or by mail marked to the Chief of Staff's attention and addressed to the Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, Post Office Box 1450, Alexandria, Virginia, 22313–1450.

FOR FURTHER INFORMATION CONTACT: Chief of Staff by facsimile transmission marked to her attention at (703) 305–8664, or by mail marked to her attention and addressed to the Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, Post Office Box 1450, Alexandria, Virginia, 22313–1450.

SUPPLEMENTARY INFORMATION: The Advisory Committees' duties include:

- Review and advise the Under Secretary of Commerce for Intellectual Property and Director of the USPTO on matters relating to policies, goals, performance, budget, and user fees of the USPTO relating to patents and trademarks, respectively; and
- Within 60 days after the end of each fiscal year: (1) Prepare an annual report on matters listed above; (2) transmit a report to the Secretary of Commerce, the President, and the Committees on the Judiciary of the Senate and the House of Representatives; and (3) publish the report in the Official Gazette of the USPTO. Members of the Patent and Trademark Public Advisory Committees are appointed by and serve at the pleasure of the Secretary of Commerce for three (3)-year terms.

Advisory Committees

The Public Advisory Committees are each composed of nine (9) voting members who are appointed by the Secretary of Commerce (the "Secretary") and who have 'substantial backgrounds and achievement in finance, management, labor relations, science, technology, and office automation." 35 U.S.C. 5(b)(3). The Public Advisory Committee members must be United States citizens and represent the interests of diverse users of the USPTO, both large and small entity applicants in proportion to the number of such applications filed. In the case of the Patent Public Advisory Committee, at least twenty-five (25) percent of the members must represent "small business concerns, independent inventors, and nonprofit organizations," and at least one member must represent the independent inventor community. 35 U.S.C. 5 (b)(2). Each of the Public Advisory Committees also includes three (3) non-voting members representing each labor organization recognized by the USPTO.

Procedures and Guidelines of the Patent and Trademark Public Advisory Committees

Each newly appointed member of the Patent and Trademark Public Advisory Committees will serve for a term of three years. Members appointed in the current fiscal year shall serve from November 27, 2004, to November 27, 2007. As required by the Act, members of the Patent and Trademark Public Advisory Committees will receive compensation for each day while the member is attending meetings or engaged in the business of that Advisory Committee. The rate of compensation is the daily equivalent of the annual rate

of basic pay in effect for level III of the Executive Schedule under section 5314 of title 5, United States Code. While away from home or regular place of business, each member will be allowed travel expenses, including per diem in lieu of subsistence, as authorized by Section 5703 of Title 5, United States Code. The USPTO will provide the necessary administrative support, including technical assistance for the Committees.

Applicability of Certain Ethics Laws

Members of each Public Advisory Committee shall be special Government employees within the meaning of Section 202 of Title 18, United States Code. The following additional information includes several, but not all, of the ethics rules that apply to members, and assumes that members are not engaged in Public Advisory Committee business more than sixty days during each calendar year:

- Each member will be required to file a confidential financial disclosure form within thirty (30) days of appointment. 5 CFR 2634.202(c), 2634.204, 2634.903, and 2634.904(b).
- Each member will be subject to many of the public integrity laws, including criminal bars against representing a party, 18 U.S.C. 205(c), in a particular matter that came before the member's committee and that involved at least one specific party. *See also* 18 U.S.C. 207 for post-membership bars. A member also must not act on a matter in which the member (or any of certain closely related entities) has a financial interest. 18 U.S.C. 208.
- Representation of foreign interests may also raise issues. 35 U.S.C. 5(a)(1) and 18 U.S.C. 219.

Meetings of the Patent and Trademark Public Advisory Committees

Meetings of each Advisory Committee will take place at the call of the Chair to consider an agenda set by the Chair. Meetings may be conducted in person, electronically through the Internet, or by other appropriate means. The meetings of each Advisory Committee will be open to the public except each Advisory Committee may, by majority vote, meet in executive session when considering personnel or other confidential matters. Nominees must also have the ability to participate in Committee business through the Internet.

Procedures for Submitting Nominations

Submit resumés for nomination for the Patent Public Advisory Committee and the Trademark Public Advisory Committee to: Chief of Staff to the Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office, utilizing the addresses provided above.

Dated: July 27, 2004.

Jon W. Dudas,

Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.

[FR Doc. 04–17512 Filed 7–30–04; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Withdrawal of Three Commercial Availability Petitions under the United States - Caribbean Basin Trade Partnership Act (CBTPA)

July 29, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: The petitioner has notified CITA that it is withdrawing three of the twelve petitions it submitted for determinations that certain woven, 100 percent cotton, flannel fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

SUMMARY: On July 14, 2004, the Chairman of CITA received twelve petitions from Sandler, Travis & Rosenberg, P.A., on behalf of Picacho, S.A., alleging that certain woven, 100 percent cotton, flannel fabrics, of certain specifications, cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petitions requested that shirts, trousers, nightwear, robes, dressing gowns and woven underwear of such fabrics assembled in one or more CBTPA beneficiary countries be eligible for preferential treatment under the CBTPA. On July 22, 2004, CITA published a notice in the **Federal Register** (69 FR 43805) soliciting public comments on these petitions, in particular with regard to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner.

On July 28, 2004, CITA received letter from Sandler, Travis & Rosenberg, P.A. withdrawing three of the petitions. The three fabrics covered by the petitions that are being withdrawn were identified as Fabrics 2, 9, and 11 in the **Federal Register** notice. The specifications of these three fabrics are repeated below. The petitioner states that these contain "minor but significant errors with regard to the coloration of the fibers and yarns of each fabric."

FOR FURTHER INFORMATION CONTACT: Janet E. Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

Specifications:

Fabric 2

HTS Subheading:	5208.42.30.00
Fiber Content:	100% Cotton
Weight:	152.6 g/m2
Width:	150 centimeters cuttable
Thread Count:	24.4 warp ends per centimeter; 15.7 filling picks per centimeter; total: 40.1 threads per square centimeter
Yarn Number:	Warp: 40.6 metric, ring spun; filling: 20.3 metric, open end spun; overall average yarn number: 39.4 metric
Finish:	of yarns of different colors; napped on both sides, sanforized

*cotton fiber must all be stock dyed prior to carding in order to produce the desired heather effect in the finished fabric.

Fabric 9

HTS Subheading:	5209.41.60.40
Fiber Content:	100% Cotton
Weight:	251 g/m2
Width:	160 centimeters cuttable
Thread Count:	22.8 warp ends per centimeter; 17.3 filling picks per centimeter; total: 40.18 threads per square centimeter
Yarn Number:	Warp: 40.6 metric, ring spun; filling: 8.46 metric, open end spun; overall average yarn number: 24.1 metric
Finish:	gingham check or plaid of yarns of different colors; napped on both sides, sanforized

Fabric 11

HTS Subheading:	5209.41.60.40
Fiber Content:	100% Cotton
Weight:	251 g/m2
Width:	160 centimeters cuttable
Thread Count:	20.1 warp ends per centimeter; 16.5 filling picks per centimeter; total: 36.6 threads per square centimeter
Yarn Number:	Warp: 27.07 metric, ring spun; filling: 10.16 metric, open end spun; overall average yarn number: 23.3 metric
Finish:	Plaid, of yarns of different colors; napped on both sides, sanforized

*The cotton fiber must all be stock dyed prior to carding in order to produce the desired heather effect in the finished fabric.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.04–17642 Filed 7–29–04; 2:02 pm]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0248]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Material Inspection and Receiving Report

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through October 31, 2004. DoD proposes that OMB extend its approval for use through October 31, 2007.

DATES: DoD will consider all comments received by October 1, 2004.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0248, using any of the following methods:

- Defense Acquisition Regulations Web site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil*. Include OMB Control Number 0704–0248 in the subject line of the message.
- Fax: Primary: (703) 602–7887; Alternate: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Mr. Steven Cohen, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Cohen, (703) 602–0293. The information collection requirements addressed in this notice are available electronically on the Internet at: *http://www.acq.osd.mil/dpap/dfars/index.htm*. Paper copies are available from Mr. Steven Cohen, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION:

Title, Associated Forms, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Appendix F, Material Inspection and Receiving Report; DD Form 250, DD Form 250c, DD Form 250–1; OMB Control Number 0704–0248.

Needs and Uses: Collection of this information is necessary to process the shipping and receipt of materials and payment to contractors under DoD contracts.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 344,500.

Number of Respondents: 34,180.

Responses Per Respondent: 228.

Annual Responses: 7,800,000.

Average Burden Per Response: Approximately 3 minutes.

Frequency: On occasion.

Summary of Information Collection

This information collection includes the requirements of DFARS Appendix F, Material Inspection and Receiving Report; the related clause at DFARS 252.246–7000, Material Inspection and Receiving Report; and DD Forms 250, 250c, and 250–1. The clause at DFARS 252.246–7000 is used in contracts that require separate and distinct deliverables. The clause requires the contractor to prepare and furnish to the Government a material inspection and receiving report (DD Form 250) in a manner and to the extent required by DFARS Appendix F. The information in the report is required for material inspection and acceptance, shipping, and payment. The contractor may submit the information by using the Wide Area WorkFlow-Receipt and Acceptance electronic form.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 04–17472 Filed 7–30–04; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 1, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 28, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Report of the Participation and Performance of Students with Disabilities on State Assessments by

Content Area, Grade, and Type of Assessment.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 60.

Burden Hours: 3,600.

Abstract: This package provides instructions and a form necessary for States to report the number of children with disabilities served under the Individuals with Disabilities Education Act—Part B (IDEA–B) that participated in regular and alternate assessments and their performance on those assessments. These data will be used for monitoring activities, for planning purposes, for congressional reporting requirements, and for dissemination to individuals and groups.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2558. When you access the information collection, click on "Download Attachments "to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–17520 Filed 7–30–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 1, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 28, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New Collection.

Title: Annual Protection and Advocacy for Assistive Technology (PAAT) Program Performance Report (SC).

Frequency: Annually.

Affected Public: Not-for-profit institutions (primary). State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 896.

Abstract: This reporting instrument and web-based data collection system will provide for the collection of annual reports from the 56 PAAT grantees to the Secretary of Education as required by section 102 of the Assistive Technology Act of 1998. Information collected also will assist Rehabilitation Services Administration (RSA) staff in their management of the PAAT program, and in meeting Government Performance and Results Act (GPRA) reporting requirements. Data will be collected through an Internet form.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2596. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Carey at 202–245–6432. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–17521 Filed 7–30–04; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meeting Notice

AGENCY: United States Election Assistance Commission.

ACTION: Notice of public meeting agenda.

DATE AND TIME: Tuesday, August 10, 2004, 10 a.m.–12 noon.

PLACE: U.S. Election Assistance Commission, 1225 New York Ave., NW., Suite 1100, Washington, DC 20005 (Metro Stop: Metro Center)

AGENDA: The purpose of this meeting will be to receive updates and reports on the following: the Federal Voting Assistance Program Best Practices for Military and Overseas Voting, the EAC November Election Research Project, the EAC National Poll Worker Initiative and other general updates since the last public meeting. The Commission will also review recommendations on the National Voter Registration Form and the HAVA College Program.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, Telephone: (202) 566–3100.

DeForest B. Soaries, Jr.,

Chairman, U.S. Election Assistance Commission.

[FR Doc. 04–17696 Filed 7–29–04; 4:02 am]

BILLING CODE 6820–MP–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7795–9]

Notice of Approval of Federal Operating Permits to Transwestern Pipeline Company; El Paso Natural Gas Company; El Paso Field Services; William Field Services

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that EPA Region 6 has issued Federal operating permits to Transwestern Pipeline Company, El Paso Natural Gas Company, El Paso Field Services, and William Field Services.

These permits grant approval to the facilities identified in the permits to operate the air emission sources identified in the permits in accordance with the terms and conditions of the respective permits. This notice is published in accordance with 40 CFR 71.11(l)(7), which requires notice of any final agency action regarding a Federal operating permit to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: The final permits are available online at *http://yosemite.epa.gov/r6/Apermit.nsf/Part71* in a part 71 table. If you have any questions or would like a copy of any of the permits listed above, please contact Mr. Daron Page, at EPA, Multimedia Planning and Permitting Division (6PD–R), 1445 Ross Avenue, Dallas, Texas 75202, or (214) 665–7222 or by e-mail at *page.daron@epa.gov*.

SUPPLEMENTARY INFORMATION:

Name	Permit No.	Location	Reservation	Public notice	Issuance date	Effective date
Transwestern Pipeline	R6FOPP71–01	Laguna, Cibola County, NM.	Laguna Pueblo	11/09/00	12/06/02	1/8/03
Transwestern Pipeline	R6FOPP71–01 Administrative Amendment.	Laguna, Cibola County, NM.	Laguna Pueblo	(1)	7/8/04	7/8/04
El Paso Natural Gas	R6FOPP71–02	Laguna, Cibola County, NM.	Laguna Pueblo	12/28/02	3/19/04	4/18/04
El Paso Field Services	R6FOPP71–03	Lindrith, Rio Arriba County, NM.	Jicarilla Apache	5/16/03	11/17/03	12/17/03
William Field Services, Los Mestenios.	R6FOPP71–04	Galivon, Rio Arriba County, NM.	Jicarilla Apache	6/13/03	11/17/03	12/16/03
William Field Services, Los Mestenios.	R6FOPP71–04 Administrative Amendment.	Galivon, Rio Arriba County, NM.	Jicarilla Apache	(1)	5/7/04	5/7/04
William Field Services, Ojito.	R6FOPP71–05	Galivon, Rio Arriba County, NM.	Jicarilla Apache	10/31/03	1/20/04	1/20/04

[1] None.

The Federal operating permits issued by EPA to the facilities identified above incorporate all applicable air quality requirements and require monitoring to ensure compliance with these requirements. Submittal of periodic reports of all required monitoring, as well as submittal of an annual compliance certification, are also required. The Federal operating permits have a term not to exceed five years, and a timely application for permit renewal must be submitted to EPA prior to permit expiration in order to continue operation of the permitted source.

The provisions of 40 CFR part 71 govern issuance of these permits. EPA published a notice and opportunity to comment in a newspaper of general circulation in the area of the facility for each permit issued. The EPA received public comments on the Transwestern Pipeline Company; El Paso Natural Gas Company; El Paso Field Services; and William Field Services, Los Mestenios Compressor Station permits. In accordance with the requirements of 40 CFR 71.11(j), EPA responded to all comments received on these permits. The EPA received no comments on the permit for William Field Services, Ojito. Pursuant to 40 CFR 71.11(i), EPA provided copies of the final permits to the applicant and each person who submitted written comments on a permit or requested notice of the final permit decision. No one requested review of any of the final permits by the Environmental Appeals Board within 30 days of receipt of the final permits in accordance with 40 CFR 71.11(l). Thus, pursuant to 40 CFR 71.11(i) and (l), the permits became final on the dates indicated in the chart above. A petition to the Environmental Appeals Board under 40 CFR 71.11(l) is, under 42 U.S.C. 307(b), a prerequisite to seeking judicial review of the final agency action. *See* 40 CFR 71.11(l)(4).

40 CFR 71.11(l)(7) requires notice of any final agency action regarding a Federal operating permit to be published in the **Federal Register**. This notice satisfies that requirement.

Dated: July 21, 2004.

Lynda F. Carroll,

Acting Regional Administrator.

[FR Doc. 04–17501 Filed 7–30–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7796–1]

Request for Nominations to the Good Neighbor Environmental Board

AGENCY: Environmental Protection Agency.

ACTION: Notice of request for nominations.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites nominations of qualified candidates to be considered for appointments to fill several vacancies on the Good Neighbor Environmental Board. For this round of recruitment, given the nature of current vacancies and the goal of maintaining

diverse representation across sectors and geographic locations, those with the following backgrounds and in the following locations are especially encouraged to apply: Environmental officials from the California state government; environmental officials from the Arizona state government; and non-governmental representatives from the state of Arizona. Other individuals are also welcome to send in nominations and apply themselves.

DATES: Suggested deadline for receiving nominations is August 15, 2004. Appointments will be made by the Administrator of the Environmental Protection Agency. Appointments are scheduled to be announced in September 2004 in advance of the Board's next meeting, scheduled for October 27–28, 2004.

ADDRESSES: Submit nomination materials to: Elaine Koerner, Designated Federal Officer, Good Neighbor Environmental Board, EPA Region 9 Office, WTR–4, 75 Hawthorne St., San Francisco, CA., 94105, T: 415–972–3437, F: 415–947–3537, e-mail *koerner.elaine@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Elaine Koerner, Designated Federal Officer, Good Neighbor Environmental Board, EPA Region 9 Office, WTR–4, 75 Hawthorne St., San Francisco, CA., 94105, T: 415–972–3437, F: 415–947–3537, e-mail *koerner.elaine@epa.gov*.

SUPPLEMENTARY INFORMATION: The Good Neighbor Environmental Board meets three times each calendar year; locations include Washington, DC, and various locations along the U.S.-Mexico border. It was created by the Enterprise for the Americas Initiative Act of 1992. An Executive Order delegates implementing authority to the Administrator of EPA. The Board is responsible for providing advice to the U.S. President and Congress on environmental and infrastructure issues and needs within the States contiguous to Mexico in order to improve the quality of life of persons residing on the U.S. side of the border. The statute calls for the Board to have representatives from U.S. Government agencies; the governments of the States of Arizona, California, New Mexico and Texas; and private organizations with expertise on environmental and infrastructure problems along the southwest border. Board members typically contribute 10–15 hours per month to the Board's work. The Board membership position is voluntary; travel expenses are covered.

The following criteria will be used to evaluate nominees:

- Residence in one of the four U.S. border states.
- Professional knowledge of, and experience with, environmental infrastructure activities and policy along the U.S.-Mexico border.
- Senior level-experience that fills a gap in Board representation, or brings a new and relevant dimension to its deliberations.
- Representation of a sector or group that is involved in border region environmental infrastructure.
- Demonstrated ability to work in a consensus-building process with a wide range of representatives from diverse constituencies.
- Willingness to serve a two-year term as an actively-contributing member, with possible re-appointment to a second term.

Nominees' qualifications will be assessed under the mandates of the Federal Advisory Committee Act, which requires Committees to maintain diversity across a broad range of constituencies, sectors, and groups.

Nominations for membership must include a resume describing the professional and educational qualifications of the nominee as well as community-based experience. Contact details should include full name and title, business mailing address, telephone, fax, and e-mail address. A supporting letter of endorsement is encouraged but not required.

Dated: July 13, 2004.

Elaine M. Koerner,

Designated Federal Officer.

[FR Doc. 04–17503 Filed 7–30–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–OW–FRL–7794–3]

Draft National Guidance: Best Management Practices for Preparing Vessels Intended To Create Artificial Reefs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and request for comments.

SUMMARY: This notice informs the public of the availability of a guidance document containing information on national environmentally-based best management practices for preparation of vessels to be sunk with the intention of creating artificial reefs. This notice of availability commences a 60-day public comment period on the guidance document. The guidance satisfies the mandate of section 3516 of the National Defense Authorization Act for Fiscal Year 2004. The guidance was also developed in response to the Maritime Administration's (MARAD) request for the U.S. Environmental Protection Agency (EPA) to assist in identifying potential management options for their decommissioned vessel fleet. The EPA is requesting public comment on this document.

DATES: EPA will accept comments on the Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs received on or before October 1, 2004.

ADDRESSES: Comments may be submitted electronically, by mail or through hand-delivery/courier. Follow the detailed instructions as provided in Section I.C. of the **SUPPLEMENTARY INFORMATION** section. Electronic files may be e-mailed to: *OW-Docket@epa.gov*. Comments may also be mailed to the Water Docket, Environmental Protection Agency, Mail Code: 4101T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OW–2004–0003. Instructions for couriers and other hand delivery are provided in Section I.C.3. The Agency will not accept facsimiles (faxes).

FOR FURTHER INFORMATION CONTACT: Laura S. Johnson, Marine Pollution Control Branch (4504T), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460; (202) 566–1273; *johnson.laura-s@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Interested Entities

Entities potentially interested in today's notice are those who want to transfer their vessel for reefing, have the capacity to prepare a vessel for reefing, wish to undertake a vessel-to-reef project, or are responsible for managing an artificial reef. Categories and entities interested in today's notice include.

Category	Examples of interested entities
Federal Government	Maritime Administration, U.S. Army Corps of Engineers, U.S. Coast Guard, U.S. Navy, National Oceanic and Atmospheric Administration.
State/Local/Tribal Government	Governments owning or responsible for artificial reef preparation, placement, and management; coastal communities.

Category	Examples of interested entities
Industry and General Public.	Shipyards, salvage companies, recreational fishing and scuba diving interests, environmental interest groups.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be interested in this notice. This table lists the types of entities that EPA is now aware could potentially be interested in this notice. Other types of entities not listed in the table could also be interested.

B. How Can I Get Copies of This Document and Other Related Information?

1. Guidance Document Electronic Access. To obtain a copy of the guidance document entitled "Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs," please access our Web site at: *http://www.epa.gov/owow/oceans/habitat/artificialreefs* under "Recent Additions."

2. Federal Register Docket. EPA has established a public docket for this notice under Docket ID No. OW–2004–0003. The public docket consists of the documents specifically referenced in this notice and other information related to this notice. The public docket does not include information claimed as Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The public docket is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. To view these materials, we encourage you to call ahead to schedule an appointment. Every user is entitled to copy 266 pages per day before incurring a charge. The docket may charge 15 cents a page for each page over the 266-page limit plus an administrative fee of $25.00.

3. Federal Register Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the "Federal Register" listings at: *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view comments, access the index listing of the contents of the public docket, and access those documents in the public docket that are available electronically. Once in the system, select "Search," then key in the appropriate docket identification number.

Certain types of information will not be placed in EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute will not be available for public viewing in EPA's electronic public docket. Copyrighted material will not be placed in EPA's electronic public docket, but will be available only in printed, paper form in the public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Section I.B.2.

For public commenters, it is important to note that comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comments contain copyrighted material, information claimed as CBI, or other information whose disclosure is restricted by statute. When EPA identifies comments containing copyrighted material, EPA will provide a reference to that material in the version of the comments that is placed in EPA's electronic public docket. The entire comment, including the copyrighted material, will be available in the public docket.

Comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit My Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comments. Please ensure that your comments are submitted within the specified time period. Comments received after the close of the stated time period will be marked "Late." EPA might not be able to consider late submittals. If you wish to submit information claimed as CBI or information that is otherwise protected by statute, please follow the instructions in Section I.D. Do not use EPA Dockets or e-mail to submit information claimed as CBI or information protected by statute.

1. *Electronically.* If you submit electronic comments as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comments. Also include this contact information on the outside of any disk or CD–ROM you submit, and in any cover letter accompanying the disk or CD–ROM. This ensures that you can be identified as the submitter of the comments and allows EPA to contact you in case EPA cannot read your comments due to technical difficulties or needs further information on the substance of your comments. EPA will not edit your comments, and any identifying or contact information provided in the body of a comment will be included as part of the comments that are placed in the public docket, and made available in EPA's electronic public docket. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comments.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "Search," and then key in Docket ID No. OW–2004–0003. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact

information unless you provide it in the body of your information.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to: *OW-Docket@epa.gov*, Attention Docket ID No. OW–2004–0003. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comments that are placed in the public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD–ROM.* You may submit comments on a disk or CD–ROM that you mail to the mailing address identified in Section I.C.2. These electronic submissions will be accepted in WordPerfect, or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send an original and three copies of all comments, enclosures, or references, to the Water Docket, Environmental Protection Agency, Mailcode MC–4101T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OW–2004–0003.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20004, Attention Docket ID No. OW–2004–0003. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Section I.B.2.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to the EPA Docket Center or through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: U.S. Environmental Protection Agency, Mailcode 4504 T, Preparation of Vessels Intended to be Artificial Reefs, 1301 Constitution Ave, NW., Room 7114, EPA West Building, Washington, DC 20004. You may claim information that you submit to EPA as CBI by marking that information CBI (if you submit CBI on disk or CD–ROM, indicate on the outside of the disk or CD–ROM that it contains information claimed as CBI and then identify electronically within the disk or CD–ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you use a disk or CD–ROM, mark the outside of the disk or CD–ROM clearly to indicate that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult one of the persons identified in the **FOR FURTHER INFORMATION CONTACT** section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find these suggestions helpful for preparing your comments:

1. Explain your comments as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that supports your comments.
4. Provide specific examples to illustrate your concerns.
5. Offer alternatives.
6. Make sure to submit your comments by the deadline identified.
7. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background and Today's Action

Options for managing obsolete and decommissioned military and commercial vessels include re-use of the vessel or parts of the vessel, recycling or scrapping, creating artificial reefs, and disposal on land or at sea. The guidance document made available today addresses one of these management options—artificial reef creation—with the intent of promoting a consistent, national approach.

An interagency workgroup, chaired by EPA, was established to develop national environmentally-based best management practices (BMPs) for the preparation of vessels to be sunk with the intention of creating artificial reefs. The workgroup was comprised of representatives from the EPA, U.S. Coast Guard, U.S. Navy, Maritime Administration (MARAD), U.S. Army Corps of Engineers, National Oceanic and Atmospheric Administration, and the U.S. Fish and Wildlife Service. Workgroup members assisted in the drafting of various sections of the document.

This guidance is required by section 3516 of the National Defense Authorization Act for Fiscal Year 2004 (Act), which amends existing law to require that MARAD and EPA jointly develop guidance recommending environmental BMPs to be used in the preparation of vessels for use as artificial reefs. These BMPs are to serve as national guidance for Federal agencies for the preparation of vessels for use as artificial reefs. The Act provides that the BMPs are to (A) ensure that vessels prepared for use as artificial reefs "will be environmentally sound in their use as artificial reefs," (B) "promote consistent use of such practices nationwide," (C) "provide a basis for estimating the costs associated with the preparation of vessels for use as artificial reefs," and (D) include measures that will "enhance the utility of the Artificial Reefing Program of the Maritime Administration as an option for the disposal of obsolete vessels."

The guidance identifies materials or categories of materials of concern that may be present aboard vessels, indicates where these materials may be found, and describes their potential adverse impacts if released into the marine environment. The materials of concern include: fuels and oil, asbestos, polychlorinated biphenyls (PCBs), paints, debris (*e.g.*, vessel debris, floatables, introduced material), and other materials of environmental concern (*e.g.*, mercury, refrigerants). Because the BMPs described in the guidance are directed at the environmental concerns associated with using vessels as artificial reefs, other sources of information should also be used with regard to preparation of the vessel from a diver safety perspective or for any other potential in-water uses (*e.g.*, breakwaters or other types of barriers).

For each material or category of material of concern identified above, the guidance provides a general performance clean-up goal and information on methods for attaining those clean-up goals in preparation of the vessel prior to sinking. The guidance also includes a description of each material of concern's shipboard use and where it may be found on a vessel, as well as its expected impacts if released into the marine environment.

The guidance describes guidelines for the preparation of vessels in a manner that are intended to ensure that the marine environment will benefit from

their use as an artificial reef. Because strategic siting is an essential component of a successful artificial reef project, the guidance also discusses reef siting.

Dated: July 20, 2004.

Benjamin H. Grumbles,

Acting Assistant Administrator, Office of Water.

[FR Doc. 04–17502 Filed 7–30–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting; Wednesday, August 4, 2004

July 28, 2004.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, August 4, 2004, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Homeland Security Policy Council	The Homeland Security Policy Council will present a report concerning this year's FCC regulatory, outreach, and partnership initiatives in support of homeland security.
2	Office of Engineering and Technology	*Title:* Communications Assistance for Law Enforcement Act and Broadband Access and Services (RM–10865). *Summary:* The Commission will consider a Notice of Proposed Rulemaking and Declaratory Ruling concerning the appropriate legal and policy framework of the Communications Assistance for Law Enforcement Act.
3	Office of Engineering and Technology	*Title:* New Part 4 of the Commission's Rules Concerning Disruptions to Communications (ET Docket No. 04–35). *Summary:* The Commission will consider a Report and Order concerning the reporting of service disruptions by providers of telecommunications services.
4	Enforcement	*Title:* Review of the Emergency Alert System. *Summary:* The Commission will consider a Notice of Inquiry concerning the examination of the Emergency Alert System as an effective mechanism for warning the American public during an emergency.
5	Wireline Competition	*Title:* Schools and Libraries Universal Service Support Mechanism (CC Docket No. 02–6). *Summary:* The Commission will consider a Fifth Report and Order concerning measures to protect against waste, fraud and abuse in the administration of the schools and libraries universal service support mechanism.
6	Wireline Competition	*Title:* Review of the Section 251 Unbundling Obligations for Incumbent Local Exchange Carriers (CC Docket No. 01–338); Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No. 96–98); and Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98–147). *Summary:* The Commission will consider an Order on Reconsideration addressing, in part, petitions filed by BellSouth and SureWest for clarification and/or partial reconsideration of the *Triennial Review Order* (FCC 03–36).
7	Media	*Title:* Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television (MB Docket No. 03–15, RM–9832). *Summary:* The Commission will consider a Report and Order concerning the conversion of the nation's broadcast television system from analog to digital television.
8	Media	*Title:* Digital Output Protection Technologies and Recording Method Certifications (MB Docket Nos. 04–55, 04–56, 04–57, 04–58, 04–59, 04–60, 04–61, 04–62, 04–63, 04–64, 04–65, 04–66, and 04–68). *Summary:* The Commission will consider an Order responding to certifications received in response to an initial certification window by which digital output protection technologies and recording methods could be authorized for use and give effect to the Redistribution Control Descriptor set forth in ATSC Standard A/65B (the "flag").
9	Consumer & Governmental Affairs	*Title:* Rules and Regulations Implementing of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CG Docket No. 04–53); and Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 (CG Docket No. 02–278). *Summary:* The Commission will consider an Order concerning implementation of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003.

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418 0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live over the Internet from the FCC's Audio/Video Events Web page at *http://www.fcc.gov/realaudio.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *http://www.capitolconnection.gmu.edu.* Audio and video tapes of this meeting can be purchased from CACI Productions, 14151 Park Meadow Drive, Chantilly, VA 20151, (703) 679–3851.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. Best Copy and Printing, Inc. may be reached by e-mail at *http://fcc@bcpiweb.com.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc.04–17646 Filed 7–29–04; 1:45 pm]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 17, 2004.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Douglas E. Hazel Revocable Trust, with Douglas E. Hazel as trustee, Washington, Missouri (Douglas Trust), and The Hazel Family, which consists of the Douglas Trust, the Cynthia Hazel Gilbertson Revocable Trust, with Cynthia Hazel Gilbertson as trustee, Faribault, Minnesota, and Hazel Investments, Limited Partnership, Washington, Missouri; to acquire voting shares of Cardinal Bancorp, Inc., St. Louis, Missouri, and thereby indirectly acquire voting shares of Citizens National Bank of Greater St. Louis, Maplewood, Missouri.

Board of Governors of the Federal Reserve System, July 27, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–17470 Filed 7–30–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 27, 2004.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Bancorp VI, Inc., Stillwell, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of The First State Bank of Grand Chain, Grand Chain, Illinois.

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. MidWest Community Financial Corporation, Midwest City, Oklahoma; to become a bank holding company by acquiring up to 100 percent of the voting shares of Canute Bancshares, Inc., Clinton, Oklahoma, and thereby indirectly acquire First State Bank, Canute, Oklahoma.

Board of Governors of the Federal Reserve System, July 27, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–17469 Filed 7–30–04; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

OMB Control No. 3090–0121

General Services Administration Acquisition Regulation; Information Collection; Industrial Funding Fee and Sales Reporting

AGENCY: Office of the Chief Acquisition Officer, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding industrial funding fee and sales reporting.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Nelson, Procurement Analyst, Contract Policy Division, at telephone (202) 501–1900 or via e-mail to linda.nelson@gsa.gov.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Regulatory Secretariat (V), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0121, Industrial Funding Fee and Sales Reporting, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration will be requesting that the Office of Management and Budget (OMB) review and approve information collection, 3090–0121, concerning industrial funding fee and sales reporting. The information is used primarily by contracting officers to estimate requirements for the subsequent year, evaluate the effectiveness of a schedule, negotiate better prices based on volume and for special reports.

B. Annual Reporting Burden

Respondents: 15,710
Responses Per Respondent: 20
Total Responses: 314,200
Hours Per Response: .0833
Total Burden Hours: 26,173
OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VR), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 3090–0121, Industrial Funding Fee and Sales Reporting, in all correspondence.

Dated: July 26, 2004

RALPH DESTEFANO

(Acting) Director, Contract Policy Division

[FR Doc. 04–17454 Filed 7–30–04; 8:45 am]

BILLING CODE 6820–61–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04276]

Expansion of HIV/AIDS Surveillance, Monitoring and Evaluation, and Information Management Activities in the Republic of Honduras; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2004 funds for a cooperative agreement program to increase the capacity, quality and coverage of HIV/AIDS-related Strategic Information activities undertaken by the Ministry of Health (MOH) as cornerstone components of an expanded national response to HIV/AIDS targeting highly vulnerable populations (HVPs) in the Republic of Honduras. In the context of Honduras, HVPs include prostitutes, men who have sex with men (MSM), persons living with HIV/AIDS (PLWHAs), prisoners, and members of the Garifuna and other ethnic groups. Strategic Information is defined as: programs and activities supporting the implementation of first and second generation epidemiological surveillance survey activities; systems for monitoring and evaluation of the impact of the multi-sectoral national response to HIV/AIDS; and strategic initiatives to improve infrastructure and systems supporting surveillance, prevention, care and treatment, laboratory and information management activities.

The Catalog of Federal Domestic Assistance number for this program is 93.941.

B. Eligible Applicant

Assistance will be provided only to the Ministry of Health (MOH) of the Republic of Honduras.

The Honduras MOH is charged by national law to oversee the national response to health problems that threaten the well being of the country's citizens, including HIV/AIDS. The MOH, as the entity responsible for public health in Honduras, has direct responsibility for overseeing surveillance and the monitoring and evaluation of the national response to HIV/AIDS and HIV-related conditions in the country. The MOH of Honduras has collaborated with HHS/CDC and USAID in the past, including collaborations related to the evaluation of surveillance and laboratory systems related to HIV/AIDS in 1999–2000.

C. Funding

Approximately $300,000 is available in FY 2004 to fund this award. It is expected that the award will begin on or before September 1, 2004, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770) 488–2700.

For technical questions about this program, contact: Edgar Monterroso/Mark Fussell, Co-Project Officers, HHS/CDC AE Guatemala Unit 3321, APO AA 34024, Telephone: (502) 369–0791, Ext 515, E-mail: *em2z@cdc.gov* or *mfzz@cdc.gov.*

Dated: July 27, 2004.

William P. Nichols, MPA,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–17483 Filed 7–30–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

Title: Fourth National Incidence Study of Child Abuse and Neglect (NIS–4).

OMB No.: New Request.

Description: The Department of Health and Human Services intends to issue letters to recruit agencies for participation in the next National Incidence Study of Child Abuse and Neglect (NIS). This will be the fourth cycle of this periodic study. The NIS–1, mandated under Public Law (Pub. L.) 93–247 (1974), was conducted in 1979 and 1980 and reported in 1981. The NIS–2 was mandated under Pub. L. 98–457 (1984), conducted in 1986 and 1987, and reported in 1988. The NIS–3 was mandated under both the Child Abuse Prevention, Adoption and Family Services Act of 1988 (Pub. L. 100–294) and the Child Abuse, Domestic Violence, Adoption and Family Services Act of 1992 (Pub. L. 102–295), conducted between 1993 and 1995, and published in 1996. The NIS–4 is mandated by the Keeping Children and Families Safe Act of 2003 (Pub. L. 108–36).

The NIS is unique in that it goes beyond the abused and neglected children who come to the attention of the Child Protective Services (CPS) system. In contrast to the National Child Abuse and Neglect Data Systems (NCANDS), which rely solely on reported cases, the NIS design assumes that reported children represent only a portion of the children who actually are maltreated. Following the implications of its assumption, the NIS estimates the scope of the maltreated child population by combining information about reported cases with data on maltreated children identified by professionals (called "sentinels") who encountered them during the normal course of their work in a wide range of agencies in representative communities. These professionals are asked to remain on the lookout for children they believe are

maltreated during the study reference period and to provide information about those children. Children identified by sentinels and those who alleged maltreatment is investigated by CPS during the same period are evaluated against standardized definitions and only children who meet the study standards are used to develop the study estimates. The study estimates are couched in terms of numbers of maltreated children, with data unduplicated so a given child is counted only once. Confidentiality of all participants is carefully protected.

A nationally representative sample of 120 counties will be selected and all local child protective service (CPS) agencies serving the selected counties will be identified. Plans will be developed to obtain data on cases investigated during the study reference period, September 4 to December 3, 2005. Sentinels in the selected counties will be identified through samples of agencies in 11 categories: county juvenile probation departments, sheriff (and/or state police) departments, public health departments, public housing departments, municipal police departments, hospitals, schools, day care centers, social service agencies, mental health agencies, and shelters for battered women or runaway/homeless youth. A total of approximately 1,600 sentinel agencies will be sampled. Plans will be developed to identify staff in these agencies who have direct contact with children to serve as sentinels during the study by submitting data on maltreated children they encounter during the study referenced period. in preparation for the study, letters will be sent to the directors of the selected agencies asking them to permit their agencies to participate in the NIS–4, and describing the general nature of the data collection effort. DHHS will issue subsequent notice of proposed data collection for this study after data collection plans are developed.

Respondents:

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Letters to CPS Agencies	120	1	.20	24
Letter to Sentinel Agencies	1600	1	.20	320
Letter to Sentinels	12000	1	.20	2400
Estimated Total Annual Burden Hours:			.20	2744

Additional Information: ACF is requesting that OMB grant a 180 day approval for this information collection under procedures for emergency processing by August 15, 2004. A copy of this information collection, with applicable supporting documentation, may be obtained by calling the Administration for Children and Families, Mary Bruce Webb at (202) 205–8628. In addition, a request may be made by sending an e-mail request to: *mbwebb@acf.hhs.gov.*

Comments and questions about the information collection described above should be directed to the following address by August 15, 2004: Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ACF, Office of Management and Budget, Paper Reduction Project, 725 17th Street, NW., Washington, DC 20503. E-mail address: *Katherine _T._Astrich@omb. eop. gov.*

Dated: July 26, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–17453 Filed 7–30–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Establishment of Animal Drug User Fee Rates and Payment Procedures for Fiscal Year 2005

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rates and payment procedures for fiscal year (FY) 2005 animal drug user fees. The Federal Food, Drug, and Cosmetic Act (the act), as amended by the Animal Drug User Fee Act of 2003 (ADUFA), Public Law 108–130, authorizes FDA to collect user fees for certain animal drug applications, on certain animal drug products, on certain establishments where such products are made, and on certain sponsors of such animal drug applications and/or investigational animal drug submissions. This notice establishes the fee rates for FY 2005.

For FY 2005, the animal drug user fee rates are: $119,300 for an animal drug application; $59,650 for a supplemental animal drug application for which safety or effectiveness data is required; $3,085 for an annual product fee; $42,600 for an annual establishment fee; and $32,150 for an annual sponsor fee. FDA will issue invoices for FY 2005 product, establishment and sponsor fees by December 30, 2004, and these invoices will be due and payable by January 31, 2005.

The application fee rates are effective for applications submitted on or after October 1, 2004, and will remain in effect through September 30, 2005. Applications will not be accepted to review until FDA has received full payment of application fees and any other animal drug user fees owed.

FOR FURTHER INFORMATION CONTACT: Visit FDA's Web site at: *http://www.fda.gov/oc/adufa* or contact Robert Miller, Center for Veterinary Medicine (HFV–10), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–5436. For general questions, you may also e-mail the Center for Veterinary Medicine (CVM) at: *cvmadufa@fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 740 of the act (21 U.S.C. 379j–12) establishes four different kinds of user fees: (1) Fees for certain types of animal drug applications and supplements, (2) annual fees for certain animal drug products, (3) annual fees for certain establishments where such products are made, and (4) annual fees for certain sponsors of animal drug applications and/or investigational animal drug submissions. (See 21 U.S.C.

379j–12(a).) When certain conditions are met, FDA will waive or reduce fees (21 U.S.C. 379j–12(d)).

For FY 2004 through FY 2008, the act establishes aggregate yearly base revenue amounts for each of these fee categories. Base revenue amounts established for years after FY 2004 are subject to adjustment for inflation and workload. Fees for applications, establishments, products, and sponsors are to be established each year by FDA so that the revenue for each fee category will approximate the level established in the statute, after the level has been adjusted for inflation and workload.

II. Revenue Amount for FY 2005 and Adjustments for Inflation and Workload

A. Statutory Fee Revenue Amounts

ADUFA specifies that the aggregate revenue amount for FY 2005 for each of the four animal drug user fee categories is $2,000,000, before any adjustments for inflation or workload are made. (See 21 U.S.C. 379j–12(b)(1)–(b)(4).)

B. Inflation Adjustment to Fee Revenue Amount

ADUFA provides that fee revenue amounts for each FY after 2004 shall be adjusted for inflation. (See 21 U.S.C. 379j–12(c)(1).) The adjustment must reflect the greater of: (1) The total percentage change that occurred in the consumer price index (CPI) for all urban consumers (all items; U.S. city average) during the 12-month period ending June 30 preceding the FY for which fees are being set or (2) the total percentage pay change for the previous FY for Federal employees stationed in Washington, DC. ADUFA provides for this annual adjustment to be cumulative and compounded annually after FY 2004. (See 21 U.S.C. 379j–12(c)(1).)

The inflation adjustment for FY 2005 is 4.42 percent. This is the greater of the CPI increase during the 12-month period ending June 30, 2004 (3.27 percent) or the increase in pay for FY 2004 for Federal employees stationed in Washington, DC (4.42 percent). No compounding is applied to this amount because there was no inflation increase applied in FY 2004.

The inflation-adjusted revenue amount for each category of fees for FY 2005 is the statutory fee amount ($2,000,000) increased by 4.42 percent, the inflation adjuster for FY 2005. The inflation-adjusted revenue amount is $2,088,400 for each category of fee, for a total inflation-adjusted fee revenue amount of $8,353,600 for all four categories of fees in FY 2005.

C. Workload Adjustment to Inflation Adjusted Fee Revenue Amount

For each FY beginning in FY 2005, ADUFA provides that fee revenue amounts, after they have been adjusted for inflation, shall be further adjusted to reflect changes in review workload (21 U.S.C. 379j–12(c)(2)).

FDA calculated the average number of each of the five types of applications and submissions specified in the workload adjustment provision (animal drug applications, supplemental animal drug applications for which data with respect to safety or efficacy are required, manufacturing supplemental animal drug applications, investigational animal drug study submissions, and investigational animal drug protocol submissions) received over the 3-year period that ended on September 30, 2002, (the base years). The agency also calculated the average number of each of these types of applications and submissions over the most recent 3-year period that ended May 31, 2004.

The results of these calculations are presented in the first two columns of table 1 of this document. Column 3 reflects the percent change in workload over the two 3-year periods. Column 4 shows the weighting factor for each type of application, reflecting how much of the total FDA animal drug review workload was accounted for by each type of application or submission in the table during the most recent 3 years. Column 5 of table 1 of this document is the weighted percent change in each category of workload and was derived by multiplying the weighting factor in each line in column 4 by the percent change from the base years in column 3. At the bottom right in table 1 of this document, the sum of the values in column 5 is added, reflecting a total change in workload of -4 percent for FY 2005. This is the workload adjuster for FY 2005.

TABLE 1.—WORKLOAD ADJUSTER CALCULATION

Application Type	Column 1 3-Year Average (Base Years)	Column 2 Latest 3-Year Average	Column 3 Percent Change	Column 4 Weighting Factor	Column 5 Weighted Percent Change
New Animal Drug Applications (NADAs)	23	20	-13%	3%	-0.4%
Supplemental NADAs with Safety or Efficacy Data	31	20	-35%	12%	-4.2%
Manufacturing Supplements	368	417	+13%	25%	+3.3%
Investigational Study Submissions	272	270	-0.7%	46%	-0.3%
Investigational Protocol Submissions	283	235	-17%	14%	-2.4%
FY 2005 Workload Adjuster					-4.0%

ADUFA specifies that the workload adjuster may not result in fees that are less than the inflation-adjusted revenue amount (21 U.S.C. 379j–12(c)(2)(B)). For this reason, the workload adjustment will not be applied in FY 2005, and the inflation-adjusted revenue amount for each category of fees for FY 2005 ($2,088,400) becomes the revenue target for fees in FY 2005, for a total inflation-adjusted fee revenue target in FY 2005 of $8,353,600 for fees from all four categories.

III. Application Fee Calculations for FY 2005

The terms "animal drug applications" and "supplemental animal drug applications" are defined in section 739 of the act (21 U.S.C. 379j–11(1).

A. Application Fee Revenues and Numbers of Fee-Paying Applications

The application fee must be paid for any animal drug application or supplemental animal drug application that is subject to fees under ADUFA and that is submitted on or after September 1, 2003. The application fees are to be set so that they will generate $2,088,400 in fee revenue for FY 2005. This is the amount set out in the statute after it has been adjusted for inflation and workload, as previously discussed in section II of this document. The fee for a supplemental animal drug application for which safety or effectiveness data are required is to be set at 50 percent of the animal drug application fee. (See 21 U.S.C. 379j–12(a)(1)(A)(ii).)

To set animal drug application fees and supplemental animal drug application fees to realize $2,088,400, FDA must first make some assumptions about the number of fee-paying applications and supplements the agency will receive in FY 2005.

The agency knows the number of applications that have been submitted in previous years. That number fluctuates significantly from year to year. Further, it is possible that the user fee program will affect the number of applications submitted, exacerbating the kinds of fluctuation in applications that is normally experienced. In addition, the agency does not have data on the number of waivers and reductions that will be granted, though this number will reduce the revenues that the agency will realize. For these reasons, in estimating the fee revenue to be generated by animal drug application fees in FY 2005, FDA is assuming that the number of applications that will pay fees in FY 2005 will be only 80 percent of the lower of the average number of submissions over the past 3 years or the number in the most recent year. This should account both for the effect of fluctuations in the numbers of applications submitted and for the effect of fee waivers or reductions that FDA estimates will be granted. Based on experience with other application user fee programs and the experience with ADUFA fees in FY 2004, FDA believes that this is a reasonable basis for estimating the number of fee-paying applications for the second year of this program.

Over the past 3 years, the average number of animal drug applications that would have been subject to the full fee was 14.3, and the number for the most recent year is estimated at 15. Over this same period, the average number of supplemental applications that would have been subject to half of the full fee was 15.3, and the number for the most recent year is estimated at 15.

Thus, for FY 2005, FDA estimates receipt of 11.5 fee paying original applications (80 percent of the 3-year average of 14.3) and 12 fee-paying supplemental animal drug applications (80 percent of the 15 estimated for the most recent years).

B. Fee Rates for FY 2005

FDA must set the fee rates for FY 2005 so that the estimated 11.5 applications that pay the full fee and the estimated 12 supplements that pay half of the full fee will generate a total of $2,088,400. To generate this amount, the fee for an animal drug application, rounded to the nearest $100, will have to be $119,300. The fee for a supplemental animal drug application, for which safety or effectiveness data, are required will have to be $59,650.

IV. Product Fee Calculations for FY 2005

A. Product Fee Revenues and Numbers of Fee-Paying Products

The animal drug product fee (also referred to as the product fee) must be paid annually by the person named as the applicant in an animal drug application or supplemental animal drug application for an animal drug product submitted for listing under section 510 of the act (21 U.S.C. 360) and by the person who had an animal drug application or supplemental animal drug application pending at FDA after September 1, 2003. (See 21 U.S.C. 379j–12(a)(2).) The term "animal drug product" is defined in 21 U.S.C. 379j–11(3). The product fees are to be set so that they will generate $2,088,400 in fee revenue for FY 2005. This is the amount set out in the statute after it has been adjusted for inflation and workload, as previously discussed in section II of this document.

To set animal drug product fees to realize $2,088,400, FDA must make some assumptions about the number of products for which these fees will be paid in FY 2005. FDA developed data on all animal drug products that have been submitted for listing under section 510 of the act and matched this to the list of all persons who had an animal drug application or supplement pending after September 1, 2003. As of July 1, 2004, FDA found a total of 752 products submitted for listing by persons who had an animal drug application or supplemental animal drug application pending after September 1, 2003. While the number of applications pending after September 1, 2003, could increase between July 1, 2004, and the end of FY 2004, the number of products potentially subject to fees that have not already qualified for fees by April 1, 2004, is only 75. Based on experience over the past several months, FDA is assuming that none of these remaining products will qualify for fees because their sponsors will submit an application between July 1, 2004, and the end of September 2004. Based on this information, FDA believes that a total of 752 products will be subject to this fee in FY 2005.

The agency does not have data on the number of waivers and reductions that will be granted, though this number will reduce the revenues that the agency will realize. In estimating the fee revenue to be generated by animal drug product fees in FY 2005, FDA is assuming that 10 percent of the products invoiced, or 75, will not pay fees in FY 2005 due to fee waivers and reductions. Based on experience with other user fee programs and the first year of ADUFA, FDA believes that this is a reasonable basis for estimating the number of fee-paying products in the first year of this program.

Accordingly, the agency estimates that a total of 677 products will be subject to product fees in FY 2005 (752 minus 75).

B. Product Fee Rates for FY 2005

FDA must set the fee rates for FY 2005 so that the estimated 677 products that pay fees will generate a total of $2,088,400. To generate this amount, the agency will require the fee for an animal drug product, rounded to the nearest $5, to be $3,085.

V. Establishment Fee Calculations for FY 2005

A. Establishment Fee Revenues and Numbers of Fee-Paying Establishments

The animal drug establishment fee (also referred to as the establishment fee) must be paid annually by the person who meets the following qualifications: (1) Owns or operates, directly or through an affiliate, an animal drug establishment; (2) is named as the applicant in an animal drug application or supplemental animal drug application for an animal drug product submitted for listing under section 510 of the act; (3) had an animal drug application or supplemental animal drug application pending at FDA after September 1, 2003; and (4) whose establishment engaged in the manufacture of the animal drug product during the FY. (See 21 U.S.C. 379j–12(a)(3).) An establishment subject to animal drug establishment fees is assessed only one such fee per FY. (See

21 U.S.C. 379j–12(a)(3).) The term "animal drug establishment" is defined in 21 U.S.C. 379j–11(4). The establishment fees are to be set so that they will generate $2,088,400 in fee revenue for FY 2005. This is the amount set out in the statute after it has been adjusted for inflation and workload, as previously discussed in section II of this document.

To set animal drug establishment fees to realize $2,088,400, FDA must make some assumptions about the number of establishments for which these fees will be paid in FY 2005. FDA developed data on all animal drug establishments and matched this to the list of all persons who had an animal drug application or supplement pending after September 1, 2003. As of July 1, 2004, FDA found a total of 54 establishments owned or operated by persons who had an animal drug application or supplemental animal drug application pending after September 1, 2003. While the number of applications pending after September 1, 2003, could increase between July 1, 2004, and the end of FY 2004, the number of establishments potentially subject to fees that have not already qualified for fees by July 1, 2004, is only 10. Based on experience over the last several months, FDA is assuming that none of these remaining establishments will qualify for fees because of additional applications submitted between July 1, 2004, and the end of FY 2004. Based on this information, FDA believes that 54 establishments will be subject to this fee in FY 2005.

The agency does not have data on the number of waivers and reductions that will be granted, though this number will reduce the revenues that the agency will realize. In estimating the fee revenue to be generated by animal drug establishment fees in FY 2005, FDA is assuming that 10 percent of the establishments invoiced, or five, will not pay fees in FY 2005 due to fee waivers and reductions. Based on experience with other user fee programs and the first year of ADUFA, FDA believes that this is a reasonable basis for estimating the number of fee-paying establishments in the second year of this program.

Accordingly, the agency estimates that a total of 49 establishments will be subject to establishment fees in FY 2005 (54 minus 5).

B. Establishment Fee Rates for FY 2005

FDA must set the fee rates for FY 2005 so that the estimated 49 establishments that pay fees will generate a total of $2,088,400. To generate this amount, the agency will require the fee for an animal drug establishment, rounded to the nearest $50, to be $42,600.

VI. Sponsor Fee Calculations for FY 2005

A. Sponsor Fee Revenues and Numbers of Fee-Paying Sponsors

The animal drug sponsor fee (also referred to as the sponsor fee) must be paid annually by each person who meets the following qualifications: (1) Is named as the applicant in an animal drug application, except for an approved application for which all subject products have been removed from listing under section 510 of the act or has submitted an investigational animal drug submission that has not been terminated or otherwise rendered inactive and (2) had an animal drug application, supplemental animal drug application, or investigational animal drug submission pending at FDA after September 1, 2003. (See 21 U.S.C. 379j–11(6) and 379j–12(a)(4).) An animal drug sponsor is subject to only one such fee each FY. (See 21 U.S.C. 379j–12(a)(4).) The sponsor fees are to be set so that they will generate $2,088,400 in fee revenue for FY 2005. This is the amount set out in the statute after it has been adjusted for inflation and workload, as previously discussed in section II of this document.

To set animal drug sponsor fees to realize $2,088,400, FDA must make some assumptions about the number of sponsors who will pay these fees in FY 2005. Based on the number of firms that would have met this definition in each of the past 3 years, FDA estimates that a total of 138 sponsors will meet this definition in FY 2005.

Careful review indicates that about one third or 33 percent of all of these sponsors will qualify for minor use/minor species exemption. Based on the agency's experience with sponsor fees in FY 2004, FDA's current best estimate is that an additional 20 percent will qualify for other waivers or reductions, for a total of 53 percent of the sponsors invoiced, or 73, who will not pay fees in FY 2005 due to fee waivers and reductions. FDA believes that this is a reasonable basis for estimating the number of fee-paying sponsors in the second year of this program.

Accordingly, the agency estimates that a total of 65 sponsors will be subject to sponsor fees in FY 2005 (138 minus 73).

B. Sponsor Fee Rates for FY 2005

FDA must set the fee rates for FY 2005 so that the estimated 65 sponsors that pay fees will generate a total of $2,088,400. To generate this amount, the agency will require the fee for an animal drug sponsor, rounded to the nearest $50, to be $32,150.

VII. Adjustment for Excess Collections

Under the provisions of ADUFA, if the agency collects more fees than were provided for in appropriations in any year, FDA is required to reduce the adjusted aggregate revenue amount in a subsequent year by that excess amount (21 U.S.C. 379j–12(g)(4)). No adjustment under this provision is required for fees assessed in FY 2005 because FDA has not collected animal drug user fees in excess of amounts provided in appropriations in any previous year.

VIII. Fee Schedule for FY 2005

The fee rates for FY 2005 are summarized in table 2 of this document.

TABLE 2.—FY 2005 FEE RATES

Animal Drug User Fee Category	Fee Rate for FY 2005
Animal Drug Application Fee	
Animal Drug Application	$119,300
Supplemental Animal Drug Application for which Safety or Effectiveness Data are Required	$59,650
Animal Drug Product Fee	$3,085
Animal Drug Establishment Fee[1]	$42,600
Animal Drug Sponsor Fee[2]	$32,150

[1] An animal drug establishment is subject to only one such fee each fiscal year.
[2] An animal drug sponsor is subject to only one such fee each fiscal year.

IX. Procedures for Paying the FY 2005 Fees

A. Application Fees and Payment Instructions

The appropriate application fee established in the new fee schedule must be paid for an animal drug application or supplement subject to fees under ADUFA that is submitted after September 30, 2004. Payment must be made in U.S. currency by check, bank draft, or U.S. postal money order payable to the order of the Food and Drug Administration. On your check, bank draft, or U.S. postal money order, please write your application's unique payment identification number, beginning with the letters "AD," from the upper right-hand corner of your completed Animal Drug User Fee Cover Sheet. Also write FDA's post office box number (P.O. Box 953877) on the enclosed check, bank draft, or money order. Your payment and a copy of the completed Animal Drug User Fee Cover Sheet can be mailed to: Food and Drug Administration, P.O. Box 953877, St. Louis, MO, 63195–3877.

If you prefer to send a check by a courier such as Federal Express or United Parcel Service, the courier may deliver the check and printed copy of the cover sheet to: U.S. Bank, Attn: Government Lockbox 953877, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This address is for courier delivery only. If you have any questions concerning courier delivery contact the U.S. Bank at 314–418–4821. This telephone number is only for questions about courier delivery.)

The tax identification number of the FDA is 530 19 6965. (Note: In no case should the check for the fee be submitted to FDA with the application.)

It is helpful if the fee arrives at the bank at least a day or 2 before the application arrives at FDA's CVM. FDA records the official application receipt date as the later of the following: The date the application was received by FDA's CVM, or the date U.S. Bank notifies FDA that your check in the full amount of the payment due has been received. U.S. Bank is required to notify FDA within 1 working day, using the payment identification number described previously.

B. Application Cover Sheet Procedures

Step One—Create a user account and password. Log onto the ADUFA Web site at *http://www.fda.gov/oc/adufa* and, under the "Forms" heading, click on the link "User Fee Cover Sheet." For security reasons, each firm submitting an application will be assigned an organization identification number, and each user will also be required to set up a user account and password the first time you use this site. Online instructions will walk you through this process. It may take a day or 2 to get the organization number and have the user account and password established.

Step Two—Create an Animal Drug User Cover Sheet, transmit it to FDA, and print a copy. After logging into your account with your user name and password, complete the steps required to create an Animal Drug User Fee Cover Sheet. One cover sheet is needed for each animal drug application or supplement. Once you are satisfied that the data on the cover sheet is accurate and you have finalized the cover sheet, you will be able to transmit it electronically to FDA, and you will be able to print a copy of your cover sheet showing your unique payment identification number.

Step Three—Send the payment for your application as described in section IX.A of this document.

Step Four—Please submit your application and a copy of the completed Animal Drug User Fee Cover Sheet to the following address: Food and Drug Administration, Center for Veterinary Medicine, Document Control Unit (HFV–199), 7500 Standish Pl., Rockville, MD 20855.

C. Product, Establishment, and Sponsor Fees

By December 30, 2004, FDA will issue invoices and payment instructions for product, establishment, and sponsor fees for FY 2005 using this fee schedule. Payment will be due and payable by January 31, 2005. FDA will issue invoices in October 2005 for any products, establishments, and sponsors subject to fees for FY 2005 that qualify for fees after the December 2004 billing.

Dated: July 23, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–17441 Filed 7–30–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Voting and Nonvoting Members on a Public Advisory Committee; Pediatric Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for members to serve on the Pediatric Advisory Committee in the Office of the Commissioner. Elsewhere in this issue of the **Federal Register**, FDA is publishing a document announcing the establishment of this committee.

FDA has special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, encourages nominations of qualified candidates from these groups.

DATES: Nominations received on or before August 17, 2004 will be given first consideration for membership on the Pediatric Advisory Committee. Nominations received after August 17, 2004 will be considered for nomination to the Pediatric Advisory Committee should nominees still be needed.

ADDRESSES: All nominations for membership, except for the consumer member, and the member from a patient or patient-family organization, should be sent to Jan Johannessen, Office of Science and Health Coordination (HF–33), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, e-mail: *jjohannessen@fda.gov*.

All nominations for the consumer member should be sent to Michael F. Ortwerth, Office of the Commissioner (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville 20857, e-mail: *michael.ortwerth@fda.hhs.gov*.

All nominations for the patient or patient-family member should be sent to M. Lyvon Covington, Office of Special Health Issues (HF–12), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, e-mail: *Magdalene.Covington@fda.hhs.gov*.

FOR FURTHER INFORMATION CONTACT: Regarding all nomination questions for membership, the primary contact is Jan N. Johannessen, Office of Science and Health Coordination (HF–33), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6687 or FAX: 301–827–3042.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for voting and nonvoting members on the Pediatric Advisory Committee.

I. Function of the Pediatric Advisory Committee

The committee advises the Commissioner of Food and Drugs on pediatric therapeutics, pediatric research, and other matters involving pediatrics for which the Food and Drug Administration has regulatory responsibility. The Committee will also

advise and make recommendations to the Secretary of Health and Human Services pursuant to 45 CFR 46.407 on research involving children as subjects that is conducted or supported by the Department of Health and Human Services.

II. Criteria for Voting Members

1. *Research and Clinical Scientists*: Persons nominated for membership shall have scientific expertise in one or more of the following disciplines: Pediatric research, pediatric subspecialties, pediatric therapeutics, statistics, and/or biomedical ethics.

2. *Consumer Member*: Persons nominated for membership on the committee as a consumer member shall have the following: (1) Ties to a consumer and/or community-based organization, (2) ability to analyze technical data, (3) understanding of research design, (4) ability to discuss benefits and risks, and (5) ability to evaluate the safety and efficacy of products under review. In their individual capacity, the consumer member will have the responsibility of representing the consumer perspective on issues and actions before the advisory committee; serving as a liaison between the committee and interested consumers, associations, coalitions, and consumer organizations; and facilitating dialogue with the advisory committee on scientific issues that affect consumers.

3. *Patient or Patient-Family Organization Member*: Persons nominated for membership on the committee as a patient or patient-family organization member shall have the following: (1) Personal experience with a specific pediatric disease as a patient or patient care-giver; (2) experience in patient advocacy; (3) ability to communicate the interests and perspectives of patients; (4) ability to understand scientific data and technical information about research studies, and/or personal experience as a participant in clinical research; and (5) ability to disseminate information about the advisory committee experience to the patient community. As a member of the Pediatric Advisory Committee, the patient or patient-family organization member will serve in their individual capacity.

III. Criteria for Nonvoting Members

1. *Industry Representative*: Persons nominated for membership on the committee as a nonvoting industry representative shall have the following: (1) Professional experience in the medical product regulated industry, (2) ability to understand and analyze scientific data and issues related to pediatric product development, and (3) ability to communicate and disseminate information about the advisory committee experience to interested parties of industry.

2. *Pediatric Health Organization Representative*: Persons nominated for membership on the committee as a representative from a pediatric health organization shall have the following: (1) A direct affiliation with a recognized pediatric health organization and (2) the ability to understand and analyze scientific data and technical information.

IV. Nomination Procedures

1. *Research and Clinical Scientists*: Any interested person may nominate one or more qualified persons for membership on the advisory committee. Self-nominations are also accepted. Nominations shall include a current resume or curriculum vitae of each nominee, including current business address and telephone number, and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning matters related to financial holdings, employment, and research grants and/or contracts.

2. *Consumer Member*: Any interested person or organization may nominate one or more qualified persons for membership on the pediatric advisory committee to represent consumer interests. Self-nominations are also accepted.

All nominations must include a cover letter, a curriculum vitae or resume, including current business address and telephone number and a list of consumer or community-based organizations for which the candidate can demonstrate active participation. FDA will ask the potential candidates to provide detailed information concerning matters related to financial holdings, employment, and research grants and/or contracts.

Selection of members representing consumer interests is conducted through procedures that include the use of organizations representing public interest and consumer advocacy groups. The organizations have the responsibility of recommending candidates to the agency for selection.

3. *Patient or Patient-Family Organization Member*: Individuals, patient advocacy groups and organizations may submit nominations. Self-nominations will also be accepted.

Nominations shall include a current resume of the nominee (including current contact information), shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning matters related to potential financial interests.

4. *Pediatric Health Organization Representative*: Individuals and pediatric organizations may submit nominations. Self-nominations will also be accepted.

All nominations must include a cover letter, a curriculum vitae or resume, information delineating the mission of the pediatric health organization and the relationship of the nominee to the pediatric health organization.

5. *Industry Representative*: Interested persons may nominate one or more qualified persons for membership. Self-nominations are also accepted.

Nominations shall include a current resume or curriculum vitae of each nominee, including current business address and telephone number, and shall state that the nominee is aware of the nomination, and is willing to serve as a nonvoting member. Nominees must have demonstrated first hand knowledge or work experience of the industry. Nominees must also demonstrate that they have the mechanisms to disseminate information from the advisory committee experience to their constituents.

Selection of the member representing industry interests will be made in accordance with 21 CFR 14.84(d). Any organization wishing to participate in the selection of a nonvoting member to represent industry on the Pediatric Advisory Committee should send a letter stating that interest to the FDA contact identified previously within 30 days of publication of this notice. Individuals who nominate themselves as industry representatives will not participate in the selection process.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: July 27, 2004.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 04–17541 Filed 7–29–04; 10:30 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Pediatric Advisory Committee; Formation of a Pediatric Ethics Subcommittee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the formation of a subcommittee of the Pediatric Advisory Committee. This subcommittee has been established to address pediatric ethical issues, as well as IRB referrals related to clinical investigations involving children as subjects and IRB referrals that involve both FDA regulated products and research involving children as subjects that is conducted or supported by the Department of Health and Human Services. The subcommittee's preliminary recommendations will be presented to the FDA Pediatric Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Jan Johannessen, Office of Science and Health Coordination (HF–33), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6687.

SUPPLEMENTARY INFORMATION: FDA is announcing the formation of a subcommittee of the Pediatric Advisory Committee. This subcommittee has been established to address pediatric ethical issues, as well as IRB referrals related to clinical investigations involving children as subjects as specified in § 50.54 (21 CFR 50.54) and IRB referrals that involve both FDA regulated products under § 50.54 and research involving children as subjects that is conducted or supported by the Department of Health and Human Services as specified in 45 CFR 46.407.

The subcommittee's preliminary recommendations will be presented to the FDA Pediatric Advisory Committee. The subcommittee will meet approximately two times a year. Meetings of the subcommittee will be open to the public. All meetings will be announced in the **Federal Register** at least 15 days prior to each scheduled public meeting.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 27, 2004.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 04–17542 Filed 7–22–04; 10:30 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Establishment of Medical Device User Fee Rates for Fiscal Year 2005

AGENCY: Food and Drug Administration

ACTION: Notice

SUMMARY: The Food and Drug Administration (FDA) is announcing the fee rates and payment procedures for medical device user fees for fiscal year (FY) 2005. The Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device User Fee and Modernization Act of 2002 (MDUFMA), authorizes FDA to collect user fees for certain medical device applications. The FY 2005 fee rates are provided in this document. For all applications submitted on or after October 1, 2004, and through September 30, 2005, fees must be paid at the FY 2005 rates at the time that applications are submitted to FDA. The later of the date that the application is received by FDA or the date that the check is received governs the fee that must be paid. This document provides details on how fees for FY 2005 were determined and payment procedures for medical device applications subject to user fees.

FOR FURTHER INFORMATION CONTACT:

For further information on MDUFMA: Visit the FDA Web site *http://www.fda.gov/oc/mdufma*.

For questions relating to this document: Frank Claunts, Office of Management (HFA–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4427.

SUPPLEMENTARY INFORMATION:

I. Background

Section 738 of the act (21 U.S.C. 379j) establishes fees for certain medical device applications and supplements. Under statutorily defined conditions, FDA may waive or reduce fees (21 U.S.C. 379j(d) and (e)).

For FY 2003 through 2007, MDUFMA (Public Law 107–250) establishes base revenue amounts for the aggregate of all application fee revenues. Base revenue amounts established for each year after FY 2003 are subject to adjustment for inflation, workload, and compensation for revenue shortfalls from previous years. Fees for applications are to be established each year by FDA so that revenues will approximate the levels established in the statute, after those amounts have been first adjusted for inflation, workload and, if required, revenue shortfalls from previous years.

This document establishes fee rates for FY 2005. These fees are effective on October 1, 2004, and will remain in effect through September 30, 2005.

II. Revenue Amount for FY 2005, and Adjustments for Inflation, Workload, and Compensation for Revenue Shortfalls from Previous Fiscal Years

A. Statutory Fee Revenue Amount

MDUFMA specifies that the fee revenue amount for FY 2005 is $29,785,000, before any adjustments are made (21 U.S.C. 379j(b)).

B. Inflation Adjustment to Fee Revenue Amount

MDUFMA provides that fee revenue amounts for each fiscal year after 2003 shall be adjusted for inflation. The adjustment must reflect the greater of the following factors: (1) The total percentage change that occurred in the Consumer Price Index (CPI) (all items; U.S. city average) during the 12-month period ending June 30 preceding the FY for which fees are being set, or (2) the total percentage pay change for the previous FY for Federal employees stationed in the Washington, DC metropolitan area. MDUFMA provides for this annual adjustment to be cumulative and compounded annually after 2003 (21 U.S.C. 379j(c)(1)).

The inflation adjustment for FY 2004 was 4.27 percent. This was the greater of the CPI increase during the 12-month period ending June 30 preceding the FY for which fees were being set (June 30, 2003—which was 2.11 percent) or the increase in pay for the previous FY (2003) for Federal employees stationed in the Washington, DC metropolitan area (4.27 percent).

The inflation increase for FY 2005 is 4.42 percent. This is the greater of the CPI increase for the 12-month period ending June 30, 2004, (3.27 percent) or the increase in pay for FY 2004 for Federal employees stationed in the Washington, DC metropolitan area (4.42 percent).

Compounding these amounts (1.0427 times 1.0442) yields a total compounded inflation adjustment of 8.88 percent for FY 2005.

The inflation-adjusted revenue amount for FY 2005 is the statutory fee amount ($29,785,000) increased by 8.88 percent, the inflation adjuster for FY

2005. The FY 2005 inflation-adjusted revenue amount is $32,429,908.

C. Workload Adjustment to Inflation Adjusted Fee Revenue Amount

For each fiscal year beginning in FY 2004, MDUFMA provides that fee revenue amounts, after they have been adjusted for inflation, shall be further adjusted to reflect increases in workload for the process for the review of medical device applications (see 21 U.S.C. 379j(c)(2)). FDA is developing a methodology to determine the extent of workload changes for the device program, but has not completed the data gathering and analysis necessary to accurately account for differences in how the Center for Biologics Evaluation and Research and the Center for Devices and Radiological Health (CBER and CDRH) define and manage their device review processes. Until FDA develops a sound methodology, we will not invoke the workload adjustment to further increase inflation-adjusted MDUFMA fees and will not be applying a workload adjustment to the FY 2005 inflation-adjusted revenue amount of $32,429,908. The need for workload adjustment will be assessed anew next year when FY 2006 fees are established.

D. Compensating Adjustment to Fee Revenue Amount Once Adjustments for Inflation and Workload Have Been Made

For each fiscal year beginning in FY 2004, MDUFMA provides that fee revenue amounts, after they have been adjusted for inflation and workload, shall be further adjusted, if necessary, to compensate for the cumulative shortfall in fee revenue from previous years (see 21 U.S.C. 379j(c)(3)).

In FY 2003, FDA had expected to collect a total of $25,125,000 in MDUFMA fees. This was the fee revenue amount stated in the statute (see 21 U.S.C. 379j(b)). As of June 30, 2003, just before fees for FY 2004 had to be published, for the first 9 months of the fiscal year, total fee collections were only $14,360,304. If fee collections in the last 3 months had remained proportional to collections in the first 9 months, FDA would have collected another $4,786,768 million—for a total of about $19,647,000 million for the year—still $5,478,000 million less than the statutory revenue amount for FY 2003. Accordingly, FDA used this amount ($5,478,000) as the compensating adjustment when fees for FY 2004 were set a year ago. However, collections in the final quarter were higher than expected, and the compensating adjustment should only have been $3,235,211.

Because experience has shown that it is difficult to predict the amount by which revenues may fall short of the revenue target before the end of the fiscal year, FDA has decided not to assess a compensating adjustment in setting fees for FY 2005. However a year from now when fees for FY 2006 are set, FDA will know with certainty the extent to which fees for FY 2004 fell short of the revised FY 2004 revenue target of $31,654,000. The shortfall, if any, will be applied, in part or in total, as the compensating adjuster in FY 2006.

III. Fee Calculations for FY 2005

A. Estimating Numbers of Applications That Will Pay Fees

Under MDUFMA, the amount of fee revenue collected is a function of two factors—the fee rate for the application and the number of applications that will pay each type of fee.

To set fees for FY 2005, FDA must first estimate the number of applications that will pay each type of fee. Before MDUFMA was enacted, FDA estimated the number of applications that would pay each type of fee. That estimate was based on the average number of each category of application over the 5-year period, FY 1997 through 2001. Those estimates took into account FDA's estimates of the number of applications that would qualify for a small business reduction or exemption. The original FY 2003 estimates are shown in the "Original Estimate" column of table 1 of this document.

The reason that MDUFMA fee revenues fell short of the revenue target in FY 2003 by $3,235,211 is that FDA collected fewer full fees than projected for original premarket approval applications (PMAs) and biologic license applications (BLAs) and their full-fee supplements, and fewer fees for 180-day supplements, as shown in the "2003 Actuals" column of table 1 of this document.

FDA is expecting that the numbers of fee-paying applications that will be received in FY 2004 will again be less than the amounts expected when MDUFMA was enacted. The "2004 Estimate" column of table 1 of this document shows the current estimate of each type of application that will pay fees, based on all fees received through June 30, 2004, the first 9 months of the fiscal year, and assuming that fee-paying applications for the remaining 3 months of the fiscal year will come in at the same rate as they were received in the first 9 months.

There are several reasons for last year's shortfall and the expected shortfall in FY 2004. The number of original PMA applications that did not pay a fee in FY 2003 because they were the first applications from a qualifying small business was much higher than expected. In addition, the number of applications submitted as 180-day supplements (paying about 3 times the fee of a real-time supplement) has been declining markedly since the enactment of MDUFMA, and the number of supplements submitted as real-time supplements has been increasing correspondingly. While the workload has remained about the same for the two categories combined, the result is substantially less fee revenue. Finally, a number of the applications in each category have been "bundled" and did not have to pay separate fees.

Because of the receipt of fewer than expected fee-paying applications in FY 2003, FDA considered basing fees for FY 2004 on lower estimates of the number of full PMA/BLA fees and 180-day supplement fees. The agency did not revise the estimated numbers of fee-paying applications in setting the FY 2004 fees, however, because such a revision would have been based on data from too brief a period—the 3 months from April 1 through June 30, 2003. A year ago, however, the agency stated its intention to reassess whether it should adjust its original estimates of the number of each type of fee-paying application when it sets fees for FY 2005, when the agency would have almost 2 years of data to determine whether its original estimates for annual numbers of applications were too high.

FDA has determined that it needs to revise the numbers of fee-paying applications it expects to receive each year based on the experience of FY 2003 and the first 9 months of FY 2004. The last column of table 1 of this document provides the more realistic estimates of numbers of fee-paying applications upon which FDA will base its fee calculations for FY 2005. Recognizing that industry also needs predictability in fee assessments, the agency is committing to using these same estimates of numbers of each type of fee-paying application when fees are set for FY 2006 and 2007.

TABLE 1.—NUMBERS OF FEE-PAYING DEVICE APPLICATIONS

Type of Fee-Paying Application	Original Estimate	FY 2003 Actuals	FY 2004 Estimates	FY 2005 Projection
Original premarket applications (PMAs), product development protocols (PDPs), premarket reports (PMRs), and biologic license applications (BLAs) and supplements paying full fees	58	46	42	51
PMAs, PDPs, PMRs, BLAs and full fee supplements paying reduced small business (SB) fees	10	6	5	6
180-Day PMA/PDP supplements paying full fees	171	118	80	86
180-Day PMA/PDP supplements paying reduced SB fees	24	22	11	9
Real time PMA supplements paying full fees	86	136	152	160
Real time PMA supplements paying reduced SB fees	14	19	19	15
Premarket notifications (510(k)s) paying full fees			2,855	3,060
Premarket notifications (510(k)s) paying reduced SB fees			487	540
Premarket notifications (510(k)s—total	4,000	4,001	3,341	3,600

B. Determining the Fee Rates

Under MDUFMA, all fees are set as a percent of the full fee for a PMA (see 21 U.S.C. 379j(a)(1)(A)). In order to generate $32,429,908 in FY 2005, using the estimates of the numbers of each type of application that will pay a fee at each rate in the column entitled "FY 2005 Projections" of table 1 of this document, the rate for a full PMA will be $239,237 for FY 2005. For all applications other than premarket notification submissions, the small business rate is 38 percent of the full fee rate (see 21 U.S.C. 379j(d)(2)(C)). For premarket notification submissions (510(k)s), the small business rate is 80 percent of the full rate for premarket notification submissions (see 21 U.S.C. 379j(e)(2)(C)(i)). The FY 2005 fee rates for all application categories are set out in table 2 of this document.

TABLE 2.—FEE TYPES, PERCENT OF PMA FEE, AND FY 2005 FEE RATES

Application Fee Type	Full Fee Amount as a Percent of PMA Fee	FY 2005 Full Fee	FY 2005 Small Business Fee
PMA (submitted under section 515(c)(1) or 515(f) of the act or section 351 of the Public Health Service (PHS) Act)		$239,237	$90,910
PMR (submitted under section 515(c)(2) of the act)	100%	$239,237	$90,910
Panel track supplement	100%	$239,237	$90,910
Efficacy supplement (to an approved premarket application under section 351 of the PHS Act)	100%	$239,237	$90,910
180-Day supplement	21.5%	$51,436	$19,546
Real time supplement	7.2%	$17,225	$6,546
510(k)	1.42% in aggregate	$3,502	$2,802

Under MDUFMA, the statutory fee revenue levels each year by about 9 percent, and the inflation adjusted increase in revenue levels is estimated at about 13 to 14 percent each year. The fees being established for FY 2005, in aggregate, represent an increase of about 10 percent (the weighted combination of an increase of 0.6 percent for 510(k) premarket notification submissions and about 15.7 percent for premarket application submissions. This combined 10 percent increase is well under the norms that should be expected under the provisions of the MDUFMA statute.

IV. Adjustment for Excess Collections in Previous Years

Under the provisions of MDUFMA, if the agency collects more fees than were provided for in appropriations in any year, FDA is required to reduce its anticipated fee collections in a subsequent year by that amount (21 U.S.C. 379j(h)(4)). No adjustments under this provision are required for fees assessed in FY 2005, since collections to date have been less than the amounts provided in appropriations. If fees assessed in FY 2005 inadvertently result in excess collections, FDA will reduce rates when fees are set for FY 2006 or 2007.

V. Small Business Qualification for Purposes of MDUFMA Fees

Firms with annual gross sales and revenues of $30 million or less, including gross sales and revenues of all

affiliates, partners, and parent firms, may qualify for a fee waiver for their first PMA, and for lower rates for subsequent PMAs, PMRs, supplements, and 510(k)s.

Even if a firm qualified under MDUFMA as a small business in FY 2004, it must obtain a new small business certification and decision number for FY 2005 and for each subsequent fiscal year. This can be initiated any time after the publication of this document. For FY 2005, firms that have not received an FY 2005 small business qualification decision number from FDA will not be permitted to submit the reduced small business fees. FDA urges firms to apply for this qualification at least 60 days before they intend to submit their application and fee.

To qualify, you are required to submit the following:

(1) Certified copies of your Federal Income Tax Return for the most recent taxable year (2003 or later), including certified copies of the income tax returns of your affiliates, partners, and parent firms.

(2) A certified list of all parents, partners, and affiliate firms since October 1, 2002.

You can find information for determining if an applicant qualifies for a small business first-time PMA waiver and lower rates for subsequent applications on the FDA Web site at *http://www.fda.gov/oc/mdufma*. At that Web site, under the heading "Guidance Documents," click on the link "Qualifying as a Small Business." This Web site provides detailed instructions and the address for mailing documentation to support qualification as a small business under MDUFMA.

VI. Procedures for Paying Application Fees

Any application or supplement subject to fees under MDUFMA that is received on or after October 1, 2004, through September 30, 2005, is subject to the FY 2005 fee rate. The later of the date that the application is received in the reviewing center's document room or the date that the check is received by the US Bank determines whether the fee rates for FY 2004 or 2005 apply. FDA must receive the correct fee at the time that an application is submitted, or the application will not be accepted for filing or review.

FDA requests that you follow the steps in the following paragraphs before submitting a medical device application subject to a fee. Please pay close attention to these procedures to ensure that FDA links the fee with the correct application. (Note: In no case should the check for the fee be submitted to FDA with the application.)

A. Step One—Secure a Payment Identification Number and Medical Device User Fee Cover Sheet From FDA Before Submitting Either the Application or the Payment. Note: FY 2005 Fee Rates Will be Available on the Cover Sheet Web Site Beginning on August 25, 2004

Log onto the MDUFMA Web site at *http://www.fda.gov/oc/mdufma* and, under the forms heading, click on the link "User Fee Cover Sheet." Complete the Medical Device User Fee Cover Sheet. Be sure you chose the correct application submission date range. (Two choices will be offered from August 25 until the middle of October 2004. One choice is for applications that will be received on or before September 30, 2004, which will be subject to FY 2004 fee rates. A second choice is for applications that will be received on or after October 1, 2004, which will be subject to FY 2005 fee rates.) After completing data entry, print a copy of the Medical Device User Fee Cover Sheet and note the unique Payment Identification Number located in the upper right-hand corner of the printed cover sheet.

B. Step Two—Electronically Transmit a Copy of the Printed Cover Sheet With the Payment Identification Number to FDA's Office of Financial Management

Once you are satisfied that the data on the cover sheet is accurate, electronically transmit that data to FDA according to instructions on the screen. Since electronic transmission is possible, applicants are required to set up a user account and use passwords to assure data security in the creation and electronic submission of cover sheets.

C. Step Three—Mail Payment and a Copy of the Completed Medical Device User Fee Cover Sheet to the St. Louis Address Specified Below

- Make the payment in U.S. currency by check, bank draft, or U.S. Postal money order payable to the Food and Drug Administration. (The tax identification number of the Food and Drug Administration is 53–0196965, should your accounting department need this information.)
- Please write your application's unique Payment Identification Number, from the upper right-hand corner of your completed Medical Device User Fee Cover Sheet, on your check, bank draft, or U.S. Postal money order.
- Mail the payment and a copy of the completed Medical Device User Fee Cover Sheet to: Food and Drug Administration, P.O. Box 956733, St. Louis, MO 63195–6733.

If you prefer to send a check by a courier such as FEDEX or UPS, the courier may deliver the checks to: US Bank, Attn: Government Lockbox 956733, 1005 Convention Plaza, St. Louis, MO 63101.

(Note: This address is for courier delivery only. Contact the US Bank at 314–418–4821 if you have any questions concerning courier delivery.)

It is helpful if the fee arrives at the bank at least 1 day before the application arrives at FDA. FDA records the official application receipt date as the later of the following:

- The date the application was received by FDA.
- The date US Bank receives the payment. US Bank is required to notify FDA within 1-working day, using the Payment Identification Number described previously.

D. Step Four—Submit your Application to FDA With a Copy of the Completed Medical Device User Fee Cover Sheet

Please submit your application and a copy of the completed Medical Device User Fee Cover Sheet to one of the following addresses:

- Medical device applications should be submitted to: Food and Drug Administration, Center for Devices and Radiological Health, Document Mail Center (HFZ–401), 9200 Corporate Blvd., Rockville, MD 20850.
- Biologic applications should be sent to: Food and Drug Administration, Center for Biologics Evaluation and Research, Document Control Center (HFM–99), suite 200N, 1401 Rockville Pike, Rockville, MD 20852–1448.

Dated: July 21, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–17440 Filed 7–30–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on August 31, 2004, from 8 a.m. to 4:30 p.m.

Location: Hilton Washington DC North/Gaithersburg, Ballroom Salons A, B, C, and D, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Janet L. Scudiero, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1184, ext. 176, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512521. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote on a premarket approval application for an interspinous process distraction system intended for treatment of patients aged 50 or older suffering from neurogenic intermittent claudication secondary to mild or moderate lumbar spinal stenosis who have undergone a regimen of non-operative treatment. Background information for the topics, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at *http://www.fda.gov/cdrh/panelmtg.html*.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by August 17, 2004. Oral presentations from the public will be scheduled for approximately 30 minutes at the beginning of committee deliberations and for approximately 30 minutes near the end of the deliberations. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before August 17, 2004, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Shirley Meeks at 301–594–1283, ext.105, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 22, 2004.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 04–17446 Filed 7–30–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–04–4004]

Memorandum of Understanding Between the Food and Drug Administration and the Harvard-Massachusetts Institute of Technology Division of Health Sciences and Technology

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between the Food and Drug Administration and the Harvard-Massachusetts Institute of Technology Division of Health Sciences and Technology, to establish the framework for a collaborative partnership on mutually agreed activities in the areas of scientific research and education.

DATES: The agreement became effective March 29, 2004.

FOR FURTHER INFORMATION CONTACT: Mary I. Poos, Office of External Relations (HF–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2825.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOU's between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: July 21, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–17513 Filed 7–30–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–04–4003]

Memorandum of Understanding Between the Food and Drug Administration and the University of California, Lawrence Livermore National Laboratory

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA and the University of California (UC), Lawrence Livermore National Laboratory to establish the framework for collaborative research and development and emergency triage response efforts. FDA and UC Lawrence Livermore National Laboratory will work collaboratively to expedite development of methods and technologies that are needed to address Homeland Security issues.

DATES: The agreement became effective February 23, 2004.

FOR FURTHER INFORMATION CONTACT: Karen A. Wolnik, Forensic Chemistry Center (HFR–CE502), Food and Drug Administration, 6751 Steger Dr., Cincinnati, OH 45237, 513–679–2700 ext. 181.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: July 21, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

225-04-4003

Memorandum of Understanding
Between
University of California
Lawrence Livermore National Laboratory
and
United States Food and Drug Administration
Office of Regulatory Affairs
for
Collaborative Research and Development
for
Homeland Security

I. Purpose, Objectives and Goals:

a. **Purpose.** This Memorandum of Understanding (MOU) establishes the framework for collaborative research and development and emergency triage response efforts between the University of California Lawrence Livermore National Laboratory (UC LLNL) and its Laboratories and Centers and the Food and Drug Administration (FDA) Office of Regulatory Affairs and its Laboratories on the subject of Homeland Security. Research and development efforts specifically targeted under this MOU are focused on, but not limited to, food safety and rapid risk assessment. The MOU is intended to expedite research and development of new methods and technologies that can be implemented in support of Homeland Security efforts by federal, state or local government entities as well as authorized private sector organizations to avert and/or mitigate the effects of terrorist activities in the United States.

Both UC LLNL and FDA believe that this collaboration will contribute to more efficient resource utilization, avert or minimize duplication, and accelerate method and technology advancement in the Homeland Security arena. The two organizations further believe that successful collaboration will leverage beneficial results via method and technology transfer in support of human health, while ensuring a safe food supply for the United States of America.

b. **Objectives.** FDA and UC LLNL will work collaboratively to expedite development of methods and technologies that are needed to address Homeland Security issues.

c. **Goals.**

i. Identify method and technology needs, formulate research and development projects that address food security needs, and

establish Interagency Agreements (IAGs) or other extramural arrangements that describe how personnel and resources of FDA and UC LLNL will be effectively utilized to perform research and development projects addressing Homeland Security issues such as early detection of impending terrorist attacks or the aftermath of terrorist attacks.

ii. Perform collaborative research and development projects in an expeditious manner.

iii. Provide products from the research and development projects in a form and format that can be easily used and understood by the targeted public and private sector organizations involved in Homeland Security activities.

II. Background and Program Scope:

a. **Background.** Terrorist attacks against the United States and the consequent war on terrorism being waged by the U.S., its allies and many countries around the world have provided great impetus for the development of methods and technologies that can be utilized to detect and/or neutralize terrorist threats. One of the greatest concerns facing the United States and other nations is the deliberate use of chemical, biological, nuclear or radiological weapons by terrorist organizations. Following the tragic events of September 11, 2001, the U.S. Food and Drug Administration, the University of California Lawrence Livermore National Laboratory, and other federal agencies, as well as universities and emergency response organizations in the public and private sector, began addressing the need for new methods and technologies related to Homeland Security.

b. **Program Scope.** Under this MOU the two organizations – UC LLNL and FDA – will meet on an annual basis to identify areas of research and development, and emergency related to Homeland Security that can be efficiently addressed through a collaborative approach.

III. Responsibilities:

a. **The Food and Drug Administration,** consistent with agency regulations governing the release of information, agrees to:

i. Work with UC LLNL to: (1) identify research and development needs in the area of Homeland Security; (2) develop, formulate and establish IAGs [this MOU will be incorporated by reference in each

related IAG] between specific UC LLNL Laboratories and Centers and one or more FDA Laboratories; and (3) describe specific research and development projects that will be jointly pursued by FDA and UC LLNL.

ii. Participate in joint technical activities (e.g., workgroups, or scientific panels) with representatives from UC LLNL, and other organizations which may be established to provide technical advice and guidance on issues related to Homeland Security.

iii. Enter into IAGs that address research and development needs, under which FDA personnel from one or more FDA Laboratories will work cooperatively on projects of mutual interest and formulated as described above with UC LLNL as time (the Food and Drug Administration has priority) and resources permit.

iv. In special cases and subject to approval by the Director of the appropriate FDA Laboratory, work with UC LLNL to address the research and development needs of a third party (either public or private).

v. Assign a Management Point of Contact and Technical Lead(s) for interactions with the UC LLNL.

vi. Provide, in cooperation with UC LLNL's Management Point of Contact, an annual executive summary report on the progress made under this MOU for each of the IAG's or other cooperative activities that are developed as part of this agreement (MOU).

vii. Record, produce and maintain minutes of meetings as described in this MOU.

b. **The University of California Lawrence Livermore National Laboratory,** consistent with agency regulations governing the release of information agrees to:

i. Work with FDA to: (1) identify research and development needs in the area of Homeland Security; (2) develop, formulate and establish IAG's [this MOU will be incorporated by reference in each related IAG] between one or more FDA Laboratories and UC LLNL Laboratories and Centers; and (3) describe specific research and development projects that will be jointly pursued by UC LLNL and FDA.

ii. Participate in joint technical activities associated with specific IAG's (e.g., workgroups, or scientific panels) with representatives from FDA and other organizations which may be established to provide technical advice and guidance on issues related to Homeland Security.

iii. Enter into IAGs that address research and development needs, under which UC LLNL personnel will work cooperatively on projects of mutual interest and formulated as described above with FDA as time (the UC LLNL mission has priority) and resources permit.

iv. In special cases and subject to approval by the Director of the appropriate UC LLNL Laboratory or Center, work with FDA to address the research and development needs of a third party (either public or private).

v. Cooperate in making facilities available in cases where emergency response activities are required.

vi. Assign a Management Point of Contact and Technical Lead(s) for interactions with the FDA.

IV. Memorandum of Understanding (MOU) Administration:

a. **Reports.** The status of work performed (associated with specific IAG's) under this MOU will be reviewed on an annual basis. The FDA Coordinator of Counter Terrorism Laboratory Response Development/Office of Regulatory Affairs, will take the lead and be responsible for organizing meetings (planning meetings and annual meetings), developing agenda and recording results of the meetings. Minutes of the meetings will be produced by FDA and be distributed to meeting participants as well as to the Director of the appropriate FDA Laboratory and in turn the Commissioner, FDA and to the UC LLNL. A central file (retained by the FDA) will be maintained.

b. **Information Releases:** The Associate Commissioner for Regulatory Affairs, FDA, and UC LLNL (or their designees) will jointly review and approve information regarding MOU activities (meetings, new developments, etc.) prior to public release. IAGs prepared under this agreement will stipulate specific procedures for the coordination, handling and public disclosure of information. All information disclosures concerning activities under this MOU or subsequent IAGs will comply with agency regulations governing the release of information. Where particular

information protocols apply to a particular laboratory, or network of laboratories, those protocols will be followed by both parties to this MOU.

c. **Security Classification:** The highest security classification applied by either FDA or UC LLNL will govern the handling of information and reports under this MOU, as appropriate. The security classification and procedures will be stipulated in each IAG.

d. **Facility Security, Health, Safety and Environmental Compliance:** When working at a host's facility, the guest employee will follow the security, health, safety and environmental policies and regulations of that facility.

e. **Reimbursement Policy:** Each party to this agreement will handle and expend its own funds. The responsibilities assumed by each party are contingent upon funds being available from which expenditures legally may be met.

f. **Annual Management Meetings:** UC LLNL and FDA will meet yearly to plan and coordinate research and development activities, and emergency response triage activities under this MOU. Such meetings will be held at a mutually agreed upon location and on a date that is compatible with the planning and budgeting cycle of each organization. At this meeting, recommendations for adjustments to current activities, projects, and budget priorities will be proposed and agreed upon by the Management Points of Contact for submission to the appropriate UC LLNL and FDA administrators for further action.

g. **Semi-Annual Technical Discussion:** UC LLNL and FDA will meet twice a year to discuss technical progress under each IAG or activity. These reviews will require technical information exchange by UC LLNL and FDA Technical Leads. These meetings may include individuals from outside of UC LLNL and FDA as mutually agreed to by the respective Management Points of Contact.

h. **Technical Lead Responsibilities:** Technical Leads for each IAG or activity will strive to engage in:

- Providing technical information exchange consistent with agency regulations governing the exchange or release of information
- Delivering written or verbal technical evaluations of progress
- Conducting visit to sites where research is underway
- Organizing and Participating in technical workshops and scientist-to-scientist meetings

- Reporting on any exceptional accomplishments from, or impediments to, successful program or project execution
- Recommending improvements for the MOU activities

i. **Approvals:** All IAGs and activities conducted to carry out this MOU must be agreed to and approved by the UC LLNL and FDA prior to commencement of any technical work.

j. **Inventions and Licensing:** Activities conducted to carry out this MOU and any IAGs or other extramural arrangements may result in products or processes that are patentable or otherwise proprietary. The organization whose work results in the invention shall disclose the invention to the other organization and may then prepare, file, and prosecute patent applications. If protection is granted, the inventing organization will manage the invention in accordance with its rules and regulations subject to a government use license. Inventions resulting from joint research and development by both UC LLNL and FDA employees shall be handled as jointly agreed to at the time of the disclosure.

V. Period of Agreement:

a. This MOU shall be effective for five years from the date of the last signature unless canceled in writing by (either/any) of the participating organizations with 90 days notice.

b. This MOU will be reviewed annually by the Management Points of Contact to determine if any changes or amendments should be incorporated. Such changes or amendments will be formally incorporated in the MOU by mutual agreement.

VI. Names and Addresses of Parties:

University of California
Lawrence Livermore National Laboratory
7000 East Avenue
Livermore, CA 94550

Food and Drug Administration
5600 Fishers Lane
Rockville, Maryland 20857

VII. General Provisions:

a. Nothing in this MOU supersedes any other memorandum of understanding held by either party.

b. This MOU in no way restricts the parties from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.

c. This MOU describes in general terms, the basis upon which the parties intent to cooperate. It does not create binding, enforceable obligations against any party.

VIII. Signatures:

Approved and Accepted for the Food and Drug Administration by

John M. Taylor
Associated Commissioner for Regulatory Affairs
U.S. Food & Drug Administration

4/14/04
Date

Approved and Accepted for the University of California
Lawrence Livermore National Laboratory by:

Harold C Graboske Jr.

Dr. Harold Graboske, Jr
Deputy Director, Science and Technology
Lawrence Livermore National Laboratory

23 Feb 04
Date

[FR Doc. 04–17511 Filed 7–30–04; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Establishment of Prescription Drug User Fee Rates for Fiscal Year 2005

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rates for prescription drug user fees for fiscal year (FY) 2005. The Federal Food, Drug, and Cosmetic Act (the Act), as amended by the Prescription Drug User Fee Amendments of 2002 (PDUFA III), authorizes FDA to collect user fees for certain applications for approval of drug and biological products, on establishments where the products are made, and on such products. Base revenue amounts for application fees, establishment fees, and product fees for FY 2005 were established by PDUFA III. Fees for applications, establishments, and products are to be established each year by FDA so that revenues from each category will approximate the levels established in the statute, after those amounts have been first adjusted for inflation and workload. This notice establishes fee rates for FY 2005 for application fees ($672,000 for an application requiring clinical data, and $336,000 for an application not requiring clinical data or a supplement requiring clinical data), establishment fees ($262,200), and product fees ($41,710). These fees are effective on October 1, 2004, and will remain in effect through September 30, 2005. For applications and supplements that are submitted on or after October 1, 2004, the new fee schedule must be used. Invoices for establishment and product fees for FY 2005 will be issued in August 2004, using the new fee schedule.

FOR FURTHER INFORMATION CONTACT: Frank Claunts, Office of Management (HFA–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4427.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 735 and 736 of the act (21 U.S.C. 379g and h), establish three different kinds of user fees. Fees are assessed on: (1) Certain types of applications and supplements for approval of drug and biological products, (2) certain establishments where such products are made, and (3) certain products (21 U.S.C. 379h(a)). When certain conditions are met, FDA may waive or reduce fees (21 U.S.C. 379h(d)).

For FY 2003 through 2007 base revenue amounts for application fees, establishment fees, and product fees are established by PDUFA III (title 5 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002). Base revenue amounts established for years after FY 2003 are subject to adjustment for inflation and workload. Fees for applications, establishments, and products are to be established each year by FDA so that revenues from each category will approximate the levels established in the statute, after those amounts have been first adjusted for inflation and workload. The revenue levels established by PDUFA III continue the arrangement under which one-third of the total user fee revenue is projected to come from each of the three types of fees: Application fees, establishment fees, and product fees.

This notice establishes fee rates for FY 2005 for application, establishment, and product fees. These fees are effective on October 1, 2004, and will remain in effect through September 30, 2005.

II. Revenue Amount for FY 2005, and Adjustments for Inflation and Workload

A. Statutory Fee Revenue Amounts

PDUFA III specifies that the fee revenue amount for fiscal year 2005 for each category of fees (application, product, and establishment) is $84,000,000, for a total of $252,000,000 from all three categories of fees (21 U.S.C. 379h(b), before any adjustments are made.

B. Inflation Adjustment to Fee Revenue Amount

PDUFA III provides that fee revenue amounts for each fiscal year after 2003 shall be adjusted for inflation. The adjustment must reflect the greater of: (1) The total percentage change that occurred in the consumer price index (CPI) (all items; U.S. city average) during the 12-month period ending June 30 preceding the fiscal year for which fees are being set, or (2) the total percentage pay change for the previous fiscal year for Federal employees stationed in the Washington, DC, metropolitan area. PDUFA III provides for this annual adjustment to be cumulative and compounded annually after FY 2003 (see 21 U.S.C. 379h(c)(1)).

The inflation increase for FY 2004 was 4.27 percent. This was the greater of the CPI increase during the 12-month period ending June 30 preceding the fiscal year for which fees are being set (June 30, 2003—which was 2.11 percent) or the increase in pay for the previous fiscal year (2003 in this case) for Federal employees stationed in the Washington, DC, metropolitan area (4.27 percent).

The inflation increase for FY 2005 is 4.42 percent. This is the greater of the CPI increase during the 12-month period ending June 30 preceding the fiscal year for which fees are being set (June 30, 2004—which was 3.27 percent) or the increase in pay for the previous fiscal year (2004 in this case) for Federal employees stationed in the Washington, DC, metropolitan area (4.42 percent).

Compounding these amounts (1.0427 times 1.0442) yields a total compounded inflation adjustment of 8.88 percent for FY 2005.

The inflation adjustment for each category of fees for FY 2005 is the statutory fee amount ($84,000,000) increased by 8.88 percent, the inflation adjuster for FY 2005. The FY 2005 inflation-adjusted revenue amount is $91,459,200 for each category of fee, for a total inflation-adjusted fee revenue amount of $274,377,600 in FY 2005.

C. Workload Adjustment to Inflation Adjusted Fee Revenue Amount

For each fiscal year beginning in FY 2004, PDUFA III provides that fee revenue amounts, after they have been adjusted for inflation, shall be further adjusted to reflect changes in workload for the process for the review of human drug applications (see 21 U.S.C. 379h(c)(2)).

The conference report accompanying PDUFA III, House of Representatives report number 107–481, provides additional instructions on how the workload adjustment provision of PDUFA III is to be implemented. Following that guidance, FDA calculated the average number each of the four types of applications specified in the workload adjustment provision (human drug applications, commercial investigational new drug applications (INDs), efficacy supplements, and manufacturing supplements) received over the 5-year period that ended on June 30, 2002 (base years), and the average number of each of these types of applications over the most recent 5-year period that ended June 30, 2004.

The results of these calculations are presented in the first 2 columns of table 1 of this document. Table 1, column 3 of this document, reflects the percent

change in workload over the two 5-year periods and column 4 shows the weighting factor for each type of application, reflecting how much of the total FDA drug review workload was accounted for by each type of application in the table during the most recent 5 years. This weighting factor was developed by averaging data generated in a 2002 KPMG study of FDA's drug review workload and data from FDA's time reporting systems to submission data for the most recent 5-year period. Column 5 of table 1 of this document, is the weighted percent change in each category of workload, and was derived by multiplying the weighting factor in each line in column 4 by the percent change from the base years in column 3. At the bottom right of table 1 of this document, the sum of the values in column 5 is added, reflecting a total change in workload of 1.47 percent for FY 2005.

TABLE 1.—WORKLOAD ADJUSTER CALCULATION

Application Type	Summary of Workload Adjustment Calculations				
	Column 1 5-year Average Base Years	Column 2 Latest 5-year Average	Column 3 Percent Change	Column 4 Weighting Factor	Column 5 Weighted % Change
New drug application/biological licence application	119.6	120.4	0.7%	42.5%	0.28%
Commercial INDs	629.8	626.6	-0.5%	41.7%	-0.21%
Efficacy supplements	159.2	166.8	4.8%	5.9%	0.28%
Manufacturing supplements	2100.6	2336.8	11.2%	9.9%	1.12%
FY 2005 workload adjuster					1.47%

Increasing the inflation-adjusted revenue amount of $91,459,200 for each category of fee by the FY 2005 workload adjuster (1.47 percent) results in an increase of $1,344,450, for a total inflation and workload adjusted revenue amount for each fee category of $92,803,650. The total FY 2005 inflation and workload adjusted fee revenue target for all three fee categories combined is $278,410,950.

III. Application Fee Calculations

PDUFA III provides that the rates for application, product, and establishment fees be established 60 days before the beginning of each fiscal year (21 U.S.C. 379h(c)(4)). The fees are to be established so that they will generate the fee revenue amounts specified in the statute, as adjusted for inflation and workload.

A. Application Fee Revenues and Application Fees

The application fee revenue amount that PDUFA III established for FY 2005 is $92,803,650, as calculated in the previous section. Application fees will be set to generate this amount.

B. Estimate of Number of Fee-Paying Applications and Establishment of Application Fees

For FY 2003 through 2007, FDA will estimate the total number of fee-paying full application equivalents (FAEs) it expects to receive the next fiscal year by averaging the number of fee-paying FAEs received in the 5 most recent fiscal years. This use of the rolling average of the 5 most recent fiscal years is the same method that was applied in making the workload adjustment.

In estimating the number of fee-paying FAEs that FDA will receive in FY 2005, the 5-year rolling average for the most recent 5 years will be based on actual counts of fee-paying FAEs received for FYs 2000 through 2004. For FY 2004, FDA is estimating the number of fee-paying FAEs for the full year based on the actual count for the first 9 months and estimating the number for the final 3 months.

Table 2, column 1 of this document, shows the total number of each type of FAE received in the first 9 months of FY 2004, whether fees were paid or not. Table 2, column 2 of this document shows the number of FAEs for which fees were waived or exempted during this period, and column 3 shows the number of fee-paying FAEs received through June 30, 2004. Column 4 estimates the 12-month total fee-paying FAEs for FY 2004 based on the applications received through June 30, 2004. All of the counts are in FAEs. A full application requiring clinical data counts as one FAE. An application not requiring clinical data counts one-half an FAE, as does a supplement requiring clinical data. An application that is withdrawn or refused for filing counts as one-fourth of an FAE if it initially paid a full application fee, or one-eighth of an FAE if it initially paid one-half of the full application fee amount.

TABLE 2.—FY 2004 FAES RECEIVED THROUGH JUNE 30, 2004, AND PROJECTED THROUGH SEPTEMBER 30, 2004

Application or Action	Column 1 Total Received Through June 30, 2004	Column 2 Fee Exempt or Waived Through June 30, 2004	Column 3 Total Fee Paying Through June 30, 2004	Column 4 12 Month Projection
Applications requiring clinical data	78.0	24.0	54.0	72.0
Applications not requiring clinical data	11.5	4.0	7.5	10.0
Supplements requiring clinical data	53.5	5.0	48.5	64.7

TABLE 2.—FY 2004 FAEs RECEIVED THROUGH JUNE 30, 2004, AND PROJECTED THROUGH SEPTEMBER 30, 2004—Continued

Application or Action	Column 1 Total Received Through June 30, 2004	Column 2 Fee Exempt or Waived Through June 30, 2004	Column 3 Total Fee Paying Through June 30, 2004	Column 4 12 Month Projection
Withdrawn or refused to file	0.25	0.0	0.25	0.3
Total	143.25	33.0	110.25	147.0

In the first 9 months of FY 2004 FDA received 143.25 FAEs, of which 110.25 were fee-paying. Based on data from the last seven FYs, on average, 25 percent of the applications submitted each year come in the final 3 months. Dividing 110.25 by 3 and multiplying by 4 extrapolates the amount to the full 12 months of the fiscal year and projects the number of fee-paying FAEs in FY 2004 at 147.

All pediatric supplements, which had been exempt from fees prior to January 4, 2002, were required to pay fees effective January 4, 2002. This is the result of section 5 of the Best Pharmaceuticals for Children Act that repealed the fee exemption for pediatric supplements effective January 4, 2002. Thus, in estimating FY 2004 fee-paying receipts, we must add all the pediatric supplements that were previously exempt from fees prior to January 4, 2002. The exempted number of FAEs for pediatric supplements for FY 2000, FY 2001, and FY 2002, respectively, were 12.5, 19, and 4.5. Since fees on these supplements are paid for pediatric applications submitted in FY 2004 and beyond, the number of pediatric supplement FAEs exempted from fees each year from FY 2000 through 2002 (the years in table 3 of this document when fees were exempted) are added to the total of fee-paying FAEs received each year.

As table 3 of this document shows, the average number of fee-paying FAEs received annually in the most recent 5-year period, assuming all pediatric supplements had paid fees, and including our estimate for FY 2004, is 138.1 FAEs. FDA will set fees for FY 2005 based on this estimate as the number of FAEs that will pay fees.

TABLE 3.—FEE-PAYING FAE—5-YEAR AVERAGE

Year	2000	2001	2002	2003	2004	5-year Average
Fee-paying FAEs	153.0	107.6	127.6	119.5	147.0	130.9
Exempt pediatric supplement FAEs	12.5	19.0	4.5	0.0	0.0	7.2
Total	165.9	126.6	132.1	119.5	147.0	138.1

The FY 2005 application fee is estimated by dividing the average number of full applications that paid fees over the latest 5 years, 138.1, into the fee revenue amount to be derived from application fees in FY 2005, $92,803,650. The result, rounded to the nearest one hundred dollars, is a fee of $672,000 per full application requiring clinical data, and $336,000 per application not requiring clinical data or per supplement requiring clinical data.

IV. Adjustment for Excess Collections in Previous Years

Under the provisions of PDUFA, as amended, if the agency collects more fees than were provided for in appropriations in any year after 1997, FDA is required to reduce its anticipated fee collections in a subsequent year by that amount (21 U.S.C. 379h(g)(4)). In FY 1998, Congress appropriated a total of $117,122,000 to FDA in PDUFA fee revenue. To date, collections for FY 1998 total $117,737,470—a total of $615,470 in excess of the appropriation limit. This is the only fiscal year since 1997 in which FDA has collected more in PDUFA fees than Congress appropriated.

FDA also has some requests for waivers or reductions of FY 1998 fees that have been decided but that are pending appeals. For this reason, FDA is not reducing its FY 2005 fees to offset excess collections at this time. An offset will be considered in a future year, if FDA still has collections in excess of appropriations for FY 1998 after the pending appeals for FY 1998 waivers and reductions have been resolved.

V. Fee Calculations for Establishment and Product Fees

A. Establishment Fees

At the beginning of FY 2004, the establishment fee was based on an estimate that 354 establishments would be subject to and would pay fees. By the end of FY 2004, FDA estimates that 379 establishments will have been billed for establishment fees, before all decisions on requests for waivers or reductions are made. FDA again estimates that a total of 25 establishment fee waivers or reductions will be made for FY 2004, for a net of 354 fee-paying establishments. FDA will use this same number again, 354, for its FY 2005 estimate of establishments paying fees, after taking waivers and reductions into account. The fee per establishment is determined by dividing the adjusted total fee revenue to be derived from establishments ($92,803,650) by the estimated 354 establishments, for an establishment fee rate for FY 2005 of $262,200 (rounded to the nearest one hundred dollars).

B. Product Fees

At the beginning of FY 2004, the product fee was based on an estimate that 2,225 products would be subject to and pay product fees. By the end of FY 2004, FDA estimates that 2,260 products will have been billed for product fees, before all decisions on requests for waivers or reductions are made. Assuming that there will be about 35

waivers and reductions granted, FDA estimates that 2,225 products will qualify for product fees in FY 2004, after allowing for waivers and reductions, and will use this number for its FY 2005 estimate. Accordingly, the FY 2005 product fee rate is determined by dividing the adjusted total fee revenue to be derived from product fees ($92,803,650) by the estimated 2,225 products for a FY 2005 product fee of $41,710 (rounded to the nearest ten dollars).

VI. Fee Schedule for FY 2005

The fee rates for FY 2005 are set out in table 4 of this document:

TABLE 4.

Fee Category	Fee Rates for FY 2005
Applications	
Requiring clinical data	$672,000
Not requiring clinical data	$336,000
Supplements requiring clinical data	$336,000
Establishments	$262,200
Products	$41,710

VII. Implementation of Adjusted Fee Schedule

A. Application Fees .

The appropriate application fee established in the new fee schedule must be paid for any application or supplement subject to fees under PDUFA that is received after September 30, 2004. Payment must be made in U.S. currency by check, bank draft, or U.S. postal money order payable to the Food and Drug Administration. Please include the user fee identification (ID) number on your check. Your payment can be mailed to: Food and Drug Administration, P.O. Box 360909, Pittsburgh, PA 15251–6909

If checks are to be sent by a courier that requests a street address, the courier can deliver the checks to: Food and Drug Administration (360909), Mellon Client Service Center, rm. 670, 500 Ross St., Pittsburgh, PA 15262–0001. (Note: This Mellon Bank address is for courier delivery only.)

Please make sure that the FDA post office box number (P.O. Box 360909) is written on the check. The tax ID number of the FDA is 530 19 6965.

B. Establishment and Product Fees

By August 31, 2004, FDA will issue invoices for establishment and product fees for FY 2005 under the new fee schedule. Payment will be due on October 1, 2004. FDA will issue invoices in October 2005 for any products and establishments subject to fees for FY 2005 that qualify for fees after the August 2004 billing.

Dated: July 27, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–17442 Filed 7–30–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Mouse Model of PRKAR1A Down-Regulation

Constantine Stratakis *et al.* (NICHD); DHHS Reference No. E–266–2004/0—Research Tool; Licensing Contact: Mojdeh Bahar; 301/435–2950; *baharm@mail.nih.gov.*

The invention represents the first animal model of cyclic AMP (cAMP)-induced tumorigenesis, and the first animal model of protein kinase A (PKA)-related tumorigenesis. The cAMP/PKA system is of seminal importance for cellular function and signaling, and is involved in many systems and diseases. This discovery is expected to facilitate the development of drugs useful in treating endocrine and other tumors.

Compositions and Methods for Diagnosis and Treatment of Chemotherapy-Resistant Neoplastic Disease

John Park (NINDS); U.S. Provisional Application No. 60/571,296 filed 15 May 2004 (DHHS Reference No. E–192–2004/0–US–01); Licensing Contact: Jesse S. Kindra; 301/435–5559; *kindraj@mail.nih.gov.*

The present invention relates to compositions and methods for the treatment of a neoplastic disease state (*i.e.,* tumors) using RNA interference-mediated down regulation of stathmin expression. This invention also discloses methods for determining the presence or predisposition to a neoplastic disease state.

Stathmin is a cytoplasmic protein that is highly expressed in many different types of tumors such as leukemias, lung cancers and brain tumors. Stathmin is believed to be involved in the regulation of the cell cycle via its interactions with microtubules. Lowering the expression of stathmin in tumor cells using RNA interference (RNAi) technology causes a decrease in tumor cell growth and also causes such cells to become more sensitive to the effects of standard chemotherapeutic agents.

Accordingly, the delivery of stathmin RNAi oligonucleotides either alone or in combination with standard chemotherapies may be used to treat patients with various tumors. For example, retroviruses or adeno-associated viruses containing stathmin RNAi oligonucleotides could be delivered to brain tumors in order to

decrease cell growth and increase sensitivity to standard chemotherapies.

Compositions of Matter and Methods of Use of Fluorescent Protein Kinases

Derek Braun and Peter Blumberg (NCI); U.S. Provisional Application filed 19 May 2004 (DHHS Reference No. E–093–2004/0–US–01); Licensing Contact: Mojdeh Bahar; 301/435–2950; *baharm@mail.nih.gov*.

The invention describes the development of fusion proteins, as well as polynucleotides encoding such fusion proteins, between protein kinase C (PKC) isoforms and variants of green fluorescent protein for the purpose of detecting protein kinase C activation within intact cells via fluorescence resonance energy transfer (FRET). Repeatable dose-dependent change of FRET with a number of PKC ligands, including phorbol esters and bryostatin, have been demonstrated. The invention is useful as a drug discovery tool for evaluating therapeutics that target PKCs.

Methods for the Identification and Use of Compounds Suitable for the Treatment of Drug Resistant Cells

Gergely Szakacs *et al.* (NCI); DHHS Reference No. E–075–2004/0–US–01 filed 18 June 2004; Licensing Contact: Jesse S. Kindra; 301–435–5559; *kindraj@mail.nih.gov*.

There is an important need to overcome cancer multiple drug resistance (MDR). ATP-binding cassette (ABC) transporters are a family of transporter proteins that contribute to drug resistance via ATP-dependent drug efflux pumps. Accordingly, based on the expression profile of 48 ABC transporters in sixty (60) cell lines, the present invention provides a method to identify (1) drugs that retain action in cells expressing MDR proteins, (2) compounds that reduce MDR by interfering with the efflux pumps. In addition, the invention describes a method to identify compounds whose antiproliferative effect is potentiated by the ABCB1/MDR1 transporter. These compounds might avoid the well-documented side-effects observed in clinical trials of "classical" MDR1 inhibitors and may serve as leads for development of novel anti-cancer agents to treat resistant disease.

Methods and Devices for Molecular Diagnosis and Prognosis of Lymphoid Malignancies

Louis M. Staudt *et al.* (NCI); U.S. Provisional Application No. 60/506,377 filed 03 Sep. 2003 (DHHS Reference No. E–234–2003/0–US–01); Licensing Contact: Jeffrey Walenta; 301/435–4633; *walentaj@mail.nih.gov*.

Human lymphomas and leukemias are a diverse set of cancers. Many of these cancers, while expressing a similar phenotype between different individuals, have a diverse underlying genetic basis for the disease. This diverse genetic basis has implications on the effective treatment of the various phenotypes of lymphoma. For example, a drug that was effective against one individual's phenotype of lymphoma will not be effective against a similar lymphoma in another individual. An invention that helps clinicians classify a lymphoproliferative disorder would provide the basis for a "pharmacogenomic" method for treating such cancers.

The patent application listed in this abstract describes the preliminary results of an ongoing effort to establish a molecular basis for classifying all lymphoproliferative disorders. Gene expression profiles, using a gene set of over 27,000 genes, have been established from a large population of lymphoproliferative tumor samples collected from patients at numerous healthcare institutions worldwide. Clinical outcomes were correlated to the gene expression profile data representing a plurality of lymphoid malignancy subtypes of previously known or unknown lymphoproliferative disorders. Finally, an analysis procedure was developed to predict the clinical outcomes based on a patients specific lymphoid tumor gene expression profile.

This patent application describes a method to predict the survival of patient with a lymphoproliferative disorder.

Dated: July 23, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–17466 Filed 7–30–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

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Griffithsin, Glycosylation-Resistant Griffithsin, and Related Conjugates, Compositions, Nucleic Acids, Vectors, Host Cells, Methods of Production and Methods of Using

Drs. Barry O'Keefe, Michael Boyd, and Toshiyuki Mori (NCI); U.S. Provisional Application No. 60/576,056 filed 01 Jun 2004 (DHHS Reference No. E–106–2003/0–US–01); Licensing Contact: Sally Hu; 301/435–5606; *hus@mail.nih.gov*.

This invention provides: (1) Isolated and purified antiviral peptides or antiviral proteins named griffithsin; (2) purified nucleic acid encoding griffithsin or a fragment thereof; (3) vectors comprising such a nucleic acid; a host cell comprising such a nucleic acid or vector; (4) a conjugate comprising all or part (such as an antiviral part) of the griffithsin; (5) antibodies that bind griffithsin; (6) methods of producing griffithsin and a conjugate thereof; (7) methods of inhibiting prophylactically and therapeutically a viral infection *e.g.*, HIV, influenza; and, (8) vaccine development and screening assays. Since picomolar concentrations of griffithsin irreversibly inactivate human clinical isolates of HIV and the griffithsin protein can also target other retroviruses (*e.g.* FIV, SIV and HTLV) and non-retroviruses (influenza, measles, ebola) having envelope constituents similar to HIV, this invention may represent potential new therapeutic or prophylactic applications against viruses, including the causative agent for AIDS.

Activation of Nerve Growth Factor Receptor Trophic Functions

Lino Tessarollo *et al.* (NCI); U.S. Provisional Application No. 60/509,158 filed 07 Oct 2003 (DHHS Reference No. E–013–2003/0–US–01); Licensing Contact: Norbert Pontzer; 301/435–5502, *pontzern@mail.nih.gov*.

Neurotrophins, such as Nerve Growth Factor (NGF), are crucial to the maintenance and survival of neurons of the peripheral and central nervous system. Although these actions have potential therapeutic use in the treatment of a number of neurodegenerative diseases, problems with peripheral administration of these fairly large molecules limits their clinical usefulness. Survival signaling of neurotrophins is mediated mainly through binding to cell surface Trk tyrosine kinase receptors. The juxtamembrane region of the NGF TrkA receptor binds two key adapter proteins, Shc and FRS–2/SNT, which become tyrosine phosphorylated and provide a scaffold for other signaling proteins. The binding of FRS–2/SNT to TrkA is also affected by a neighboring three amino acid KFG domain conserved in all Trk receptors. These inventors found that deletion of the three KFG amino acids affects binding and activation of the adaptor proteins FRS–2/SNT and Shc. This effect increases the general ability to activate downstream TrkA activated signaling pathways in response to NGF. This molecular phenotype leads biologically to a trophic effect on the cholinergic neurons of the basal forebrain and of the striatum in vivo. This invention provides a target for selecting small drugs that mimic the effect of KFG domain deletion and thus promote trophic effects in degenerative diseases.

Compositions and Methods for Diagnostics and Therapeutics for Hydrocephalus

Perry J. Blackshear, Darryl C. Zeldin, Joan P. Graves, Deborah J. Stumpo (NIEHS); U.S. Provisional Patent Application No. 60/374,184 filed 19 Apr 2002 (DHHS Reference No. E–163–2002/0–US–01); U.S. Provisional Patent Application No. 60/388,266 filed 13 Jun 2002 (DHHS Reference No. E–163–2002/1–US–01); PCT Application No. PCT/US03/12348 filed 18 Apr 2003, which published as WO 03/088919 on 30 Oct 2003 (DHHS Reference No. E–163–2002/2–PCT–01); Licensing Contact: Pradeep Ghosh; 301/435–5282; *ghoshpr@mail.nih.gov.*

Congenital hydrocephalus is a public health problem and a significant population suffers from this birth defect in the United States. It has been estimated that a significant number of patients with congenital hydrocephalus also suffer from aqueductal stenosis. Congenital hydrocephalus has an adverse effect on developing brain and may persist as neurological defects in children and adults. Some of these defects may manifest in form of mental retardation, cerebral palsy, epilepsy and visual disabilities. The cost of treatment for such disorders may exceed $100 million annually. Efficient diagnostics to determine the risks of development of hydrocephalus are lacking in the market.

This invention relates to RFX4_v3 proteins and nucleic acids encoding the RFX4_v3 proteins. RFX4_v3 proteins are associated with congenital hydrocephalus. Congenital hydrocephalus is a common birth defect and many cases of hydrocephalus are caused by chromosome X-linked genetic mutations. The present invention provides assays for the detection of RFX4_v3 polymorphisms associated with congenital hydrocephalus that may lead to the determination of an individual's risk of developing disease states and conditions. Therefore, the present invention would be most useful in developing diagnostic tests for abnormalities that may lead to the development of hydrocephalus and thus, has a market potential of substantial significance.

Dated: July 23, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–17467 Filed 7–30–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

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Monoclonal Antibody (MP804) That Specifically Binds Stem Cells and Its Use

Neal D. Epstein (NHLBI); U.S. Provisional Application No. 60/565,101 filed 23 Apr 2004 (DHHS Reference No. E–014–2004/0–US–01); Licensing Contact: Fatima Sayyid; (301) 435–4521; *sayyidf@mail.nih.gov.*

Adult stem cells hold great promise for human disorders that are currently incurable including spinal-cord injury and brain diseases. Although it has been shown that adult stem cells can produce many different tissue types in the body, from blood to muscle to nerve leading hope to their use for repairing or replacing diseased or damaged organs, their use is limited due to lack of reagents for isolation of adult stem cells from tissues. This invention is drawn to antibodies that can detect a subpopulation of primitive stem cells in adult murine skeletal muscle. This subset of cells can be used to repair a variety of neurological disorders, to produce primary and immortalized cell lines for physiologic and pharmaceutical research, and for genomic and proteomic studies focused on the process of neural cell differentiation.

Modulating P38 Kinase Activity

Dr. Jonathan Ashwell (NCI); U.S. Provisional Application No. 60/541,993 filed 05 Feb 2004 (DHHS Reference No. E–010–2004/0–US–01); Licensing Contact: Marlene Shinn-Astor; (301) 435–4426; *shinnm@mail.nih.gov.*

Protein kinases are involved in various cellular responses to extracellular signals. The protein kinase termed p38 is also known as cytokine suppressive anti-inflammatory drug binding protein (CSBP) and RK. It is believed that p38 has a role in mediating cellular response to inflammatory stimuli, such as leukocyte accumulation, macrophage/monocyte activation, tissue resorption, fever, acute phase responses and neutrophilia. In addition, p38 has been implicated in cancer, thrombin-induced platelet aggregation, immunodeficiency disorders, autoimmune diseases, cell death, allergies, osteoporosis and neurodegenerative disorders.

The NIH announces a new technology that includes compositions and methods for controlling the activity of p38 specifically in T cells through an alternate activation pathway. By controlling p38 activity through

interference with this alternate pathway, the T cells themselves can be controlled which in turn can be a treatment for conditions or diseases characterized by T cell activation such as autoimmune diseases, transplant rejection, graft-versus-host disease, systemic lupus erythematosus, and viral infections such as HIV infections.

Human Neuronal Cells for Therapeutic Uses

Jong-Hoon Kim, Raja Kittappa, and Ronald D. McKay (NINDS); U.S. Provisional Application No. 60/495,346 filed 14 Aug 2003 (DHHS Reference No. E–056–2003/0–US–01); Licensing Contact: Norbert Pontzer; (301) 435–5502; *pontzern@mail.nih.gov*.

Embryonic stem (ES) cells from various animal models demonstrate pluripotency, the ability to generate the multiple cell types found in the adult body. ES cells can also proliferate indefinitely in an undifferentiated state *in vitro*. These properties may allow cells derived from ES cells to replace diseased or injured cells and tissue: While the local milieu may direct some naïve ES cells into the appropriate fate for that tissue, the formation of teratomas and other unwanted cell types remains an unsolved problem. Thus, the ability to direct the differentiation of embryonic stem (ES) cells into specific fates may be a necessary condition for their use in transplantation therapy for diseases such as Parkinson's.

Using mouse ES cells, this laboratory previously produced a highly enriched population of midbrain neuronal cells that, when transplanted into rat models of Parkinson's disease, improved motor function and demonstrated *in vivo* electrophysiological properties consistent with functioning dopamine neurons. Using a similar culturing strategy, but with conditions specifically modified for human ES cells, these inventors have now produced a highly enriched population of human neuronal cells that exhibit electrical activity and synaptic vesicle release. Another simplified method differentiates ES cells grown as a monolayer into neurons, without going through an embryoid body stage. This intellectual property provides methods for producing human neuronal cells in general and dopaminergic cells specifically, the cells themselves, and methods of treating diseases caused by neuronal degeneration.

Dated: July 21, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–17468 Filed 7–30–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Methods and Compositions for the Promotion of Hair Growth Utilizing Actin Binding Peptides

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR part 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in U.S. Patent Application Serial No. 60/351,386 (re-filed), PCT Patent Application Serial No. PCT/US03/01973, filed January 22, 2003 (DHHS Ref. E–053–2002/0–PCT–02), entitled "Methods and Compositions for the Promotion of Hair Growth Utilizing Actin Binding Peptides" to Panacea Biotec Ltd., which has offices in New Delhi, India. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory may be limited to India, Sri Lanka, Bangladesh, Pakistan, Nepal, Malaysia, Thailand, Indonesia, Singapore and the Philippines, and the field of use may be limited to the use of actin binding proteins for the development of a topical hydrogel treatment for alopecia to promote hair growth (This notice modifies a previous **Federal Register** notice published in 69 FR 13859, March 24, 2004).

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before October 1, 2004 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Jesse S. Kindra, J.D., M.S., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; telephone: (301) 435–5559; facsimile: (301) 402–0220; e-mail: *kindraj@mail.nih.gov*.

SUPPLEMENTARY INFORMATION: The technology describes methods and compositions for treating a subject (human or animal) suffering from hair loss. More specifically, the technology relates to the discovery that actin binding peptides promote hair growth. In one example, the technology describes the exogenous delivery of a seven amino acid peptide of Thymosin-β4 to promote hair growth.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: July 23, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–17465 Filed 7–30–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Public Affairs; Submission for Emergency Processing for Ready for Kids Mascot Naming Contest

AGENCY: Public Affairs, DHS.

ACTION: Notice; request for comments; correction.

SUMMARY: On July 26, 2004, the Department of Homeland Security (DHS) published a **Federal Register** notice advising the public that DHS would submit an information collection request to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995, for the Ready for Kids Mascot Naming Contest.

This notice corrects the July 26, 2004 notice. The Ready for Kids Mascot Naming Contest is not subject to

Paperwork Reduction Act (PRA) requirements.

FOR FURTHER INFORMATION CONTACT: Lara Shane at 202–282–8010 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: On July 26, 2004, DHS published a notice in the **Federal Register** stating that DHS would submit a new information collection request (ICR) to OMB pursuant to the PRA and estimating burden hours associated with that request.

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), a Federal agency must obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations. This information collection, does not meet the definition of "information collection" as defined under 5 CFR part 1320, and is therefore exempt from the requirements of the PRA. Accordingly, there is no requirement to obtain OMB approval for this information collection, as previously stated and reported in the federal notice published July 26, 2004.

The July 26, 2004 **Federal Register** notice published contained incorrect information regarding the frequency of information collection, estimated time per respondent, total burden hours, and the description for the collection. As noted, the submission of information is exempt from PRA. The corrections are as follows:

Frequency: One-time.

Estimated Time Per Respondent: 15 minutes per response.

Total Burden Hours: 125 hours.

Please note the description was also amended for clarity.

Description: The Department of Homeland Security is launching an expansion of the Ready campaign, called Ready for Kids, designed for children grades 4–8. As part of Ready for Kids, the Department of Homeland Security will conduct a "name the mascot" contest.

Dated: July 27, 2004.

Steve Cooper,

Chief Information Officer.

[FR Doc. 04–17536 Filed 7–30–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

[USCG–2004–18656]

U.S. Position on Amendments to MARPOL 73/78 Regarding the Phase-Out of Existing Single Hull Tank Vessels

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: This notice is to inform the public that on Friday, July 2, 2004, the U.S. Embassy in London deposited a declaration with the International Maritime Organization stating that the express approval of the U.S. Government will be necessary before the December 2003 revised Regulation 13G and new Regulation 13H of the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) would enter into force for the U.S. In this declaration, the U.S. cited specific technical differences between the revised MARPOL 73/78 regulations for new and existing tank vessels and provisions of the Oil Pollution Act of 1990.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact LCDR Roger K. Butturini, Project Manager, Office of Standards Evaluation and Development, Project Development Division (G-MSR–2), telephone 202–267–2857 or via e-mail *rbutturini@comdt.uscg.mil.* If you have questions about viewing material on the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2004–18656 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

SUPPLEMENTARY INFORMATION: The International Convention for the Prevention of Pollution from Ships (MARPOL 73/78), 33 U.S.C. § 1901 *et seq.*, is the primary international agreement aimed at reducing pollution of the marine environment from a variety of vessel-generated sources. Annex I to MARPOL 73/78, "Prevention of Pollution by Oil," contains provisions intended to reduce both intentional and accidental discharges of oil. Regulation 13G of Annex I, "Prevention of oil pollution in the event of collision or stranding-Measures for existing tankers," establishes the phase-out schedule for single hull oil tank vessels. On December 4, 2003, the IMO adopted an amendment to Regulation 13G to accelerate the phase-out of single hull tank vessels. During the same session, the IMO also adopted a new Regulation 13H to Annex I, entitled "Prevention of oil pollution when carrying heavy grades of oil," to ban the carriage of heavy grade oil in single hull tank vessels.

Although the international maritime community is moving closer to U.S. standards, significant differences between Regulation 13G and the Oil Pollution Act of 1990 (OPA 90), 46 U.S.C. 3703, remain. For example, OPA 90 is generally more aggressive in its phase-out schedule for a majority of single hull oil tank vessels, based on size and age of the ship. During similar circumstances in 1992 and 2002, the U.S. Embassy in London deposited declarations with the International Maritime Organization (IMO) stating that the express approval of the United States would be necessary before Regulation 13F of Annex I, "Prevention of oil pollution in the event of collision or stranding" or amended Regulation 13G would enter into force for the United States. Furthermore, the link between Regulation 13H and Regulations 13F and 13G is such that it is difficult to apply Regulation 13H without also giving effect to Regulations 13F and 13G.

Through its July 2, 2004 declaration, which is available in the docket, the U.S. declared a position with the IMO that the express approval of the U.S. will be necessary before these amendments will be applied in lieu of existing U.S. law. As a result, the U.S. has reaffirmed with the IMO that OPA 90 continues to be the national governing standard for tank vessels operating in U.S. waters.

Authority: 33 U.S.C. 1231, 33 U.S.C. 1321, E.O. 12777, Department of Homeland Security Delegation No. 0170.1.

Dated: July 26, 2004.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 04–17527 Filed 7–30–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker Permit

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19

U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker local permits are canceled without prejudice.

Name	Permit #	Issuing port
Linda S. Schultz, dba PCI Import Services	53–02–BBR	Houston.
World Commerce Services, Inc	28–01–754	San Francisco.
Patricia A. Sanders	01–17–005	Atlanta.
Christopher A. LaVenture	38–02–MJ1	Detroit.
T.H. Weiss (Houston), Inc	5302–006	Houston
Charter Brokerage Corporation	14664	New York.

Dated: July 22, 2004.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 04–17496 Filed 7–30–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Cancellation of Customs Broker License Due to Death of the License Holder

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: General Notice.

SUMMARY: Notice is hereby given that, pursuant to Title 19 of the Code of Federal Regulations § 111.51(a), the following individual Customs broker license and any and all permits have been cancelled due to the death of the broker:

Name	License #	Port name
Emmett Sindik	04219	New Orleans.
Kenneth E. Lacy	05962	San Francisco.
Jimmy F. Lumpkin	06110	New Orleans.

Dated: July 22, 2004.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 04–17495 Filed 7–30–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4909–N–07]

Notice of Proposed Information Collection for Public Comment: Notice of Funding Availability for the Urban Scholar Fellowship Program

AGENCY: Office of Policy Development and Research, HUD

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below with be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* October 1, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development; 451 7th Street, SW., Room 8228, Washington, DC 20410–6000.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, 202–708–3061, ext. 3852(this is not a toll-free number), for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development will submit the proposed extension of information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate for the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

This Notice also lists the following information:

Title of Proposal: Notice of Funding Availability for the Urban Scholars Fellowship Program.

OMB Control Number: 2528–0214.

Description of the Need for the Information and Proposed Use: The information is being collected to select applicants for awards in this statutorily created competitive grant program and to monitor performance of grantees to ensure that they meet statutory and program goals and requirements.

Agency Form Numbers: SF–424, HUD–424B, SFLLL, HUD–27061, HUD–2880, HUD–2730, HUD–96010, HUD–2993, and HUD–2994.

Members of the Affected Public: Urban Scholar Fellowship Program applicants.

Estimation of the total number of hours needed to prepare the information collection including numbers of respondents, frequency of response, and hours of response: Information pursuant to grant award will be submitted once a year. The following chart details the respondent burden on a quarterly, semi-annual and annual basis:

	Number of respondents	Total annual responses	Hours per response	Total hours
Applicants	100	100	32	3,200
Eight-month Reports	10	10	8	80
Final Reports	10	10	4	40
Total	120	120	44	3,320

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 22, 2004.

Dennis C. Shea,

Assistant Secretary for Policy Development and Research.

[FR Doc. 04–17514 Filed 7–30–04; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–58]

Notice of Submission of Proposed Information Collection to OMB; HUD Conditional Commitment/Direct Endorsement Statement of Appraised Value

AGENCY: Office of the Chief Information Officer.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a request for renewal of approval of a currently approved collection of information. The Conditional Commitment/Direct Endorsement Statement of Appraised Value, is used by appraisers and/or underwriters upon their review of the appraisal report (URAR) to determine if a property meets FHA guidelines to be eligible for HUD mortgage insurance. Underwriters are required to sign and submit a copy of the completed form to HUD for endorsement as part of the case binder; to provide a copy to the homebuyer; and to maintain a copy for the mortgagee.

DATES: *Comments Due Date:* September 1, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0494) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins and at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a survey instrument to obtain information from faith based and community organizations on their likelihood and success at applying for various funding programs. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: HUD Conditional Commitment/Direct Endorsement Statement of Appraised Value.

OMB Approval Number: 2502–0518.

Form Numbers: HUD–92800.5B.

Description of the Need for the Information and Its Proposed Use: The Conditional Commitment/Direct Endorsement Statement of Appraised Value, is used by appraisers and/or underwriters upon their review of the appraisal report (URAR) to determine if a property meets FHA guidelines to be eligible for HUD mortgage insurance. Underwriters are required to sign and submit a copy of the completed form to HUD for endorsement as part of the case binder; to provide a copy to the homebuyer; and to maintain a copy for the mortgagee.

The copy provided to the homebuyer explains in detail the purpose of an appraisal, the need for a home inspection and special commitment conditions that may need to be met before FHA can insure the property. The information is also used for test cases to determine a mortgagees eligibility in becoming a FHA approved lender.

Frequency of Submission: On Occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	8,000	1,200,000		0.12		144,000

Total Estimated Burden Hours: 1,200,000.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 27, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 04–17516 Filed 7–30–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4914–N–03]

Mortgagee Review Board Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In compliance with section 202(c) of the National Housing Act, notice advises of the cause and description of certain administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees. This notice of administrative actions relates solely to the failure of Title I lenders and Title II mortgagees to submit the required audited annual financial statement, an acceptable annual audited financial statement and/or payment of the annual recertification fee.

FOR FURTHER INFORMATION CONTACT: Phillip A. Murray, Director, Office of Lender Activities and Program Compliance, Room B–133–3214 L'Enfant Plaza, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone: (202) 708–1515. (This is not a toll-free number.) A Telecommunications Device for Hearing- and Speech-Impaired Individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (added by section 142 of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101–235, approved December 15, 1989), requires that HUD publish a description of and the cause for administrative actions against a HUD-approved mortgagee by the Department's Mortgagee Review Board. In compliance with the requirements of section 202(c)(5), this notice advises of administrative actions that have been taken by the Mortgagee Review Board from October 1, 2003 through March 31, 2004, related to the failure of Title I lenders and Title II mortgagees to submit the required audited annual financial statement, an acceptable annual audited financial statement and/or payment of the annual recertification fee.

Action: Withdrawal of HUD/FHA Title I lender approval and Title II mortgagee approval.

Cause: Failure to submit to the Department the required annual audited financial statement, an acceptable annual audited financial statement, and/or remit the required annual recertification fee.

33 TITLE I LENDERS AND LOAN CORRESPONDENTS

[Terminated between October 1, 2003 and March 31, 2004]

Name	City	State
ABC MORTGAGE INC	SACRAMENTO	CA
BAYPORTE ENTERPRISES INC	FOSTER CITY	CA
CALIFORNIA DISCOUNT MORTGAGE	COVINA	CA
CALIFORNIA GOLD MORTGAGE INC	ENCINO	CA
CELTIC BANK	SALT LAKE CITY	UT
CHANNEL POINT CORPORATION	CARSON	CA
COUNTYWIDE LENDERS CORP	ONTARIO	CA
CROWN BANK FSB	CASSELBERRY	FL
CSBM INC	PASADENA	CA
DIADCO FINANCIAL SERVICES INC	COVINA	CA
ENTERPRISE FEDERAL SAVINGS BANK	LARGO	MD
EZ HOME FUNDING INC	SOUTH GATE	CA
FIDELITY FEDERAL SAVINGS BANK	CHICAGO	IL
FIRST NATIONAL BANK	BANGOR	WI
FIRST PREFERRED MORTGAGE CORP	DOWNEY	CA
INTEGRITY MORTGAGE CORPORATION	DOWNEY	CA
LANDMARK NATIONAL BANK	DODGE CITY	KS
LIBERTY FINANCIAL GROUP	BELLEVUE	WA
LIBERTY MORTGAGE CORPORATION	ERIE	PA
LINDA JENSEN ENTERPRISES	MISSION VIEJO	CA
LOANMAX BANCORP	ARTESIA	CA
M W FINANCIAL INC	TORRANCE	CA
MAJESTY MORTGAGE CORP	LOS ANGELES	CA
MOJAVE VALLEY MORTGAGE CORP	VICTORVILLE	CA
NAPOLI MORTGAGE AND INVESTMENT	MIAMI	FL
NDNJ INC	RANCHO PALOS VERDES.	CA
PROFESSIONAL ADVANTAGE FINANCIAL GROUP I	BOSTON	MA
PROFUNDING INC	NORTH HOLLYWOOD	CA
RICARDO GERSCOVICH INC	VAN NUYS	CA
SECOND CITY FINANCIAL INC	DENVER	CO
THIRTY TWO ROJO INC	PALM DESERT	CA
TRICOR FUNDING INC	ONTARIO	CA
WAUSAU MORTGAGE CORPORATION	PLEASANTON	CA

179 TITLE II MORTGAGEES AND LOAN CORRESPONDENTS

[Terminated between October 1, 2003 and March 31, 2004]

Name	City	State
ABC MORTGAGE INC	SACRAMENTO	CA
ADVANTAGE ONE MORTGAGE CORP	BENSALEM	PA
ALCON ACTION AGENCY INC MORTGAGES	CONWAY	SC
ALLIED LENDING CORPORATION	LAKE FOREST	CA
ALPINE MORTGAGE OF OREGON INC	SPRINGFIELD	OR
ALTERNA MORTGAGE COMPANY	MT OLIVE	NJ
AMERICA WEST LENDER EXPRESS INC	SAN DIEGO	CA
AMERICAN REVERSE MORTGAGE LLC	GLEN BURNIE	MD
AMERITECH MORTGAGE BANKERS INC	LANHAM	MD
AMEX REAL ESTATE SERVICES INC	VISTA	CA
ANTELOPE MORTGAGE INC	NEWBERG	OR
APPLE MORTGAGE BANC AND LENDING	FORT MYERS	FL
APR MORTGAGE	NORTHRIDGE	CA
ASSURANCE LENDING SERVICES LLC	HOUSTON	TX
AXTION INC	COLUMBIA	SC
BANYAN FINANCIAL OF CENTRAL FLORIDA LP	CLERMONT	FL
BELL CAPITAL INC	CHICAGO	IL
BENEFICIAL CAPITAL MANAGEMENT CORP	LAGUNA HILLS	CA
BENEFIT MORTGAGE SERVICES LLC	CLINTON	MD
C W COBB AND ASSOCIATION INC	ARLINGTON	VA
CALIFORNIA EXPRESS FUNDING INC	ONTARIO	CA
CALIFORNIA GOLD MORTGAGE INC	ENCINO	CA
CAMINO REAL FINANCIAL INC	WHITTIER	CA
CANYON MORTGAGE INC	PALM DESERT	CA
CAPITAL MORTGAGE COMPANY	ADDISON	IL
CARRINGTON MORTGAGE SERVICES INC	HUNTINGTON BEACH	CA
CARVER FEDERAL SAVINGS ALA	NEW YORK	NY
CAVERSHAM FINANCIAL INC	ATLANTA	GA
CENTER CITY LENDERS INC	ORLANDO	FL
CENTURY MORTGAGE AND FUNDING INC	LISLE	IL
CHANNEL POINT CORPORATION	CARSON	CA
CHOCTAW HOPE DEVELOPMENT CORP	HUGO	OK
CITIFINANCIAL MORTGAGE COMPANY INC	IRVING	TX
CITYWIDE MORTGAGE PROS	LOCKPORT	IL
CLS FINANCIAL SERVICES INC	LYNNWOOD	WA
COMMUNITY INVESTMENT CORP	CHICAGO	IL
CONNECTICUT HOUSING INV FUND INC	HARTFORD	CT
CONSUMER MORTGAGE GROUP INC	CENTENNIAL	CO
CONTINENTAL COMMUNITY BANK AND TRUST CO	AURORA	IL
CONTINENTAL PACIFIC CAPITAL AND FINANCIAL	TARZANA	CA
COPIAGUE FUNDING CORP	LINDENHURST	NY
COUNTY MORTGAGE COMPANY INC	WEST CALDWELL	NJ
CREATIVE MORTGAGE USA INC	LANSING	IL
CREDIT CLINIC USA INC	BALTIMORE	MD
CROSSROAD CAPITAL SERVICES INC	NEW ROCHELLE	NY
CSBM INC	PASADENA	CA
CUSTOM LENDING GROUP INC	NAPA	CA
CYPRESS POINT FUNDING INC	WOODLAND HILLS	CA
DAN CAVALLO INC	RIVERSIDE	CA
DEAN ENTERPRISES INCORPORATED	LA CANADA	CA
DECORUM FINANCIAL MORTGAGE CORP	NORTH LITTLE ROCK	AR
DELTA MORTGAGE CORPORATION	FORT COLLINS	CO
DEVON INC	LAS VEGAS	NV
DIAMOND MORTGAGE BROKER INC	SANTA ANA	CA
DISCOVER MORTGAGE COMPANY	DECATUR	GA
E THREE R FINANCIAL CORPORATION	KANSAS CITY	MO
EMPIRE LENDING CORPORATION	CITY OF INDUSTRY	CA
ENCORE MORTGAGE SERVICE	VOORHEES	NJ
ENTERPRISE FEDERAL SAVING BANK	LARGO	MD
EZ HOME FUNDING INC	SOUTH GATE	CA
FAI MORTGAGE CORP	FAIRFIELD	NJ
FAIRWAY OF AMERICA INC	EAST LANSING	MI
FIDELITY FEDERAL SAVINGS BANK	CHICAGO	IL
FIRST BANK OF-MISSOURI	GLADSTONE	MO
FIRST CENTENNIAL NATIONWIDE MORTGAGE	CENTENNIAL	CO
FIRST CLASS FINANCIAL LLC	COLORADO SPRINGS	CO
FIRST WESTERN FUNDING CORP	FORT COLLINS	CO
FIVE STAR FINANCIAL INC	JOLIET	IL
FN MORTGAGE CORPORATION	SANTA ANA	CA
FUNDING EXPRESS BANCORP INC	UPLAND	CA
GATEWAY RESIDENTIAL FUNDING	CONCORD	CA

179 TITLE II MORTGAGEES AND LOAN CORRESPONDENTS—Continued

[Terminated between October 1, 2003 and March 31, 2004]

Name	City	State
GEORGE WASHINGTON SAVINGS BANK	OAKLAWN	IL
GIBRALTER LOAN SERVICES INC	VISTA	CA
GLENBY MORTGAGE BANKING LTD	JERICHO	NY
GRAND MORTGAGE INC	GAINESVILLE	GA
GRANITE HOME MORTGAGE CORPORATION	DIAMOND BAR	CA
GUARANTY LOAN AND REAL ESTATE	WEST MEMPHIS	AR
HANNON MORTGAGE INC	TUCSON	AZ
HBA CAPITAL GROUP INC	HALLANDALE	FL
HOME LOAN GROUP INC	PLEASANTON	CA
HOMEBANK	ROCKWALL	TX
HOMEBUYERS FINANCIAL SERVICES LP	BRENTWOOD	TN
HOMESOURCE CAPITAL MORTGAGE CO LP	JUPITER	FL
HOUSING AME MORTGAGE COMPANY	BOCA RATON	FL
IMPACT LENDING INC	NEW PORT RICHEY	FL
INDEPENDENT MORTGAGE CORP	CLERMONT	FL
INTEGRITY FINANCIAL SERVICES	OAKBROOK	IL
INTEGRITY MORTGAGE CORP	DOWNEY	CA
KEYES PENN MORTGAGE COMPANY	LAWRENCEVILLE	GA
KSJ ENTERPRISES	WASHINGTON	DC
L AND S FINANCIAL SERVICES LLC	WEST JORDAN	UT
LAKE ELMO BANK	OAKDALE	MN
LEGACY LENDING INC	STEILACOOM	WA
LEGACY MORTGAGE COMPANY INC	WATERLOO	IA
LEND LEASE HOUSING FINANCE GROUP LP	DALLAS	TX
LIBERTY MORTGAGE COMPANY	CHICAGO	IL
LIGHTHOUSE MORTGAGE COMPANY LLC	VENICE	FL
LOAN LINES INC	TARZANA	CA
LOANMAX BANCORP	ARTESIA	CA
LUU ASSOCIATES INC	CITY OF INDUSTRY	CA
MAJESTY MORTGAGE CORP	LOS ANGELES	CA
MALVERN FEDERAL SAVINGS BANK	PAOLI	PA
MARCO MORTGAGE INC	OXNARD	CA
MEG MORTGAGE CENTER INC	FORT LAUDERDALE	FL
MERCURY MORTGAGE CO INC	TULSA	OK
METRO ISLAND MORTGAGE INC	RIO PIEDRAS	PR
METRO MORTGAGE CORPORATION	METAIRIE	LA
METROPLEX RESIDENTIAL LENDING LP	PLANO	TX
METWEST MORTGAGE SERVICES INC	SPOKANE	WA
MFB FINANCIAL	MISHAWAKA	IN
MIDWEST MORTGAGE COMPANY	GLENDALE HEIGHTS	IL
MONEY PLUS FINANCIAL INC	RANCHO CUCAMONGA.	CA
MONEYTREE MORTGAGE COMPANY	AURORA	IL
MORTGAGE ACCESS GROUP INCORP	PINOLE	CA
MORTGAGE AMERICA INC–NJ	MANALAPAN	NJ
MORTGAGE BANKING ASSIST INC	BEDFORD	TX
MORTGAGE COMPANY MICHIGAN INC	ROCHESTER HILLS	MI
MORTGAGE CREDIT SERVICES INC	ORANGE	CA
MORTGAGE FINDERS	DES PLAINES	IL
MORTGAGE MARKET INC	TIGARD	OR
MORTGAGE SOLUTIONS INC	MARIETTA	GA
NAPOLI MTG AND INVESTMENT CORP	MIAMI	FL
NDNJ INC	RANCHO PALOS VERDES.	CA
NEEDAMORTGAGE COM INC	SEATTLE	WA
NEIGHBORHOOD MORTGAGE INC	PHOENIX	AZ
NEW FINANCE INC	MIAMI	FL
PACIFIC COAST MORTGAGE INC	CHINO	CA
PACIFIC LIFE INSURANCE COMPANY	NEWPORT BEACH	CA
PALMA CORPORATION	LAS VEGAS	NV
PARAGON MORTGAGE BANKERS CORP	CARLE PLACE	NY
PELICAN FINANCIAL SERVICES INC	BATON ROUGE	LA
PINE VALLEY MORTGAGE CORPORATION	DULUTH	GA
PRIMARY MORTGAGE GROUP INC	MISSION VIEJO	CA
PRIME STAR MORTGAGE COMPANY INC	STOCKBRIDGE	GA
PROFESSIONAL ADVANTAGE FINANCIAL GROUP	BOSTON	MA
PROFESSIONAL MORTGAGE SOLUTIONS	REGO PARK	NY
PROFUNDING INC	NORTH HOLLYWOOD	CA
PROSPERITY CAPITAL INC	ANAHEIM	CA
QUALITY MORTGAGE CONSULTANTS INC	POLLOCK PINES	CA
REAL AMERICAN LENDING INC	WESTMINSTER	CA

179 TITLE II MORTGAGEES AND LOAN CORRESPONDENTS—Continued

[Terminated between October 1, 2003 and March 31, 2004]

Name	City	State
REAL ESTATE MORTGAGE COUNSELORS	LEMON GROVE	CA
REAL TIME FUNDING CORP	DOWNEY	CA
RESORT MORTGAGE INC	GULF BREEZE	FL
ROCKPOINTE FINANCIAL SERVICES GROUP INC	IRVINE	CA
ROYAL HAVEN MORTGAGE INC	LOS ANGELES	CA
SAINT ANTHONY BANK FSB	CICERO	IL
SARAS INC	LAGUANA HILLS	CA
SCHWAB FINANCIAL SERVICES INC	OREGON CITY	OR
SEACOAST FINANCIAL INC	SANTA MARIA	CA
SECOND CITY FINANCIAL INC	DENVER	CO
SENIOR HOMEOWNERS FINANCIAL SERVICES	MONTEREY PARK	FL
SERONELLO SUMMERS INC	SAN RAMON	CA
SIGNATURE MORTGAGE INC	ST CHARLES	MO
SMP FINANCIAL CORP	TUSTIN	CA
SOUTHERN MORTGAGE INVESTMENT CORP	MARIETTA	GA
SOUTHLAND MORTGAGE CORP OF NC	CHARLOTTE	NC
SOVEREIGN MORTGAGE LP	DENVER	CO
ST CLOUD MORTGAGE	SANTA CLEMENTE	CA
ST FRANCIS BANK FSB	NEW BERLIN	WI
SUNSET MORTGAGE AND FUNDING CORP	STATEN ISLAND	NY
SUPERIOR FINANCING INC	ST PAUL	MN
TDC MORTGAGE CORP	LAS VEGAS	NV
THRESHOLD FINANCIAL CORPORATION	WESTPORT	CT
TOWNE BANK	CINCINNATI	OH
TREANOR ENTERPRISES	DALLAS	TX
TRIMARK CAPITAL INC	PHOENIX	AZ
TROY SAVINGS BANK	TROY	NY
TURNER-YOUNG INVESTMENT CO	FORT WORTH	TX
TWENTY FIRST CAPITAL FUNDING INC	LOS ANGELES	CA
UNITED STATES NATIONAL BANK	RED LODGE	MT
USA FINANCIAL SERVICES INC	FAIRFAX	VA
VETERANS BENEFITS CLEARINGHOUSE	ROXBURY	MA
W D WICKLEY INC	RANCHO CUCAMONGA.	CA
WANTLAND REALTY CORPORATION	NORTH PALM BEACH	FL
WAUKEGAN SAVINGS AND LOAN SB	WAUKEGAN	IL
WCFRE INC	CARLSBAD	CA
WESTERN UNITED LIFE ASSURANCE	SPOKANE	WA
WETCO FINANCIAL INC	BATON ROUGE	LA
WORTHINGTON FINANCIAL SERVICES	LP NAPLES	FL

Dated: July 16, 2004.

Sean Cassidy,

General Deputy Assistant Secretary for Housing.

[FR Doc. 04–17515 Filed 7–30–04; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Hanford Reach National Monument Federal Advisory Committee Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Hanford Reach National Monument Federal Planning Advisory Committee meeting.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is announcing a meeting of the Hanford Reach National Monument Federal Planning Advisory Committee (Committee). In this meeting, the Committee will continue their work on making recommendations to the Service and the Department of Energy (DOE) on the preparation of a long-term management plan for the Hanford Reach National Monument Comprehensive Conservation Plan and associated Environmental Impact Statement (CCP/EIS). The Committee is focusing on advice that identifies and reconciles land management issues while meeting the directives of Presidential Proclamation 7319 that established the Monument.

DATES: The Committee has scheduled the following meeting: Thursday, August 26, 2004, 9:30 a.m. to 4:30 p.m., Richland, WA.

ADDRESSES: The meeting will take place at the Washington State University Tri-Cities Consolidated Information Center, 2770 University Drive, Rooms 120 and 120 A, Richland, WA.

Written comments may be submitted to Mr. Greg Hughes, Designated Federal Official for the Hanford Reach National Monument (HRNM) Federal Planning Advisory Committee, Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge, 3250 Port of Benton Blvd., Richland, WA 99352; fax (509) 375–0196. Copies of the draft meeting agenda can be obtained from the Designated Federal Official. Comments may be submitted via email to *hanfordreach@fws.gov*. Additional information regarding the Monument and the CCP is available on the monument's Internet site at *http://hanfordreach.fws.gov*.

FOR FURTHER INFORMATION CONTACT: For further information concerning the meeting, contact Mr. Greg Hughes, via telephone at (509) 371–1801, or fax at (509) 375–0196.

SUPPLEMENTARY INFORMATION: Committee meetings are open to the

public. Verbal comments may be submitted during the course of the meeting, written comments may be submitted at the close of the meeting, as described under addressees.

Dated: July 16, 2004.

David J. Wesley,

Acting Regional Director, Region 1, Portland, OR.

[FR Doc. 04–17482 Filed 7–30–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Public Meeting: Resource Advisory Council to the Lower Snake River District, Bureau of Land Management, U. S. Department of the Interior

AGENCY: Bureau of Land Management, U.S. Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Lower Snake River District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held August 24, 2004, beginning 9:30 a.m. at the Tribal Headquarters of Shoshone-Paiute Native American Indian Tribe, located on the Duck Valley Reservation, Owyhee, Nevada 83705. Public comment periods will be held after topics on the agenda. The meeting will adjourn at 3:30 p.m.

FOR FURTHER INFORMATION CONTACT: MJ Byrne, Public Affairs Officer and RAC Coordinator, Lower Snake River District, 3948 Development Ave., Boise, ID 83705, Telephone (208) 384–3393.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in southwestern Idaho. At this meeting, the following actions will occur/topics will be discussed:

- Overview of Natural Resource Issues on the Duck Valley Reservation;
- Review of RAC and BLM co-sponsored Community Discussion on Western Juniper Management—Workshop held on July 22, 2004;
- Report on Off-Highway Vehicle Route Designation efforts in the Lower Snake River District;
- Update on BLM-Idaho Organizational Refinement;
- Update: Implementation of LEPA Candidate Conservation Agreement;
- Update on Sage Grouse Habitat Restoration efforts;
- Hot Topics—Snail Lawsuit; Overview on Information Memorandum on Implementation of Idaho Rangeland Standards and Guidelines, and;
- Update on status of District's Fire and Fuels Management Plan, and Normal Year Fire Rehab. Plans;
- Subcommittee Reports
  - Off-Highway Vehicles (OHV) and Transportation Management, Resource Management Plans (RAC assistance requested with finalizing draft alternatives), Sage Grouse Habitat Management, and, River and Recreation Management;
- Three Field Office Managers and District Fire Manager provide updates on current issues and planned activities in their Field Offices and the District.

Agenda items may change due to changing circumstances. All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below. Expedited publication is requested to give the public adequate notice.

Dated: July 26, 2004.

Glen M. Secrist,

District Manager.

[FR Doc. 04–17481 Filed 7–30–04; 8:45 am]

BILLING CODE 4310–GG–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–406, Enforcement Proceedings (II)]

Certain Lens-Fitted Film Packages; Determination Not To Review the Presiding Administrative Law Judge's Enforcement Initial Determination; Request for Briefing on Recommended Enforcement Measures

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the administrative law judge's (ALJ) initial enforcement determination (EID) on violation, including his determination to find Anthony Cossentino and Jack Benun subject to the cease and desist order issued to respondent Jazz Photo Corp. (Jazz) at the conclusion of the original investigation.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., telephone 202–205–3104, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol.public.* Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission's original investigation in this matter was terminated on June 2, 1999, with a finding of violation of section 337 by 26 respondents by reason of importation or sales after importation of certain lens-fitted film packages (*i.e.*, disposable cameras) that were found to infringe one or more claims of 15 patents held by complainant Fuji Photo Film Co. (Fuji). 64 FR 30541 (June 8, 1999). The Commission issued a general exclusion order, prohibiting the importation of LFFPs that infringe any of the claims at issue, and issued cease and desist orders to twenty domestic respondents. *Id.* The Commission's orders were upheld by the U.S. Court of Appeals for the Federal Circuit. *Jazz Photo Corp.* v. *Int'l Trade Comm'n*, 264 F.3d 1094 (Fed. Cir. 2001), *cert. denied* 536 U.S. 950 (2002).

On September 24, 2002, the Commission initiated enforcement proceedings at the request of complainant Fuji under Commission rule 210.75(b) to determine whether respondent Jazz and/or two individuals associated with Jazz, Mr. Jack Benun and Mr. Anthony Cossentino, violated the general exclusion order and/or the cease and desist orders, issued on June 2, 1999, in the original *Film Packages*

investigation. The proceedings were referred to the presiding ALJ for issuance of an EID. The proceedings were suspended for several months due to the outbreak of severe acute respiratory syndrome (SARS) in areas of China where discovery had to be completed.

On April 6, 2004, the ALJ issued his EID, finding that all respondents had violated the general exclusion order and cease and desist orders. Fuji, Jazz, Benun and Cossentino filed petitions for review of the EID on April 22, 2004. Those parties, as well as the Commission investigative attorneys filed responses to the petitions on May 10, 2004.

The Commission, having examined the petitions for review, and the responses thereto has determined not to review the EID's determination that the general exclusion order and cease and desist order issued to Jazz have been violated, as well as his determination to find Mr. Cossentino and Mr. Benun subject to the cease and desist order issued to Jazz. In connection with the final disposition of the enforcement proceedings, the Commission may issue civil penalties for violations of its cease and desist order. The Commission has not yet ruled on whether it will adopt the specific enforcement measures recommended in the EID.

Written Submissions: The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the specific enforcement measures recommended by the ALJ in his EID no later than close of business on August 20, 2004. Response submissions must be filed no later than the close of business on September 3, 2004. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See section 201.6 of the Commission's Rules of Practice and Procedure, 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and sections 210.75 of the Commission's Rules of Practice and Procedure (19 CFR 210.75).

Issued: July 27, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–17473 Filed 7–30–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–162 (Second Review)]

Melamine from Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping finding on melamine from Japan.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping finding on melamine from Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is September 21, 2004. Comments on the adequacy of responses may be filed with the Commission by October 18, 2004. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: August 2, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background. On February 2, 1977, the Department of the Treasury issued an antidumping finding on imports of melamine from Japan (42 FR 6366). Following five-year reviews by Commerce and the Commission, effective September 1, 1999, Commerce issued a continuation of the antidumping finding on imports of melamine from Japan (64 FR 47764). The Commission is now conducting a second review to determine whether revocation of the finding would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) *The Subject Country* in this review is Japan.

(3) *The Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. The Commission did not make a *Domestic Like Product* determination *per se* in its original determination but effectively treated all melamine in crystal form as a single *Domestic Like Product*. In its full five-year review determination, the Commission found one *Domestic Like Product* consisting of all melamine in crystal form and inclusive of all particle sizes.

(4) *The Domestic Industry* is the U.S. producers as a whole of the *Domestic*

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 04–5–094, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Like Product, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its full five-year review determination, the Commission defined the *Domestic Industry* as producers of melamine in crystal form.

(5) *An Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list. Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the "same particular matter" as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was "personal and substantial." However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at (202) 205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is September 21, 2004. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is October 18, 2004. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information. Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information to be provided in response to this Notice of Institution: As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and e-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping finding on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the

Subject Merchandise in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 1998.

(7) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 1998, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: July 27, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–17569 Filed 7–30–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–282 (Second Review)]

Petroleum Wax Candles From China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on petroleum wax candles from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on petroleum wax candles from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is September 21, 2004. Comments on the adequacy of responses may be filed with the Commission by October 18, 2004. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: August 2, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202) 205–3193, Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 04–5–095, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background. On August 28, 1986, the Department of Commerce issued an antidumping duty order on imports of petroleum wax candles from China (51 FR 30686). Following five-year reviews by Commerce and the Commission, effective September 23, 1999, Commerce issued a continuation of the antidumping duty order on imports of petroleum wax candles from China (64 FR 51514). The Commission is now conducting a second review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its expedited five-year review determination, the Commission defined the *Domestic Like Product* as petroleum wax candles.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited five-year review determination, the Commission defined the *Domestic Industry* as producers of petroleum wax candles.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list. Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register.** The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the "same particular matter" as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was "personal and substantial." However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at (202) 205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register.** Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is September 21, 2004. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is October 18, 2004. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by § 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information. Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution:

As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and e-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 1998.

(7) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the Subject Country; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 1998, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

Issued: July 27, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–17568 Filed 7–30–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–345]

Shifts In U.S. Merchandise Trade 2004

AGENCY: United States International Trade Commission.

EFFECTIVE DATE: July 1, 2004.

ACTION: Opportunity to submit written statements in connection with the July 2005 Web site update containing information for 2004.

SUMMARY: The Commission has prepared and published annual reports on U.S. trade shifts in selected industries/commodity areas under investigation No. 332–345 since 1993.

The Commission plans to publish the 2004 Web site update in July 2005, which will cover shifts in U.S. trade in 2004 compared with trade in 2003. Comments and suggestions regarding the Web site update to be completed in July 2005 are welcome in written submissions as specified below.

The ITC has changed the structure of this year's report, converting exclusively to a Web-based format (with added focus on sectoral issues) that can be accessed at *http://www.usitc.gov/tradeshifts/default.htm*. This new format includes links to ITC research and other resources allowing quick access to analyses and data, as well as links to other organizations that have related information. Future improvements also anticipate additional features, such as mid-year data and information updates. User feedback on the revised format is encouraged by providing access to the ITC online Reader Satisfaction Survey (*http://reportweb.usitc.gov/reader_survey/readersurvey.html*).

A CD-ROM version of the report containing 2003 data may be requested by contacting the Office of the Secretary at (202) 205–2000 or by fax at (202) 205–2104. Interested parties may also provide comments by downloading the survey form and business reply mailer for this publication from the Commission's Web site.

FOR FURTHER INFORMATION CONTACT: Questions about the merchandise trade shifts information may be directed to the project leader, Heather Sykes, Office of Industries ((202) 205–3436). For information on the legal aspects, please contact William Gearhart, Office of General Counsel ((202) 205–3091). The media should contact Margaret O'Laughlin, Public Affairs Officer ((202) 205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–2648.

Background: The initial notice of institution of this investigation was published in the **Federal Register** of September 8, 1993 (58 F.R. 47287). The Commission expanded the scope of this investigation to cover services trade in a separate report, which it announced in a notice published in the **Federal Register** of December 28, 1994 (59 F.R. 66974). The merchandise trade report has been published in the current series under investigation No. 332–345 annually since September 1993. This year's Web-based format identifies the key trends affecting principal foreign markets and 10 major U.S. sectors. In addition, U.S. industry and market profiles covering each sector for full-years 1999–2003, to include domestic consumption, production, employment, and import penetration, are provided for more than 250 major industry/commodity groups and subgroups examined in the study.

Written Submissions: No public hearing is planned. However, interested persons are invited to submit written comments or suggestions concerning the July 2005 report. All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8); any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.8 of the rules require that a signed original (or a copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted. Section 201.6 of the rules require that the cover of the document and the individual pages clearly be marked as to whether they are the "confidential" or "nonconfidential" version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties. In the public version of the report, however, the Commission will not publish confidential business information in a manner that could reveal the operations of the firm supplying the information. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's Rules (19 CFR 201.8) (*see* Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf*). Persons with questions regarding electronic filing should contact the Secretary ((202) 205–2000 or *edis@usitc.gov*.) To be assured of consideration by the Commission, written statements related to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on December 29, 2004. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Issued July 28, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–17537 Filed 7–30–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Drummond Company, Inc.

[Docket No. M–2004–032–C]

Drummond Company, Inc., P.O. Box 10246, Birmingham, Alabama 35202–0246 has filed a petition to modify the application of 30 CFR 75.601 (Short circuit protection of trailing cables) to its Shoal Creek Mine (MSHA I.D. No. 01–02901) located in Jefferson County, Alabama. The petitioner requests a modification of the existing standard to permit the use of an alternative method for identifying circuit breakers and disconnecting devices. The petitioner proposes to mount the circuit breaker and corresponding receptacle on a panel in a manner that will maintain a physical relationship between the breaker and the receptacle; and to install two permanent labels on each panel that will indicate Circuit #1 and Circuit #2, etc., just above the circuit breaker and the corresponding receptacle that operates the circuit breaker. The petitioner has listed in this petition other procedures that would be followed for implementation of the proposed alternative method. The petitioner proposes to identify labeling on the trailing cable plugs that will indicate that the machine is attached to a particular cable; post signs in strategic locations on the power center that will indicate labeling requirements; provide specific training before the proposed alternative method is implemented to all miners who are designated to verify the instantaneous short circuit settings; and submit proposed revisions for its approved Part 48 training plan to the Coal Mine Safety and Health District Manager for the area in which the mine is located that will specify task training for miners designated to verify the labeling and short circuit settings. The petitioner asserts that the proposed

alternative method would provide at least the same measure of protection as the existing standard.

2. Drummond Company, Inc.

[Docket No. M–2004–033–C]

Drummond Company, Inc., P.O. Box 10246, Birmingham, Alabama 35202–0246 has filed a petition to modify the application of 30 CFR 75.904 (Identification of circuit breakers) to its Shoal Creek Mine (MSHA I.D. No. 01–02901) located in Jefferson County, Alabama. The petitioner requests a modification of the existing standard to permit the use of an alternative method for identifying circuit breakers and disconnecting devices. The petition proposes to mount the circuit breaker and corresponding receptacle on a panel in a manner that will maintain a physical relationship between the breaker and the receptacle; and to install two permanent labels on each panel that will indicate Circuit #1 and Circuit #2, etc., just above the circuit breaker and the corresponding receptacle that operates the circuit breaker. The petitioner has listed in this petition other procedures that would be followed for implementation of the proposed alternative method. The petitioner proposes to identify labeling on the trailing cable plugs that will indicate that the machine is attached to a particular cable; post signs in strategic locations on the power center that will indicate labeling requirements; provide specific training before the proposed alternative method is implemented to all miners who are designated to verify the instantaneous short circuit settings; and submit proposed revisions for its approved Part 48 training plan to the Coal Mine Safety and Health District Manager for the area in which the mine is located that will specify task training for miners designated to verify the labeling and short circuit settings. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Warrior Coal, LLC

[Docket No. M–2004–034–C]

Warrior Coal, LLC, 57 J.E. Ellis Road, Madisonville, Kentucky 42431 has filed a petition to modify the application of 30 CFR 75.1103–4(a) (Automatic fire sensor and warning device systems; installation; minimum requirements) to its Cardinal Mine (MSHA I.D. No. 15–17216) located in Hopkins County, Kentucky. The petitioner requests a modification of the existing standard to permit the use of an alternative method of compliance for an automatic fire sensor and warning device system to identify a fire within each belt flight. The petitioner proposes to install a low-level carbon monoxide detecting system as an early warning fire detection system in all belt entries where a monitoring system identifies a sensor location in lieu of identifying each belt flight. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to *comments@msha.gov*, by fax at (202) 693–9441, or by regular mail to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before September 1, 2004. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 20th day of July 2004.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 04–17452 Filed 7–30–04; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before September 1, 2004 to be assured of consideration.

ADDRESSES: Comments should be sent to: OMB Desk Officer for NARA, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5167.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on May 13, 2004 (69 FR 26623–26624). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Request for and Record of Pass.

OMB number: 3095–0026.

Agency form number: NA Form 6006.

Type of review: Regular.

Affected public: Individuals or households, business or other for-profit organizations and institutions, and Federal government.

Estimated number of respondents: 1,300.

Estimated time per response: 3 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 65 hours.

Abstract: The collection of information is necessary as a security measure to protect employees, information, and property in NARA facilities and to facilitate the issuance of passes. Use of the form is authorized by 44 U.S.C. 2104. Respondents who are contractors are given a building pass which expires at the end of each fiscal year; those who are volunteers are given a pass valid for 2 years. At the NARA College Park facility, individuals receive an access card with the pass that is electronically coded to permit access to secure zones ranging from a general nominal level to stricter access levels for classified records zones. The access card system is part of the security management system which meets the accreditation standards of the Government intelligence agencies for

storage of classified information, and serves to comply with E.O. 12958, as amended.

Dated: July 27, 2004.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 04–17485 Filed 7–30–04; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR part 35, Medical Use of Byproduct Material.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* Reports of medical events, doses to an embryo/fetus or nursing child, or leaking sources are reportable on occurrence. A certifying entity desiring to be recognized by the NRC must submit a one-time request for recognition.

5. *Who will be required or asked to report:* Physicians and medical institutions holding an NRC license authorizing the administration of byproduct material or radiation therefrom to humans for medical use.

6. *An estimate of the number of responses:* The estimated number of annual responses: 242,030 (51,309 responses from NRC licensees + 1,759 recordkeepers and 184,686 responses from Agreement State licensees + 6,332 recordkeepers). Also 23 specialty certification boards are expected to request recognition under the proposed revision of part 35 (amendment of 10 CFR part 35, "Medical Use of Byproduct Material—Recognition of Specialty Boards").

7. *The estimated number of annual respondents:* 8,091 (1,759 NRC licensees and 6,332 Agreement State licensees).

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 1,113,217 hours (242,030 hours for NRC licensees and 871,059 hours for Agreement State licensees [an average of 138 hours per licensee] and an additional one-time burden of 128 hours for certifying boards).

9. *An indication of whether section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* 10 CFR part 35, "Medical Use of Byproduct Material," contains NRC's requirements and provisions for the medical use of byproduct material and for issuance of specific licenses authorizing the medical use of this material. These requirements and provisions provide for the radiation safety of workers, the general public, patients, and human research subjects. 10 CFR part 35 contains mandatory requirements that apply to NRC licensees authorized to administer byproduct material or radiation therefrom to humans for medical use.

The information in the required reports and records is used by the NRC to ensure that public health and safety is protected, and that the possession and use of byproduct material is in compliance with the license and regulatory requirements.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by September 1, 2004. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

OMB Desk Officer,
Office of Information and Regulatory Affairs (3150–0010),
NEOB–10202,
Office of Management and Budget,
Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 26th day of July 2004.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 04–17478 Filed 7–30–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–263]

Nuclear Management Company, LLC; Monticello Nuclear Generating Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from title 10 of the Code of Federal Regulations (10 CFR), part 50, appendix R, section III.G.2.b. for Facility Operating License No. DPR–22, issued to Nuclear Management Company, LLC (NMC), for operation of the Monticello Nuclear Generating Plant (Monticello), located in Wright County, Minnesota. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would authorize an exemption from the automatic fire suppression system requirements of 10 CFR part 50, appendix R, section III.G.2.b. as it applies to Fire Area IV/Fire Zone 1F. Fire Area IV/Fire Zone 1F corresponds to the Monticello torus compartment, located at elevation 896 feet, 3 inches of the reactor building. The proposed action is in accordance with NMC's exemption request of September 15, 2003, as supplemented February 24, 2004.

The Need for the Proposed Action

NMC requested this exemption as a result of internal assessments of the Monticello's Fire Protection Program. NMC determined that the existing exemption from 10 CFR part 50 appendix R, section III.G.2.b (granted in 1983) for the torus compartment did not bound the existing plant configuration and the current Monticello Appendix R safe shutdown analysis. Accordingly, the NMC resubmitted its request for a permanent exemption for this area.

Environmental Impacts of the Proposed Action

The NRC staff reviewed NMC's exemption request and will issue a safety evaluation documenting its review. The review found that the Division 1 and Division 2 components of the core spray, residual heat removal (RHR) cooling, suppression pool level transmitter, and suppression pool temperature monitoring systems (SPOTMOS) are separated in Fire Area IV/Fire Zone 1F by at least 75 feet. The NRC staff concluded that the area wide automatic fire suppression is not necessary to achieve the underlying purpose of appendix R, section III.G.2.b, for the suppression pool torus area at Monticello considering the following:

- The minimal amount of fixed and transient combustibles present;
- The separation between redundant trains of core spray valves, RHR cooling valves, and suppression pool level transmitters;
- Smoke and temperature detector provisions;
- The ability of SPOTMOS to continue to operate with at least one RTD on one train in the operable-but-degraded mode for any fire in fire zone 1F that involved both conduit trains.

The details of the NRC staff's safety evaluation will be provided as part of the letter to NMC transmitting the NRC staff's decision on the exemption request.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for Monticello dated November 1972.

Agencies and Persons Consulted

On July 22, 2004, the NRC staff consulted with the Minnesota State official, Nancy Campbell of the Department of Commerce, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see NMC's exemption request of September 15, 2003, as supplemented February 24, 2004. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 22nd day of July 2004.

For the Nuclear Regulatory Commission.

L. Raghavan,

Chief, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–17476 Filed 7–30–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 11Ac1–4; SEC File No. 270–405; OMB Control No. 3235–0462.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 11Ac1–4 [17 CFR 240.11Ac1–4] under the Securities Exchange Act of 1934 requires specialists and market makers to publicly display a customer limit order when that limit order is priced superior to the quote that is currently being displayed by the specialist or market maker. Customer limit orders that match the bid or offer being displayed by the specialist or market maker must also be displayed if the limit order price matches the national best bid or offer. It is estimated that approximately 585 broker and dealer respondents incur an aggregate burden of 228,735 hours per year to comply with this rule.

Rule 11Ac1–4 does not contain record retention requirements. Compliance with the rule is mandatory. Responses are not confidential. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in

writing within 60 days of this publication.

Direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: July 26, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–17487 Filed 7–30–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50077; File No PCAOB–2004–06]

Public Company Accounting Oversight Board; Notice of Filing of Proposed Rule 3101, Certain Terms Used in Auditing and Related Professional Practice Standards

July 26, 2004.

Pursuant to section 107(b) of the Sarbanes-Oxley Act of 2002 (the "Act"), notice is hereby given that on June 18, 2004, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission" or "SEC") the proposed rule described in items I and II below, which items have been prepared by the Board and are presented here in the form submitted by the Board. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Board's Statement of the Terms of Substance of the Proposed Rule

On June 9, 2004, the Board adopted Rule 3101, *Certain Terms Used in Auditing and Related Professional Practice Standards* ("the proposed rule"). The proposed rule text is set out as follows:

RULES OF THE BOARD

SECTION 1. GENERAL PROVISIONS

Rule 1001. Definitions of Terms Employed in Rules.

(a)(xii) Auditor

The term "auditor" means both public accounting firms registered with the Public Company Accounting Oversight Board and associated persons thereof.

SECTION 3. PROFESSIONAL STANDARDS

Part 1—General Requirements

Rule 3101. Certain Terms Used in Auditing and Related Professional Practice Standards

(a) The Board's auditing and related professional practice standards use certain terms set forth in this rule to describe the degree of responsibility that the standards impose on auditors.

(1) Unconditional Responsibility: The words "must," "shall," and "is required" indicate unconditional responsibilities. The auditor must fulfill responsibilities of this type in all cases in which the circumstances exist to which the requirement applies. Failure to discharge an unconditional responsibility is a violation of the relevant standard and Rule 3100.

(2) Presumptively Mandatory Responsibility: The word "should" indicates responsibilities that are presumptively mandatory. The auditor must comply with requirements of this type specified in the Board's standards unless the auditor demonstrates that alternative actions he or she followed in the circumstances were sufficient to achieve the objectives of the standard. Failure to discharge a presumptively mandatory responsibility is a violation of the relevant standard and Rule 3100 unless the auditor demonstrates that, in the circumstances, compliance with the specified responsibility was not necessary to achieve the objectives of the standard.

Note: In the rare circumstances in which the auditor believes the objectives of the standard can be met by alternative means, the auditor, as part of documenting the planning and performance of the work, must document the information that demonstrates that the objectives were achieved.

(3) Responsibility To Consider: The words "may," "might," "could," and other terms and phrases describe actions and procedures that auditors have a responsibility to consider. Matters described in this fashion require the auditor's attention and understanding. How and whether the auditor implements these matters in the audit will depend on the exercise of professional judgment in the circumstances consistent with the objectives of the standard.

Note: If a Board standard provides that the auditor "should consider" an action or procedure, consideration of the action or procedure is presumptively mandatory, while the action or procedure is not.

(b) The terminology in paragraph (a) of this rule applies to the responsibilities imposed by the auditing and related professional practice standards, including the interim standards adopted in Rules 3200T, 3300T, 3400T, 3500T, and 3600T.

(c) The documentation requirement in paragraph (a)(2) is effective for audits of financial statements or other engagements with respect to fiscal years ending on or after [insert date the later of November 15, 2004, or 30 days after approval of this rule by the Securities and Exchange Commission].

II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rule and discussed any comments it received on the proposed rule. The text of these statements may be examined at the places specified in item IV below. The Board has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

(a) Purpose.

The Commission understands from the PCAOB staff that Rule 1001(a)(xii) would define the term "auditor" to mean both public accounting firms registered with the Public Company Accounting Oversight Board and associated persons thereof. A similar definition was included in PCAOB Auditing Standard No. 1, *References in Auditors' Reports to the Standards of the Public Company Accounting Oversight Board* (approved by the SEC on May 14, 2004) and PCAOB Auditing Standard No. 2, *An Audit of Internal Control Over Financial Reporting Performed in Conjunction with An Audit of Financial Statements* (approved by the SEC on June 17, 2004). Instead of continuing to repeat the definition of this term in future standards, the Board approved the inclusion of this defined term in Rule 1001, *Definitions of Terms Employed in Rules*. Other than its use in these standards, the term "auditor" is not used in the Board's currently effective rules in a context in which this definition would apply. Accordingly, the definition in Rule 1001 does not change the meaning of any currently effective PCAOB rule or standard. Also, while the new definition of "auditor" in Rule 1001 would apply to any auditing and related professional practice standard established by the Board, including a PCAOB standard that amends an interim standard, it would not apply to the auditing and professional standards that the Board adopted as its interim standards in PCAOB Rules 3200T through 3600T. To

the extent the Board has amended an interim standard subsequent to its adoption, the definition in Rule 1001 would apply to the amended language of the interim standard but not to the unchanged language of that standard.

Section 103(a)(1) of the Act authorizes the PCAOB to establish, by rule, auditing standards to be used by registered public accounting firms in the preparation and issuance of audit reports, as required by the Act. PCAOB Rule 3100, "Compliance with Auditing and Related Professional Practice Standards," requires auditors to comply with all applicable auditing and related professional practice standards established by the PCAOB. The Board has adopted as interim standards, on an initial, transitional basis, the generally accepted auditing standards described in the American Institute of Certified Public Accountants' ("AICPA") Auditing Standards Board's Statement on Auditing Standards No. 95, *Generally Accepted Auditing Standards*, as in existence on April 16, 2003 (the "interim standards").

The proposed rule sets forth terminology the Board will use in auditing and related professional practice standards established or adopted by the Board.

(b) Statutory Basis.

The statutory basis for the proposed rule is Title I of the Act.

B. Board's Statement on Burden on Competition

The Board does not believe that the proposed rule will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Pursuant to the Act and PCAOB Rule 3100, auditing and related professional practice standards established by the PCAOB must be complied with by all registered public accounting firms.

C. Board's Statement on Comments on the Proposed Rule Received From Members, Participants or Others

The Board released the proposed rule for public comment in PCAOB Release No. 2003–018 (October 7, 2003). A copy of PCAOB Release No. 2003–018 and the comment letters received in response to the PCAOB's request for comment are available on the PCAOB's Web site at *http://www.pcaobus.org*. The Board received 12 written comments. The Board has modified certain aspects of the proposed rule in response to comments it received, as discussed below:

Rule 3101(a)

The Board added the following captions to Rule 3101(a): 3101(a)(1) Unconditional Responsibility, 3101(a)(2) Presumptively Mandatory Responsibility, and 3101(a)(3) Responsibility To Consider. Proposed Rule 3101(a) did not have a caption or designation for each category of terms. Rather, the proposed rule simply referenced the category of certain terms by using the standard format in PCAOB rulemaking. The Board added the captions in response to a commenter's recommendation that a caption be added to each category of certain terms for ease of reference and clarity.

One commenter recommended replacing the term "obligation" in Rule 3101 with a comparable term because the commenter believed that the term "obligation" in legal and governmental environments has a connotation that is inconsistent with the intent of Rule 3101 and may be misinterpreted by legal or governmental officials. After considering this comment, the Board replaced the term "obligation" with the synonym "responsibility" in Rule 3101.

Rule 3101(a)(2) defines a presumptively mandatory responsibility as a requirement that the auditor must comply with "unless the auditor demonstrates that alternative actions he or she followed in the circumstances were sufficient to achieve the objectives of the standard." Furthermore, Rule 3101(a)(2) states that "failure to discharge a presumptively mandatory responsibility is a violation of the relevant standard and Rule 3100 unless the auditor demonstrates that, in the circumstances, compliance with the specified responsibility was not necessary to achieve the objectives of the standard."

The Board also added a note to Rule 3101(a)(2) to require auditors to document compliance with presumptively mandatory responsibilities by alternative means. The Board originally proposed that the auditor be required to "demonstrate by verifiable, objective, and documented evidence" that the alternative procedures he or she followed were sufficient in the specific circumstances. Commenters stated that they believed that the documentation requirement was important, both to promote discipline of thought and to provide a uniform basis for evaluating compliance with the standards. Several of these commenters went even further to recommend that the Board strengthen the documentation requirement by adding language such as "contemporaneous" and "memorialized at the time of the audit" to the rule.

Conversely, other commenters suggested that the documentation requirement was unduly onerous and placed too great a documentation burden on the auditors. The commenters argued that the documentation would be too voluminous and would add very little value to the audit. Some of these commenters further recommended that, in lieu of the proposed documentation requirement, the rule require that the auditor consider the significance of the particular audit area and document only the significant issues or findings. A commenter also recommended that other evidence, such as oral explanation, should be allowed as support for the reasons why the auditor chose not to perform a presumptively mandatory responsibility. Additionally, some commenters recommended that the documentation requirement should be addressed in the standard on audit documentation.

The integrity of the audit depends, in large part, on the existence of a complete and understandable record of the work performed, the conclusions reached, and the evidence obtained to support those conclusions. Clear, complete, and comprehensive audit documentation enhances the quality of the audit. Audit documentation should demonstrate compliance with professional standards and justify the reasons for any variations in procedures performed.

The PCAOB standards require the auditor to document the procedures performed, evidence obtained, and conclusions reached during an engagement. To further enhance the quality of the audit, Rule 3101(a)(2) adds a specific documentation requirement to achieve complete and comprehensive audit documentation in engagement working papers for situations in which the auditor does not perform a presumptively mandatory responsibility. In those instances, it is essential that auditors document the reasons they chose not to perform the presumptively mandatory responsibility and how the alternative procedure they performed sufficiently achieved the objectives of the specific standard.

Because circumstances will be rare in which the auditor will perform an alternative procedure, the Board anticipates that the documentation requirement in the rule ought not to result in unduly onerous consequences or too voluminous documentation. Furthermore, since the auditor must already document the work performed as part of the audit, adding a concise explanation as to why the auditor chose to perform the alternative procedure

should not increase the volume of documentation to an unreasonable level.

During an internal or external review of the engagement, other evidence, including oral explanation, may help substantiate the procedures performed by the auditor during the audit. However, because the auditor is required to document his or her work in the engagement working papers during the audit, oral explanation should be used only to clarify the documented work performed. The justification as to why the alternative procedure was performed rather than the presumptively mandatory responsibility must be documented in the working papers. Furthermore, the reviewer should give appropriate consideration to the credibility of the individual(s) providing the oral explanation, and the oral explanation should be consistent with the documented evidence in the engagement working papers.

Moreover, the Board concluded that applying the documentation requirement only to significant issues, findings, or procedures is impractical because it will not be efficient or effective to determine, each time, whether the level of significance of an audit area warranted the auditor to document the reasons for choosing to perform an alternative procedure instead of the presumptively mandatory procedure. The purpose of Rule 3101 is to bring uniformity to definitions and requirements that auditors have to follow. In addition, the Board determined that moving Rule 3101(a)(2)'s documentation requirement to the audit documentation standard would not be appropriate because of its specific subject matter.

Additionally, the Board has added a note, originally a footnote in the Board's proposing release accompanying its proposed rule, describing an auditor's responsibility in a "should consider" scenario to the text of Rule 3101(a)(3), Responsibility to Consider. Some commenters recommended that this footnote be added directly to the text of the rule because they saw it as an important clarification that was not included in the original proposed rule. A commenter further urged the Board to elaborate on its applicability and the documentation requirements for a "should consider" action.

Another commenter suggested that the "should consider" footnote be excluded from the rule because it implies that the action would require the auditor to document every instance of compliance with a "should consider" action. The commenter, instead, recommended that Rule 3101(a)(3) be revised to apply to all considerations regardless of how the obligation is expressed (for example, whether it is preceded by a "should," "may," "could," or "might").

Because the "should consider" terminology is widely used in the interim standards, the Board determined that it is important to state the Board's expectation for compliance and, therefore, agreed with commenters who recommended adding the "should consider" footnote to the text of Rule 3101(a)(3). Furthermore, the Board concluded that there is an important difference between a "should consider" and a "may consider" action or procedure. The difference is a direct correlation to the definitions of "should" and "may." The auditor has a greater responsibility in a "should consider" action because the auditor has a presumptively mandatory responsibility to consider the action or procedure versus just having a responsibility to consider the action. Therefore, Rule 3101(a)(3) was not revised to apply to all considerations regardless of how the obligation is expressed.

Additionally, the Board determined that the documentation requirement relating to a procedure that an auditor "should consider" is not the same as the documentation requirement for a presumptively mandatory responsibility because in a "should consider" situation, only the consideration of the action is presumptively mandatory, while the action or procedure itself is not. In these situations, the auditor should use his or her professional judgment in determining how to document his or her consideration of the specific action or procedure.

Rule 3101(b)

Some commenters on the proposed rule stated that the imperatives the Board identified are consistent with the way auditors currently interpret existing auditing and related professional practice standards, while other commenters recommended that Rule 3101(a) not apply to the interim standards on the grounds that the new definitions could create confusion or have unintended consequences. Because the accounting profession previously had not expressly defined these terms, commenters further recommended that the Board perform a comprehensive analysis of how and in what context the interim standards use the defined terms to determine whether current practice is consistent with the Rule 3101(a) definitions.

The Board concluded that the terminology defined in Rule 3101 is consistent with the existing interpretation regarding the application of the terminology in the interim standards. Rule 3101 creates a common understanding among the auditors as to what is expected of them when performing engagements in accordance with the PCAOB standards and, therefore, Rule 3101 will apply to the interim standards.

Furthermore, a commenter recommended that the Board clarify the level of authority the appendices carry when accompanying the Board's standards. Because the Board adopts the appendices to its permanent standards as rules, the appendices to the Board's permanent standards carry the same level of authority as the standards themselves. In addition, the appendices to the interim standards, which in certain circumstances carry a different level of authority, retain their original level of authority as adopted on April 16, 2003.

Rule 3101(c)

Rule 3101(c) establishes an effective date for the documentation requirement in paragraph (a)(2). The Board agreed with commenters who recommended establishing an effective date to provide a reasonable amount of time for auditors to implement procedures to properly comply with the new documentation requirement.

III. Date of Effectiveness of the Proposed Rule and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Board consents the Commission will:

(a) By order approve such proposed rule; or

(b) Institute proceedings to determine whether the proposed rule should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule is consistent with Title I of the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/pcaob.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File

No. PCAOB–2004–06 on the subject line.

Paper comments:

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File No. PCAOB–2004–06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/pcaob.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the PCAOB. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. PCAOB–2004–06 and should be submitted on or before August 23, 2004.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–17461 Filed 7–30–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50093; File No. SR–Amex–2004–56]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Amend Alphabetical Designations of Paragraphs in Amex Rule 118

July 27, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 26, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has filed this proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to correct the alphabetical designation of paragraphs in Amex Rule 118. The text of the proposed rule change is available at the Commission and at the Amex.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On April 30, 2003 the Exchange submitted a proposal amending Amex Rule 118 to adopt a clearly erroneous transaction rule and half-point error guarantee for trades in Nasdaq National Market Securities. By the time the Commission approved this filing on June 29, 2004,[5] it had approved other changes[6] to Rule 118 and the alphabetical designation of the new paragraphs to this rule were no longer appropriate. This filing seeks to correct a formatting error and keep published rules organized.

2. Statutory Basis

The Amex believes the proposed rule change is consistent with section 6(b) of the Act[7] in general and furthers the objectives of section 6(b) of the Act[8] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received by the Exchange on this proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange asserts that the proposed rule change is immediately effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder[10] because it: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with protection of investors and the public interest.

The Exchange has requested the Commission to waive the 30-day operative delay and the five-day pre-filing notice requirement. The Commission believes waiving the 30-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 49941 (June 29, 2004), 69 FR 40992 (July 7, 2004) (SR–Amex–2003–39).

[6] *See* Securities Exchange Act Release No. 49240 (February 12, 2004), 69 FR 8248 (February 23, 2004) (SR–Amex 2003–21).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

day operative delay is consistent with the protection of investors and the public interest because it will allow the expeditious and accurate publication of Amex rules.[11] The Commission has also determined to waive the five-day pre-filing notice requirement. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include SR–Amex–2004–56 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to SR–Amex–2004–56. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to SR–Amex–2004–56 and should be submitted on or before August 23, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–17493 Filed 7–30–04; 8:45 am]

BILLING CODE 8010–01–P

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50083; File No. SR–BSE–2004–30]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. To Allow for the Pricing of the Options Leg(s) of Stock-Option Orders in Penny Increments

July 26, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 16, 2004, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the BSE. The BSE submitted the proposed rule change under section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to revise the procedures for executing stock-option orders on the Boston Options Exchange Facility ("BOX") by allowing for the pricing of the options leg(s) of stock option orders in penny increments. In addition, the proposed rule change corrects a typographical error in the original rule text. The text of the proposed rule change is below. Proposed new language is *italicized*; proposed deletions are in brackets.

* * * * *

Chapter V Doing Business on BOX

Sec. 27 Complex Orders

* * * * *

(b) Applicability of BOX Rules. Except as otherwise provided in this Section, Complex Orders shall be subject to all other BOX Rules that pertain to orders generally.

i. Minimum Increments. Bids and offers on [c]*C*omplex [o]*O*rders may be expressed in any decimal price pursuant to Section 6 of this Chapter V (Minimum Trading Increments), *and the option leg(s) of a stock-option order may be executed in one cent increments*, regardless of the minimum increments otherwise [appropriate] *applicable* to the individual *option* legs of the order. Complex [o]*O*rders expressed in net price increments that are not multiples of the minimum increment are not entitled to the same priority under subparagraph (b)(ii) of this Section 27 as such orders expressed in increments that are multiples of the minimum increment.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the BSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to revise the procedures for executing stock-option orders on BOX by allowing for the pricing of the options leg(s) of stock-option combination orders in penny increments. In addition, the proposed rule change corrects a few typographical errors in the original rule text. The proposed rule change is based on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

International Securities Exchange, Inc. ("ISE") Rule 722(b)(1).[5]

Because the options leg(s) of a stock-option order must be executed in $.05 increments (for options trading below $3) and $.10 increments (for options trading at or above $3),[6] while the stock leg(s) of a stock-option order trades in $.01 increments, it is not always possible to achieve a proposed net price for stock-option orders. For example, suppose an investor proposes to buy stock and sell options at a net price of $8.50. If the stock is $11.72 bid to $11.74 offered, and the option is $3.20 bid to $3.30 offered, a net price of $8.50 cannot be achieved without executing the option leg at $3.22, $3.23, or $3.24.[7] Therefore, the Exchange proposes to allow for the execution of the option leg(s) of stock-option combination orders in one-cent increments to allow investors greater opportunities to receive execution of their stock-option orders. The options leg(s) of a stock-option order will continue to be reported through the Options Price Reporting Authority with a code that indicates that the trade was part of a complex order. The actual price of the trade will be reported.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with section 6(b) of the Act,[8] in general, and furthers the objectives of section 6(b)(5) of the Act,[9] in particular, in that it is designed to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange further believes that the execution of the options leg(s) of a stock-option order in $.01 minimum increments would improve investors' ability to receive execution of their orders.

[5] *See also* Securities Exchange Act Release No. 49251 (February 13, 2004), 69 FR 8252 (February 23, 2004) (order approving File No. SR–ISE–2003–37) (revising the ISE's procedures for executing stock-option orders by automating the transmission of the stock leg(s) of a stock-option combination order to a broker-dealer on behalf of ISE members and allowing for the pricing of the options leg(s) of stock-option combination orders in penny increments).

[6] *See* Chapter V, Section 6 of the BOX rules.

[7] To execute the order within the bid and offer for the stock and the option, a net price of $8.50 could only be achieved by (1) executing the stock at $11.72 and the option at $3.22 ($11.72–$8.50); (2) executing the stock at $11.73 and the option at $3.23 ($11.73–$8.50); or (3) executing the stock at $11.74 and the option at $3.24 ($11.74–$8.50).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The BSE has filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11] Because the foregoing rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. As required under Rule 19b–4(f)(6)(iii), the BSE provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to filing the proposal with the Commission or such shorter period as designated by the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

[10] 15 U.S.C. 78s(b)(3)(a).

[11] 17 CFR 240.19b–4(f)(6).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BSE–2004–30 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–BSE–2004–30. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal offices of the BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2004–30 and should be submitted on or before August 23, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–17494 Filed 7–30–04; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50089; File No. SR–CHX–2004–04]

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Order Approving Proposed Rule Change To Revise CHX Article VI, Rule 5 To Correct a Reference to the Form Used for the Registration of New Branch Offices

July 26, 2004.

On January 7, 2004, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to update the reference to a form used by certain CHX member firms for the registration of new branch offices. The proposed rule change was published for comment in the **Federal Register** on April 13, 2004.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

The proposed rule change would conform the Exchange's rules to its practice. Under the Exchange's rules, a member firm for which the Exchange is the designated examining authority must notify the Exchange before opening a new branch office. The Exchange's rules require that a member firm provide this notice by completing and submitting a MW–B form. The Exchange represents, however, that it currently asks its member firms to submit Schedule E to Form BD for that purpose. The proposed rule change would correct the reference to the form in CHX Article VI, Rule 5.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] The Commission believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5),[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. Specifically, the Commission believes that the Exchange's proposal will conform its rules to its practice.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–CHX–2004–04) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–17490 Filed 7–30–04; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 49529 (April 6, 2004), 69 FR 19583.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50087: File No. SR–NASD–2004–090]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Nasdaq Closing Cross

July 26, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 9, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On July 23, 2004, Nasdaq amended the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes an amendment to NASD Rule 4709 to establish auxiliary procedures for administering the Nasdaq Closing Cross on certain significant trading days. Nasdaq intends to implement the proposed rule change immediately upon approval by the Commission.[4] The text of the proposed rule change is set forth below. Proposed new language is in *italics;* deletions are in [brackets].[5]

* * * * *

4709. Nasdaq Closing Cross

(a) No Change.

(b) No Change.

(c) Processing of Nasdaq Closing Cross.

(1)–(4) No Change.

(5) Auxiliary Procedures. When significant trading volume is expected at the close of regular hours, Nasdaq may apply auxiliary procedures for the Closing Cross to ensure a fair and orderly market. The determination to implement auxiliary procedures for the Closing Cross shall be made by the President of Nasdaq or any Executive Vice President designated by the President. Nasdaq shall inform market participants of such auxiliary procedures as far in advance as practicable. Auxiliary procedures shall include:

(i) Setting an earlier time or times for the end of the order entry periods set forth in paragraph (a) for IO, MOC, and LOC orders. Nasdaq may end the order entry period as early as 3:40 p.m.

(ii) Setting an earlier time for the order modification and cancellation periods in paragraph (a) for IO, MOC, and LOC orders. Nasdaq may end the order modification and cancellation periods as early as 3:40 p.m.

(iii) Setting an earlier time for the dissemination times and frequencies set forth in paragraph (b) for the Order

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 22, 2004 ("Amendment No. 1"). In Amendment No. 1, Nasdaq restated the proposed rule change in its entirety.

[4] The Commission revised this sentence to reflect the fact that Nasdaq intends to implement the proposed rule change immediately upon approval by the Commission. Telephone conversation between Jeffrey S. Davis, Associate Vice President and Associate General Counsel, Nasdaq, and Ann E. Leddy, Special Counsel, Division, Commission (July 23, 2004).

[5] The proposed rule change is marked to show changes from the rule text appearing in the NASD Manual available at www.nasd.com. There are no other pending or approved rule filings that would affect NASD Rule 4709(c).

Imbalance Indicator. Nasdaq may begin disseminating the Order Imbalance Indicator as early as 3:40 p.m. and may increase or decrease the frequency with which the Order Imbalance Indicator is disseminated.

(iv) Adjusting the threshold values set forth in subparagraph (c)(2)(D) to no greater than 20 percent.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 11, 2004, the Commission approved Nasdaq's proposal to create a Closing Cross.[6] The Closing Cross is designed to create a robust close that allows for price discovery, and an execution that results in an accurate, tradable closing price. There are three components of the Nasdaq Closing Cross: (1) The creation of Market On Close ("MOC"), Limit on Close ("LOC") and Imbalance Only ("IO") order types; (2) the dissemination of an order imbalance indicator; and (3) Closing Cross processing in the Nasdaq Market Center at 4:00:00 that executes the maximum number of shares at a single, representative price that is the Nasdaq Official Closing Price.

In order to maintain a fair and orderly market on significant trading days, such as the reconstitution of indices administered by Standard and Poors and the Russell Investment Group and various options expiration days, it is necessary for Nasdaq to adjust certain aspects of the Closing Cross. These significant trading days are characterized by high volume during a limited period of time around the close due to market participants' desire to execute trades at the closing price used by various index providers. On such days, the effort required to maintain a fair and orderly market and the potential cost of not maintaining a fair and orderly market are both increased. Therefore, Nasdaq believes it is prudent to maintain flexibility to adjust certain aspects of the Closing Cross for these significant trading days.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of section 15A of the Act,[7] in general, and with section 15A(b)(6) of the Act,[8] in particular, in that section 15A(b)(6) requires that the rules of self-regulatory organizations be designed, among other things, to protect investors and the public interest. Nasdaq believes that its current proposal is consistent with the obligations under these provisions of the Act because it would result in the public dissemination of information that more accurately reflects the trading in a particular security at the close. Furthermore, to the extent a security is a component of an index, the index would more accurately reflect the value of the market, or segment of the market, the index is designed to measure. The corresponding result should be trades executed at prices more reflective of the current market.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, as amended, or

B. Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–090 on the subject line.

Paper Comments

Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–090. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml)*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–090 and should be submitted on or before August 23, 2004.

[6] *See*, Securities Exchange Act Release No. 49406 (Mar. 11, 2004), 69 FR 12879 (Mar. 18, 2004) (SR–NASD–2003–173).

[7] 15 U.S.C. 78*o*–3.

[8] 15 U.S.C. 78*o*–3(b)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–17489 Filed 7–30–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50091; File No. SR–NASD–2004–091]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Discontinue the Use of the Nasdaq NEWS Feature of the Nasdaq Workstation II, and To Provide a Different Standard for the Beginning and End of a Trading Halt

July 27, 2004.

On June 15, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to discontinue the use of the Nasdaq NEWS feature of the Nasdaq Workstation II, and to provide for a different standard for the beginning and end of a trading halt. The proposed rule change was published for notice and comment in the **Federal Register** on June 25, 2004.[3] The Commission received no comments on the proposal.

The Commission has reviewed carefully the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[4] and, in particular, the requirements of section 15A(b)(6) of the Act,[5] which requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR–NASD–2004–091) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–17492 Filed 7–30–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50090; File No. SR–NYSE–2004–06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the New York Stock Exchange, Inc. Relating to Amendments to Exchange Rule 104 and Rule 123

July 27, 2004.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder,[2] notice is hereby given that on February 6, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On April 5, 2004, the Exchange amended the proposed rule change.[3] On July 14, 2004, the Exchange again amended the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 104.10 (Dealings by Specialists) to provide that customers may limit the ability of specialists to trade along with their orders or to invoke precedence based on size when the specialist is liquidating a position in a specialty security for its dealer account. Exchange Rule 123 (Records of Orders) is also proposed to be amended to require a record of any such request to the specialist to yield.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

Rule 104.

Dealings by Specialists

* * * * *

Supplementary Material:

Functions of Specialists

.10 Regular Specialists.—Any member who expects to act regularly as specialist in any listed stock and to solicit orders therein must be registered as a regular specialist.

* * * * *

(6)(i) Transactions on the Exchange by a specialist for his own account in liquidating or decreasing his position in a specialty stock are to be effected in a reasonable and orderly manner in relation to the condition of the general market, the market in the particular stock and the adequacy of the specialist's positions to the immediate and reasonably anticipated needs of the round-lot and the odd-lot market and in this connection:

* * * * *

(B) the specialist should maintain a fair and orderly market during liquidation and, after reliquifying, should re-enter the market to offset imbalances between supply and demand. The selling of stock on a direct minus tick or a zero minus tick, or the purchasing of stock on a direct plus tick or a zero plus tick should be effected in conjunction with the specialist's re-entry in the market on the opposite side of the market from the liquidating transaction where the imbalance of supply and demand indicates that immediately succeeding transactions may result in a lower price (following the specialist's sale of stock on a direct minus tick or a zero minus tick) or a higher price (following the specialist's

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 49898 (June 21, 2004), 69 FR 35696.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78o–3(b)(6).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 2, 2004 and accompanying Form 19b–4 ("Amendment No. 1"). In Amendment No. 1, the NYSE clarified that, under the proposed rule change, customers may limit specialists from trading along with their orders and from invoking precedence based on size.

[4] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated July 13, 2004 and accompanying Form 19b–4 ("Amendment No. 2"). In Amendment No. 2, NYSE amended the proposed rule text and added additional explanatory material to clarify the proposal. Amendment No. 2 replaced the Exchange's original filing and Amendment No. 1 thereto in their entirety.

purchase of stock on a direct plus tick or a zero plus tick). During any period of volatile or unusual market conditions resulting in a significant price movement in the subject security, the specialist's transactions in re-entering the market following a liquidating transaction effected by selling stock on a direct minus tick or zero minus tick, or purchasing stock on a direct plus tick or zero plus tick, should, at a minimum, reflect the specialist's usual level of dealer participation in the subject security. During such periods of unusual price movement in a security, any series of such transactions which may be effected in a brief period of time should be accompanied by the specialist's re-entry in the market and effecting transactions which reflect a significant degree of dealer participation[.];

(C) transactions by a specialist for his or her dealer account in liquidating or decreasing a position in a specialty security must yield parity to and may not claim precedence based on size over a customer order in the crowd upon the request of the member representing such order, where such request has been documented as a term of the order, to the extent of the volume of such order that has been included in the quote prior to the transaction.

* * * * *

Rule 123.

Record of Orders

* * * * *

(g) Requests to Yield.

A request to a specialist to yield to a customer order in accordance with Rule 104.10(6)(C) is a condition of that order and must be documented in accordance with applicable books and records requirements.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rules 104.10(6)(i) (Dealings by Specialists) and 123 (Records of Orders) to provide that customers may limit the ability of specialists to trade along with their orders or to invoke precedence based on size when the specialist is liquidating a position in a specialty security for its dealer account.

It is well established that specialists must always yield to customer orders on the book when trading in their specialty securities for their dealer accounts. However, when liquidating a position in a specialty security for its dealer account, a specialist is permitted to trade along with customer orders represented in the crowd and is entitled to invoke precedence based on size. The proposed amendment to NYSE Rule 104.10(6)(i) will give the crowd broker the right to require that the specialist yield to his or her customer's order. The proposed amendment will create more similarity in the way orders on the book and in the crowd are handled and will help diminish the perception that specialists have an advantage in trading for their dealer accounts.

NYSE Rule 104 requires that specialists' proprietary dealings be reasonably necessary to permit the specialist to maintain a fair and orderly market. Specialist dealer transactions when liquidating a position must meet this standard. In addition, specialists are required to obtain Floor Official approval for any liquidations that are conducted on a direct plus or minus tick. Thus, specialists' transactions when liquidating proprietary positions are subject to specific affirmative market-making standards and review. Nevertheless, there may be circumstances in which a customer will wish to preclude a specialist from participating with a specific trade. The proposed rule change will provide the mechanism for the customer to effect this restriction.

Specifically, Exchange Rule 104.10(6)(i) will be amended to include new paragraph (C) to provide that transactions by a specialist for his or her dealer account in liquidating or decreasing a position in a specialty security must yield to a customer's order in the crowd upon the request of the member representing such order, where such request has been documented as a term of the order, to the extent of the volume of such order included in the quote prior to the transaction. The customer's order will then participate in the transaction to the extent that priority, parity and precedence rules permit.

Exchange Rule 123 will be amended to add new paragraph (g) to provide that a request to a specialist to yield to a customer order is a condition of that order and must be documented in accordance with applicable books and records requirements (Exchange Rules 123 and 410; Rules 17(a)–3 and (a)–4 [5] under the Act).

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under section 6(b)(5) [6] that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of section 11A(a)(1) of the Act [7] in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market and provide an opportunity for investors' orders to be executed without the participation of a dealer.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory

[5] 17 CFR 240.17a-3 and 240.17a-4.
[6] 15 U.S.C. 78f(b)(5).
[7] 15 U.S.C. 78k–1(a)(1).

organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2004–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR-NYSE–2004–06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE–2004–06 and should be submitted on or before August 23, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–17491 Filed 7–30–04; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 4793]

Determination Pursuant to Section 2(b)(6) of the Export-Import Bank Act of 1945

Pursuant to section 2(b)(6) of the Export-Import Bank Act of 1945, as amended (the "Act"), Executive Order 11958 of January 18, 1977, as amended by Executive Order 12680 of July 5, 1989, and State Department Delegation of Authority No. 245 of April 23, 2001, I hereby determine that:

(1) The defense articles or services for which the Government of Colombia has requested an Export-Import Bank (Ex-Im Bank) guarantee or insurance, six Elbit weapons management and delivery system kits for installation by Sikorsky Aircraft Corporation on Colombian Air Force helicopters, are being sold primarily for anti-narcotics purposes and to support Colombia's campaign against narcotics trafficking.

(2) The sale of such defense articles or services is in the national interest of the United States.

(3) Pursuant to section 706(5) of the Foreign Relations Authorization Act of FY 2003 (Pub. L. 107–228), section 2291j(e) of title 22, United States Code, does not apply with respect to Colombia.

(4) The Government of Colombia has complied with all U.S.-imposed end use restrictions on the use of defense articles or services previously financed under the Act.

(5) The Government of Colombia has not engaged in a consistent pattern of gross violations of internationally recognized human rights, taking into consideration whether Colombia has engaged in or tolerated particularly severe violations of religious freedom or has failed to undertake serious and sustained efforts to combat particularly severe violations of religious freedom when such efforts could have been reasonably undertaken.

This determination shall be reported to Congress and shall be published in the **Federal Register**.

[8] 17 CFR 200.30–3(a)(12).

Dated: June 22, 2004.

Richard L. Armitage,

Deputy Secretary of State, Department of State.

[FR Doc. 04–17519 Filed 7–30–04; 8:45 am]

BILLING CODE 4710–29–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination of Chile's Trade Surplus in Sugar and Certain Sugar Containing Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Pursuant to U.S. Note 12(a) to subchapter XI of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS), the Office of the United States Trade Representative (USTR) is providing notice of its determination that Chile does not have a trade surplus in sugar, sugar-containing products, and high fructose corn syrup.

EFFECTIVE DATE: Date of publication in the Federal Register.

ADDRESSES: Inquiries may be mailed or delivered to Sharon Sydow, Director of Agriculture Trade Policy, Office of Agricultural Affairs, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Sharon Sydow, Office of Agricultural Affairs, 202–395–6127.

SUPPLEMENTARY INFORMATION: Pursuant to section 201 of the United States-Chile Free Trade Agreement Implementation Act (Pub. L. 108–77; 117 Stat. 909, 913; 19 U.S.C. 3805 note), Presidential Proclamation No. 7746 of December 30, 2003 (68 FR 75789), implemented on behalf of the United States the United States-Chile Free Trade Agreement (FTA) and modified the HTS to reflect therein the tariff and rules of origin treatment provided for in the FTA.

Pursuant to U.S. Note 12(a) to subchapter XI of HTS chapter 99, beginning in 2004 and annually thereafter, USTR is required to publish in the **Federal Register** a determination of the amount of Chile's trade surplus, by volume, with all sources for goods in Harmonized System (HS) subheadings 1701.11, 1701.12, 1701.91, 1701.99, 1702.20, 1702.30, 1702.40, 1702.60, 1701.90, 1806.10, 2101.12, 2101.20, and 2106.90, except that Chile's imports of U.S. goods under HS subheadings 1702.40 and 1702.60 that qualify for preferential treatment under the FTA may not be included in the calculation

of Chile's trade surplus. During calendar year 2003, the most recent year for which data is available, Chile's imports of the foregoing goods exceeded its exports by 186,269.7 metric tons according to data published by its customs authority, the Servicio Nacional de Aduana. Accordingly, based on this data, USTR determines that Chile's trade surplus for 2004 is negative.

Allen F. Johnson,

Chief Agricultural Negotiator.

[FR Doc. 04–17474 Filed 7–30–04; 8:45 am]

BILLING CODE 3190–W4–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

2004–2005 Allocations of the Tariff-rate Quotas for Raw Cane Sugar, Refined Sugar, and Sugar-Containing Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice of the country-by-country allocations of the in-quota quantity of the tariff-rate quotas for imported raw cane sugar, refined sugar, and sugar-containing products for the period that begins October 1, 2004 and ends September 30, 2005.

EFFECTIVE DATE: October 1, 2004.

ADDRESSES: Inquiries may be mailed or delivered to Sharon Sydow, Director of Agricultural Trade Policy, Office of Agricultural Affairs, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Sharon Sydow, Office of Agricultural Affairs, (202) 395–6127.

SUPPLEMENTARY INFORMATION: Pursuant to Additional U.S. Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), the United States maintains tariff-rate quotas for imports of raw cane and refined sugar. Pursuant to additional U.S. Note 8 to chapter 17 of the HTS, the United States also maintains a tariff-rate quota for certain sugar-containing products.

Section 404(d)(3) of the Uruguay Round Agreements Act (19 U.S.C. 3601(d)(3)) authorizes the President to allocate the in-quota quantity of a tariff-rate quota for any agricultural product among supplying countries or customs areas. The President delegated this authority to the United States Trade Representative under Presidential Proclamation 6763 (60 FR 1007).

The in-quota quantity of the tariff-rate quota for raw cane sugar for the period October 1, 2004–September 30, 2005, has been established by the Secretary of Agriculture at 1,117,195 metric tons, raw value (1,231,497 short tons), the minimum to which the United States is committed under the World Trade Organization Agreement. The quantity of 1,117,195 metric tons, raw value is being allocated to the following countries:

Country	FY 2005 allocation
Argentina	45,281
Australia	87,402
Barbados	7,371
Belize	11,583
Bolivia	8,424
Brazil	152,691
Colombia	25,273
Congo	7,258
Cote d'Ivoire	7,258
Costa Rica	15,796
Dominican Republic	185,335
Ecuador	11,583
El Salvador	27,379
Fiji	9,477
Gabon	7,258
Guatemala	50,546
Guyana	12,636
Haiti	7,258
Honduras	10,530
India	8,424
Jamaica	11,583
Madagascar	7,258
Malawi	10,530
Mauritius	12,636
Mexico	7,258
Mozambique	13,690
Nicaragua	22,114
Panama	30,538
Papua New Guinea	7,258
Paraguay	7,258
Peru	43,175
Philippines	142,160
South Africa	24,220
St. Kitts & Nevis	7,258
Swaziland	16,849
Taiwan	12,636
Thailand	14,743
Trinidad-Tobago	7,371
Uruguay	7,258
Zimbabwe	12,636

These allocations are based on the countries' historical shipments to the United States. The allocations of the raw cane sugar tariff-rate quota to countries that are net importers of sugar are conditioned on receipt of the appropriate verifications of origin.

This allocation includes the following minimum quota-holding countries: Congo, Cote d'Ivoire, Gabon, Haiti, Madagascar, Papua New Guinea, Paraguay, St. Kitts & Nevis, and Uruguay.

The in-quota quantity of the tariff-rate quota for refined sugar for the period October 1, 2004–September 30, 2005, has been established by the Secretary of Agriculture at 43,000 metric tons, raw value (47,399 short tons), of which the Secretary has reserved 22,656 metric tons (24,974 short tons) for specialty sugars. Of the quantity not reserved for specialty sugars, a total of 10,300 metric tons (11,354 short tons) is being allocated to Canada and 2,954 metric tons (3,256 short tons) is being allocated to Mexico. The remaining 7,090 metric tons (7,815 short tons) of the in-quota quantity not reserved for specialty sugars may be supplied by any country on a first-come, first-served basis, subject to any other provision of law. The 22,656 metric tons (24,974 short tons) reserved for specialty sugars is also not being allocated among supplying countries and is available on a first-come, first-served basis, subject to any other provision of law.

With respect to the tariff-rate quota of 64,709 metric tons (71,329 short tons) for certain sugar-containing products maintained pursuant to additional U.S. Note 8 to chapter 17 of the HTS, 59,250 metric tons (65,312 short tons) of sugar-containing products is being allocated to Canada. The remaining in-quota quantity for this tariff-rate quota is available to other countries on a first-come, first-served basis.

Conversion factor: 1 metric ton = 1.10231125 short tons.

Allen F. Johnson,

Chief Agricultural Negotiator.

[FR Doc. 04–17475 Filed 7–30–04; 8:45 am]

BILLING CODE 3190–W4–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of a Record of Decision (ROD) and a Written Reevaluation for the Evaluation of New Information Regarding an Aviation Easement and Tree Trimming/Removal at Cleveland Hopkins International Airport, Cleveland, Ohio

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of a ROD and a Written Reevaluation for the evaluation of new information regarding an avigation easement and tree trimming/removal at Cleveland Hopkins International Airport, Cleveland, Ohio.

SUMMARY: The Federal Aviation Administration (FAA) is making available a ROD and a Written Evaluation for new information concerning an avigation easement and tree trimming/removal at Cleveland

Hopkins International Airport, Cleveland, Ohio.

Point of Contact: Mr. Ernest Gubry, Environmental Protection Specialist, FAA Great Lakes Region, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, MI 48174 (734) 229–2905.

SUPPLEMENTARY INFORMATION: The FAA is making available a ROD and a Written Reevaluation of new information an avigation easement and trimming/removal at Cleveland Hopkins International Airport, Cleveland, Ohio. The purpose of the ROD and Written Reevaluation was to evaluate potential environmental impacts arising from Cleveland Metroparks issuance an authorization for an easement for tree trimming/removal on their property.

These documents will be available during normal business hours at the following locations: FAA Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, MI 48174; FAA Airports Division Office, 2300 East Devon Ave., Des Plaines, IL 60018; Cleveland Hopkins International Airport, 5300 Riverside Drive, Cleveland, OH 44135.

Due to current security requirements, arrangements must be made with the point of contact prior to visiting these offices.

Issued in Detroit, Michigan, July 19, 2004.

Irene R. Porter,

Manager, Detroit Airport District Office, FAA, Great Lakes Region.

[FR Doc. 04–17533 Filed 7–30–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration (FAA)

[Docket No. FAA–2004–16944]

Operating Limitations at Chicago O'Hare International Airport

ACTION: Notice of scheduling reduction meeting and request for information.

SUMMARY: The FAA will conduct a meeting to discuss flight reductions at Chicago's O'Hare International Airport (O'Hare) to reduce overscheduling and flight delays during peak hours of operation at that airport. This meeting is open to all scheduled carriers, regardless of whether they currently provide scheduled service to O'Hare, and to the airport operator of O'Hare. Registration in advance of the meeting is requested. In addition, the FAA invites interested persons to submit written information on such schedule reductions. The FAA plans to issue its decision on delay reductions in a final order.

DATES: *Scheduling reduction meeting.* The FAA will hold the scheduling reduction meeting on August 4, 2004, beginning at 9:30 a.m., and the meeting will continue on August 5, 2004, if necessary.

Written information. Any written information on the subject of schedule reductions at O'Hare, including data and views, must be submitted by August 11, 2004. To the extent possible, the FAA will consider late-filed submissions in making its determination in its final order.

ADDRESSES: *Scheduling reduction meeting.* The meeting will be held in the Bessie Coleman Conference Center, Federal Aviation Administration; Orville Wright Building, Second Floor; 800 Independence Avenue, SW.; Washington, DC.

Written information. You may submit written information, identified by docket number FAA–2004–16944, by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting information on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management System, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001. If sent by mail, information is to be submitted in two copies. Persons wishing to receive confirmation of receipt of their written submission should include a self-addressed stamped postcard.
- Hand Delivery: Docket Management System, Room PL–401, on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number FAA–2004–16944 for this notice at the beginning of the information that you submit. Note that the information received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Submissions to the docket that include trade secrets, confidential, commercial, or financial information, or sensitive security information will not be posted in the public docket. Such information will be placed in a separate file to which the public does not have access, and a note will be placed in the public docket to state that the agency has received such materials from the submitter.

FOR FURTHER INFORMATION CONTACT: Gerry Shakley, System Operations, Air Traffic Organization; telephone—(202) 267–9424; facsimile—(202) 267–7277; e-mail—*gerry.shakley@faa.gov.* Registration must occur on or before Monday, August 2, 2004.

SUPPLEMENTARY INFORMATION: The Federal Aviation Act (the Act) at 49 U.S.C. 41722, authorizes the Secretary of Transportation to request air carriers to attend a meeting with the FAA Administrator to discuss flight schedule reductions at any severely congested airport during peak operating hours. On January 8, 2004, following several months in which delays at O'Hare and emanating from the airport through the national airspace system had reached unacceptable levels, the Administrator determined that such a meeting regarding severe congestion at O'Hare was necessary. On January 16, 2004, the Secretary then made a similar determination that a meeting was needed to meet a serious transportation need or important public benefit.

Before the scheduling reduction meeting was to occur, the FAA separately obtained the agreement of the two largest operators at O'Hare, American Airlines and United Airlines, to reduce their scheduled operations, and the FAA thereafter issued an order implementing the reductions in their scheduled service during peak hours. *See* FAA Orders issued in this Docket on January 21, 2004, and amended on April 21, 2004. In these Orders, we made clear our intention to conduct a scheduling reduction meeting if the consensual reductions did not achieve their desired effect.

The Orders limiting scheduled operations during certain hours at O'Hare by American Airlines and United Airlines will expire as of October 30, 2004. Moreover, even with the reductions by those carriers, the statistics for air traffic at O'Hare continue to show overscheduling and excessive delays. Daily scheduled operations published for August remain approximately 170 flights above the daily August 2003 scheduled flights. Several of the busiest traffic days ever recorded at O'Hare occurred since late June. On July 1, there were 2,968 operations, just 8 fewer than the previous record on August 31, 2001. In May 2004, a NAS monthly record of 14,495 total delays was also established. Although the level of delays has fluctuated from month to month, and weather has played a major factor, the overall trend of delays remains unacceptably high when recent periods are compared to the period before November 2003. The cumulative number of delays for this calendar year

as of June 30 is 58,578; that figure is more than the respective full-year totals for each of 2000, 2001, and 2002.

Based on these and other factors, the Administrator has again determined, pursuant to the Act, that O'Hare is a severely congested airport and that a scheduling reduction meeting is necessary in order to discuss flight reductions in an effort to reduce overscheduling and flight delays at O'Hare during peak operating hours. The Secretary of Transportation has also determined, pursuant to the Act, that a scheduling reduction meeting regarding flight reductions at O'Hare is necessary to meet a serious transportation need or to achieve an important public benefit. In light of these determinations, the FAA will conduct a scheduling reduction meeting pursuant to the Act.

The FAA will hold the scheduling reduction meeting on August 4, 2004, beginning at 9:30 a.m. at the location indicated above. The meeting will continue on August 5, 2004, if necessary. As provided in the Act, no later than forty-eight hours before convening the meeting, the FAA will identify on the FAA's Web site, *http://www.faa.gov*, the peak periods of operation O'Hare and the FAA's targets for flight operations during the peak periods of operation.

The FAA will transcribe the scheduling reduction meeting including those sessions in which air carriers offer flight reductions to the FAA, as provided for by the procedures outlined below. The transcript and other documents related to the meeting will be available for inspection in Department of Transportation Docket FAA–2004–16944. In addition, any interested person may submit written information to the public docket no later than August 11, 2004. The docket is accessible through the Department of Transportation's Docket Management system and may be accessed via the Internet at *http://dms.dot.gov*.

After conducting the scheduling reduction meeting and considering all submitted information, the FAA will publish its final order on delay reductions at O'Hare in the **Federal Register**. The order is expected to be effective for no more than six months and may restrict service during peak hours by all air carriers, including air carriers that are not currently operating at O'Hare.

To ensure that proper accommodations are afforded to the meeting, all scheduled carriers that wish to attend the scheduling reduction meeting should register for the meeting on or before August 2, 2004. Registration may be accomplished by contacting Gerry Shakley, System Operations, Air Traffic Organization; telephone—(202) 267–9424; facsimile—(202) 267–7277; e-mail—*gerry.shakley@faa.gov*, identifying the air carrier and its intention to attend the meeting, and identifying who will represent the air carrier at the meeting.

Because the scheduling reduction meeting and all preparations for it are subject to the antitrust laws, the FAA has worked closely with the Department of Justice, Antitrust Division on procedures for the conduct of the meeting that should help ensure legal compliance. Copies of the FAA letter to the Antitrust Division and their response are incorporated below. As noted in this correspondence, communications among carriers regarding competitively sensitive information could result in a violation of the antitrust laws and lead to civil or criminal liability. Thus, the procedures outlined in the notice provide for a series of scheduling reduction sessions to be conducted separately by FAA staff with each air carrier attending the meeting. We will also meet with representatives of the airport operator. During those sessions any scheduled air carrier or the airport operator, if in attendance, may provide other supplemental information to the FAA regarding the targeted schedule reductions at O'Hare. The FAA requests the cooperation of all participants at the meeting in adhering to the procedures outlined in the notice.

The text of the FAA letter describing the planned procedures and the text of the Department of Justice letter assessing those procedures are as follows:

July 14, 2004, R. Hewitt Pate, Assistant Attorney General, Antitrust Division, Room 3109, U.S. Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530–0001.

Dear Mr. Pate:

We anticipate that the Secretary of Transportation will soon determine, pursuant to 49 U.S.C. 41722,[1] that it is necessary to convene a meeting of air carriers with the Administrator of the Federal Aviation Administration (FAA) to discuss flight reductions at Chicago O'Hare International Airport (O'Hare) in an effort to reduce overscheduling and flight delays during peak hours of operation. Because of severe congestion at that airport and the resulting delays and inconvenience to the traveling public, the Administrator intends to convene such a meeting in the immediate future. The purpose of this letter is to describe the format and procedures for the meeting and to ensure that, provided the meeting is conducted in accordance with this memorandum, the Department of Justice would not seek to challenge as a violation of the U.S. antitrust laws any air carrier's attendance at or participation in the meeting or an air carrier's actions taken to comply with an Order of the Administrator issued as a result of the meeting.

[1] [The text of a footnote quoting 49 U.S.C. 41722 is omitted here.]

Meeting Procedures

1. Notice to Air Carriers and Other Interested Parties

To assist the Administrator in formulating flight reduction targets, as contemplated by 49 U.S.C. 41722, and to identify the air carriers that will attend the meeting, the Administrator will send a letter notifying the O'Hare airport operator and each scheduled air carrier serving O'Hare of the meeting. The letter will describe the necessity for the meeting and will identify the periods during a representative business day that the Administrator considers severely congested. The letter will establish the date and time for the meeting and will designate Washington, DC, as the meeting's location. The letter will advise that the meeting and all preparations for it are subject to the antitrust laws and that communications among air carriers regarding competitively sensitive information, such as markets served, prices charged, and marketing plans, could result in a violation of the antitrust laws. Copies of the letter will be sent to the Antitrust Division, as well as to the Air Transport Association, Regional Airline Association, and Air Carrier Association of America.

The FAA Air Traffic Organization will separately provide the O'Hare airport operator and each air carrier serving O'Hare with a summary showing the FAA's current information as to scheduled arrivals and departures at O'Hare (including code-share flights) for each air carrier during each 15 minute period from 6 a.m. to 11 p.m. on a representative business day. A letter enclosed with this summary will request that each air carrier confirm the FAA's current information as to that air carrier's scheduled operations at O'Hare, respond as to whether the air carrier will attend the schedule reduction meeting, and if the air carrier will attend, identify whom its representative will be.

The FAA also will publish in the **Federal Register** a notice of the meeting that identifies the basis for the meeting, when and where the meeting will take place, and the manner in which the meeting will be conducted. The **Federal Register** notice will invite all scheduled air carriers to attend and will specify that a transcript of the meeting will be available for inspection in a public docket opened within three business days after the Administrator formally adjourns the flight reduction meeting.

2. Establishment and Notice of Flight Reduction Targets

The Administrator shall establish flight reduction targets, based on the number of flight operations scheduled for a representative business day. As required by the statute, at least 48 hours prior to the meeting, the Administrator will publish notice of these targets on the FAA's Web site. The notice will specify the total number of

reductions sought from the total number of flight operations conducted. The notice will not include carrier-specific limitations, targets, or suggested reductions.

3. Conduct of the Meeting

The meeting will be conducted under the following procedures:

a. The meeting will be chaired by the Administrator or by a delegate of the Administrator.

b. The meeting will be open to attendance by the O'Hare airport operator and all scheduled air carriers, and the FAA will transcribe the meeting.

c. Representatives of the Department of Justice will be invited to attend.

d. At the beginning of the meeting, the FAA will announce that, pursuant to advice from the Department of Justice, no communications will be permitted by any air carrier representative in the presence of any representative of another air carrier regarding the subject of flight reductions at O'Hare or regarding any other competitively sensitive information, including but not limited to markets served, prices charged, and marketing plans.

e. The Administrator will then distribute to the meeting's attendees a list of the number of flights, not specific as to air carrier, during each 15-minute period from 6 a.m. until 1 p.m. on a representative business day, and she will identify any periods that she considers severely congested, as well as general targets for flight reductions during those periods.

f. Each air carrier serving O'Hare and attending the meeting will then be invited into a separate and confidential session with representatives of the FAA Air Traffic Organization, at which the air carrier will be asked to offer flight reductions or schedule modifications. Only representatives of that air carrier and the U.S. government will be permitted to attend the offer sessions; however, the sessions will be transcribed.

g. Any offer of flight reductions should specify the precise number of arrivals and departures, if any, the submitting air carrier is willing to remove from each of the severely congested periods identified by the Administrator, indicating whether the flight operation(s) would be cancelled or moved to another time period. The offer may not be explicitly contingent on specific flight reductions by other air carriers but may be conditioned on the Administrator's implementation of an overall reduction of specified numbers of flight operations toward the target during the periods in question. The offer may not contain information from the air carrier on markets served, prices charged, marketing plans or other competitively sensitive matters.

h. After the completion of all such sessions, the FAA Air Traffic Organization: will review the offers made; will revise, in light of the offers made, the list of the number flights, not specific as to air carrier, during each 15-minute period from 6 a.m. until 11 p.m. on a representative business day; and will consult with the Administrator. The Administrator will distribute to the meeting's attendees the carrier non-specific list of the number of flights on a representative business day, and she will identify any periods that she continues to consider severely congested and identify targets for flight reductions during those periods.

i. At her discretion, the Administrator or her delegate may repeat steps (f) through (h), and she may continue the schedule reduction meeting as she deems necessary.

j. If the Administrator determines that identifying carrier-specific targets would facilitate voluntary flight reductions and schedule modifications, the Administrator may advise each air carrier separately and confidentially of flight reduction targets specific to that air carrier. No carrier-specific information will be provided to any air carrier other than information regarding that air carrier; however, the Administrator may make general assurances with respect to the overall proportionality of the flight reductions among the air carriers serving O'Hare.

k. Following the Administrator's identification of further flight reduction targets, each air carrier attending the meeting that serves O'Hare will be invited to a separate and confidential session with representatives of the FAA Air Traffic Organization, at which the air carrier will be given the opportunity to submit a new or revised offer of flight reductions or schedule modifications.

l. At her discretion, the Administrator or her delegate may repeat steps (j) and (k), and she may continue the schedule reduction meeting as she deems necessary.

The Administrator may terminate the schedule reduction meeting at her discretion.

4. Order of the Administrator Concerning Delays at O'Hare

The FAA Air Traffic Organization will review the final offers of each air carrier attendee of the meeting and recommend a proposed flight reduction plan to the Administrator. After the Administrator's review and approval of the plan, the resulting schedule reductions, including carrier-specific limitations, will be published in the **Federal Register** as a final order of the Administrator. The final order of the Administrator will be in effect for no more than twelve months and will specify a method by which air carriers adversely affected by the order may be relieved of its effect. The order will also be subject to modifications by the Administrator.

Please inform me if these procedures are acceptable to you.

Sincerely,

Andrew B. Steinberg,
Chief Counsel.

July 15, 2004, Andrew B. Steinberg, Esq., Chief Counsel, U.S. Department of Transportation, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591.

Re: O'Hare Delay Reduction Meeting

Dear Mr. Steinberg:

This letter is written in response to your July 14, 2004 letter describing the planned format of a meeting of air carriers with the Administrator of the Federal Aviation Administration ("FAA") to discuss flight reductions at Chicago's O'Hare International Airport ("O'Hare"). The meeting is being called in light of a determination by the Secretary of Transportation, pursuant to 49 U.S.C. 41722, that the meeting is necessary to reduce flight delays during peak hours of operation. You anticipate that such a meeting would be followed by an Order of the Administrator limiting flight operations at O'Hare. You seek assurances that, provided the meeting and related activities are conducted as described in your letter, the Department of Justice would not seek to challenge as a violation of the antitrust laws any air carrier's attendance at or participation in the meeting or any carrier's unilateral actions taken to comply with an Order of the Administrator issued as a result of the meeting.

According to your letter, all carriers participating in the meeting will be advised that the meeting and all preparations for it are subject to the antitrust laws and that communications among carriers regarding competitively sensitive information, such as markets served, prices charged, and marketing plans, could result in a violation of the antitrust laws and lead to civil or criminal liability. At the beginning of the meeting, the Administrator (or her delegee) will announce that, pursuant to advice from the Department of Justice, no communication will be permitted by any air carrier representative in the presence of any representative of another air carrier regarding flight reductions at O'Hare or any other competitively sensitive subject, including but not limited to markets served, prices charged, and marketing plans.

At the meeting, the Administrator will distribute a list of the number of flights, not specific as to air carrier, currently scheduled each 15-minute period from 6 a.m. to 11 p.m., indicate any periods that she considers to be severely congested, and provide general targets for flight reductions during those periods, which will not identify which carriers' flights are targeted to be moved or eliminated. Each carrier will then be invited into a separate, confidential discussion with the Administrator during which the carrier will be asked to offer specific flight reductions or schedule changes, which shall not be made explicitly contingent on specific reductions offered by another carrier or carriers. During such discussions the Administrator may provide general assurances with respect to the overall proportionality of the flight reductions being sought by the FAA from carriers serving O'Hare.

After completion of the individual carrier sessions, the Administrator will revise the list of flights to reflect the individual discussions with the carriers. The carriers will again be given this list, which will not identify flights by carrier. If the Administrator believes that severely congested time periods still exist, she may set revised targets and repeat the individual sessions with carriers.

If the Administrator determines that identifying carrier-specific targets is necessary to facilitate voluntary flight reductions and schedule modifications, she may advise each carrier separately and

confidentially or flight reduction targets specific to that carrier, which information will not be given to any other carrier or carriers.

The Administrator will develop and approve a proposed flight reduction plan and schedule reduction, which will be published in the Federal Register as a final order. A transcript of the meeting will not be available until three business days after the Administrator formally adjourns the flight reduction meeting.

Importantly, the procedures do not provide for any meetings among the carriers without the FAA present. The procedures will not allow any discussion or negotiation among carriers about flight reductions, prices charged, or markets served. During the course of the meetings, carriers will not be told schedule reductions or modifications other carriers are offering or being asked to offer.

For these reasons, the Department has no current intention to initiate antitrust enforcement action against any carrier that participates in the FAA's flight reduction meeting and conducts itself in the manner described in your letter. This expresses the Department's current enforcement intention regarding the carriers' participation in the flight reduction meeting. The Department reserves the right to bring an enforcement action against any conduct that violates the antitrust laws.

Yours sincerely,
R. Hewitt Pate

Issued in Washington, DC, on July 28, 2004.

Marion C. Blakey,

Administrator.

[FR Doc. 04–17525 Filed 7–28–04; 3:47 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 04–04–C–00–MCI To Impose and Use the Revenue From a Passenger Facility Charge (PFC) Collected at the Kansas City International Airport for Use at the Charles B. Wheeler Downtown Airport, Kansas City, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC collected at the Kansas City International Airport for use at the Charles B. Wheeler Downtown Airport, Kansas City, Missouri, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158.).

DATES: Comments must be received on or before September, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 910 Locust Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Mark VanLoh, Director of Aviation, Kansas City International Airport, at the following address: Kansas City Aviation Department, 601 Brasilia Avenue, Kansas City, Missouri 64153.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Kansas City International Airport, Kansas City, Missouri, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Nicoletta S. Oliver, Airports Compliance Specialist, FAA, Central Region, 901 Locust Street, Kansas City, MO 64106, (816) 329–2642. The application may be reviewed in person at the same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC collected at the Kansas City International Airport for use at the Charles B. Wheeler Downtown Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 21, 2004, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Kansas City, was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 5, 2005.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: October 2017.

Proposed charge expiration date: December 2017.

Total estimated PFC revenue: $4,066,500.

Brief description of proposed project(s): Reconstruct Runway 1/19 at the Charles B. Wheeler Downtown Airport. Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Kansas City International Airport, Kansas City, MO.

Issued in Kansas City, Missouri, on July 22, 2004.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 04–17534 Filed 7–30–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describes the nature of the information collections and their expected burdens. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on May 17, 2004 (69 FR 27968).

DATES: Comments must be submitted on or before September 1, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On May 17, 2004,

FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 69 FR 27968. FRA received no comments after issuing this notice.

Before OMB decides whether to approve this proposed collection of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)-(c); 5 CFR 1320.12(d); see also 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summary below describe the nature of the information collection requirements (ICRs) and the expected burden. These requirements are being submitted for clearance by OMB as required by the PRA.

Title: Railroad Trespasser Death Study.

OMB Control Number: 2130–NEW.

Type of Request: Approval of a New Collection of Information.

Affected Public: County (Regional) Coroners/Medical Examiners.

Form(s): FRA F 6180.117.

Abstract: Trespasser deaths on railroad rights-of-way and other railroad property are the leading. cause of fatalities attributable to railroad operations in the United States. In order to address this serious issue, interest groups, the railroad industry, and governments (Federal, State, and local) must know more about the individuals who trespass. With such knowledge, specific education programs, materials, and messages regarding the hazards and consequences of trespassing on railroad property can be developed and effectively disseminated. Since currently available data are lacking in demographic detail, FRA proposes to conduct a study (using a private contractor) to obtain demographic data from local County Medical Examiners so as to develop a general, regional profile of "typical" trespassers in order to target audiences with appropriate education and enforcement campaigns that will reduce the annual number of injuries and fatalities.

Annual Estimated Burden Hours: 120 hours.

Addressee: Send comments regarding these information collections to the Office of Information. and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, Attention: FRA Desk Officer.

Comments are invited on the following: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on July 21, 2004.

Kathy A. Weiner,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 04–17538 Filed 7–30–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–18745]

Receipt of Applications for Temporary Exemption From a Federal Motor Vehicle Safety Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of receipt of applications for temporary exemptions from a Federal motor vehicle safety standard; Request for comments.

SUMMARY: We have received applications from three motorcycle manufacturers (Honda, Piaggio, and Yamaha) for temporary exemptions from a provision in the Federal motor vehicle safety standard on motorcycle controls and displays specifying that a motorcycle rear brake, if provided, must be controlled by a right foot control. The manufacturers ask that we permit the left handlebar as an alternative location for the rear brake control. Each manufacturer states its belief that "compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall level of safety at least equal to the overall safety level of nonexempt vehicles."

We are publishing this notice of receipt of the applications in accordance with our regulations on the subject, and ask for public comment on each application. This publication does not mean that we have made a judgment yet about the merits of the applications.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than September 1, 2004.

ADDRESS: You may submit your comments [identified by the DOT DMS Docket Number cited in the heading of this document] by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–(202)–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW, Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

You may call the Docket at (202) 366–9324. You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. Michael Pyne, Office of Crash Avoidance Standards at (202) 366–4171. His fax number is (202) 493–2739.

For legal issues, you may call Ms. Dorothy Nakama, Office of the Chief Counsel at (202) 366–2992. Her fax number is (202) 366–3820.

You may send mail to these officials at National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION

I. Background

49 U.S.C. section 30113(b) provides the Secretary of Transportation the authority to exempt, on a temporary basis, motor vehicles from a motor vehicle safety standard under certain circumstances. The exemption may be renewed, if the vehicle manufacturer reapplies. The Secretary has delegated

the authority for section 30113(b) to NHTSA.

NHTSA has established regulations at 49 CFR part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards*. Part 555 provides a means by which motor vehicle manufacturers may apply for temporary exemptions from the Federal motor vehicle safety standards on the basis of substantial economic hardship, facilitation of the development of new motor vehicle safety or low-emission engine features, or existence of an equivalent overall level of motor vehicle safety.

Federal Motor Vehicle Safety Standard (FMVSS) No. 123, *Motorcycle controls and displays* (49 CFR section 571.123) specifies requirements for the location, operation, identification, and illumination of motorcycle controls and displays, and requirements for motorcycle stands and footrests. Among other requirements, FMVSS No. 123 specifies that for motorcycles with rear wheel brakes, the rear wheel brakes must be operable through the right foot control, although the left handlebar is permissible for motor-driven cycles. (*See* S5.2.1, and Table 1, Item 11. Motor-driven cycles are motorcycles with motors that produce 5 brake horsepower or less. (*See* 49 CFR section 571.3, Definitions.)

On November 21, 2003, NHTSA published in the **Federal Register** (68 FR 65667) a notice proposing two regulatory alternatives to amend FMVSS No. 123. Each alternative would require that for certain motorcycles without a clutch control lever, the rear brakes must be controlled by a lever located on the left handlebar. We also requested comment on industry practices and plans regarding controls for motorcycles with integrated brakes. If this proposed rule is made final, the left handlebar would be permitted as an alternative location for the rear brake control.

II. Applications for Temporary Exemption From FMVSS No. 123

NHTSA has received applications for temporary exemption from S5.2.1 and Table 1, Item 11 from three motorcycle manufacturers: Honda Motor Company, Ltd. (Honda); Piaggio & C. S.p.A. and Piaggio USA, Inc (Piaggio); and Yamaha Motor Corporation USA (Yamaha) . Honda asks for a new temporary exemption for the PS250 (for Model Years (MYs) 2005 and 2006), and an extension of an existing temporary exemption for the NSS250 (for MYs 2005–2006). Piaggio asks for new temporary exemptions for the Vespa GT200 (for MYs 2005–2006), the Piaggio BV200 (for MYs 2005–2006) and the Piaggio X9–500 (for MYs 2005–2006). Piaggio asks for an extension of an existing temporary exemption for the Vespa ET4 (for MYs 2004–2006). Yamaha asks for a new temporary exemption for the YP–400 (for MYs 2005–2006), which Yamaha asserts is "equivalent" to the Yamaha Vino 125. The Vino 125 is the subject of a grant of a temporary exemption from Standard No. 123 until March 1, 2005 (See 68 FR 15552; March 31, 2003). All of these motorcycles are considered "motor scooters."

The safety issues are identical in the case of all of these motorcycles. Honda, Piaggio, and Yamaha have applied to use the left handlebar as the location for the rear brake control on their motorcycles whose engines produce more than 5 brake horsepower (all of the motorcycles specified in the previous paragraph). The frames of each of the motorcycles that are the subject of these applications for temporary exemptions have not been designed to mount a right foot operated brake pedal (*i.e.*, these motor scooters have a platform for the feet and operate only through hand controls). Applying considerable stress to this sensitive pressure point of the motor scooter frame by putting on a foot operated brake control could cause failure due to fatigue, unless proper design and testing procedures are performed.

III. Why the Petitioners Claim the Overall Level of Safety of the Motorcycles Equals or Exceeds That of Non-exempted Motorcycles

The applicants have argued that the overall level of safety of the motorcycles covered by their petitions equals or exceeds that of a non-exempted motorcycle for the following reasons. Each manufacturer stated that motorcycles for which applications have been submitted are equipped with an automatic transmission. As there is no foot-operated gear change, the operation and use of a motorcycle with an automatic transmission is similar to the operation and use of a bicycle, and the vehicles can be operated without requiring special training or practice. Each manufacturer provided the following additional arguments:

Honda—Honda provided separate applications for the new exemption for the PS250 and the renewal of the exemption for the NSS250. In both cases, Honda provided test data showing how each motorcycle met the FMVSS No. 122 *Motorcycle brake systems* test specified at S5.3, service brake system—second effectiveness test. Honda provided separate sets of data showing the results of a second effectiveness comparison test data for the NSS250 and the PS250 equipped with the combined brake system. The test results for the NSS250 and the PS250 were compared to results for similarly sized models without the combined brake systems. In all cases, the NSS250 and the PS250 had shorter braking stopping distances than did the models without the combined brake systems.

Honda also provided results of ECE 78 test data for the NSS250 and PS250, equipped with the combined brake system, and provided test data comparing stopping distances on various surfaces using the rear brake control only between an NSS250 and a PS250 equipped with a combined brake system and a similar model without a combined brake system.

Piaggio—Piaggio stated that brake tests in accordance with FMVSS No. 122 *Motorcycle brake systems*, were conducted on all Vespa and Piaggio models and stated that all models "easily exceed" the performance requirements of FMVSS No. 122. Piaggio also stated that Vespa and Piaggio vehicles fully meet the 93/14 EEC brake testing requirements, and enclosed a copy of the brake testing report of the "Ministero dei Trasporti e della Navigazione" Italy or TUV/VCA.

Piaggio cited several reasons why it believes the left handlebar rear brake actuation force provides an overall level of safety that equals or exceeds a motorcycle with a right-foot rear brake control. Among these reasons, Piaggio cited the "state of the art" hydraulically activated front disc brakes used on Vespa and Piaggio vehicles, as providing more than enough brake actuation force available to the "hand of even the smallest rider." Piaggio explained that because of the greater physical size of a foot-powered brake pedal, mechanical efficiency is lower and inertia about the pivot is higher. This results in less effective feedback, or what Piaggio describes as "feeling" of the actuation system. Piaggio asserted that because there is more sensitivity to brake feedback from the hand lever, use of a hand lever reduces the probability of inadvertent wheel locking in an emergency braking situation. Piaggio stated that inexperienced riders may lose control of their motorcycle because of rear wheel locking, and that use of the hand lever reduces the possibility of rear wheel locking.

Yamaha—Yamaha cited an August 1999 study, "Motorcycle Braking Control Response Study" by T. J. Carter, as showing that handlebar-mounted rear brakes have an equivalent level of safety to that of right-foot control rear brakes, because handlebar-mounted rear brakes

have equivalent reaction times to the foot control. Yamaha analogized motorcycle operators changing from the dual hand control wheel brakes to the hand/foot arrangement, to that of an automobile driver going from an automatic transmission to a stick shift. Yamaha asserted: "[t]here have been no required warnings of 'change' or 'difference in operating character' to the automobile operator, nor has there been shown to be a lessened or lowered level of equivalent safety for the two different systems on the same platform (automobiles)."

IV. Why Petitioners Claim an Exemption Would Be in the Public Interest and Would be Consistent With the Objectives of Motor Vehicle Safety

Each manufacturer offered the following reasons why temporary exemptions for their motorcycles would be in the public interest and would be consistent with the objectives of motor vehicle safety:

Honda—For both the NSS250 and the PS250, Honda asserted that it is "certain" that the level of safety of the two motorcycles "is equal to similar vehicles certified under FMVSS No. 123; therefore, we seek renewal of the [or a new] temporary exemption from this standard." Honda noted that both the NSS250 and the PS250 are equipped with a combined brake system. The combined brake system uses both front and rear disc brakes and employs a unique three-piston front caliper. Applying the right handlebar brake lever activates the front brake caliper. Applying the left handlebar brake lever activates one piston in the front brake caliper and the rear brake caliper.

Honda asserted that with the combined brake system, the rider is able to precisely control brake force distribution, depending on which control is used. Applying the right handlebar lever activates the outer two pistons in the front caliper. In this case, the front wheel receives a larger portion of the braking force. Applying the left handlebar lever activates the center piston in the front caliper and the single piston in the rear caliper. A valve has been installed in this system to slightly delay the brake force at the front wheel. This delay improves braking by allowing the rear of the scooter to settle, which helps to minimize front nose dive and weight shift. Honda further noted that using both controls at once activates all pistons in both calipers for maximum braking force.

For the NSS250, Honda plans to offer some models with an optional antilock-brake system.

Piaggio—Piaggio stated that with the introduction of automatic transmission engines on motorcycles, "the Code of Federal Regulations is completely out of harmonization with the majority of countries in the world as far as the FMVSS 123–S5.2.1 is concerned." Piaggio asserted all European Community countries permit motorcycle manufacturers to make their own decision whether to use a left handlebar control or a right foot control for rear wheel brakes.

Yamaha–-Since there have been many previous exemptions to Standard No. 123, S5.2.1, and Table 1, Item 11 granted, Yamaha asserts that "the grounds and precedent are clear and a redundant reiteration of same is not in order to preserve precious Agency time." Yamaha concluded that its "request is consistent with the intent of the National Traffic and Motor Vehicle Safety Act and offers an equivalent level of safety for consumers and other motorists/highway users."

V. Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

You may also submit your comments to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov.* Click on "Help & Information" or "Help/Info" to obtain instructions for filing the document electronically.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).
2. On that page, click on "search."
3. On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1998–1234," you would type "1234." After typing the docket number, click on "search."
4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Although the comments are imaged documents, instead of word processing documents, the "pdf" versions of the documents are word searchable.

Please note that even after the comment closing date, we will continue

to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

How Does the Federal Privacy Act Apply to My Public Comments?

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; pages 19477–78) or you may visit *http://dms.dot.gov*.

Authority: 49 U.S.C. Section 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on: July 28, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–17535 Filed 7–30–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–RIC

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–RIC, U.S. Income Tax Return for Regulated Investment Companies.

DATES: Written comments should be received on or before October 1, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return for Regulated Investment Companies.

OMB Number: 1545–1010.

Form Number: 1120–RIC.

Abstract: Internal Revenue Code sections 851 through 855 provide rules for the taxation of a domestic corporation that meets certain requirements and elects to be taxed as a regulated investment company. Form 1120–RIC is filed by a domestic corporation making such an election in order to report its income and deductions and to compute its tax liability. The IRS uses the information on Form 1120–RIC to determine whether the corporation's income, deductions, credits, and tax have been correctly reported.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 3,277.

Estimated Time Per Respondent: 116 hours, 5 minutes.

Estimated Total Annual Burden Hours: 380,425.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 19, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–17451 Filed 7–30–04; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Monday,
August 2, 2004

Part II

Department of Housing and Urban Development

24 CFR Parts 200, 207 and 232
HUD Multifamily Rental Projects and Health Care Facility Closing Documents: Revisions and Updates and Notice of Information Collection; Proposed Rule and Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 200, 207, and 232

[Docket No. FR–4883–P–01; HUD–2004–0004]

RIN 2502–AI11

HUD Multifamily Rental Projects and Health Care Facilities: Regulatory Revisions

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend certain Federal Housing Administration (FHA) regulations to update these regulations to reflect current HUD policy in the area of multifamily rental projects and health care facilities. In developing a set of comprehensive documents for use in the FHA mortgage programs for multifamily rental projects and health care facilities (excluding hospitals), HUD identified outdated language and policies that not only needed to be changed in closing documents but also in HUD's regulations. Elsewhere in today's **Federal Register**, HUD is publishing a notice that solicits comments on revisions and updates to the closing documents.

DATES: *Comment Due Date:* October 1, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Gains E. Hopkins, Jr., Office of General Counsel, Room 9230, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500; telephone (202) 708–4090 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The regulatory changes proposed in this rule arise from HUD's comprehensive review over the last year of multifamily rental project and health care facility closing forms and documents. In 1999, HUD developed the Multifamily Accelerated Processing (MAP) initiative. During the MAP development process, HUD noted that the FHA documents used for multifamily rental project and health care facility closings had not been amended or revised in any significant fashion since the 1960s. It became clear during the development of the MAP initiative that all of HUD's multifamily closing forms (closing documents) required thorough review and, in many cases, revision to reflect modern-day terms and inclusion of conditions that offer the requisite protection to all parties to the transaction, consistent with modern real estate and mortgage lending laws and procedures. The notice published elsewhere in today's **Federal Register** identifies revisions and updates to the closing documents and describes in detail HUD's review process that resulted in the changes to the closing documents. The notice clarifies that the revisions to the closing documents do not cover the forms for HUD's Section 202 Housing for the Elderly program (Section 202) and Section 811 Housing for Persons with Disabilities (Section 811) program. Documents for the Section 202 and Section 811 programs will be revised in the near future.

In the process of updating and revising the closing documents, HUD recognized that revisions and updates were needed to certain corresponding FHA regulations on which the authority for the closing documents is based. These regulations also were found to be outdated. This rule identifies the changes that the Department intends to make to its regulations in 24 CFR parts 200, 207 and 232.

24 CFR Part 200

The requirements for commitment and endorsement of a mortgage note are provided in 24 CFR part 200, subpart A. Generally, where specific closing documents are referenced in 24 CFR part 200, subpart A, the regulations in this subpart provide that the referenced documents be in a form prescribed by HUD. The subpart also iterates other closing requirements that are reflected in the closing documents.

One regulatory change to part 200, subpart A, prompted by the review and updating of the closing documents pertains to "tenants in common" as an eligible mortgagor entity. HUD intends to remove tenancies in common as eligible mortgagor entities, except for tenancies in common comprised only of natural persons. No tenancy in common that includes any entity, such as a partnership or a limited liability company, that is not a natural person would be eligible as a mortgagor. In this rule, HUD amends § 200.5, which defines an eligible mortgagor under HUD's multifamily and health care facility mortgage insurance programs, to reflect the removal of tenants in common as an eligible mortgagor entity.

24 CFR Part 207

Section 207.255. Included in the update of the closing documents is a revision of the security instrument (HUD 94000M). As part of the revision to this document, HUD developed a new two-tiered default scheme. Class A is for financial defaults, which give the lender an immediate right to an insurance fund claim. Class B is for all other bases for default, and requires the prior written approval of HUD for the lender to make an insurance fund claim. Class B would include several new bases for default derived, in part, from the Freddie Mac model. These include fraud or material misrepresentation or omission by the borrower, its officers, directors, trustees, general partners, members, managers, or guarantors (1) in the application for the HUD-insured loan; (2) in the application for financial assistance, other than the HUD-insured loan; (3) in any financial statement, rent roll, or other report or information provided by the borrower during the term of the Indebtedness; and (4) in any request for lender's consent to any proposed action. Other new bases for default would include the commencement of a forfeiture action or proceeding, which in the lender's reasonable judgment could result in the loss of the property or impairment of the lien. HUD has revised 24 CFR 207.255 to reflect this two-tiered default scheme. As provided in 24 CFR 207.255, once a default exists under the security instrument and continues for a minimum period of 30 days, the lender would become eligible to receive mortgage insurance benefits.

In addition to reflecting the new two-tiered default system, § 207.255 would be revised to clarify that the purpose of the section is to define "default" and "date of default" for purposes of filing an insurance claim with the FHA Commissioner. Also, editorial revisions would be made to improve the readability of this section.

Section 207.256. Minor editorial changes would also be made to § 207.256 to improve readability and to

clarify which provisions in § 207.255 would be cross-referenced in § 207.256.

Sections 207.256a, 207.256b, and 207.257. Minor editorial changes would be made to these sections to improve readability. None of the changes would alter the substance of these provisions.

Section 207.258. HUD is also proposing to amend § 207.258, which provides insurance claim requirements, to conform this regulation to the requirements included in paragraph 24 of the "Mortgagee's Certificate" (HUD 92434M), one of which is that the mortgagee must request a three-month extension of the 45-day deadline prescribed by § 207.258 for a mortgage funded with the proceeds of state or local bonds, Government National Mortgage Association (Ginnie Mae) mortgage-backed securities, or other bond obligations specified by HUD, any of which contains a lock-out or penalty provision.

24 CFR Part 232

The new health care facility regulatory agreement has been revised to reflect the policy to regulate lessees of health care facilities to the same extent as owners of health care facilities. Although the Department has always taken the position that any lessee or sublessee would be subject to the same regulatory controls to which the owner is subjected under a regulatory agreement, this is the first time this policy has been clearly stated in writing. HUD's regulation in 24 CFR 232.4 also would be revised to reflect this policy.

HUD invites comment on these proposed changes, and also invites public comment on additional changes that would be necessary to avoid conflicts between HUD's regulations and the proposed revision of the closing documents in the notice published elsewhere in today's **Federal Register**.

II. Findings and Certifications

Paperwork Reduction Act

The information collection requirements resulting from changes to the multifamily rental project and health care facility closing documents have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (the Act). The notice on revisions to the closing documents, published elsewhere in today's **Federal Register**, presents the estimated reporting burden under the Act and meets the publication requirements of the Act. Under the Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This proposed rule does not impose any federal mandate on any state, local, or tribal government or the private sector within the meaning of UMRA.

Environmental Impact

A Finding of No Significant Impact with respect to the environment for this rule has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Room 10276, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule and in so doing certifies that this rule would not have a significant economic impact on a substantial number of small entities. The proposed rule is limited to making certain conforming amendments to FHA regulations that address multifamily rental projects and health care facilities to ensure their consistency with the recent update and revision of the documents used for multifamily rental project and health care facility closings. Notwithstanding HUD's determination that this rule would not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that would meet HUD's objectives as described in this preamble.

Federalism Impact

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the executive order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the executive order.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget reviewed this proposed rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this proposed rule is a "significant regulatory action," as defined in section 3(f) of the order (although not economically significant, as provided in section 3(f)(1) of the order). Any change made to the proposed rule subsequent to its submission to OMB is identified in the docket file, which is available for public inspection in the office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410–0500.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for Mortgage Insurance for the Purchase or Refinancing of Existing Multifamily Housing Projects is 14.155, and for Mortgage Insurance for Nursing Homes, Intermediate Care Facilities, Board and Care Homes and Assisted Living Facilities is 14.129.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, 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.

24 CFR Part 207

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs—health, Loan programs—housing and community development, Mortgage insurance, Nursing homes, Reporting and recordkeeping requirements.

Accordingly, for the reasons discussed in this preamble, HUD proposes to amend 24 CFR parts 200, 207, and 232 as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

1. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1702–1715z–21; 42 U.S.C. 3535(d).

2. Revise § 200.5 to read as follows:

§ 200.5 Eligible mortgagor.

The mortgagor shall be comprised of one or more natural persons or entities acceptable to the Commissioner, as limited by the applicable section of the Act, and shall possess the powers necessary and incidental to operating the project. Tenancies in common are not eligible mortgagor entities, except for tenancies in common comprised only of natural persons.

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

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

Authority: 12 U.S.C. 1701z–11(e), 1713, and 1715b; 42 U.S.C. 3535(d).

4. Revise § 207.255 to read as follows:

§ 207.255 Defaults for purposes of insurance claim.

This section defines "default" and "date of default" for purposes of a mortgagee filing an insurance claim with the Commissioner.

(a) The following shall be considered a default under the terms of a mortgage insured under this subpart:

(1) Failure of the mortgagor to make any payment due under the mortgage (also referred to as a "Class A Event of Default" in certain mortgage security instruments); or

(2) A violation of any other covenant under the provisions of the mortgage, if the mortgagee, because of such violation, has accelerated the debt subject to any necessary HUD approval (also referred to as a "Class B Event of Default" in certain mortgage security instruments).

(b) For purposes of a mortgagee filing an insurance claim with the Commissioner, the failure of the mortgagor to make any payment due under an operating loss loan or under the original mortgage shall be considered a default under both the operating loss loan and original mortgage.

(c) If a default as defined in paragraphs (a) and (b) of this section continues for a minimum period of 30 days, the mortgagee shall be entitled to receive the benefits of the insurance provided for the mortgage, subject to the procedures in this subpart.

(d) For the purposes of this section the date of default shall be:

(1) The date of the first failure to make a monthly payment that subsequent payments by the mortgagor are insufficient to cover when those subsequent payments are applied by the mortgagee to the overdue monthly payments in the order in which they became due; or

(2) The date of the first uncorrected violation of a covenant or obligation for which the mortgagee has accelerated the debt.

5. Revise § 207.256 to read as follows:

§ 207.256 Notice to the Commissioner of default.

(a) If a default as defined in § 207.255(a) or (b) is not cured within the grace period of 30 days provided under § 207.255(c), the mortgagee must, within 30 days after the date of the end of the grace period, notify the Commissioner of the default, in the manner prescribed in 24 CFR part 200, subpart B.

(b) The mortgagee must give notice to the Commissioner, in the manner prescribed in 24 CFR part 200, subpart B, of the mortgagor's violation of any covenant, whether or not the mortgagee has accelerated the debt.

6. Revise § 207.256a to read as follows:

§ 207.256a Reinstatement of defaulted mortgage.

If, after default and prior to the completion of foreclosure proceedings, the mortgagor cures the default, the insurance shall continue on the mortgage as if a default had not occurred, provided the mortgagee gives notice of reinstatement to the Commissioner, in the manner prescribed in 24 CFR part 200, subpart B.

7. Revise § 207.256b to read as follows:

§ 207.256b Modification of mortgage terms.

(a) The mortgagor and the mortgagee may, with the approval of the Commissioner, enter into an agreement that extends the time for curing a default under the mortgage or modifies the payment terms of the mortgage.

(b) The Commissioner's approval of the type of agreement specified in paragraph (a) of this section shall not be given, unless the mortgagor agrees in writing that, during such period as payments by the mortgagor to the mortgagee are less than the amounts required under the terms of the original mortgage, the mortgagee will hold in trust for disposition, as directed by the Commissioner, all rents or other funds derived from the secured property that are not required to meet actual and necessary expenses arising in connection with the operation of such property, including amortization charges under the mortgage.

(c) The Commissioner may exempt a mortgagor from the requirement of paragraph (b) of this section in any case where the Commissioner determines that such exemption does not jeopardize the interests of the United States.

8. Revise § 207.257 to read as follows:

§ 207.257 Commissioner's right to require acceleration.

Upon receipt of notice of violation of a covenant, as provided for in § 207.256(b), or otherwise being appraised of the violation of a covenant, the Commissioner reserves the right to require the mortgagee to accelerate payment of the outstanding principal balance due in order to protect the interests of the Commissioner.

9. In § 207.258, revise paragraph (a) and the first sentence of the introductory language of paragraph (b) to read as follows:

§ 207.258 Insurance claim requirements.

(a) *Alternative election by mortgagee.* When the mortgagee becomes eligible to receive mortgage insurance benefits pursuant to § 207.255(c), the mortgagee must, within 45 days after the date of eligibility, give the Commissioner notice, in the manner prescribed in 24 CFR part 200, subpart B, of its intention to file an insurance claim and of its election either to assign the mortgage to the Commissioner, as provided in paragraph (b) of this section, or to acquire and convey title to the Commissioner, as provided in paragraph (c) of this section. For mortgages funded with the proceeds of state or local bonds, GNMA mortgage-backed securities, or other bond obligations specified by HUD, any of which contains a lock-out or penalty provision, the mortgagee must, in the event of a default during the term of the prepayment lock-out or penalty (*i.e.*, prior to the date on which prepayments may be made with a penalty):

(1) Request an extension of the deadline for filing notice of the mortgagee's intention to file an insurance claim and the mortgagee's election to assign the mortgage or acquire and convey title in accordance with the mortgagee certificate;

(2) Assist the mortgagor in arranging refinancing to cure the default and avert

an insurance claim, if HUD grants the requested (or a shorter) extension of notice filing deadline;

(3) Report to HUD at least monthly on any progress in arranging refinancing;

(4) Cooperate with HUD in taking reasonable steps in accordance with prudent business practices to avoid an insurance claim;

(5) Require successors or assigns to certify in writing that they agree to be bound by these conditions for the remainder of the term of the prepayment lock-out or penalty; and

(6) After completion of any refinancing, notify HUD of a delinquency when a payment is not received by the 15th day after the date the payment is due.

(b) *Assignment of mortgage to Commissioner.* If the mortgagee elects to assign the mortgage to the Commissioner, the mortgagee shall, at any time within 30 days after the date of notice of the election, file its application for insurance benefits and assign to the Commissioner, in such manner as the Commissioner may require, any credit instrument and the realty and chattel security instruments.

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

10. The authority citation for part 232 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715w, and 1715z(9); 42 U.S.C. 3535(d).

11. In subpart A, add a new § 232.4, to read as follows:

§ 232.4 Lessees and sublessees.

Where a lessee or sublessee holds rights, powers or authorities to act, which would be held by the mortgagor in the absence of a lease, the lessee or sublessee is subject to program requirements to the same extent as the mortgagor under the Section 232 program.

Dated: June 29, 2004.

Sean Cassidy,

General Deputy, Assistant Secretary for Housing.

[FR Doc. 04–16782 Filed 7–27–04; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4883–N–02] HUD–2004–0003

HUD Multifamily Rental Project and Health Care Facility Closing Documents: Revisions and Updates and Notice of Information Collection

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: Consistent with the Paperwork Reduction Act of 1995, HUD is publishing for public comment a comprehensive set of closing forms and documents for use in the Federal Housing Administration (FHA) multifamily rental project and health care facility (excluding hospitals) programs. In addition to meeting the requirements of the Paperwork Reduction Act, this notice seeks public comment for the purpose of enlisting input from the lending industry and other interested parties in the development and adoption of a set of instruments that offer the requisite protection to all parties in these FHA-insured mortgage programs, consistent with modern real estate and mortgage lending laws and procedures. The development of these forms identified outdated language and policies in HUD regulations that needed to be changed. These forms are also posted on HUD's website at *www.HUD.gov*. Accordingly, elsewhere in today's **Federal Register**, HUD is publishing a proposed rule that solicits comments on changes to certain FHA regulations as described in the preamble to that rule.

DATES: *Comment Due Date:* October 1, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Gains E. Hopkins, Jr., Office of the General Counsel, Room 9230, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500; telephone (202) 708–4090 (this is not a toll-free number). Persons with hearing or speech disabilities may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. General Summary of Changes to HUD Multifamily Rental and Health Care Facility Closing Documents

In 1999, HUD developed the Multifamily Accelerated Processing (MAP) initiative. It was during the MAP development process that HUD noted that the multifamily rental project and health care facility closing forms had not been amended or revised in any significant fashion since the 1960s. It became clear during the development of MAP that all of HUD's multifamily closing forms required thorough review and comparison to modern day instruments to offer the requisite protection to all parties to the transaction, consistent with modern real estate and mortgage lending laws and procedures. Consequently, five committees consisting of experienced HUD closing attorneys were assembled to review the closing documents and to advise HUD's Office of Housing about improvements and recommendations. With input from HUD attorneys, FHA multifamily lenders, and counsel to parties to HUD-insured transactions, HUD determined how the forms could be revised to reflect current departmental policy and current real estate and mortgage financing practice. First drafts of revised closing documents were posted on a HUD Web site at the end of March 2000, and comments were solicited from the public and industry representatives. In response to the many comments received, significant changes were made to several of the draft documents and those changes are incorporated in the drafts being published with this notice.

The revised documents being published for public comment as part of this notice do not include the forms for HUD's Section 202 Housing for the Elderly (Section 202) program and Section 811 Housing for Persons with Disabilities (Section 811) program. Documents for the Section 202 and Section 811 programs will be revised in the near future.

The major changes to the appended closing documents are discussed in this notice. Terms that appear in this notice that begin with an initial capitalization refer to the titles of closing documents are defined terms in the closing documents. Though major changes were made to several of the documents, HUD strived to keep all changes consistent within current HUD policy and the FHA regulatory framework except where otherwise identified in this notice. The requirements for commitment and endorsement of a mortgage note are provided in 24 CFR part 200, subpart A. Generally, the regulations in this part and subpart provide that where specific closing documents are referenced in the regulations the regulations provide that the documents shall be in a form as prescribed by HUD. The subpart also specifies other closing requirements that are reflected in the closing documents. There are numerous instances where the existing documents have been clarified, expanded, or otherwise modified to reflect current HUD policy and regulations, which have changed since the documents were originally adopted. One example of such change pertains to the policy that FHA regulation of lessees of health care facilities will be to the same extent to which owners of health care facilities are regulated. This policy is set forth in the new health care facility regulatory agreement. Although HUD has always taken the position that any lessee or sublessee would be subject to the same regulatory controls to which the owner is subjected under a regulatory agreement, this is the first time that this policy has been clearly stated in writing. Comment is specifically invited on the proposed change in the closing documents. A change to HUD regulations to also reflect this policy is included in HUD's proposed rule, published elsewhere in today's **Federal Register**.

In addition to specific changes to individual documents, HUD advises that there are two separate Regulatory Agreement (RA) formats published with this notice. When the closing documents were published on the HUD Web site in March 2000, only one RA format was published at that time, and the single RA format covered both rental housing projects and health care facilities. The single RA format was developed as a result of public comment that the multiple RA formats, currently in use, are confusing, antiquated, and often misapplied. Since publication on HUD's Web site, separate formats were developed for (1) rental housing programs, and (2) health care facilities under Section 232 of the National Housing Act (NHA). Certain "rental" type modifications may be necessary to the health care facilities RA on a case-by-case basis to cover assisted living facilities (ALFs) and board and care homes (B & C homes) under Section 232. Certain provisions relating to

admission, occupancy and security deposits, among others may need to be added depending on state law. The Section 232 RA also briefly mentions an Admission Agreement, which is a type of lease between a resident of an ALF, B & C home, or Nursing Home. The description of this type of admissions agreement may need to be expanded further in certain documents depending on state law.

A major revision that HUD is considering and which is not reflected in the closing documents published with this notice is a consolidation of the various escrow forms. A consolidation would eliminate several forms which are very similar and for which the differences could be identified in a set of boxes to be checked. A frequent complaint of lenders and other users of the multifamily rental and heath care facility mortgage insurance programs has been the confusing nature of too many similar forms.

The FHA Form 2446, Escrow Agreement for Off-Site Facilities, is not included in the attached documents. When the consolidated escrow forms are published the FHA Form 2446 will be included in the that publication and, if it is not appropriate for a consolidated escrow, or if a consolidated escrow form is not developed, the FHA Form 2446 will be updated since it was last revised in April, 1962. A consolidated escrow form would contain an escrow for minor moveables and the 12-month debt service escrow for Section 232 projects with independent units. If these provisions are not included in a consolidated escrow form, another separate escrow form will have to be developed. HUD invites public comment on this proposal. HUD is considering publishing a consolidated escrow form. A consolidated escrow form would represent a major change from the policy articulated in the current Section 232 lessee regulatory agreement.

An additional change made in the RAs and other relevant documents pertains to the definition of "principal." The term "tenants in common" is being removed from the definition of "principal" because HUD intends, as a matter of policy, to eliminate tenancies in common as eligible mortgagor entities, except for tenancies in common comprised of one or more natural persons. No tenancies in common comprised of entities such as partnerships and limited liability companies, etc. would be eligible as mortgagors.

Two minor changes will be apparent in reviewing all the published forms but the reason for the changes may not be apparent. First, a decision was made to adopt a universal numbering system for the closing documents, *e.g.* HUD Form 9XXXXM, for the multifamily rental project and health care facility closing documents. A universal numbering system should reduce confusion because the documents will appear in the same group wherever HUD publishes the documents, *e.g.* HUDCLIPS. The second change is that the terms "lender" and "borrower" are used consistently throughout all the documents, except with respect to the title for the document "Mortgagee's Certificate". The terms "lender" and "borrower" are defined to mean "mortgagee" and "mortgagor" as those terms are used in the NHA. Formerly, the documents contained a variety of terms to refer to these parties; therefore, consistency more in line with modern real estate practice is anticipated to make the documents more easily understood.

Form HUD–3259, Latent Defects Bond, has not been included in the closing documents published with this notice and, like FHA Form 2446, HUD 3259 does not have the 90000M series number. Similarly, the Borrower's Cost Breakdown, HUD–2328, does not have a 90000M series number since this form was recently revised. When these forms are renewed, HUD will consider including the 3259 and the 2328 forms in the 90000M series. The FHA Form 2446 will be assigned a 90000M series number if it is not consolidated into a master escrow agreement as discussed above.

The description of the significant changes made to the individual closing documents follows. The documents are divided into two categories: major documents and miscellaneous documents. Most of the major documents have been revised in some significant fashion. The miscellaneous documents generally have not been revised. Three new documents appear in the miscellaneous category, namely, the Escrow Agreement for Working Capital, the Sinking Fund Agreement, and the Escrow Agreement for Latent Defects (For Use with Completion Assurance Agreement).

The legal authority of HUD to implement these changes to documents is found in Titles II and IX of the NHA and in 24 CFR part 200 and the separate parts pertaining to each individual multifamily rental and health care program, including but not limited to 24 CFR parts 207, 220, 221, 232, 241, and 244.

B. Major Documents

1. Security Instrument (HUD 94000M)

The Security Instrument has been changed considerably from the numerous state-specific forms currently in use by FHA. The forms currently in use were developed in the early days of FHA and have not been changed in any significant fashion since the 1960s. Certain commenters have questioned the value of instruments that are not consistent with documents used by other agencies and the commercial real estate market. Perhaps the most significant criticism was that the current FHA form Security Instruments do not provide lenders with the necessary protection that a modern instrument would offer. In developing the new multistate format, HUD made every effort to carefully examine the provisions of the security instruments currently and compare them with those used in the commercial real estate lending market today. Particularly, HUD looked carefully at the Freddie Mac multistate format (which differs little from that used by Fannie Mae) as well as at recent developments in the law. Consequently, HUD developed a multistate format which is consistent with existing HUD administrative policy and which is also consistent with modern lending and credit enhancement practices. In most areas, the multistate Security Instrument uses concepts in the existing FHA form documents and expands and clarifies them, as in the case of condemnation, property and liability insurance, single-asset borrower, books, records and financial reporting. The revised Security Instrument also clarifies for the parties to the Security Instrument which actions of the borrower and lender require HUD approval. The borrower and lender, however, remain the only parties to the Security Instrument, and HUD continues to have no direct contractual relationship with the owner with respect to the Security Instrument or to the Note. Further, the Security Instrument is organized along the same lines as the Freddie Mac instrument. State-specific addenda are being developed by HUD field counsel for the various jurisdictions and will need to be appended to the multistate format comparable to the approach taken by the Freddie Mac. The HUD state-specific addenda will differ significantly from the Freddie Mac addenda only in that there will be a provision governing construction advances in the HUD addenda since HUD insures construction advances, unlike Freddie Mac. This construction advances provision varies from state to state.

Also, the HUD instrument is designed to cover health care facilities as well as rental housing projects unlike the Freddie Mac instrument, which is restricted to rental housing. The following provides a description of the major substantive changes that have been made and the section numbers cited in the following discussion refer to sections in the Security Instrument:

Personal Liability (Section 6). HUD has decided to hold key principals personally liable for the indebtedness, but only if they commit the following actions: the borrower ceases to be a single-purpose, single-asset entity without prior HUD approval; the borrower transfers the property without prior HUD approval; the borrower creates or permits to be created a lien or encumbrance without prior HUD approval; the borrower commits fraud or makes a material misrepresentation to HUD or the lender; loss or damage suffered by the lender caused by the borrower's failure to pay Rents and security deposits it is obligated to pay; the borrower fails to apply insurance or condemnation proceeds as specified in the Security Instrument or to comply with requirements on the delivery of books, records and reports to the mortgagee. *See also* Sections 1(m), 1(p), 18, 23, 24, 45 and Section 8 of the Security Instrument.

Default (Sections 24 and 45). HUD has developed a new two-tiered default scheme: Class A for financial defaults, giving the lender an immediate right to an insurance fund claim, and Class B for all other bases for default, requiring the prior written approval of HUD for the lender to make an insurance fund claim. Class B defaults contains several new bases for default and are derived, in part, from the Freddie Mac model. The new bases include fraud or material misrepresentation or omission by the borrower, its officers, directors, trustees, general partners, members, managers or guarantors: (1) In the application for the HUD-insured loan; (2) in the application for financial assistance other than the HUD-insured loan that is included in the definition of "Indebtedness"; (3) in any financial statement, rent roll, or other report or information provided by the borrower during the term of the Indebtedness; and (4) in any request for lender's consent to any proposed action. Other new bases for default include the commencement of a forfeiture action or proceeding, which in the lender's reasonable judgment could result in the loss of the property or impairment of the lien.

Mandatory Acceleration (Section 10). HUD has decided to require the lender, when directed by HUD, to declare the entire Indebtedness due and payable following a declaration of default by HUD under the terms of the Regulatory Agreement.

Waste (Sections 1(y) and 47). HUD has augmented the common law and state law definitions of "Waste" with an expanded contractual definition of and corresponding remedies for its commission. The definition of Waste includes the unauthorized modification of the property affecting value, failure to maintain the property, violation of covenants in the loan documents which require compliance with federal regulations regarding physical conditions standards, failure to pay certain taxes, and the wrongful retention of rents. This new definition is derived from The American Law Institute (ALI) in ALI's Restatement of the Law Third, Property (Mortgages)© 1997, and portions of that work are used with ALI's kind permission.

Assignment of Leases (Section 4). HUD has included an Assignment of Leases provision to the Security Instrument. In addition to the absolute assignment by the borrower to the lender of all leases on the subject property, this section sets forth the mandatory lease provisions for non-residential use of the property, including new requirements for all leases for telecommunication uses on the mortgaged property.

Health Care Facilities (Sections 1(g) and 1(q)(16)). HUD has revised the form of Security Instrument to include health care facilities. The changes are:

a. The title of the revised form is now known as the *HUD Multifamily/Health Care Facility (Mortgage, Deed of Trust, or other designation as appropriate in jurisdiction), Assignment of Rents and Security Agreement.*

b. The definition of Health Care Facilities at Section 1(g) has been expanded to include a comprehensive list of health care facilities authorized under the NHA or other applicable federal law.

c. The definition of "Mortgaged Property" at Section 1(q)(16) has been written to include all licenses, Bed Authority, and Certificates of Need required that are necessary to operate a facility and receive benefits and reimbursement from health care assistance providers that were relied upon by HUD to insure the Security Instrument.

Termination (Section 49). HUD added a provision to clarify that, at such time as HUD no longer insures the loan or holds the Security Instrument, all obligations of the parties to the Security Instrument terminate with respect to HUD, provided that the borrower is in compliance with the Regulatory Agreement, and the lender is in compliance with the Contract of Insurance.

Management Contracts (Section 20). HUD has decided to require any management contract to contain a provision that the contract shall be subject to termination without penalty and without cause upon written request of the lender.

Environmental Hazards (Section 51). HUD has decided to include a provision similar to the Freddie Mac model to provide protections to the lender with respect to environmental hazards.

2. Multifamily/Multistate Note (HUD 94001M)

The current version of the HUD Multifamily/Multistate Note is, for some states, approximately 30 years old. The HUD Multifamily/Multistate Note in some states, such as Pennsylvania, was modeled on a Fannie Mae note form from the late 1960's or early 1970's. The proposed new version of the mortgage loan HUD Multifamily/Multistate Note is based, in part, on the 1999 Freddie Mac multifamily note. The proposed HUD Multifamily/Multistate Note is essentially a new form of note. The text has been rewritten. Discussion of issues has been expanded. Topics have been better organized. The essential concepts remain the same. Substantively, there are no major changes except for the issue of personal liability. The proposed HUD Multifamily/Multistate Note is now directly linked to the proposed Security Instrument and cannot be read independent of that document. The HUD Multifamily/Multistate Note is to be used for multifamily and healthcare programs. Some consideration was given to a revision, which would be consistent with the Government National Mortgage Association (Ginnie Mae) electronic payment; however, the decision was that such a provision would be confusing and that HUD could issue administrative policy directives permitting such changes for Ginnie Mae transactions. HUD invites public comment or suggested alternatives with respect to that issue. The major changes to the HUD Multifamiy/Multistate Note follow and the section numbers cited below refer to sections in that note.

Personal Liability (Section 8). The HUD Multifamily/Multistate Note limits personal liability. It is a non-recourse Note. The version currently in use does not have a non-recourse provision in the printed form, though personal liability language was permitted by a HUD Handbook. The revised HUD Multifamily/Multistate Note identifies exceptions to the limit on personal

liability in the Security Instrument, Regulatory Agreement, and the Note. The HUD Multifamily/Multistate Note identifies six exceptions to the limit on personal liability. A Borrower will be personally liable if the Borrower commits any of the six so-called "bad boy" acts identified in the exceptions. The "bad boy" acts concern the failure to pay the Lender rents after an event of default, failure to apply insurance or condemnation proceeds as required by the Security Instrument, the failure to deliver books and records, acquisition of property or operation of a business in violation of the Security Instrument, transfer or granting of a lien or encumbrance, and fraud or misrepresentation.

Key Principal (Section 1). The revised HUD Multifamily/Multistate Note adds a new defined term for "Key Principal" which will be discussed in an Office of Housing directive. The forthcoming Office of Housing directive will explain how to determine who will be a Key Principal. The Key Principal will be personally liable for "bad boy" acts.

Attachment to the Note. The HUD Multifamily/Multistate Note includes the attachment entitled Acknowledgment and Agreement of Key Principal to Personal Liability for Exceptions to Non-Recourse Liability. This document will make the Key Principal financially liable for "bad boy" acts.

3. Regulatory Agreement (HUD 92466M)

HUD extensively modified the Regulatory Agreement with the main change being a consolidation of all the various rental housing projects currently in use into one document. HUD drafted a separate Regulatory Agreement for its health care facilities. Lenders, Borrowers, and project managers often complained about the number of forms and the duplication of information required by the various forms. Therefore, an effort was made to evaluate all of the various Regulatory Agreements currently being used, as well as other forms executed by Borrowers in an effort to determine which forms could be consolidated without unnecessary complication. Additionally, none of the current forms had been amended for many years, and some did not fully reflect current administrative policy requirements. HUD reorganized the Regulatory Agreement by topics for ease of use, included current policy and administrative requirements and incorporated the Mortgagor's Certificate into the proposed Regulatory Agreement.

HUD spent considerable time analyzing the issue of whether to develop a separate format to cover the Section 232 Health Care Facilities program (nursing homes, intermediate care facilities, assisted living facilities and board and care homes). The final decision was to develop a separate Regulatory Agreement for health care facilities. In developing a Regulatory Agreement that will work for the various rental housing programs (excluding the FHA subsidy programs under which projects are not being initially insured any longer), great care was taken to be certain that all provisions are consistent with current administrative policy of HUD.

The proposed Regulatory Agreement is not designed to be used in all cases where there is a Transfer of Physical Assets, if the transfer involves a project which was initially insured under one of the FHA subsidy programs (Section 236 Interest Reduction Program (IRP), Rental Assistance Program (RAP), 221(d)(3) Below Market Interest Rate (BMIR), Rent Supplement, etc.) In these cases it will be necessary to develop a transactional specific Regulatory Agreement based on a combination of as much of the new format as will be compatible with those provisions of the existing Regulatory Agreement, such as those pertaining to occupancy and rental and which are mandated by the subsidy program statutes or regulations. On the other hand, the proposed format can be used for a transfer of an unsubsidized rental project and with few, if any, changes.

Article I—Definitions. The definitions are found in Article I at the beginning of the proposed Regulatory Agreement. In the existing Regulatory Agreement, the definitions are found near the end of the Regulatory Agreement. Most of the definitions in the Regulatory Agreement are the same as the definitions in the proposed Security Instrument, and many are similar to definitions found in the Freddie Mac closing documents.

Section 1(a): "Affiliate" is a new term. The definition is taken from 24 CFR 24.105.

Section 1(b): HUD decided to use the term "Borrower" instead of "Owner" or "Mortgagor" so that the same terms would be used in the Regulatory Agreement and the Security Instrument. HUD finds this term to be more universal than the term "Mortgagor". The definition of Borrower is expanded to make it clear that the definition includes a purchaser of the development that does not assume the Security Instrument.

Section 1(d): "Directives" is a new term and includes prospective issuances of HUD as well as ones effective on the date the HUD Multifamily/Multistate Note was first insured.

Section 1(p): HUD added an expanded definition of "Mortgaged Property" including other defined terms, such as "Fixtures" (Section 1(g)) and "Personalty" (Section 1(s)), which are not defined in the current Regulatory Agreements.

Section 1(x): HUD added a definition for "Reasonable operating expenses" to clarify current policy.

Section 1(aa): HUD chose to use the term "Security Instrument" instead of "Mortgage." HUD finds this term to be more universally understood and used in multifamily project closing transactions than the term "Mortgage."

Section 1(z) and Section 1(bb): The proposed Regulatory Agreement collectively covers more programs and types of developments than each of the current agreements. For this reason, the proposed Regulatory Agreement defines both "Surplus Cash" (Section 1(bb)) and "Residual Receipts" (Section 1(z)).

Section 1(ee): "Waste" is a new definition and is the same as the definition of "Waste" in Section 1(cc) of the proposed Security Instrument. Section 21 of the proposed Regulatory Agreement prohibits the Borrower from committing Waste.

Article II—Construction.

Sections 2–9: HUD decided to merge the Mortgagor's Certificate (FHA Form No. 2433) into the proposed Regulatory Agreement.

Article III—Financial Management.

Section 11(b): HUD added a provision providing for periodic review of the amount to be deposited in the reserve for replacement fund.

Section 11(c): HUD added a provision requiring that interest earned on the reserve for replacement fund be deposited into that fund.

Section 11(d): HUD added a provision permitting HUD to direct the application of the reserve for replacement fund at any time.

Section 15(b): HUD added additional conditions under which the Borrower may take Distributions.

Section 15(e): HUD clarified when the Borrower may be reimbursed for equity or capital contributions.

Section 19: HUD added a provision concerning the maintenance and inspection of books and records of management agents and Affiliates.

Article IV Project Management. Most of the provisions of this Article represent an elaboration of provisions currently found in the HUD Regulatory Agreement, HUD–92466.

Section 21: This provision derives from the current paragraphs 7 and 9 and expresses the requirement that the Borrower maintain the property and the books in satisfactory condition and that this obligation is independent of any obligation of any other entity or person.

Section 22: This provision requiring flood insurance in flood hazard areas is new to the Regulatory Agreement, but is not a new requirement for Borrowers.

Sections 23, 24, 25, 26 and 27: These provisions derive from paragraph 9 of the current Regulatory Agreement. Section 23 requires execution of a Management Agreement and Management Certification. Section 25 requires that the Management Agreement and any third party vendor contract entered into by the Borrower be terminable at the request of HUD. Section 26 provides expanded guidance for contract acquisition and management by the Borrower. Section 27 continues the existing requirement that the Borrower be responsive to inquiries from HUD regarding the operation and management of the Project.

Section 28: This provision derives from the regulations at 24 CFR part 245, as amended by the regulations published on June 7, 2000, at 65 FR 36272. This provision explains rights of tenants to organize and gives tenants remedies against Borrowers who unreasonably interfere with these rights.

Section 29: This provision derives from the current paragraph 10 and provides a remedy for HUD in the event that the Borrower fails to comply with a law that is relevant to the management of the Project.

Article V—Admissions and Occupancy.

Section 40: HUD clarified that the Borrower may not charge a resident or applicant an admission fee, founders fee, continuing care retirement community fee, life-care fee or similar payment.

Article VI—Actions Requiring the Prior Written Approval of HUD. This Article prohibits certain actions without the prior written approval of HUD.

Section 42(a): This provision maintains provisions in the Regulatory Agreement currently in use that restricts the alienation of real and personal property of the Project. However, unlike the Regulatory Agreements currently in use, this section of the revised Regulatory Agreement establishes exceptions permitting disposal of obsolete or deteriorated equipment and conveyance of property by operation of law.

Sections 42(b), (c), (d), (e), (g), (h): These sections contain provisions substantially equivalent provisions to those in the Regulatory Agreements currently in use. Clarification and improved wording is the primary purpose of any variations from prior instruments.

Section 42(f): The Regulatory Agreements currently in use restrict the right of the Borrower from conveying its general partnership interests; this provision extends that restriction to other interests, in recognition of other forms of Borrower entities being utilized.

Section 42(i): This provision is not contained in Regulatory Agreements currently in use. The provision is designed to avoid a claim by the Borrower that certain of its money is an endowment which is not permitted to be used to pay Project debt or expenses. The provision will permit such a claim only if the money is clearly part of such a restricted endowment.

Section 42(j): This provision, restricting the Borrower's right to change provisions of its organizational documents, is not found in the Regulatory Agreements currently in use. However, this provision is compatible with provisions that HUD has traditionally required to be contained in the Borrower's organizational documents themselves.

Section 42(k): This provision, regulating the institution and settling of litigation by the Borrower above $25,000, is not found in Regulatory Agreements currently in use. The inclusion of this provision by HUD represents a decision by HUD to apply a consistent policy to all programs and to clearly state that policy in the Regulatory Agreement.

Section 42(l): This provision, prohibiting reimbursement without the prior written approval of HUD, is not found in Regulatory Agreements currently in use. However, the provision is consistent with existing HUD policy that prefers that the Borrower or project manager pay the expenses of the project directly rather than by reimbursing another for these expenses.

Section 42(m): This provision, prohibiting receipt of various fees or payments, is not found in Regulatory Agreements currently in use.

Article VII—Enforcement.

Section 43(b) and (c): HUD added additional items which shall constitute a violation of the Regulatory Agreement. These include fraud or material misrepresentations by the Borrower, its officers, directors, trustees, general partners, members, managers or managing agent in connection with certain documents submitted to HUD or requests for HUD's consent to any proposed action.

Section 44: In this section, HUD clarified the circumstances under which it may declare a default following the existence of a violation.

Section 44(b): This section provides that instead of being merely able to request the holder of the HUD Multifamily/Multistate Note, when the note is not held by HUD, to accelerate the HUD Multifamily/Multistate Note following a declaration of default, HUD will have the discretion to require the holder of the HUD Multifamily/Multistate Note to accelerate the Note following the declaration of default. There is a corresponding provision in the Security Instrument at Section 10.

Section 44(g): HUD added a new provision to provide for the removal of certain persons from a role in ownership of the Mortgaged Property with respect to violations of the Regulatory Agreement related to felony criminal convictions or civil judgments concerning the operation or management of the Mortgaged Property.

Section 45: HUD added a new provision to provide a measure of damages for failure to maintain the Mortgaged Property as required by the Regulatory Agreement.

Article VIII—Miscellaneous.

Sections 47, 48, 49, 51: These sections contain provisions substantially equivalent to provisions found in Regulatory Agreements currently in use. Clarification and improved wording is the primary purpose of any variation from prior instruments.

Section 50: This provision, concerning the effect of section headings and titles, is not found in Regulatory Agreements currently in use. However, it is a standard contractual provision.

Section 52: This provision for parties' addresses for purposes of providing notice is not found in Regulatory Agreements currently in use. However, it is a standard contractual provision.

Section 53: This provision, pertaining to the Regulatory Agreement as a Uniform Commercial Code (UCC) security agreement, a fixture financing statement and the granting to HUD of a security interest, and related matters, is not contained in current Regulatory Agreements.

Article IX—Section 8 Housing Assistance Payments Contracts. Currently HUD has a different form of Regulatory Agreement (HUD–92465) for developments with project-based Section 8 assistance. HUD includes Article IX in order to make a uniform Regulatory Agreement applicable to

insured projects with Section 8 rental assistance.

In Sections 54(a), the definition of "Section 8 units" expands the current definition in Section 16(j) of HUD–92465 to clarify that "Section 8 units" does not include Section 8 certificates, vouchers or housing choice vouchers. The other sections in Article IX were in HUD–92465. Section 54(b) corresponds to Section 16(k) of HUD–92465. Sections 55, 56, and 57 correspond to Sections 5(a), (b) and (c) of HUD–92465. Sections 58, 59 and 60 correspond to Sections 9(a), (b) and (c) of HUD–92465.

4. Regulatory Agreement for Health Care Facilities (92466M–HCF)

HUD extensively modified the Regulatory Agreement formats that are currently in use. The main change is consolidation of all the various rental housing project and Health Care Facility (excluding hospitals) Regulatory Agreements currently in use into two new documents (one for rental projects [92466M] and one for health care facilities [92466M–HCF]). Aside from containing numerous provisions pertaining exclusively to health care facilities insured under Section 232 of the National Housing Act and the elimination of provisions which apply exclusively to rental housing (mainly admission and occupancy, Section 8 assistance, *etc.*), the 92466M–HCF is much the same as the 92466. The discussion of the 92466M includes a discussion of the provisions used in both documents.

In virtually all instances the 92466M–HCF is consistent with current HUD policy. However, there is one area of current HUD policy that requires clarification and therefore, HUD is specifically bringing this clarification to the attention of the public. That policy is that health care lessees are regulated to the same extent that mortgagors are regulated in the Section 232 program. Clarification is needed because the existing lessee regulatory agreement (Form 2466–NHL) contains few regulatory requirements and, consequently has created numerous questions and conflicts with lessees or operators or both.

In view of increasing conflicts and defaults in the Section 232 program, HUD's Office of Inspector General undertook an investigation, which resulted in a report with recommendations that are incorporated in the Health Care Facility Regulatory Agreement. Attention is called to the formatting of 92466M–HCF. The initial formatting of the 92466M–HCF on pages one and two differs from the "rental project" 92466M in that there are check boxes for the various types of facilities eligible under the Section 232 program, *e.g.* nursing homes, intermediate care facilities, board and care facilities, assisted living facilities and combinations. The 92466M–HCF also requires the insertion of data pertaining to the number of beds and/or units. In the opening paragraphs of the 92466M–NHL, HUD clarifies that the instrument covers Borrowers, Lessees and/or Operators. This terminology appears throughout the instrument.

Article I—Definitions. The definitions are found in Article I at the beginning of the proposed 92466M–HCF. Definitions are found near the end of the current forms of Regulatory Agreement. Most of the definitions in the 92466M–HCF are precisely the same as the definitions in the rental housing Regulatory Agreement and the proposed Security Instrument. Many definitions are similar to definitions found in the Freddie Mac closing documents. However, a few definitions are unique to the 92466M–HCF. For example, please see in Section 1, b, c, d, i, j, l, q, s, u.(15), x, y, z, bb, dd, gg, and jj. Specifically, the definition of "Leases," in the 92466–HCF, includes the Admission Agreement, which is a form of lease used between a resident and an ALF, B & C home or Nursing Home. The definitions of Operator and Lessee are particularly significant and the use of these terms in the 92466–HCF is important in understanding the expanded controls over Lessees and Operators. Some common definitions have been altered to fit the concept of a health care facility.

Article II—Construction. See 92466M discussion of these provisions.

Article III—Financial Management. See 92466M discussion of these provisions and, in addition, see Sections 12 pertaining to the Sinking Fund, 18 pertaining to books of management agents, Lessees, Operators, managers and Affiliates, and 19 pertaining to the Annual Financial Audit. These sections contain additional provisions related to the coverage of Lessees and Operators in health care facilities.

Article IV Project Management. Some of the provisions of this Article are consistent with the 92466M. However see: Section 20. Equipment; Section 21. Licensure; Section 22. Bed Capacity; Section 23.b. pertaining to coverage of Lessees and Operators; Section 24. Prohibition of Additional Fees (*e.g.* fees for life-care, *etc.*); Section 25. Coverage; Section 26. Residency of ALF's; and Sections 28–34. pertaining to coverage of Lessees and Operators. One significant change is in Section 34, Compliance with Laws, which requires maintenance of the requisite level of professional liability insurance as determined by HUD.

Article V—Lease of Health Care Facility. Section 35 is most explicit in describing additional regulatory controls applicable when a Health Care Facility is leased and in articulating fully the concept that a Lessee and Borrower together are generally subject to the same regulatory controls as a Borrower where no lease is involved. Significantly, Lessees are responsible for the same level of financial reporting, securitization of all Personalty, and agreeing that the Certificate of Need and license cannot be transferred from the Project.

Article VI—Actions Requiring the Prior Written Approval of HUD, Article VII—Enforcement and Article VIII, Miscellaneous. These Articles are virtually the same as those in the 92466M. See the discussion there of the Sections in Articles VI, VII and VIII. In addition, please note that Section 46, pertaining to Notices, specifically covers Lessees and Operators.

5. Mortgagee's Certificate (HUD 92434M)

The Mortgagee's Certificate is substantially the same as the current form. Several minor changes were made from the current form for clarity and ease of comprehension relating to organization and word choice. Also, in the interest of uniformity, the definition of any capitalized term used in the Mortgagee's Certificate can be found in the Regulatory Agreement and/or the Security Instrument. The following substantive changes were made:

Paragraph 1: HUD added a provision stating that the Lender agrees to be bound by all directives of HUD. Although Lender cannot be adversely affected by changes in regulation, HUD should be able to freely interpret its statutes and regulations. It would be problematic to apply the mortgagee letters and handbooks exactly as they existed at firm commitment for each Project. In order to participate in the program, the Lender must agree to comply with current mortgagee letters and handbooks throughout the life of the mortgage loan so long as they do not conflict with the regulations from the time of the firm commitment.

Paragraph 5: HUD changed the requirement for "clear title" to the language that mirrors the requirements for title at 24 CFR 207.258(b)(2)(ii) and (iii).

Paragraph 7: HUD removed the specific contractual provisions with respect to the creation and handling of the Working Capital Deposit and created

a separate Working Capital Escrow Agreement that will be referenced in and attached to the Mortgagee's Certificate.

Paragraph 8: HUD removed the specific contractual provisions with respect to the creation and handling of the Sinking Fund and created a separate Sinking Fund Agreement that will be referenced in and attached to the Mortgagee's Certificate.

Paragraph 13: HUD added the requirement that the Lender is responsible for timely filing of the appropriate Financing Statements under the UCC on behalf of HUD pursuant to HUD's rights under the Regulatory Agreement.

Paragraph 19: HUD amended this provision to require that HUD be included as a named insured in hazard insurance policies for the Project consistent with the new form of mortgage.

Paragraph 20: HUD amended the current Mortgagee's Certificate that previously included items which are to be paid (such as extension fees) in clauses (b), (c), (d) and (e) of paragraph (2) to include only items to be paid at or before initial closing. Deferred fees and charges of all kinds are now addressed only in paragraph 20(f). Further, the HUD added clause (g) of paragraph 20, which allows the Lender to collect servicing and administrative fees. HUD also added clauses (h) and (i) to paragraph 20 to advise HUD if the construction and/or permanent loan is being funded by GNMA mortgage-backed securities or participation certificates in order to address the concern that HUD offices are inconsistent with their requirements to disclose information regarding the underlying financing arrangements of the transaction.

Paragraph 25: HUD included a certification that the Lender has no identity of interest with the Mortgagor.

Paragraph 26: HUD included a certification that the Lender has no identity of interest with the Borrower's attorney to mirror the requirement from the Borrower's attorney opinion.

Paragraph 29: HUD added a certification that all of the closing documents (indicated on the closing checklist and with the exception of the Opinion by Counsel to the Borrower) are in accord with the HUD format documents except as revised and approved by HUD Field Counsel. The Lender will draft a memorandum listing any and all changes to the HUD-approved forms. HUD's approval of the changes will occur by acceptance of the documents and the memorandum listing the changes at the closing. In order to clarify what documents were accepted at the closing, a list of all documents accepted at the closing will be signed by the HUD closing attorney, the Lender and the Borrower. HUD also added the following language "[i]t is understood that changes and modifications do not include filling in blanks, attaching exhibits or riders, deleting inapplicable provisions or making changes authorized by applicable HUD regulation, handbooks and/or directives."

Paragraph 30: HUD added a requirement that the Lender immediately notify HUD in writing upon learning of any violation of the Regulatory Agreement.

Paragraph 31: HUD added a requirement that the Lender promptly review any Borrower's request to transfer the Project and not unreasonably withhold approval of the transfer. If HUD approves the transfer, the Lender will execute a Release and Assumption Agreement or a Mortgage Modification Agreement incorporating the Regulatory Agreement in the Mortgage. HUD also prohibited the Lender from collecting any fee in connection with reviewing the transfer except for reimbursement of actual expenses incurred in connection with reviewing the transfer.

6. Building Loan Agreement (HUD–92441M)

The Building Loan Agreement, HUD 92441 (5–84), remains largely unchanged. There were minor grammatical and style changes made to the text. The substantive changes were as follows:

The first factual recital was revised to reflect all forms of approved mortgagors, including partnerships and limited liability companies.

Paragraph 1 was revised to require submission of closing documents and completion of the initial closing before mortgage proceeds may be advanced.

Paragraph 3 was revised to require approval of all construction changes by the lender and HUD. This reflects existing HUD policy and procedure.

Paragraph 5 was revised to include the permanent loan fee, legal, organizational and audit in the itemized list of charges.

Paragraph 12 was revised to remove the words "upon completion," which would change the text to require the security agreement and financing statements to be submitted with all other documents at the time of the initial closing.

Paragraph 14 was revised to follow the text of Section 212(a) of the National Housing Act.

Paragraph 19 was added to acknowledge the personal liability of the borrower if mortgage advances are not applied in accord with the requisitions and the Building Loan Agreement. This is a clarification of HUD's policy and reflects HUD's interpretation of the form currently in use.

Paragraph 20 was added to clarify that HUD is not a party to the Building Loan Agreement.

7. Supplement to Building Loan Agreement (HUD 92441M–SUPP)

The Supplement to the Building Loan Agreement, form HUD 92441, is to be used when the Borrower acts as its own general contractor and there is no construction contract. This form is used infrequently. The revised Supplement does not have any substantive changes. Some editorial changes were made, and the references to forms have been updated to refer to the new form numbers.

8. Construction Contract (HUD 92442M)

The existing HUD construction contracts, HUD Forms 92442–Lump Sum, and 92442–A–Cost Plus, were consolidated into a single HUD Construction Contract. The consolidation of the two contract formats was based upon a determination that the HUD construction contracts currently in use are more similar than different, and, the identical and distinct provisions of the construction contracts could efficiently be adapted to a consolidated format. HUD also determined that a separate form was not necessary to take advantage of the Incentive Payment for Early Completion. Note that the Incentive Payment Computation Form, page 2 of HUD–92443, has not been removed and it is referenced as a contract document in Article 2, Section A.7, of the consolidated construction contract.

HUD gave consideration to including the full text of the Labor Requirements, currently set forth in the Form HUD–2554, within the body of the contract. HUD determined not to include those requirements, because to do so would unnecessarily lengthen the construction contract.

HUD considered the possibility of adhering to a construction schedule culminating with payment upon Substantial Completion, rather than payment upon Final Completion. HUD's Office of Housing determined that the best interests of the Department are served by retaining the Final Completion requirement, to preserve rights attendant to warranty items and liquidated damages. The terms "Final

Completion" and "Final Completion Deadline" are clarified in Article 3, Section A.

Significant changes to the HUD consolidated construction contract include the following:

a. The format, page one, provides for designation as either a Lump Sum or Cost Plus contract, insertion of the Project Number, and identification of the parties to the contract.

b. The contract documents recited in Article 2. Section A expressly includes the project manual, the Incentive Payment Computation form (if applicable), and the Prevailing Wage Determination.

c. The mandatory arbitration provisions contained in the AIA A201–1997 General Conditions are expressly excepted from the HUD contract, in Article 2.A.2.

d. The provisions for the payment of incentives for the early completion of construction have been set forth explicitly in the body of the contract, as explained in Article 3. F. For Cost Plus contracts, where there is no Identity of interest between the Owner and the Contractor, the incentive provision is stated in Article 4. D. Where there exists such an Identity of Interest, the incentive provision is stated in Article 4.E. For Lump Sum contracts, the incentive provision is stated in Article 4A. B. The contract language is based upon the provisions currently found in Form HUD–92443 (3/94) and in paragraph 1–15. B. 2. of Handbook 4430.1.

e. Payment Procedures found in Article 5 require the contractor to execute and submit all final advance documents required by HUD as a condition precedent to payment of final balance due to the contractor.

f. The Contractor, pursuant to Article 6, is expressly authorized to withhold payment from the subcontractor(s) in an amount reflecting percentages actually retained from payments to the contractor on account of such subcontractor's portion of the work.

g. References to "HUD requirements" in Article 7, Section E. include "HUD Administrative Requirements" with the intent of reaching all forms of relevant issuance such as Handbooks, Guidebooks, Program Notices, Mortgagee letters, and other written directives issued by HUD relating to the HUD Multifamily or Health Care Facility insurance programs under the National Housing Act, as amended, and any successive legislation.

h. The relationship between state law considerations and lien waiver requirements is addressed in Article 9.B. Article 9.B. states: "In jurisdictions where permitted by law, the Owner may require the Contractor to execute a Waiver of Liens which shall be recorded prior to the commencement of construction."

i. A new Article 12 clarifies the roles of Lender and HUD, disclaiming imputed liability to HUD or the Lender as a result of action or inaction of the Owner, Contractor or any third parties.

j. A new Article 14 provides for designation of the Owner and Contractor representatives responsible for communications involving the contract.

9. Supplementary Conditions of the Contract for Construction (HUD–92554M)

This revision to the form Supplementary Conditions of the Contract for Construction is substantially the same as the current Form HUD–2554. However, this draft is designed explicitly for use in the FHA program and not for use in the Section 202, Section 811 or in other HUD programs. This draft form is subject to further internal review by HUD to adapt this form for use in transactions under Section 202 and Section 811. It was originally included within the body of the Merged Construction Contract posted on HUD's Web site on March 31, 2000, with other draft forms for use in multifamily project and facility closings. Upon further consideration and based on several comments received by this office, the decision was made to retain the form of the Supplementary Conditions for use as a separate instrument rather than include it within the body of the construction contract form.

In the interest of clarity and ease of comprehension, several changes were made to current Form HUD–2554 including punctuation, citations and cross-references, and a few subsection numbers were changed. The following additional changes were also made to the form:

a. The instructions contained at the beginning of Article I (the paragraph headed "Instructions") were removed, and appropriate language with respect to the applicability of paragraphs B, C and D (formerly A, B, and C) was added at the beginning of each appropriate paragraph itself. See the discussion for paragraphs 1.B, 1.C and 1.D that immediately follows.

b. Paragraph 1.B (Minimum Wages) now opens with a statement describing projects exempt from the minimum wage provisions contained therein.

c. Subparagraph 4 (i) of paragraph 1.B is updated to reference the current name for the office within the Department of Labor responsible for apprentice and trainee programs. The current name of the office is "Office of Apprenticeship Training, Employer and Labor Services" which was formerly known as the "Bureau of Apprenticeship and Training."

d. Subparagraph 6 of paragraph 1.B now refers to the clauses in subparagraphs 1 through 10 of paragraph B in lieu of referring to the comparable clauses of 29 CFR 5.5(a), in identifying minimum wage provisions to be inserted in subcontracts.

e. Paragraph 1.C (Contract Work Hours and Safety Standards Act) now starts with a subparagraph numbered 1 that states: "This paragraph C of Article 1 is applicable only if a direct form of federal assistance is involved, such as Section 8, Section 202/811 Capital Advance, grants *etc.*, and is applicable only where the prime contract is in an amount greater than $100,000. As used in this paragraph C, the terms 'laborers' and 'mechanics' include watchmen and guards."

f. Subsection 1.D (Certification) now starts with the following phrase that identifies the scope of the certification: "For projects with mortgages insured under the National Housing Act that are subject to paragraph B of this Article 1."

g. Article 2 (Equal Employment Opportunity) was revised to remove the language provided in the beginning of the Article that states that an obligation on the part of an "applicant" to incorporate certain provisions in construction contracts. HUD determined that language is not appropriate for inclusion within the body of the form, since the form itself is designed to be included in construction contracts (as an attachment) and not to be included in grant agreements or application forms.

h. Article 2, subsections B and C (formerly A and B), were revised to include reference to persons with disabilities as a protected class.

i. Article 2, subsections H, I and J, were removed because it was determined that these provisions relative to the agreements and obligations of "the applicant" were not appropriate for inclusion in this construction contract document. Rather, these provisions should be included in other, more appropriate instruments.

j. Article 3 (Equal Opportunity for Businesses and Lower Income Persons Located Within the Project Area), commences with a revised statement (now labeled subsection A) that describes the applicability of Article 3 by simply referring to the regulation at 24 CFR part 135.

k. Article 4 (Health and Safety) now starts with an "applicability" paragraph (labeled paragraph A) that clarifies the scope of applicability of this article and states: "This Article 4 is applicable only where the prime contract is in an amount greater than $100,000." This new language reflects the fact that Article 4 derives from the Contract Work Hours and Safety Standards Act, which contains such limitation.

10. Opinion by Counsel to the Borrower and Instructions and Certification (HUD 91725M)

The guide format for the opinion required by HUD in multifamily rental project and health care facility closings was originally prepared in 1994 in response to changes in opinion practice as reflected by the ABA Accord and various State law bar reports on opinion letters. The proposed revision to the guide format reflects approximately seven years experience with the 1994 version and, as would be expected, contains numerous technical changes and corrections such as the striking of the requirement that HUD be shown in Financing Statements "as its interest appears." The principal purpose of the guide format remains, which is to achieve a uniform format which can be utilized throughout the nation and which will be familiar to HUD counsel, Lenders and other parties to the mortgage insurance transactions in all jurisdictions. The major substantive changes being proposed are as follows:

Instructions to the Guide Format on the Opinion by Counsel to the Borrower. The Instructions have been updated and contain numerous clarifications that should facilitate use of the guide format in preparing the Opinion by Counsel to the Borrower (Opinion). The Instructions describe and explain the rationale for the major changes to the guide format, *e.g.* the section pertaining to the UCC, reliance by successors and assigns of the Lender, certification as to the guide following the format provided by HUD, stronger certification/warning language in the Opinion and virtually all other closing documents being reviewed by Counsel to the Borrower, *etc.* Note specifically the discussion of acceptability of counsel, signatures, certification of the mortgagor, identity of interest, liens, certifications as to Regulatory Agreement and side-deals, reliance on other opinions and reliance by subsequent holders. Further, the Instructions contain considerably greater guidance and numerous clarifications as to when and how the guide format is to be utilized, *e.g.* as to which programs and which closings the guide form is applicable, as to how the guide format can or should be modified, *etc.*

Section 13. This section and several related provisions pertaining to securitization of the Lender and HUD under the UCC have been revised to reflect the fact that the Lender now has to also prepare an appropriate Security Agreement and Financing Statements to securitize HUD as well as the lender. It is also likely that the Opinion will have to be updated at final endorsement to properly cover the UCC securitization, particularly for health care facilities where the proper documentation under the UCC cannot be prepared until completion of the project or facility.

Certification by Mortgagor. See Section 8 related to identities of interest and side-deals.

C. Miscellaneous Documents

1. *Residual Receipts Notes (HUD–91710M and 91712M).* Each proposed Residual Receipts Note format has been revised to incorporate directive requirements into the text of the notes.

2. *Escrow Agreement for Incomplete Construction (HUD–92456M).* HUD revised the Escrow Agreement by adding 'incomplete construction' to the title of the form. The recital provision has been changed with respect to statement that the Lender is to advance the entire amount of the loan provided for in the Building Loan Agreement. This statement is misleading since the amount of the loan can and often does change at final endorsement. The provision now reads: 'to insure the Mortgage Loan in its maximum approved amount.' The form was corrected to remove the Labor Standards Procedures and substitute the Form HUD–92554M, Supplementary Conditions of the Contract for Construction, as the labor standards. Finally, the term 'cash' was added to the deposit.

3. *Request for Final Endorsement of Credit Instrument (HUD 92023M).* No substantive changes were made to this form.

4. *Leasehold Instructions with Lease Addendum (HUD 92070M).* The revision made to this form clarifies that the instructions and addendum are to be used in connection with a ground lease. The procedures for leasehold termination by reason of tenant defaults and the right to cure defaults are revised to give greater protection to the insured mortgagee and to HUD. Upon premature termination of the leasehold by reason of tenant defaults, the revision specifically provides that the insured mortgage remains an encumbrance on the improvements.

5. *Surplus Cash Note (HUD–92223M).* Each proposed Surplus Cash Note format has been revised to incorporate directive requirements into the text of the notes.

6. *Completion Assurance Agreement (HUD–92450M).* There were no substantive changes made to this form.

7. *Payment Bond (HUD–92452M–A).* This form includes several revisions. New provisions added to the form include a provision that amounts paid to the Owner without the written consent of the Lender do not reduce the Surety's liability. The cost of equipment was added as an additional item that may be claimed under the bond. An Additional Obligee Rider was attached for cases in which HUD approves an additional obligee on the bond. An Additional Surety Rider was attached for cases in which HUD allows more than one surety. The form was revised to reflect that the one-year time period to bring an action under the bond runs from the date the last labor or service was performed or last materials or equipment were furnished, rather than from the date the Contractor ceased work. Another revision provides that the Surety waives notice of any changes to the construction contract, including changes of time.

8. *Performance Bond-Dual Obligee (HUD 92452M).* New provisions added to the form include a provision that amounts paid to the Owner without the written consent of the Lender do not reduce the Surety's liability. Also, the Surety must notify Obligees of its failure to make payments or perform obligations and provide time to cure before the Surety can assert Obligee's failure to perform as cause for Surety not to perform. An Additional Obligee Rider was attached for cases in which HUD approves an additional obligee on the bond. An Additional Surety Rider was attached for cases in which HUD allows more than one surety. The form was revised to reflect that the two-year time period to bring an action under the bond runs from the date the Owner declares the Contractor in default of the contract rather than from the date on which the final payment under the contract was due. Another revision provides that the Surety waives notice of any changes to the construction contract, including changes of time.

9. *Request for Endorsement of Credit Instrument Insurance Upon Completion (HUD–92455M).* HUD made substantial revisions to the current version of this form that is dated February 1973. Many of the paragraph numbers of the current document have changed and the references that follow are to the paragraph numbers in the proposed

document unless otherwise indicated. A space has been provided for inspection fees in the third paragraph. In the Certificate of Mortgagee, paragraph 4 has been expanded to include Section 223 projects. A statement has been added to paragraph 5 to cover Section 223 delayed repairs and latent defect protection. Paragraph 6 has been revised so that it is no longer restricted to Section 232 projects. Paragraph 7 has been added to include the amount deposited into the Reserve for Replacements for Section 223 projects. In paragraph 8, the language has been updated by adding a statement regarding fees and charges. In paragraph 9.b., language has been added that requires Lenders to certify that, in addition to the initial service charge, the Lender receives a servicing fee, which is included in the mortgage rate, an administrative fee for investing the cash held in the Reserve for Replacements and any other interest-bearing escrows required by the Department. Paragraph 9.d has been amended to set out the dollar amount of the permanent placement fee collected by the Lender, in addition to the initial service charge. Paragraph 9.f has been added for bond-financed projects, to disclose the amount collected to cover the cost of issuance. Also, a statement must be attached itemizing and explaining the necessity of each cost. Paragraph 10.g of the current form is obsolete. It has been rewritten and replaced with references to GNMA. Paragraph 10 has been added to cover the rights of HUD during the period of lockout or prepayment penalty. Paragraph 11 regarding the letter of credit has been rewritten to follow the current regulation at 24 CFR 200.63. In the Certificate of Mortgagor, the current paragraph 4 is obsolete, is addressed elsewhere in other forms and has been deleted. Paragraph 7.b in the Certificate of Mortgagor has been expanded to provide space for additional obligations. The Certificate of General Contractor (contractor) has been amended extensively. A signature block has been added for the contractor. In signing the document, contractor will be made a party to the document. Further, the contractor certifies that the contractor will pay the obligations and provide receipts except for unfinished work funded by an escrow.

10. *Surveyor's Report (HUD–92457M) and Survey Instructions and Report (HUD–92457A–M).* The only change to the Surveyor's Report (HUD–92457M) and Survey Instructions and Report (HUD–92457A–M) was to require surveyors to apply the Minimum Standard Detail Requirements and Classifications for ALTA/ACSM Land Title surveys that were adopted in 1999, rather than the 1992 standards to which the March 1998 version of the form referred.

11. *Request for Approval of Advance of Escrow Funds (HUD 92464M).* No substantive changes were made to this form.

12. *Escrow Agreement for Noncritical, Deferred Repairs (HUD–92476.1M).* The Department substantially revised this form. HUD deleted references to Capital Needs Assessments and 241(f) loans and refers in general to Section 223, since repairs can arise under the Section 223(f) and 223 (a)(7) insured loans. As with other escrow forms, if the Depository is the Lender, the term Depository refers to the Lender. The form has been clarified to provide that deposits for the escrows are in cash for both the unpaid construction costs and for delayed repairs and has been made consistent with Housing Notice H99–33. Protective language was added to cover contingencies, such as, failure to complete the Section 223 repairs on time or in the event of default. In paragraph 8, the provisions of the regulation at 24 CFR 200.63 governing the letter of credit were added.

13. *Agreement of Sponsors To Furnish Additional Funds (HUD 92476M).* This form was revised slightly to clarify that the deposit to be made by a sponsor is to be pursuant to form HUD 92476aM.

14. *Escrow Agreement-Additional Contribution By Sponsors for Operating Deficit (HUD–92476aM).* This form was revised slightly to clarify certain aspects of it. A reference to "Operating Deficit" was added to the title to assist the reader in determining at a glance whether it is the needed form. The reference to "bearer bonds" as an acceptable form of the deposit was eliminated as obsolete. Paragraph 4, regarding HUD's determination that the project has achieved sustaining occupancy and income, has been clarified to show that this determination is within HUD's sole discretion. At paragraph 5, the essence of the provisions of the regulation at 24 CFR 200.63 governing the letter of credit were added.

15. *Bond Guaranteeing Sponsor's Performance (HUD–92477M).* There were no substantive changes made to this form.

16. *Mortgagor's Oath (HUD–92478M).* This form was edited for clarification and to more fully comply with the relevant statutes. Specifically, HUD has made reference in each of the first two paragraphs to the section of the NHA upon which the respective requirements are based and, at the same time, has eliminated the recitation of the statutory provisions as unnecessary. In paragraph (1), reference to a prohibition on offering hotel services to tenants was removed. This prohibition is not included in the statute and leads to confusion as to whether a particular project is in compliance with the statute. In paragraph (2), reference was added to exceptions to occupancy requirements that are permitted by the statutes. The need for the document to be executed as an oath before a notary public has been highlighted, the notary block has been edited to accommodate varying types of entities as signatories, and a second notary block has been added for convenience.

17. *Off-Site Bond (HUD 92479M).* An Additional Obligee Rider was attached for use in cases in which HUD approves an additional obligee on the bond. An Additional Surety Rider was attached for use in cases in which HUD allows more than one surety. As revised, the bond is a dual obligee bond, with the lender and owner as obligees. The cost of equipment was added as an additional item that may be claimed under the bond. Also, the two-year time period to bring an action under the bond was revised to run from date the Owner declared the Contractor in default, rather than date the off-site improvements were to be installed. Another change is that the Surety waives notice of any changes, including changes of time, to the construction contract.

18. *Escrow Agreement for Latent Defects (HUD–92414M).* HUD acknowledges that there is no closing document that covers an escrow for latent defects even though current policy requires such an escrow. In most cases, closings are conducted in different offices with the lenders preparing different versions of escrow agreements for the borrower's signature. In order to be consistent HUD has developed the Escrow Agreement for Latent Defects, in which the Depository agrees to hold a fund in a separate account for a stated period of time. The form describes how the Lender shall maintain the fund and how the fund should be administered in the event of assignment or default by the Borrower.

19. *Escrow Agreement for Working Capital (HUD 92412M).* HUD is proposing a new closing document in response to lenders' requests for a Department-approved form of Escrow Agreement for Working Capital. The new form of Escrow Agreement for Working Capital is between the Borrower and Depository and makes provision for the Lender to act as the Depository. Current HUD policy is to

reflect the working capital escrow in the Mortgagee's Certificate. The Mortgagee's Certificate is not legally adequate to establish a contractual relationship between the Borrower and the Lender since it is a certification from the Lender to HUD, and the Borrower is not a party. The new form recites the project name and location and refers to the terms and requirements of the firm commitment for the project.

20. *Sinking Fund Agreement (HUD 92413M).* The Sinking Fund Agreement is a new document that requires the Borrower of certain Health Care Facilities (where depreciation is a component of the federal Medicaid reimbursement) to deposit, in a trust fund with the Lender, an amount representing the excess depreciation component of the capital reimbursement per a schedule prepared by the Lender. Currently, requirements for this Sinking Fund are found in the Mortgagee's Certificate. The Borrower is not a party to the Mortgagee's Certificate; therefore, the document is not legally adequate to establish a contractual relationship between the Borrower and the Lender. The current arrangement is cumbersome and is inaccurate in places. The proposed document overcomes the current deficiencies and identifies the rights and responsibilities of the parties more clearly and in a legally enforceable manner.

21. *Agreement and Certification (HUD–93305M).* The most significant change made to this form was to consolidate the 3305 and 3306 forms as well as a third Agreement and Certification format which was developed during the document reform process for use in the Section 223(f) refinancing program. The proposed form, published with this notice, sets forth separate provisions, where necessary, for use in differing programs, and provides boxes that can be checked to indicate the applicability of a particular provision. Where a provision would apply in any program, no box is necessary. If the final decision of HUD is to consolidate the three forms, the consolidated form has been designated as the 93305; however, HUD can consider a different number if this creates confusion. Further, HUD revised the form to clarify the definition of identity of interest. The definition adds 'business interests' to financial and family relationships and adds 'partners and principals' to officers, directors and stockholders. The term Principals is capitalized for the remainder of the form and the expanded definition of identity of interest is added to the provisions regarding the 50%–75% Rule, Builders and Sponsors Profit And Risk Allowance (BSPRA) and Sponsors Profit and Risk Allowance (SPRA). The beginning of Paragraph 10 is revised to clarify that BSPRA is included when HUD processes the project loan application to include BSPRA, rather than providing that BSPRA is automatically included. Modifications to Paragraph 10(b) clarify that when the identity of interest between the borrower and the contractor is not maintained through final endorsement, the BSPRA identity is lost and the borrower will be allowed a SPRA instead of BSPRA. Paragraph 10(c) is rewritten in plain language to explain the 50–75% rule. Paragraph 11 is revised to clarify that if the 50–75% Rule is violated, both the profit and the overhead to the contractor are lost. This is consistent with HUD's mortgage credit guidelines. Paragraph 14 has been expanded to include collateral agreements or side-deals of any kind in connection with the project, not just the financing or borrowing arrangements that are in the current version of this form.

22. *HUD Amendment to Owner-Architect Agreement AIA B–181 (HUD–92408M).* This document formerly was required by HUD directives to be attached to the contract between the owner and the project architect, and was found as an appendix to a HUD Handbook. It has been updated in content, format and references to HUD's outstanding architectural instructions. HUD has clarified that the architect's drawings may be used by a substitute party who takes control of the project in order to complete the work, following failure of the owner to do so, by eliminating paragraph 6 in the prior version and adding a new paragraph 4. HUD further added the element of timing to the requirement that the owner and architect inform HUD of identities of interest within five working days of the first knowledge thereof.

As noted earlier in this preamble, HUD is proposing conforming changes to certain of its regulations to update these regulations where regulatory language was also identified as outdated and to maintain consistency with the new proposed closing documents that are published with this notice. HUD's related proposed rule is published elsewhere in today's **Federal Register**.

II. Findings and Certifications

Paperwork Reduction Act

The proposed new information collection requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Under this Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

The public reporting burden for this new collection 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 in the following table:

Forms	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
HUD–91710M	1200	1	1200	0.5	600	$26	$15,600
HUD–91712M	1200	1	1200	0.5	600	26	15,600
HUD–92023M	1200	1	1200	1	1200	26	31,200
HUD–92070M	1200	1	1200	0.5	600	26	15,600
HUD–92223M	1200	1	1200	0.5	600	26	15,600
HUD–92408M	1200	1	1200	0.5	600	26	15,600
HUD–92412M	1200	1	1200	0.5	600	26	15,600
HUD–92413M	1200	1	1200	0.5	600	26	15,600
HUD–92414M	1200	1	1200	0.5	600	26	15,600
HUD–92450M	1200	1	1200	0.5	600	26	15,600
HUD–92452A–M	1200	1	1200	0.5	600	26	15,600
HUD–92452M	1200	1	1200	0.5	600	26	15,600
HUD–92455M	1200	1	1200	1	1200	26	31,200
HUD–92456M	1200	1	1200	0.5	600	26	15,600

Forms	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
HUD–92457A–M	1200	1	1200	0.5	600	26	15,600
HUD–92457M	1200	1	1200	0.5	600	26	15,600
HUD–92464M	1200	1	1200	1	1200	26	31,200
HUD–92476.1M	1200	1	1200	0.5	600	26	15,600
HUD–92476A–M	1200	1	1200	0.5	600	26	15,600
HUD–92476M	1200	1	1200	0.5	600	26	15,600
HUD–92477M	1200	1	1200	0.5	600	26	15,600
HUD–92478M	1200	1	1200	0.5	600	26	15,600
HUD–92479M	1200	1	1200	0.5	600	26	15,600
HUD–91725M	1200	1	1200	2	2400	26	62,400
HUD–91725M–CER	N/A	1	N/A	N/A	N/A	N/A	N/A
HUD–91725M–INST	N/A	1	N/A	N/A	N/A	N/A	N/A
HUD–92434M	1200	1	1200	0.75	900	26	23,400
HUD–92441M–SUPP	1200	1	1200	0.75	900	26	23,400
HUD–92441M	1200	1	1200	1	1200	26	31,200
HUD–92442M	1200	1	1200	1	1200	26	31,200
HUD–92466M	1200	1	1200	0.75	900	26	23,400
HUD–92466M–HCFRA	1200	1	1200	0.75	900	26	23,400
HUD–92554M	1200	1	1200	0.2	240	26	6,240
HUD–94000M	1200	1	1200	0.75	900	26	23,400
HUD–94001M	1200	1	1200	1	1200	26	31,200
HUD–93305M	1200	1	1200	0.5	600	26	15,600

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received by October 1, 2004. Comments must refer to the proposal by name and docket number (FR–4883–N–02) and must be sent to:

Mark Menchik, HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503–0001, Fax number (202) 395–6974, E-mail *Mark_D._Menchik@omb.eop.gov* and

Kathleen McDermott, Reports Liaison Officer, Office of the Assistant Secretary for Housing-Federal Housing, Commissioner, Room 9116, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000.

III. Closing Documents

The individual closing documents follow and HUD welcomes comment on these documents.

Dated: June 29, 2004.

Sean Cassidy,

General Deputy, Assistant Secretary for Housing.

OMB Approval No. (Exp. 00/00/00)

Public Reporting Burden for this collection of information is estimated to average .75 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, DC 20410–3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502–0468), Washington, DC 20503. Do not send this completed form to either of the above addresses.

Recording requested by:

_____

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After recording return to:

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Multifamily/Health Care (Mortgage, Deed of Trust, or Other Designation as Appropriate in Jurisdiction) Assignment of Rents and Security Agreement

(State)

HUD Project Number:

Project Name:

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SECTION

Multifamily/Health Care (Mortgage, Deed of Trust, or Other Designation as Appropriate in Jurisdiction) Assignment of Rents and Security Agreement

THIS MULTIFAMILY/HEALTH CARE (MORTGAGE, DEED OF TRUST, OR OTHER DESIGNATION AS APPROPRIATE IN JURISDICTION) ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (the "Security Instrument") is made as of this _____ day of _____, _____, [among][between] _____, a _____ organized and existing under the laws of _____, whose address is _____, as grantor, trustor, Borrower ("Borrower"), to _____, [as trustee ("Trustee"), for the benefit of _____, a _____ organized and existing under the laws of _____, whose address is _____, as beneficiary or][and] Lender ("Lender"), a _____ organized and existing under the laws of _____, whose address is _____.

[Borrower, in consideration of the Indebtedness and the trust created by this Security Instrument, irrevocably grants, conveys and assigns to Trustee and Trustee's successors and assigns, in trust, with power of sale, the Mortgaged Property, including the Land located in _____ County, State of _____ and described in Exhibit A attached to this Security Instrument, to have and to hold the Mortgaged Property unto Trustee and Trustee's successors and assigns. USE ALTERNATIVE APPROPRIATE GRANTING CLAUSE IF A MORTGAGE TRANSACTION.]

To secure to Lender the repayment of the Indebtedness evidenced by Borrower's Note payable to Lender dated as of the date of this Security Instrument, and maturing on _____, ____, in the principal amount of $_____, and all renewals, extensions and modifications of the Indebtedness, and the performance of the covenants and agreements of Borrower contained in this Security Instrument and the Note.

Borrower represents and warrants that Borrower is lawfully seized of the Mortgaged Property and has the right, power and authority to mortgage, grant, convey and assign the Mortgaged Property, and that the Mortgaged Property is unencumbered. Borrower covenants that Borrower will warrant and defend generally the title to the Mortgaged Property against all claims and demands, subject to any easements and restrictions listed in a schedule of exceptions to coverage in any title insurance policy issued to Lender contemporaneously with the execution and recordation of this Security Instrument and insuring Lender's interest in the Mortgaged Property.

Covenants. Borrower and Lender covenant and agree as follows:

1. *Definitions.* The following terms, when used in this Security Instrument (including when used in the above recitals), shall have the following meanings:

(a) "Borrower" means all persons or entities identified as "Borrower" in the first paragraph of this Security Instrument, together with any successors and assigns. Whenever the term "Borrower" is used herein, the same shall be deemed to include the Obligor of the debt secured by the Security Instrument and shall also be deemed to be the Mortgagor as defined by the National Housing Act, as amended, implementing regulations and Directives.

(b) "Building Loan Agreement" means HUD-approved form of the agreement between the Borrower and Lender setting forth the terms and conditions for a construction loan.

(c) "Collateral Agreement" means any separate agreement between Borrower and Lender for the purpose of establishing replacement reserves for the Mortgaged Property, establishing a fund to assure the completion of repairs or Improvements specified in that agreement, or any other agreement or agreements between Borrower and Lender which provide for the establishment of any other fund, reserve or account including but not limited to those reserves and escrows required by HUD in connection with construction activity, if any, and those reserves and escrows required by HUD in connection with Health Care Facilities. These include but are not limited to the Sinking Fund Agreement, which provides for a depreciation reimbursement account to pay future principal payments of the Mortgage, where Medicaid or third-party reimbursement is on a depreciation plus interest basis; the Depreciation Reserve Fund Agreement which provides for an escrow or trust account with an approved custodian or trustee established for replacing equipment and for funding of depreciation in accordance with a schedule approved by HUD, and the Mortgage Reserve Fund, which provides for an escrow or trust account with an approved custodian or trustee established for replacing equipment or protecting the Mortgaged Property or HUD.

(d) "Event of Default" means the occurrence of any event listed in Section 23 or Section 24.

(e) "Fixtures" means all property which is so attached to the Land or the Improvements as to constitute a fixture under applicable law, whether acquired now or in the future, including: machinery, equipment (including medical equipment and systems), engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, computers, medical systems, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposals, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; playground and exercise equipment and classroom furnishings and equipment.

(f) "Governmental Authority" means any board, commission, department or body of any municipal, county, state or federal governmental unit, or any subdivision of any of them, that has or acquires jurisdiction over the Mortgaged Property, including the use, operation or improvement of the Mortgaged Property.

(g) "Health Care Facilities" means, but is not limited to, public or private nonprofit and proprietary hospitals, including major movable equipment, group practice medical facilities, skilled nursing home facilities, intermediate care facilities, board and care homes and assisted living facilities, and supplemental loans to finance Improvements, additions and equipment to these Health Care Facilities as authorized under the National Housing Act or other applicable federal law.

(h) "HUD" means the United States Department of Housing and Urban Development acting by and through the Secretary in the capacity as insurer or holder of the loan secured hereby under the authority of the National Housing Act, as amended, the Department of Housing and Urban Development Act, as amended, or any other federal law or regulation pertaining to the loan (as evidenced by the Note) or the Mortgaged Property.

(i) "Impositions" and "Imposition Deposits" are defined in Section 8(a).

(j) "Improvements" means the buildings, structures, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions.

(k) "Indebtedness" means the principal of, interest on, and all other amounts due at any time under the Note or this Security Instrument, including prepayment premiums, late charges, default interest, and advances as provided in Section 14 to protect the security of this Security Instrument.

(l) "Land" means the estate in realty described in Exhibit A.

(m) "Leases" means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property (including proprietary leases, non-residential leases or occupancy agreements if Borrower is a cooperative housing corporation), and all modifications, extensions or renewals. For Health Care Facilities, Lease also means, but is not limited to, the agreements between the Borrower/lessor and the operator/lessee of the facility by which the lessee agrees to operate and manage the facility, and/or portion thereof, and any agreement between the Health Care Facility and a lessee/provider of medical and related services proper and necessary for the care and treatment of persons who are acutely ill who require medical or health care customarily, or most effectively provided for by Health Care Facilities. (As used herein, operator/lessee, lessee and lessee/provider shall cumulatively be referred to as "Lessee.")

(n) "Lender" means the entity identified as "Lender" in the first paragraph of this Security Instrument, or any subsequent holder of the Note, and whenever the term "Lender" is used herein, the same shall be deemed to include the Obligee, or the Trustee(s) and the Beneficiary of the Security Instrument and shall also be deemed to be the Mortgagee as defined by the National Housing Act, as amended, implementing regulations and Directives.

(o) "Loan Documents" means the Note, this Security Instrument, and the Regulatory Agreement, as such documents may be amended from time to time.

(p) "Loan Servicer" means the entity that from time to time is designated by Lender to collect payments and deposits and receive Notice under the Note or this Security Instrument, and otherwise to service the loan evidenced by the Note for the benefit of Lender. Unless Borrower receives Notice to the contrary, the Loan Servicer is the entity identified as "Lender" in the first paragraph of this Security Instrument.

(q) "Mortgaged Property" means all of Borrower's present and future right, title and interest in and to all of the following:

(1) The Land;

(2) The Improvements;

(3) The Fixtures;

(4) The Personalty;

(5) All current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated;

(6) All proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, whether or not Borrower obtained the insurance pursuant to Lender's requirement;

(7) All awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;

(8) All contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations;

(9) All proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds;

(10) All Rents and Leases;

(11) All earnings, royalties, instruments, accounts, accounts receivable, supporting obligations, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the loan secured by this Security Instrument and, if Borrower is a cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents;

(12) All Imposition Deposits;

(13) All refunds or rebates of Impositions by any municipal, state or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Security Instrument is dated);

(14) All tenant security deposits which have not been forfeited by any tenant under any Lease;

(15) All names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property; and

(16) For Health Care Facilities, Mortgaged Property also includes, but is not limited to, any and all licenses, Bed Authority, and/or Certificates of Need required to operate the facility and receive the benefits and reimbursements under a provider agreement with Medicaid, Medicare, any state or local programs, health care insurers or other assistance providers relied upon by HUD to insure the Security Instrument,

to the extent allowed by law. Mortgaged Property also includes all receipts, revenues, income and other moneys received by or on behalf of the Health Care Facility, including all accounts receivable, all contributions, donations, gifts, grants, bequests, all revenues derived from the operation of the Health Care Facility and all rights to receive the same, whether in the form of accounts receivable, contract rights, chattel paper, instruments or other rights whether now owned or held or later acquired by the Health Care Facility.

(r) "Note" means the Multifamily/Health Care Facility Note described on page 1 of this Security Instrument, including all schedules, riders, allonges and addenda, as such Multifamily/Health Care Facility Note may be amended from time to time.

(s) "Personalty" means all furniture, furnishings, equipment, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software) and other tangible or electronically stored personal property (other than Fixtures) which are owned or leased by the Borrower or the Lessee now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, and any operating agreements relating to the Land or the Improvements, and any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements, choses in action and all other intangible property and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land. For Health Care Facilities, Personalty also includes all tangible and intangible personal property used for health care (such as major movable equipment and systems), accounts, licenses, bed authorities, certificates of need required to operate the project and to receive benefits and reimbursements under provider agreements with Medicaid, Medicare, state and local programs, payments from health care insurers and any other assistance providers ("Receivables"); all permits, instruments, Rents, lease and contract rights, equipment leases relating to the use, operation, maintenance, repair and improvement of the Health Care Facility. Generally, intangibles shall also include all cash and cash escrow funds, such as but not limited to: sinking fund accounts, depreciation reserve fund accounts, mortgage reserve fund accounts, reserve for replacement accounts, bank accounts, residual receipt accounts, all contributions, donations, gifts, grants, bequests and endowment funds by donors and all other revenues and accounts receivable from whatever source paid or payable.

(t) "Principals" are the following legal and natural persons having ownership interests in the Borrower: natural persons who are sole owners, joint venturers, joint tenants, tenants by the entirety, trustees or beneficiaries of trusts, and all general partners; in the case of limited partnerships, limited partners having a twenty-five (25) percent or more interest in the partnership; in the case of public or private corporations or governmental entities, the president, vice president, secretary, treasurer, and all other executive officers who are directly responsible to the board of directors, or any equivalent governing body, as well as all directors and each stockholder having a 10 percent or more interest in the corporation; in the case of a Limited Liability Company (LLC) or a Limited Liability Partnership (LLP), all managing members or partners, all managers, and all members or partners with a 10 percent or greater governance interest or a twenty-five (25) percent or greater financial interest.

(u) "Property Jurisdiction" is defined in Section 32(a).

(v) "Regulatory Agreement" means the agreement between the Borrower or certain Lessees of the Borrower and HUD establishing the Borrower's or Lessees' obligations in the operation of the Mortgaged Property and the rights and powers of HUD.

(w) "Rents" means all rents (whether from residential or non-residential space), revenues, issues, profits, (including carrying charges, maintenance fees, and other cooperative revenues) and other income of the Land or the Improvements, including all revenues, gross receipts and receivables in connection with medical services and care, and all pledges, gifts, grants, bequests, contributions and endowments, parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due, or to become due, and deposits forfeited by tenants.

(x) "Taxes" means all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, could become a lien on the Land or the Improvements.

(y) "Waste" means a failure to keep the Mortgaged Property in decent, safe and sanitary condition and in good repair. Waste also means the failure to meet certain financial obligations regarding the payment of Taxes and the relinquishment of the possession of Rents. During any period in which HUD insures this loan or holds a security interest on the Mortgaged Property, Waste is committed when, without Lender's and HUD's express written consent, Borrower:

(1) Physically changes the Mortgaged Property, whether negligently or intentionally, in a manner that reduces its value;

(2) Fails to maintain and repair the Mortgaged Property;

(3) Fails to pay before delinquency any Taxes secured by a lien having priority over the Security Instrument;

(4) Fails to comply with covenants in the Note, this Security Instrument or the Regulatory Agreement respecting physical care, maintenance, construction, demolition, or insurance against casualty of the Mortgaged Property or fails to comply with HUD requirements regarding physical condition standards for HUD housing, including those codified at 24 CFR 5.703 and any subsequent amendments thereto; or

(5) Retains possession of Rents to which the Lender or its assigns have the right of possession under the terms of the Loan Documents.

2. *Uniform Commercial Code Security Agreement.* This Security Instrument is also a security agreement under the Uniform Commercial Code for any of the Mortgaged Property which, under applicable law, may be subject to a security interest under the Uniform Commercial Code, whether acquired now or in the future, and all products and cash proceeds and non-cash proceeds thereof (collectively, "UCC Collateral"), and Borrower hereby grants to Lender a security interest in the UCC Collateral. Borrower shall execute and deliver to Lender, upon Lender's request, financing statements, continuation statements and amendments, in such form as Lender may require to perfect or continue the perfection of this security interest. Borrower shall pay all filing costs and all costs and expenses of any record searches for financing statements that Lender may require. Without the prior written consent of Lender and HUD, Borrower shall not create or permit to exist any other lien or security interest

in any of the UCC Collateral. If an Event of Default has occurred and is continuing, Lender shall have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Security Instrument or existing under applicable law. In exercising any remedies, Lender may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of Lender's other remedies. This Security Instrument constitutes a financing statement with respect to any part of the Mortgaged Property which is or may become a Fixture.

3. *Assignment of Rents; Appointment of Receiver; Lender in Possession.* (a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all Rents. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all Rents and to authorize and empower Lender to collect and receive all Rents without the necessity of further action on the part of Borrower. Promptly upon request by Lender, Borrower agrees to execute and deliver such further assignments as Lender may from time to time require. Borrower and Lender intend this assignment of Rents to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of Rents, and for no other purpose, Rents shall not be deemed to be a part of the "Mortgaged Property" as that term is defined in Section 1(q). However, if this present, absolute and unconditional assignment of Rents is not enforceable by its terms under the laws of the Property Jurisdiction, then the Rents shall be included as a part of the Mortgaged Property and it is the intention of the Borrower that in this circumstance this Security Instrument create and perfect a lien on Rents in favor of Lender, which lien shall be effective as of the date of this Security Instrument.

(b) After the occurrence of an Event of Default, Borrower authorizes Lender to collect, sue for and compromise Rents and directs each tenant and/or non-residential Lessee of the Mortgaged Property to pay all Rents to, or as directed by, Lender. However, until the occurrence of an Event of Default, Lender hereby grants to Borrower a revocable license to collect and receive all Rents for use in accordance with the provisions of the Regulatory Agreement, to hold all Rents in trust for the benefit of Lender and to apply all Rents to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under this Security Instrument, including Imposition Deposits, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities, Taxes and insurance premiums (to the extent not included in Imposition Deposits), tenant improvements and other capital expenditures. So long as no Event of Default has occurred and is continuing, the Rents remaining after application pursuant to the preceding sentence may be retained by Borrower free and clear of, and released from, Lender's rights with respect to Rents under this Security Instrument, unless otherwise restricted by the terms of the Regulatory Agreement. From and after the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, or by a receiver, Borrower's license to collect Rents shall automatically terminate and Lender shall without Notice be entitled to all Rents as they become due and payable, including Rents then due and unpaid. Borrower shall pay to Lender upon demand all Rents to which Lender is entitled. At any time on or after the date of Lender's demand for Rents, Lender may give, and Borrower hereby irrevocably authorizes Lender to give, Notice to all tenants of the Mortgaged Property instructing them to pay all Rents to Lender. No tenant shall be obligated to inquire further as to the occurrence or continuance of an Event of Default, and no tenant shall be obligated to pay to Borrower any amounts which are actually paid to Lender in response to such a Notice. Any such Notice by Lender shall be delivered to each tenant personally, by mail or by delivering such demand to each rental unit. A copy of such Notice shall be provided promptly to HUD by Lender. Borrower shall not interfere with and shall cooperate with Lender's collection of such Rents.

(c) Borrower represents and warrants to Lender that Borrower has not executed any prior assignment of Rents (other than an assignment of Rents to HUD pursuant to the Regulatory Agreement and an assignment of Rents securing indebtedness that will be paid off and discharged with the proceeds of the loan evidenced by the Note or assignments of Rents in connection with commercial or health care transactions as approved by HUD), that Borrower has not performed, and Borrower covenants and agrees that it will not perform, any acts and has not executed, and shall not execute, any instrument which would prevent Lender from exercising its rights under Section 3, and that at the time of execution of this Security Instrument there has been no anticipation or prepayment of any Rents for more than two months prior to the due dates of such Rents. Borrower shall not collect or accept payment of any Rents more than two months prior to the due dates of such Rents (other than collections in connection with commercial or health care transactions as approved by HUD).

(d) If an Event of Default has occurred and is continuing, Lender may, regardless of the adequacy of Lender's security or the solvency of Borrower and even in the absence of Waste (but only with the prior written approval of HUD in the event of non-monetary defaults), enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts that Lender in its discretion determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents, the making of repairs to the Mortgaged Property and the execution or termination of contracts providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing the assignment of Rents pursuant to Section 3(a), protecting the Mortgaged Property or the security of this Security Instrument, or for such other purposes as Lender in its discretion may deem necessary or desirable. Alternatively, if an Event of Default has occurred and is continuing, regardless of the adequacy of Lender's security, without regard to Borrower's solvency and without the necessity of giving prior Notice (oral or written) to Borrower, Lender may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in the preceding sentence. A copy of such request shall be provided promptly to HUD by Lender. If Lender elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred and is continuing, Borrower, by its execution of this Security Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver ex parte if permitted by applicable law. Lender or the receiver, as the case may be, shall be entitled to receive a reasonable fee for managing the Mortgaged Property. Immediately upon appointment of a receiver or

immediately upon the Lender's entering upon and taking possession and control of the Mortgaged Property, Borrower shall surrender possession of the Mortgaged Property to Lender or the receiver, as the case may be, and shall deliver to Lender or the receiver, as the case may be, all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Mortgaged Property and all security deposits and prepaid Rents. In the event Lender takes possession and control of the Mortgaged Property, Lender may exclude Borrower and its representatives from the Mortgaged Property. Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred under Section 3 shall not be construed to make Lender a Lender-in-possession of the Mortgaged Property so long as Lender, or authorized agent of Lender, has not entered into actual possession of the Land and Improvements.

(e) If Lender enters the Mortgaged Property, Lender shall be liable to account only to Borrower and only for those Rents actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Lender under Section 3, and Borrower hereby releases and discharges Lender from any such liability to the fullest extent permitted by law. However, nothing contained in this Security Instrument shall in any fashion discharge Lender from any obligations to HUD or any other party under the Regulatory Agreement, the Contract of Insurance (as set forth in applicable HUD regulations), or the HUD statutes and regulations.

(f) If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Lender for such purposes shall become an additional part of the principal of the Indebtedness as provided in Section 14.

(g) Any entering upon and taking of control of the Mortgaged Property by Lender or the receiver, as the case may be, and any application of Rents as provided in this Security Instrument shall not cure or waive any Event of Default or invalidate any other right or remedy of Lender and/or HUD as its interests appear under applicable law or provided for in this Security Instrument.

4. *Assignment of Leases; Leases Affecting the Mortgaged Property.* (a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all of Borrower's right, title and interest in, to and under the Leases, including Borrower's right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all of Borrower's right, title and interest in, to and under the Leases. Borrower and Lender intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the Leases shall not be deemed to be a part of the "Mortgaged Property" as that term is defined in Section 1(q). However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the Property Jurisdiction, then the Leases shall be included as a part of the Mortgaged Property and it is the intention of Borrower that in this circumstance this Security Instrument create and perfect a lien on the Leases in favor of Lender, which lien shall be effective as of the date of this Security Instrument.

(b) Until Lender gives Notice to Borrower of Lender's exercise of its rights under Section 4, Borrower shall have all rights, power and authority granted to Borrower under any Lease (except as otherwise limited by this Section or any other provision of this Security Instrument), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. Upon the occurrence of an Event of Default, the permission given to Borrower pursuant to the preceding sentence to exercise all rights, power and authority under Leases shall automatically terminate. Borrower shall comply with and observe Borrower's obligations under all Leases, including Borrower's obligations pertaining to the maintenance and disposition of tenant security deposits.

(c) Borrower acknowledges and agrees that the exercise by Lender, either directly or by a receiver, of any of the rights conferred under Section 4 shall not be construed to make Lender a Lender-in-possession of the Mortgaged Property so long as Lender, or an authorized agent of Lender, has not entered into actual possession of the Land and the Improvements. The acceptance by Lender of the assignment of the Leases pursuant to Section 4(a) shall not at any time or in any event obligate Lender to take any action under this Security Instrument or to expend any money or to incur any expenses. Lender shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Mortgaged Property unless Lender is a Lender-in-possession. Prior to Lender's actual entry into and taking possession of the Mortgaged Property, Lender shall not (1) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (2) be obligated to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property; or (3) be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Security Instrument by Borrower shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and shall be that of Borrower, prior to such actual entry and taking of possession.

(d) Upon delivery of Notice by Lender to Borrower of Lender's exercise of Lender's rights under Section 4 at any time after the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, Lender immediately shall have all rights, powers and authority granted to Borrower under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.

(e) Borrower shall, promptly upon Lender's request, deliver to Lender an executed copy of each residential Lease then in effect. All Leases for residential dwelling units shall be acceptable to the Lender and shall comply with HUD requirements.

(f) Borrower shall not lease any portion of the Mortgaged Property for non-residential use except with the prior written consent of Lender and HUD, and Lender's and HUD's prior written approval of the Lease agreement. Borrower shall not modify the terms of, or extend or terminate, any Lease for non-residential use (including any Lease in existence on the date of this Security Instrument) without the prior written consent of Lender and HUD. Borrower shall, without request by Lender, deliver an executed copy of each non-residential Lease to Lender and HUD promptly after such Lease is signed.

(1) All non-residential Leases, including renewals or extensions of existing

Leases, shall specifically provide that (i) such Leases are subordinate to the lien of this Security Instrument; (ii) the tenant shall attorn to Lender and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Mortgaged Property by any purchaser at a foreclosure sale or by Lender in any manner; (iii) the tenant agrees to execute such further evidences of attornment as Lender or any purchaser at a foreclosure sale may from time to time request; (iv) the Lease shall not be terminated by foreclosure or any other transfer of the Mortgaged Property; (v) after a foreclosure sale of the Mortgaged Property or after transfer of the Mortgaged Property to the Lender by a deed-in-lieu of foreclosure, Lender or any purchaser at such foreclosure sale may, at Lender's or such purchaser's option, accept or terminate such Lease; and (vi) the tenant shall, upon receipt after the occurrence of an Event of Default of a written request from Lender, pay all Rents payable under the Lease to Lender. (2) In addition to the foregoing requirements, any Lease of the Mortgaged Property for telecommunications uses shall contain: (i) A comprehensive listing of the equipment to be installed; (ii) a legal description of the portion of the Mortgaged Property to be utilized; (iii) a comprehensive listing of any proposed Improvements to the Mortgaged Property; (iv) a provision which conditions the Lease on the tenant obtaining all variances, permits, licenses or approvals required by applicable law; (v) a provision precluding the assignment or sublet of the leased space without the prior written approval of the Lender and HUD, to be granted or withheld by each in its sole discretion; (vi) an acknowledgment by the tenant that it has performed its own investigation of the property and has determined its suitability for use; (vii) a provision granting the Borrower, its successors or assigns, the right to relocate any equipment, wiring or cabling; and (viii) a provision which permits the Borrower, its successors or assigns, the right to terminate the Lease should it be shown that the equipment constitutes a danger to health or safety.

(g) Borrower shall not receive or accept Rent under any Lease (whether residential or non-residential) for more than two months in advance.

5. *Payment of Indebtedness; Performance Under Loan Documents; Prepayment Premium.* Borrower shall pay the Indebtedness when due in accordance with the terms of the Note and this Security Instrument and shall perform, observe and comply with all other provisions of the Note and this Security Instrument. Borrower shall pay a prepayment premium in connection with certain prepayments of the Indebtedness, including a payment made after Lender's exercise of any right of acceleration of the Indebtedness, as provided in the Note.

6. *Exculpation.* Borrower's personal liability for payment of the Indebtedness and for performance of the other obligations to be performed by it under this Security Instrument is limited in the manner, and to the extent, provided in the Note and attached Acknowledgment except as provided otherwise herein or limited or modified by the Regulatory Agreement and federal law.

7. *Deposits for Taxes, Insurance and Other Charges.* (a) Borrower shall pay to and deposit with Lender, together with and in addition to the monthly payments of interest or of principal and interest payable under the terms of the Note secured hereby, on the first day of each month after the commencement of amortization under the Note, and continuing until the debt secured hereby is paid in full, the following sums:

(1) An amount sufficient to provide Lender with funds to pay the next mortgage insurance premium if this Security Instrument and the Note secured hereby are insured or a monthly service charge, if they are held by HUD, as follows:

(i) If and so long as the Note of even date is insured under the provisions of the National Housing Act, as amended, an amount sufficient to accumulate in the hands of Lender one month prior to its due date the annual mortgage insurance premium, in order to provide Lender with funds to pay such premium to HUD pursuant to the National Housing Act, as amended, and applicable Regulations thereunder, or;

(ii) If and so long as the Note and this Security Instrument are held by HUD, a monthly service charge in an amount equal to one-twelfth of one-half (1/12 of 1/2) percent of the average outstanding principal balance due on the Note computed for each successive year beginning with the first day of the month following the date of this Security Instrument, or the first day of the month following assignment, if the Note and this Security Instrument are assigned to HUD without taking into account delinquencies or prepayment;

(2) A sum to the ground rents, if any, next due, plus the premiums that will next become due and payable on policies of fire and other property insurance covering the premises covered hereby, plus water rates, Taxes, municipal/government utility charges and special assessments next due on the premises covered hereby (all as estimated by Lender) less all sums already paid therefor divided by the number of months to the date when such ground rents, premiums, water rates, Taxes, municipal/utility charges and special assessments will become delinquent, such sums to be held by Lender in trust to pay said ground rents, premiums, water rates, Taxes, and special assessments; and

(3) All payments and deposits mentioned in the two preceding subsections of this Section and all payments to be made under the Note shall be added together and the aggregate amount thereof shall be paid each month in a single payment or deposit to be applied by Lender to the following items in the order set forth:

(i) Premium charges under the Contract of Insurance;

(ii) Ground rents, Taxes, special assessments, water rates, municipal/government utility charges, fire and other property insurance premiums;

(iii) Interest on the Note; and

(iv) Amortization of the principal of Note.

(b) Borrower shall pay to and deposit with Lender, at times specified and as required by HUD, all other escrows and deposits, including any reserve for replacements.

8. *Imposition Deposits.* (a) In the event Borrower fails to pay any sums provided for in this Security Instrument, Lender, at its option, may pay the same. Any excess funds accumulated under Section 7(b) remaining after payment of the items therein mentioned, shall be credited to subsequent monthly payments of the same nature required thereunder; but if any such item shall exceed the estimate therefor, or if the Borrower shall fail to pay any other governmental or municipal charge, Borrower shall forthwith make good the deficiency or pay the charge before the same become delinquent or subject to interest or penalties and in default thereof Lender may pay the same. All sums paid by Lender and any sums which Lender may be required to advance to pay mortgage insurance premiums shall be added to the principal of the Note and shall bear interest from the date of payment at the rate specified in the Note and shall be due and payable on demand. In case of termination of the Contract of Insurance by prepayment of the Indebtedness in full, or otherwise (except as hereinafter provided) accumulations under Section 7(a) not required to meet payments due under the Contract of Insurance, shall be credited to Borrower. If the Mortgaged

Property is sold under foreclosure or is otherwise acquired by Lender after Default, any remaining balance of the accumulations under Section 7(b) shall be credited to the principal under the Note as of the date of the commencement of foreclosure proceedings or as of the date the Mortgaged Property is otherwise acquired; and accumulations under (a) thereof shall be likewise credited unless required to pay sums due HUD under the Contract of Insurance. The amounts deposited under Section 7 and Section 8 is collectively referred to in this Security Instrument as the "Imposition Deposits". The obligations of Borrower for which the Imposition Deposits are required are collectively referred to in this Security Instrument as "Impositions". The amount of the Imposition Deposits shall be sufficient to enable Lender to pay applicable Impositions before the last date upon which such payment may be made without any penalty or interest charge being added. Lender shall maintain records indicating how much of the monthly Imposition Deposits and how much of the aggregate Imposition Deposits held by Lender are held for the purpose of paying Taxes, insurance premiums and each other obligation of Borrower for which Imposition Deposits are required. Any waiver by Lender of the requirement that Borrower remit Imposition Deposits to Lender may be revoked by Lender, in Lender's discretion, at any time upon Notice to Borrower.

(b) Imposition Deposits shall be held in an institution (which may be Lender, if Lender is such an institution, and/or if required by HUD under the Regulatory Agreement with respect to all or any portion of said Imposition Deposits) whose deposits or accounts are insured or guaranteed by a federal agency and which meets all applicable HUD requirements. Lender shall not be obligated to open additional accounts or deposit Imposition Deposits in additional institutions when the amount of the Imposition Deposits exceeds the maximum amount of the federal deposit insurance or guaranty. Lender shall apply the Imposition Deposits to pay Impositions so long as no Event of Default has occurred and is continuing. Unless applicable law requires, Lender shall not be required to pay Borrower any interest, earnings or profits on the Imposition Deposits. Borrower hereby pledges and grants to Lender a security interest in the Imposition Deposits as additional security for all of Borrower's obligations under this Security Instrument and the Note. Any amounts deposited with Lender under Section 8 shall not be trust funds, nor shall they operate to reduce the Indebtedness.

(c) If Lender receives a bill or invoice for an Imposition, Lender shall pay the Imposition from the Imposition Deposits held by Lender. Lender shall have no obligation to pay any Imposition to the extent it exceeds Imposition Deposits then held by Lender. Lender may pay an Imposition according to any bill, statement or estimate from the appropriate public office or insurance company without inquiring into the accuracy of the bill, statement or estimate or into the validity of the Imposition.

(d) If at any time the amount of the Imposition Deposits held by Lender for payment of a specific Imposition exceeds the amount reasonably deemed necessary by Lender plus one-sixth of such estimate, the excess shall be credited against future installments of Imposition Deposits. If at any time the amount of the Imposition Deposits held by Lender for payment of a specific Imposition is less than the amount reasonably estimated by Lender to be necessary plus one-sixth of such estimate, Borrower shall pay to Lender the amount of the deficiency within 15 days after Notice from Lender.

9. *Collateral Agreements.* Borrower shall deposit with Lender such amounts as may be required by any Collateral Agreement and shall perform all other obligations of Borrower under each Collateral Agreement. Collateral Agreement deposits shall be held in an institution (which may be Lender, if Lender is such an institution) whose deposits or accounts are insured or guaranteed by a federal agency. Unless applicable law requires, Lender shall not be required to pay Borrower any interest, earnings or profits on the Imposition Deposits.

10. *Regulatory Agreement Default.* Borrower and HUD have executed a Regulatory Agreement which is being recorded simultaneously with this Security Instrument and is incorporated in and made a part of this Security Instrument. Upon the direction of HUD, following a declaration of default by HUD under the Regulatory Agreement, the Lender shall declare the entire Indebtedness to be due and payable.

11. *Application of Payments.* If at any time Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, then Lender must apply that payment to amounts then due and payable in the precise manner and in the precise order set forth in Section 7(a). Neither Lender's acceptance of an amount which is less than all amounts then due and payable nor Lender's application of such payment in the manner authorized shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction. Notwithstanding the application of any such amount to the Indebtedness, Borrower's obligations under this Security Instrument and the Note shall remain unchanged.

12. *Compliance with Laws.* Borrower shall comply with all applicable: laws; ordinances; regulations; requirements of any Governmental Authority; lawful covenants and agreements recorded against the Mortgaged Property; the National Housing Act; the Regulatory Agreement; regulations and Directives of HUD; including but not limited to those of the foregoing pertaining to: health and safety; construction of Improvements on the Mortgaged Property; fair housing; civil rights; zoning and land use; leases; lead-based paint maintenance requirements of 24 CFR Part 35, subpart F; and maintenance and disposition of tenant security deposits; and, with respect to all of the foregoing, all subsequent amendments, revisions, promulgations or enactments. Borrower shall at all times maintain records sufficient to demonstrate compliance with the provisions of Section 12. Borrower shall take appropriate measures to prevent, and shall not engage in or knowingly permit, any illegal activities at the Mortgaged Property that could endanger tenants or visitors, result in damage to the Mortgaged Property, result in forfeiture of the Mortgaged Property, or otherwise materially impair the lien created by this Security Instrument or Lender's interest in the Mortgaged Property. Borrower represents and warrants to Lender that no portion of the Mortgaged Property has been or will be purchased with the proceeds of any illegal activity.

13. *Use of Property.* Unless required by applicable law and approved by Lender and HUD, Borrower shall not (a) allow changes in the use for which all or any part of the Mortgaged Property is being used at the time this Security Instrument was executed, (b) convert any individual dwelling units or common areas to commercial use, (c) initiate or acquiesce in a change in the zoning classification of the Mortgaged Property, (d) establish any condominium or cooperative regime with respect to the Mortgaged Property, (e) change any unit configurations or the number of units in the Mortgaged Property or (f) permit the Mortgaged Property to be used as transient housing or as a hotel in violation of Section 513

of the National Housing Act, as amended.

14. *Protection of Lender's Security.* (a) If Borrower fails to perform any of its obligations under this Security Instrument, Note or Regulatory Agreement, or if any action or proceeding is commenced which purports to affect the Mortgaged Property, Lender's security or Lender's rights under this Security Instrument, including eminent domain, insolvency, Waste, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, disburse such sums and take such actions as Lender reasonably deems necessary to perform such obligations of Borrower and to protect Lender's interest, including (1) payment of fees and out-of-pocket expenses of attorneys (including fees for litigation at all levels), accountants, inspectors and consultants, (2) entry upon the Mortgaged Property to make repairs or secure the Mortgaged Property, (3) procurement of the insurance required by Section 21, and (4) payment of amounts which Borrower has failed to pay under Section 17 and Section 19.

(b) Any amounts disbursed by Lender under Section 14, or under any other provision of this Security Instrument that treats such disbursement as being made under Section 14, shall be added to, and become part of the principal of the Indebtedness, shall be immediately due and payable and shall bear interest from the date of disbursement until paid at the rate specified by HUD.

(c) Nothing in Section 14 shall require Lender to incur any expense or take any action, and Lender shall not incur any expense or take any action without the prior written approval of HUD.

15. *Inspection.* Lender and/or HUD, their agents, representatives, and designees, may make or cause to be made entries upon and inspections of the Mortgaged Property (including the HUD-required annual inspection and any environmental inspections and tests) during normal business hours, or at any other reasonable time.

16. *Books and Records; Financial Reporting.* (a) Borrower shall keep and maintain at all times at the Mortgaged Property or the management agent's offices, and upon Lender's or HUD's request shall make available at the Mortgaged Property, complete and accurate books of account and records (including copies of supporting bills and invoices) adequate to reflect correctly the operation of the Mortgaged Property, and copies of all written contracts, Leases, and other instruments which affect the Mortgaged Property. The books, records, contracts, Leases and other instruments shall be subject to examination and inspection at any reasonable time by Lender and/or HUD.

(b) Borrower shall furnish to Lender all of the following:

(1) Within 90 days after the end of each fiscal year of Borrower (or pursuant to HUD requirements, if different), a statement of income and expenses for Borrower's operation of the Mortgaged Property for that fiscal year, a statement of changes in financial position of Borrower relating to the Mortgaged Property for that fiscal year and, when requested by Lender or HUD, a balance sheet showing all assets and liabilities of Borrower relating to the Mortgaged Property as of the end of that fiscal year;

(2) Within 120 days after the end of each fiscal year of Borrower (or pursuant to HUD requirements, if different), and at any other time upon Lender's or HUD's request, a rent schedule for the Mortgaged Property showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable for the current month, the date through which rent has been paid, and any related information requested by Lender;

(3) Within 120 days after the end of each fiscal year of Borrower (or pursuant to HUD requirements, if different), and at any other time upon Lender's or HUD's request, an accounting of all security deposits held pursuant to all Leases, including the name of the institution (if any) and the names and identification numbers of the accounts (if any) in which such security deposits are held and the name of the person to contact at such financial institution, along with any authority or release necessary for Lender to access information regarding such accounts;

(4) Within 120 days after the end of each fiscal year of Borrower (or pursuant to HUD requirements, if different), and at any other time upon Lender's or HUD's request, a statement that identifies all owners with any interest in Borrower, directly or indirectly, or through one or more intermediaries, and the interest held by each. In addition, the Borrower must also submit a list of all officers and directors of any corporations, and all managers who are not members of any limited liability company, identified in this statement;

(5) Upon Lender's or HUD's request at any time when an Event of Default has occurred and is continuing, monthly income and expense statements for the Mortgaged Property;

(6) Upon Lender's or HUD's request, a monthly property management report for the Mortgaged Property, showing the number of inquiries made and rental applications received from tenants or prospective tenants and deposits received from tenants and any other information requested by Lender; and

(7) Any other records or documents reasonably requested by Lender or HUD.

(c) Each of the statements, schedules and reports required by Section 16(b) shall be certified to be complete and accurate by an individual having authority to bind Borrower, and shall be in such form and contain such detail as Lender and/or HUD may require. Lender or HUD also may require that any statements, schedules or reports be audited at Borrower's expense by independent certified public accountants acceptable to Lender or HUD.

(d) If Borrower fails to provide in a timely manner the statements, schedules and reports required by Section 16(b), Lender or HUD shall have the right to have Borrower's books and records audited, at Borrower's expense, by independent certified public accountants selected by Lender in order to obtain such statements, schedules and reports, and all related costs and expenses of Lender shall become immediately due and payable and shall become an additional part of the Indebtedness as provided in Section 14.

(e) If an Event of Default has occurred and is continuing, Borrower shall, at Borrower's expense, deliver to Lender or HUD upon written demand all books and records relating to the Mortgaged Property or its operation.

(f) Borrower authorizes Lender or HUD to obtain a credit report on Borrower at any time.

17. *Taxes; Operating Expenses.* (a) Subject to the provisions of Section 17(c) and Section 17(d), Borrower shall pay, or cause to be paid, all Taxes when due and before the addition of any interest, fine, penalty or cost for nonpayment.

(b) Subject to the provisions of Section 17(c) and the HUD-approved operating budget, if any, Borrower shall pay the expenses of operating, managing, maintaining and repairing the Mortgaged Property (including insurance premiums, utilities, repairs and replacements) before the last date upon which each such payment may be made without any penalty or interest charge being added.

(c) As long as no Event of Default exists and Borrower has timely delivered to Lender any bills or

premium Notice that it has received, Borrower shall not be obligated to pay Taxes, insurance premiums or any other individual Imposition to the extent that sufficient Imposition Deposits are held by Lender for the purpose of paying that specific Imposition. If an Event of Default exists and subject to outstanding HUD requirements pertaining to claims for mortgage insurance benefits, Lender may exercise any rights Lender may have with respect to Imposition Deposits without regard to whether Impositions are then due and payable. Lender shall have no liability to Borrower for failing to pay any Impositions to the extent that any Event of Default has occurred and is continuing, insufficient Imposition Deposits are held by Lender at the time an Imposition becomes due and payable or Borrower has failed to provide Lender with bills and premium Notice as provided above.

(d) Borrower, at its own expense and with the approval of HUD, may contest by appropriate legal proceedings, conducted diligently and in good faith, the amount or validity of any Imposition other than insurance premiums, if (1) Borrower notifies Lender of the commencement or expected commencement of such proceedings, (2) the Mortgaged Property is not in danger of being sold or forfeited, (3) Borrower deposits with Lender reserves sufficient to pay the contested Imposition, if requested by Lender, and (4) Borrower furnishes whatever additional security is required in the proceedings or is reasonably requested by Lender, which may include the delivery to Lender of the reserves established by Borrower to pay the contested Imposition.

(e) Borrower shall promptly deliver to Lender a copy of all Notices of, and invoices for, Impositions, and if Borrower pays any Imposition directly, Borrower shall promptly furnish to Lender receipts evidencing such payments.

18. *Liens; Encumbrances.* Borrower acknowledges that the grant, creation or existence of any mortgage, deed of trust, deed to secure debt, security interest or other lien or encumbrance (a "Lien") on the Mortgaged Property (other than the lien of this Security Instrument, any tax liens which are imposed before payment is due, or any inferior liens which are approved by HUD and Lender), whether voluntary, involuntary or by operation of law, and whether or not such Lien has priority over the lien of this Security Instrument, is an Event of Default and subjects Borrower to personal liability under the Note.

19. *Preservation, Management and Maintenance of Mortgaged Property.* Borrower (a) shall not commit Waste or permit impairment or deterioration of the Mortgaged Property, (b) shall not abandon the Mortgaged Property, (c) shall restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, whether or not litigation or insurance proceeds or condemnation awards are available to cover any costs of such restoration or repair, (d) shall keep the Mortgaged Property in decent, safe, sanitary condition and good repair, including the replacement of Personalty and Fixtures with items of equal or better function and quality, all in accordance with applicable HUD requirements, (e) shall provide for qualified management of the Mortgaged Property by a residential rental property manager satisfactory to Lender and HUD under a contract approved by Lender in writing or for the operation of a Health Care Facility pursuant to any governmental requirements pertaining to operation and licensure, (f) shall give Notice to Lender and HUD of and, unless otherwise directed in writing by Lender and HUD, shall appear in and defend, any action or proceeding purporting to affect the Mortgaged Property, Lender's security or Lender's rights under this Security Instrument, (g) shall not (and shall not permit any tenant or other person to) remove, demolish or alter the Mortgaged Property or any part of the Mortgaged Property without the prior written approval of HUD except that the Borrower may, without the prior written approval of HUD, dispose of obsolete or deteriorated Fixtures or Personalty if the same are replaced with like items of the same or greater quality or value, and (h) shall not expend any project funds in connection with expenses incurred by or for the benefit of the ownership entity. All expenses incurred by Borrower in connection with the Mortgaged Property shall be reasonable and necessary, and incurred in compliance with HUD requirements.

20. *Management Contracts.* Any management contract entered into by Borrower shall contain a provision that it shall be subject to termination without penalty and without cause upon written request of Lender and shall contain a provision which gives no more than a thirty day notice of termination. Upon such request, Borrower shall immediately arrange to terminate the contract, and the Borrower shall also make arrangements satisfactory to Lender for continuing acceptable management of the Mortgaged Property effective as of the termination date of the contract.

21. *Property and Liability Insurance.* (a) Borrower shall keep the Improvements insured at all times against such hazards as Lender and HUD may from time to time require, which insurance shall include but not be limited to coverage against loss by fire and allied perils, general boiler and machinery coverage, builders all-risk and business income coverage. Lender's and HUD's insurance requirements may change from time to time throughout the term of the Indebtedness. If Lender or HUD so require, such insurance shall also include sinkhole insurance, mine subsidence insurance, earthquake insurance, and, if the Mortgaged Property does not conform to applicable zoning or land use laws, building ordinance or law coverage. If any of the Improvements is located in an area identified by the Federal Emergency Management Agency (or any successor to that agency) as an area having special flood hazards, and if flood insurance is available in that area, Borrower shall insure such Improvements against loss by flood. If Lender determines that flood insurance has not been obtained in the required amount, Lender must notify Borrower and HUD of Borrower's obligations to obtain the proper flood insurance. If Borrower does not obtain such insurance within 45 days of the date of this notification, Lender shall purchase such flood insurance on behalf of Borrower and may charge Borrower for the cost of premiums and fees incurred by Lender in purchasing the flood insurance.

(b) All premiums on insurance policies required under Section 21(a) shall be paid in the manner provided in Section 7, unless Lender has designated in writing another method of payment. All such policies shall also be in a form approved by Lender. All policies of property damage insurance shall include a non-contributing, non-reporting mortgage clause in a form approved by Lender, and in favor of Lender and HUD, as their interests may appear. Lender shall have the right to hold the original policies or duplicate original policies of all insurance required by Section 21(a). Borrower shall promptly deliver to Lender a copy of all renewal and other Notices received by Borrower with respect to the policies and all receipts for paid premiums. At least 30 days prior to the expiration date of a policy, Borrower shall deliver to Lender the original (or a duplicate original) of a renewal policy in form satisfactory to Lender.

(c) Borrower shall maintain at all times commercial general liability

insurance, workers' compensation insurance and such other liability, errors and omissions and fidelity insurance coverages as Lender and HUD may from time to time require, or shall require any appropriate party, including but not limited to the Operator or Lessee to maintain at all times commercial general liability insurance, workers' compensation insurance and such other liability, errors and omissions and fidelity insurance coverages as Lender and HUD may from time to time require.

(d) All insurance policies and renewals of insurance policies required by Section 21 shall be in such amounts and for such periods as Lender and HUD may from time to time require, and shall be issued by insurance companies satisfactory to Lender. Lender shall have the right to effect insurance in the event Borrower fails to comply with this Section.

(e) Borrower shall comply with all insurance requirements and shall not permit any condition to exist on the Mortgaged Property that would invalidate any part of any insurance coverage that this Security Instrument requires Borrower to maintain.

(f) In the event of loss, Borrower shall give immediate written Notice to the insurance carrier and to Lender. Borrower hereby authorizes and appoints Lender as attorney-in-fact for Borrower to make proof of loss, to adjust and compromise any claims under policies of property damage insurance, to appear in and prosecute any action arising from such property damage insurance policies, to collect and receive the proceeds of property damage insurance, and to deduct from such proceeds Lender's expenses incurred in the collection of such proceeds. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in Section 21 shall require Lender to incur any expense or take any action. Lender may, at Lender's option and with the prior written approval of HUD, (1) hold the balance of such proceeds to be used to reimburse Borrower for the cost of restoring and repairing the Mortgaged Property to the equivalent of its original condition or to a condition approved by Lender (the "Restoration"), or (2) apply the balance of such proceeds to the payment of the Indebtedness, whether or not then due. To the extent Lender determines to apply insurance proceeds to Restoration, Lender shall do so in accordance with Lender's then-current policies relating to the restoration of casualty damage on similar multifamily properties and in accordance with outstanding HUD policy and regulations.

(g) Lender shall not exercise its option to apply insurance proceeds to the payment of the Indebtedness if all of the following conditions are met: (1) No Event of Default (or any event which, with the giving of Notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing; (2) Lender determines, in its discretion, that there will be sufficient funds to complete the Restoration; (3) Lender determines, in its discretion, that the rental income from the Mortgaged Property after completion of the Restoration will be sufficient to meet all operating costs and other expenses, Imposition Deposits, deposits to reserves and loan repayment obligations relating to the Mortgaged Property; and (4) Lender determines, in its discretion, that the Restoration will be completed before the earlier of (A) one year before the maturity date of the Note or (B) one year after the date of the loss or casualty. Further, Lender may not exercise its option to apply insurance proceeds to the payment of the Indebtedness without the prior written approval of HUD. If HUD fails to give its approval to the use or application of such funds within 60 days after the written request by the Lender, the Lender may use or apply such funds for any of the purposes specified herein without the approval of HUD.

(h) If the Mortgaged Property is sold at a foreclosure sale or Lender or HUD acquire title to the Mortgaged Property, Lender and HUD, as their interests may appear, shall automatically succeed to all rights of Borrower in and to any insurance policies and unearned insurance premiums and in and to the proceeds of property damage insurance resulting from any damage to the Mortgaged Property prior to such sale or acquisition.

22. *Condemnation.* (a) Borrower shall promptly notify Lender and HUD of any action or proceeding relating to any condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect (a "Condemnation"). Borrower shall appear in and prosecute or defend any action or proceeding relating to any Condemnation unless otherwise directed by Lender in writing. Borrower authorizes and appoints Lender as attorney-in-fact for Borrower to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any Condemnation and to settle or compromise any claim in connection with any Condemnation. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in Section 22 shall require Lender to incur any expense or take any action. Borrower hereby transfers and assigns to Lender all right, title and interest of Borrower in and to any award or payment with respect to (1) any Condemnation, or any conveyance in lieu of Condemnation, and (2) any damage to the Mortgaged Property caused by governmental action that does not result in a Condemnation.

(b) All awards of compensation in connection with condemnation for public use of or a taking of any of the Mortgaged Property, shall be paid to Lender to be applied to the amount due under the Note secured hereby in (1) amounts equal to the next maturing installment or installments of principal and (2) with any balance to be credited to the next payment due under the Note. All awards of damages in connection with any condemnation for public use of or damage to the Mortgaged Property, shall be paid to Lender to be applied to a fund held for and on behalf of Borrower which fund shall, at the option of Lender, and with the prior written approval of HUD, either be applied to the amount due under the Note as specified in the preceding sentence, or be disbursed for the restoration or repair of the Mortgaged Property. No amount applied to the reduction of the principal amount due in accordance with Section 22(b)(1) shall be considered an optional prepayment as the term is used in this Security Instrument and the Note secured hereby, nor relieve Borrower from making regular monthly payments commencing in the first day of the first month following the date of receipt of the award. Lender is hereby authorized in the name of Borrower to execute and deliver necessary releases or approvals or to appeal from such awards.

23. *Transfers of the Mortgaged Property or Interests in Borrower.* The Borrower shall not convey, assign, transfer, pledge, hypothecate, encumber or otherwise dispose of the Mortgaged Property or any interest therein or permit the conveyance, assignment or transfer of any interest in the Borrower (if the effect of such conveyance, assignment or transfer is the creation or elimination of a Principal) without the prior written approval of HUD. The Borrower does not need to obtain the prior written approval of HUD for: (a) A conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under this Security Instrument, (b) the Mortgaged Property becoming part of a bankruptcy estate by operation of law under the United States Bankruptcy Code, or (c) an interest acquired by inheritance or by Court decree.

24. *Events of Default.* The occurrence of any one or more of the following shall constitute either a Class A Event of Default or a Class B Event of Default under this Security Instrument:

(a) Class A Event of Default: Any failure by Borrower to pay or deposit when due any amount required by the Note or Section 7(a) or (b) of this Security Instrument for a period of thirty (30) days after the due date thereof.

(b) Class B Events of Default:

(1) Fraud or material misrepresentation or material omission by Borrower, any of its officers, directors, trustees, general partners, members or managers or any guarantor in connection with (i) the application for or creation of the Indebtedness, (ii) any financial statement, rent roll, or other report or information provided to Lender during the term of the Indebtedness, or (iii) any request for Lender's consent to any proposed action under this Security Instrument or the Note;

(2) The commencement of a forfeiture action or proceeding, whether civil or criminal, which, in Lender's reasonable judgment, could result in a forfeiture of the Mortgaged Property or otherwise materially impair the lien created by this Security Instrument or Lender's interest in the Mortgaged Property;

(3) Any failure by Borrower to perform any of its obligations under this Security Instrument (other than those specified in Section 24(a) and Section 24(b)(1) and (b)(2)), as and when required, which continues for a period of 30 days after Notice of such failure by Lender to Borrower. However, no such Notice or grace period shall apply in the case of any such failure which could, in Lender's judgment, absent immediate exercise by Lender of a right or remedy under this Security Instrument, result in harm to Lender or impairment of the Note or this Security Instrument;

(4) Any failure by Borrower to perform any of its obligations as and when required under the Regulatory Agreement which continue beyond the applicable cure period, if any, specified in the Regulatory Agreement; however, violations under the terms of the Regulatory Agreement may only be treated as a default hereunder in cases where HUD requires Lender to do so; and

(5) Borrower voluntarily files for bankruptcy protection under the United States Bankruptcy Code or voluntarily becomes subject to any reorganization, receivership, insolvency proceeding or other similar proceeding pursuant to any other federal or state law affecting debtor and creditor rights, or an involuntary case is commenced against Borrower by any creditor (other than Lender) of Borrower pursuant to the United States Bankruptcy Code or other federal or state law affecting debtor and creditor rights and is not dismissed or discharged within 60 days after filing.

25. *Remedies Cumulative.* Each right and remedy provided in this Security Instrument is distinct from all other rights or remedies under this Security Instrument, the Note or the Regulatory Agreement or afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order.

26. *Forbearance.* (a) So long as the obligation secured hereby is insured by HUD, Lender shall not without obtaining the prior written consent of HUD, take any of the following actions: extend the time for payment of all or any part of the Indebtedness; reduce the payments due under this Security Instrument or the Note; release anyone liable for the payment of any amounts under this Security Instrument or the Note; accept a renewal of the Note; modify the terms and time of payment of the Indebtedness; join in any extension or subordination agreement; release any Mortgaged Property; take or release other or additional security; modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable under the Note; and otherwise modify this Security Instrument, the Note, or the Regulatory Agreement. However, if the Contract of Insurance has been terminated, Lender may (but shall not be obligated to) agree with Borrower to any of the aforementioned actions in this Section and Lender shall not have to give Notice to or obtain the consent of any guarantor or third-party obligor.

(b) Any forbearance by Lender (or HUD as its interests appear) in exercising any right or remedy under the Note, this Security Instrument, or the Regulatory Agreement or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Lender of payment of all or any part of the Indebtedness after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due of all other payments on account of the Indebtedness or to exercise any remedies for any failure to make prompt payment. Enforcement by Lender of any security for the Indebtedness shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right available to Lender. Lender's receipt of any awards or proceeds under Section 21 and Section 22 shall not operate to cure or waive any Event of Default.

27. *Loan Charges.* If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower is interpreted so that any charge provided for in this Security Instrument or the Note, whether considered separately or together with other charges levied in connection with this Security Instrument or the Note, violates that law, and Borrower is entitled to the benefit of that law, that charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Lender in excess of the permitted amounts shall be applied by Lender to reduce the principal of the Indebtedness. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all Indebtedness which constitutes interest, as well as all other charges levied in connection with the Indebtedness which constitute interest, shall be deemed to be allocated and spread over the stated term of the Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of the Note.

28. *Waiver of Statute of Limitations.* To the extent permitted by law, Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Security Instrument or to any action brought to enforce this Security Instrument or the Note.

29. *Waiver of Marshalling.* Notwithstanding the existence of any other security interests in the Mortgaged Property held by Lender or by any other party and subject to the rights and requirements of HUD particularly under but not limited to the Regulatory Agreement, Lender shall have the right to determine the order in which any or all of the Mortgaged Property shall be subjected to the remedies provided in this Security Instrument and the Note or applicable law. Lender shall have the right to determine the order in which any or all portions of the Indebtedness are satisfied from the proceeds realized upon the exercise of such remedies. Borrower and any party who now or in the future acquires a security interest in the Mortgaged Property and who has actual or constructive notice of this Security Instrument waives any and all

right to require the marshalling of assets or to require that any of the Mortgaged Property be sold in the inverse order of alienation or that any of the Mortgaged Property be sold in parcels or as an entirety in connection with the exercise of any of the remedies permitted by applicable law or provided in this Security Instrument.

30. *Further Assurances.* Borrower shall execute, acknowledge, and deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements, transfers and assurances as Lender may require from time to time in order to better assure, grant, and convey to Lender the rights intended to be granted, now or in the future, to Lender under this Security Instrument and the Note.

31. *Estoppel Certificate.* Within 10 days after a request from Lender, Borrower shall deliver to Lender a written statement, signed and acknowledged by Borrower, certifying to Lender or any person designated by Lender, as of the date of such statement, (a) that the Note, the Regulatory Agreement and this Security Instrument are unmodified and in full force and effect (or, if there have been modifications, that the Note, the Regulatory Agreement and this Security Instrument are in full force and effect as modified and setting forth such modifications); (b) the unpaid principal balance of the Note; (c) the date to which interest under the Note has been paid; (d) that Borrower is not in default in paying the Indebtedness or in performing or observing any of the covenants or agreements contained in this Security Instrument, the Note and the Regulatory Agreement (or, if Borrower is in default, describing such default in reasonable detail); (e) whether or not there are then existing any setoffs or defenses known to Borrower against the enforcement of any right or remedy of Lender under the Note, the Regulatory Agreement and this Security Instrument; and (f) any additional facts requested by Lender.

32. *Governing Law; Consent to Jurisdiction and Venue.* (a) This Security Instrument and the Note which does not itself expressly identify the law that is to apply to it, shall be governed by the laws of the jurisdiction in which the Land is located (the "Property Jurisdiction") except as such local law may be preempted by federal law.

(b) Borrower agrees that any controversy arising under or in relation to the Note or this Security Instrument shall be litigated exclusively in the Property Jurisdiction except as federal jurisdiction may be appropriate pursuant to any federal requirements. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the Note, any security for the Indebtedness, or this Security Instrument. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

33. *Notice.* (a) All notices, demands and other communications ("Notice") under or concerning this Security Instrument shall be in writing. Each Notice shall be addressed to the intended recipient at its address set forth in this Security Instrument (and notices to HUD shall be addressed to the appropriate HUD field office responsible for servicing the Mortgaged Property), and shall be deemed given on the earliest to occur of (1) the date when the Notice is received by the addressee; (2) the first Business Day after the Notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery; or (3) the third Business Day after the Notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested. As used in this Section 33, the term "Business Day" means any day other than a Saturday, a Sunday or any other day on which Lender or HUD is not open for business.

(b) Any party to this Security Instrument may change the address to which Notices intended for it are to be directed by means of Notice given to the other party in accordance with Section 33. Each party agrees that it will not refuse or reject delivery of any Notice given in accordance with Section 33, that it will acknowledge, in writing, the receipt of any Notice upon request by the other party and that any Notice rejected or refused by it shall be deemed for purposes of Section 33 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

(c) Any Notice under the Note which does not specify how Notice is to be given shall be given in accordance with Section 33.

34. *Sale of Note; Change in Servicer.* The Note or a partial interest in the Note (together with this Security Instrument) may be sold one or more times without prior Notice to Borrower. A sale may result in a change of the Loan Servicer. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a sale or transfer of all or a partial interest in the Note or a change of the Loan Servicer, Borrower will be given Notice of the sale, transfer and/or change.

35. *Single Asset Borrower.* Until the Indebtedness is paid in full or unless otherwise approved in writing by HUD, (a) Borrower is either a single asset entity or a natural person and shall maintain the assets of the Mortgaged Property in segregated accounts and (b) Borrower, if not a natural person, (1) shall not acquire any real or personal property other than the Mortgaged Property and personal property related to the operation and maintenance of the Mortgaged Property except pursuant to the rules and regulations of HUD and with the prior written approval of HUD and (2) shall not own or operate any business other than the management and operation of the Mortgaged Property except pursuant to the rules and regulations of HUD and with the prior written approval of HUD.

36. *Successors and Assigns Bound.* This Security Instrument shall bind, and the rights granted by this Security Instrument shall inure to, the respective successors and assigns of Lender and Borrower.

37. *Joint and Several Liability.* If more than one person or entity signs this Security Instrument as Borrower, the obligations of such persons and entities shall be joint and several.

38. *Relationship of Parties; No Third Party Beneficiary.* (a) The relationship between Lender and Borrower shall be solely that of creditor and debtor, respectively, and nothing contained in this Security Instrument shall create any other relationship between Lender and Borrower.

(b) No creditor of any party to this Security Instrument and no other person shall be a third party beneficiary of this Security Instrument, the Note or the Regulatory Agreement. Without limiting the generality of the preceding sentence, (1) any arrangement (a "Servicing Arrangement") between the Lender and any Loan Servicer for loss sharing or interim advancement of funds shall constitute a contractual obligation of such Loan Servicer that is independent of the obligation of Borrower for the payment of the Indebtedness, (2) Borrower shall not be a third party beneficiary of any Servicing Arrangement, and (3) no payment by the Loan Servicer under any Servicing Arrangement will reduce the amount of the Indebtedness.

39. *Severability; Amendments.* The invalidity or unenforceability of any

provision of this Security Instrument shall not affect the validity or enforceability of any other provision, and all other provisions shall remain in full force and effect. This Security Instrument contains the entire agreement among the parties as to the rights granted and the obligations assumed in this Security Instrument. This Security Instrument may not be amended or modified except by a writing signed by the party against whom enforcement is sought.

40. *Construction.* The captions and headings of the sections of this Security Instrument are for convenience only and shall be disregarded in construing this Security Instrument. Any reference in this Security Instrument to an "Exhibit" or a "Section" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Security Instrument or to a Section of this Security Instrument. All Exhibits attached to or referred to in this Security Instrument are incorporated by reference into this Security Instrument. Any reference in this Security Instrument to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time except as to certain HUD regulations and procedures in connection with the Contract of Insurance which initially establish the rights of the Lender and the Borrower. Use of the singular in this Agreement includes the plural and use of the plural includes the singular. As used in this Security Instrument, the term "including" means "including, but not limited to."

41. *Loan Servicing.* All actions regarding the servicing of the Note, including the collection of payments, the giving and receipt of Notice, inspections of the Mortgaged Property, inspections of books and records, and the granting of consents and approvals, may be taken by the Loan Servicer unless Borrower receives Notice to the contrary. If Borrower receives conflicting Notice regarding the identity of the Loan Servicer or any other subject, any such Notice from Lender shall govern unless there is a Notice from HUD and, in all cases, any Notice from HUD governs notwithstanding any Notice from any other party.

42. *Disclosure of Information.* To the extent permitted by law, Lender may furnish information regarding Borrower or the Mortgaged Property to third parties with an existing or prospective interest in the servicing, enforcement, evaluation, performance, purchase or securitization of the Indebtedness, including but not limited to trustees, master servicers, special servicers, rating agencies, and organizations maintaining databases on the underwriting and performance of multifamily mortgage loans. Borrower irrevocably waives any and all rights it may have under applicable law to prohibit such disclosure, including but not limited to any right of privacy.

43. *No Change In Facts or Circumstances.* Borrower certifies that all information in the application for the loan submitted to Lender (the "Loan Application") and in all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan Application are complete and accurate in all material respects and that there has been no material adverse change in any fact or circumstance that would make any such information incomplete or inaccurate. The submission of false or incomplete information shall be a Class B Event of Default.

44. *Estoppel.* The Lender is not the agent of HUD. Any action by the Lender in exercising any right or remedy under this Security Instrument shall not be a waiver or preclude the exercise by HUD of any right or remedy which HUD might have under the Regulatory Agreement or other HUD requirements.

45. *Acceleration; Remedies.* At any time during the existence of a Class A Event of Default, Lender, at Lender's option, may declare the Indebtedness to be immediately due and payable without further demand, and may invoke the power of sale and any other remedies permitted by applicable law or provided in this Security Instrument or in the Note. At any time during the existence of a Class B Event of Default, Lender, at Lender's option, but only after receipt of the prior written approval of HUD, may declare the Indebtedness to be immediately due and payable without further demand, and may invoke the power of sale and any other remedies permitted by applicable law or provided in this Security Instrument or in the Note. Notwithstanding any language in Section 45 to the contrary, upon direction of HUD, following a declaration of default by HUD under the Regulatory Agreement, Lender shall declare the entire Indebtedness to be due and payable. Borrower acknowledges that the power of sale granted in this Security Instrument may be exercised by Lender without prior judicial hearing. Borrower has the right to bring an action to assert the non-existence of a Class A or Class B Event of Default or any other defense of Borrower to acceleration and sale; however, applicable Federal law may limit certain rights of the Borrower. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including reasonable attorneys' fees (including but not limited to appellate litigation), costs of documentary evidence, abstracts and title reports.

[Insert Provisions Pertaining to Sale as Appropriate Under State Law]

46. *Federal Remedies.* In addition to any rights and remedies set forth in the Regulatory Agreement, HUD has rights and remedies under federal law, including but not limited to the right to foreclose pursuant to the Multifamily Mortgage Foreclosure Act of 1981, 12 U.S.C. 3701 *et seq.* when HUD is the holder of the Note.

47. *Remedies for Waste.* In addition to any other rights and remedies set forth in the Note and this Security Instrument or those available under applicable law, including exemplary damages where permitted, the following remedies for Waste by Borrower are available to Lender as necessary to give complete redress:

(a) the exercise of the remedies available to Lender during the existence of a Class B default, as set forth in Section 45 of this Security Instrument;

(b) an injunction prohibiting future Waste or requiring correction of Waste already committed, but only to the extent that the Waste has impaired or threatens to impair Lender's security; and

(c) recovery of damages, limited by the amount of the Waste, to the extent that the Waste has impaired Lender's security. Any recovery of damages by Lender or HUD for Waste shall be applied, at the sole discretion of HUD, (1) to remedy the Waste of the Mortgaged Property, (2) to the Indebtedness or (3) for any other purpose designated by HUD.

If the mortgage or deed of trust relationship has ended at the time Lender claims Waste has been committed against the Mortgaged Property, an impairment of security exists if the value of the Mortgaged Property is less that the sum of the debt obligation under the Note and this Security Instrument, and the obligations secured by any liens senior to this Security Instrument. If the mortgage or deed of trust relationship continues to exist at the time Lender claims Waste has been committed against the Mortgaged Property, an impairment of security exists if the ratio of the mortgage or deed of trust obligation to the value of the Mortgaged Property is above its scheduled level.

48. *References.* All references to rental housing income and rental payments

shall, in the case of Health Care Facilities be construed to mean all income from whatever source derived from the operation of the facility, so far as the context permits.

49. *Termination.* At such time as HUD no longer insures this loan or holds this Security Instrument, (a) all rights and responsibilities of HUD shall conclude, all mortgage insurance and references to mortgage insurance premiums shall cease and all obligations of the Secretary and HUD shall terminate; (b) all obligations and responsibilities of Borrower to HUD shall likewise terminate provided Borrower is in compliance with the Regulatory Agreement and (c) all obligations and responsibilities of Lender to HUD shall likewise terminate provided Lender is in compliance with the Contract of Insurance.

50. *Construction Financing.* The Indebtedness represents funds to be used in the construction of certain Improvements on the Land, in accordance with the Building Loan Agreement which is incorporated herein by reference to the same extent and effect as if fully set forth and made herein (provided, however, that if and to the extent that the Building Loan Agreement is inconsistent herewith, this Security Instrument shall govern). If the construction of the Improvements to be made pursuant to the Building Loan Agreement shall not be carried on with reasonable diligence, or shall be discontinued at any time for any reason other than strikes or lock-outs, the Lender, after due Notice to the Borrower, or any subsequent owner, is hereby vested with full and complete authority to enter upon the Land to employ watchmen to protect such Improvements from depredation or injury and to preserve and protect the Personalty therein, to continue any and all outstanding contracts for the erection and completion of said Improvements, to make and enter into any contracts and obligations wherever necessary, either in its own name or in the name of the Borrower, or other owner, and to pay and discharge all debts, obligations, and liabilities incurred thereby. All such sums so advanced by the Lender (exclusive of advances of the principal of the Indebtedness) shall be added to the principal of the Indebtedness secured hereby and all shall be secured by this Security Instrument and shall be due and payable on demand with interest at the rate provided in the Note, but no such advances shall be insured unless same are specifically approved by HUD prior to the making thereof. The Indebtedness shall, at the option of the Lender or holder of this Security Instrument and the Note become due and payable on the failure of the Borrower, or other owner, to keep and perform any of the covenants, conditions and agreements of the Building Loan Agreement. This covenant shall be terminated upon the completion of the Improvements to the satisfaction of the Lender and the making of the final advance as provided in the Building Loan Agreement.

51. *Environmental Hazards* (a) Definitions:

(1) "Hazardous Materials" means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls ("PCBs") and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the Mortgaged Property is prohibited by any federal, state or local authority; any substance that requires special handling; and any other material or substance now or in the future defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "contaminant," or "pollutant" within the meaning of any Hazardous Materials Law.

(2) "Hazardous Materials Laws" means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, administrative rulings and court judgments and decrees in effect now or in the future and including all amendments, that relate to Hazardous Materials and apply to Borrower or to the Mortgaged Property. Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.*, the Toxic Substance Control Act, 15 U.S.C. 2601, *et seq.*, the Clean Water Act, 33 U.S.C. 1251, *et seq.*, and the Hazardous Materials Transportation Act, 49 U.S.C. 5101, *et seq.*, and their state analogs.

(3) "Environmental Permit" means any permit, license, or other authorization issued under any Hazardous Materials Law with respect to any activities or businesses conducted on or in relation to the Mortgaged Property.

(b) Except for (1) matters covered by a written program of operations and maintenance approved in writing by Lender (an "O&M Program"), (2) matters described in paragraph (c) of this Section 51; or (3) (for so long as the loan secured hereby is insured by HUD) matters covered by outstanding HUD requirements which may differ from this Section 51, with respect to lead based paint requirements, for example, Borrower shall not cause or permit any of the following:

(i) The presence, use, generation, release, treatment, processing, storage (including storage in above ground and underground storage tanks), handling, or disposal of any Hazardous Materials on or under the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property;

(ii) The transportation of any Hazardous Materials to, from, or across the Mortgaged Property;

(iii) Any occurrence or condition on the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property, which occurrence or condition is or may be in violation of Hazardous Materials Laws; or

(iv) Any violation of or noncompliance with the terms of any Environmental Permit with respect to the Mortgaged Property or any property of Borrower that is adjacent to the Mortgaged Property.

The matters described in clauses (i) through (iv) above are referred to collectively in this Section 51 as "Prohibited Activities or Conditions".

(c) Prohibited Activities and Conditions shall not include the safe and lawful use and storage of quantities of (1) pre-packaged supplies, cleaning materials and petroleum products customarily used in the operation and maintenance of comparable multifamily properties, (2) cleaning materials, personal grooming items and other items sold in pre-packaged containers for consumer use and used by tenants and occupants of residential dwelling units in the Mortgaged Property; and (3) petroleum products used in the operation and maintenance of motor vehicles from time to time located on the Mortgaged Property's parking areas, so long as all of the foregoing are used, stored, handled, transported and disposed of in compliance with Hazardous Materials Laws.

(d) Borrower shall take all commercially reasonable actions (including the inclusion of appropriate provisions in any Leases executed after the date of this Security Instrument) to prevent its employees, agents, and contractors, and all tenants and other occupants from causing or permitting

any Prohibited Activities or Conditions. Borrower shall not lease or allow the sublease or use of all or any portion of the Mortgaged Property to any tenant or subtenant for nonresidential use by any user that, in the ordinary course of its business, would cause or permit any Prohibited Activity or Condition.

(e) If an O&M Program has been established with respect to Hazardous Materials, Borrower shall comply in a timely manner with, and cause all employees, agents, and contractors of Borrower and any other persons present on the Mortgaged Property to comply with the O&M Program. All costs of performance of Borrower's obligations under any O&M Program shall be paid by Borrower, and Lender's out-of-pocket costs incurred in connection with the monitoring and review of the O&M Program and Borrower's performance shall be paid by Borrower upon demand by Lender. Any such out-of-pocket costs of Lender which Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 14.

(f) Borrower represents and warrants to Lender that, except as previously disclosed by Borrower to Lender in writing:

(1) Borrower has not at any time engaged in, caused or permitted any Prohibited Activities or Conditions;

(2) To the best of Borrower's knowledge after reasonable and diligent inquiry, no Prohibited Activities or Conditions exist or have existed;

(3) Except to the extent previously disclosed by Borrower to Lender in writing, the Mortgaged Property does not now contain any underground storage tanks, and, to the best of Borrower's knowledge after reasonable and diligent inquiry, the Mortgaged Property has not contained any underground storage tanks in the past. If there is an underground storage tank located on the Property which has been previously disclosed by Borrower to Lender in writing, that tank complies with all requirements of Hazardous Materials Laws;

(4) Borrower has complied with all Hazardous Materials Laws, including all requirements for notification regarding releases of Hazardous Materials. Without limiting the generality of the foregoing, Borrower has obtained all Environmental Permits required for the operation of the Mortgaged Property in accordance with Hazardous Materials Laws now in effect and all such Environmental Permits are in full force and effect;

(5) No event has occurred with respect to the Mortgaged Property that constitutes, or with the passing of time or the giving of Notice would constitute, noncompliance with the terms of any Environmental Permit;

(6) There are no actions, suits, claims or proceedings pending or, to the best of Borrower's knowledge after reasonable and diligent inquiry, threatened that involve the Mortgaged Property and allege, arise out of, or relate to any Prohibited Activity or Condition; and

(7) Borrower has not received any complaint, order, Notice of violation or other communication from any Governmental Authority with regard to air emissions, water discharges, noise emissions or Hazardous Materials, or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property.

The representations and warranties in this Section 51 shall be continuing representations and warranties that shall be deemed to be made by Borrower throughout the term of the loan evidenced by the Note, until the Indebtedness has been paid in full.

(g) Borrower shall promptly notify Lender in writing upon the occurrence of any of the following events:

(1) Borrower's discovery of any Prohibited Activity or Condition;

(2) Borrower's receipt of or knowledge of any complaint, order, Notice of violation or other communication from any Governmental Authority or other person with regard to present or future alleged Prohibited Activities or Conditions or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property; and

(3) any representation or warranty in this Section 51 becomes untrue after the date of this Agreement.

Any such Notice given by Borrower shall not relieve Borrower of, or result in a waiver of, any obligation under this Security Instrument, the Note, or any other Loan Document.

(h) Borrower shall pay promptly the costs of any environmental inspections, tests or audits ("Environmental Inspections") required by Lender in connection with any foreclosure or deed in lieu of foreclosure, or as a condition of Lender's consent to any Transfer under Section 23, or required by Lender following a reasonable determination by Lender that Prohibited Activities or Conditions may exist. Any such costs incurred by Lender (including the fees and out-of-pocket costs of attorneys and technical consultants whether incurred in connection with any judicial, appellate or otherwise, or administrative process or otherwise) which Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 14. The results of all Environmental Inspections made by Lender shall at all times remain the property of Lender and Lender shall have no obligation to disclose or otherwise make available to any party other than Borrower and HUD such results or any other information obtained by Lender in connection with its Environmental Inspections. Lender hereby reserves the right, and Borrower hereby expressly authorizes Lender, to make available to any party, including any prospective bidder at a foreclosure sale of the Mortgaged Property, the results of any Environmental Inspections made by Lender with respect to the Mortgaged Property. Borrower consents to Lender notifying any party (either as part of a notice of sale or otherwise) of the results of any of Lender's Environmental Inspections. Borrower acknowledges that Lender cannot control or otherwise assure the truthfulness or accuracy of the results of any of its Environmental Inspections and that the release of such results to prospective bidders at a foreclosure sale of the Mortgaged Property may have a material and adverse effect upon the amount which a party may bid at such sale. Borrower agrees that Lender shall have no liability whatsoever as a result of delivering the results of any of its Environmental Inspections to any third party, and Borrower hereby releases and forever discharges Lender from any and all claims, damages, or causes of action, arising out of, connected with or incidental to the results of, the delivery of any of Lender's Environmental Inspections.

(i) If any investigation, site monitoring, containment, clean-up, restoration or other remedial work ("Remedial Work") is necessary to comply with any Hazardous Materials Law or order of any Governmental Authority that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property under any Hazardous Materials Law, Borrower shall, by the earlier of (1) the applicable deadline required by Hazardous Materials Law or (2) 30 days after Notice from Lender demanding such action, begin performing the Remedial Work, and thereafter diligently prosecute it to completion, and shall in any event complete the work by the time required by applicable Hazardous Materials Law. If Borrower fails to begin on a timely basis or diligently prosecute any required Remedial Work, Lender may, at

its option, cause the Remedial Work to be completed, in which case Borrower shall reimburse Lender on demand for the cost of doing so. Any reimbursement due from Borrower to Lender shall become part of the Indebtedness as provided in Section 14.

(j) Borrower shall cooperate with any inquiry by any Governmental Authority and shall comply with any governmental or judicial order which arises from any alleged Prohibited Activity or Condition.

(k) Borrower shall indemnify, hold harmless and defend (1) Lender, (2) any prior owner or holder of the Note, (3) the Loan Servicer, (4) any prior Loan Servicer, (5) the officers, directors, shareholders, partners, employees and trustees of any of the foregoing, and (vi) the heirs, legal representatives, successors and assigns of each of the foregoing (collectively, the "Indemnitees") from and against all proceedings, claims, damages, penalties and costs (whether initiated or sought by Governmental Authorities or private parties), including fees and out of pocket expenses of attorneys and expert witnesses, investigatory fees, and remediation costs, whether incurred in connection with any judicial (including appellate) or administrative process or otherwise, arising directly or indirectly from any of the following:

(i) Any breach of any representation or warranty of Borrower in this Section 51;

(ii) Any failure by Borrower to perform any of its obligations under this Section 51;

(iii) The existence or alleged existence of any Prohibited Activity or Condition;

(iv) The presence or alleged presence of Hazardous Materials on or under the Mortgaged Property or any property of Borrower that is adjacent to the Mortgaged Property; and

(v) The actual or alleged violation of any Hazardous Materials Law.

(l) Counsel selected by Borrower to defend Indemnitees shall be subject to the approval of those Indemnitees. However, any Indemnitee may elect to defend any claim or legal or administrative proceeding at the Borrower's expense.

(m) Borrower shall not, without the prior written consent of those Indemnitees who are named as parties to a claim or legal or administrative proceeding (a "Claim"), settle or compromise the Claim if the settlement (1) results in the entry of any judgment that does not include as an unconditional term the delivery by the claimant or plaintiff to Lender of a written release of those Indemnitees, satisfactory in form and substance to Lender; or (2) may materially and adversely affect Lender, as determined by Lender in its discretion.

(n) Borrower's obligation to indemnify the Indemnitees shall not be limited or impaired by any of the following, or by any failure of Borrower or any guarantor to receive Notice of or consideration for any of the following:

(1) Any amendment or modification of any Loan Document;

(2) Any extensions of time for performance required by any Loan Document;

(3) Any provision in any of the Loan Documents limiting Lender's recourse to property securing the Indebtedness, or limiting the personal liability of Borrower or any other party for payment of all or any part of the Indebtedness;

(4) The accuracy or inaccuracy of any representations and warranties made by Borrower under this Security Instrument or any other Loan Document;

(5) The release of Borrower or any other person, by Lender or by operation of law, from performance of any obligation under any Loan Document;

(6) The release or substitution in whole or in part of any security for the Indebtedness; and

(7) Lender's failure to properly perfect any lien or security interest given as security for the Indebtedness.

(o) Borrower shall, at its own cost and expense, do all of the following:

(1) Pay or satisfy any judgment or decree that may be entered against any Indemnitee or Indemnitees in any legal or administrative proceeding incident to any matters against which Indemnitees are entitled to be indemnified under this Section 51;

(2) Reimburse Indemnitees for any expenses paid or incurred in connection with any matters against which Indemnitees are entitled to be indemnified under this Section 51; and

(3) Reimburse Indemnitees for any and all expenses, including fees and out-of-pocket expenses of attorneys and expert witnesses, paid or incurred in connection with the enforcement by Indemnitees of their rights under this Section 51, or in monitoring and participating in any legal (including appellate) or administrative proceeding.

(p) In any circumstances in which the indemnity under this Section 51 applies, Lender may employ its own legal counsel and consultants to prosecute, defend or negotiate any claim or legal or administrative proceeding and Lender, with the prior written consent of Borrower (which shall not be unreasonably withheld, delayed or conditioned) may settle or compromise any action or legal or administrative proceeding. Borrower shall reimburse Lender upon demand for all costs and expenses incurred by Lender, including all costs of settlements entered into in good faith, and the fees and out of pocket expenses of such attorneys (including but not limited to appellate litigation) and consultants.

(q) The provisions of this Section 51 shall be in addition to any and all other obligations and liabilities that Borrower may have under applicable law or under other Loan Documents, and each Indemnitee shall be entitled to indemnification under this Section 51 without regard to whether Lender or that Indemnitee has exercised any rights against the Mortgaged Property or any other security, pursued any rights against any guarantor, or pursued any other rights available under the Loan Documents or applicable law. If Borrower consists of more than one person or entity, the obligation of those persons or entities to indemnify the Indemnitees under this Section 51 shall be joint and several. The obligation of Borrower to indemnify the Indemnitees under this Section 51 shall survive any repayment or discharge of the Indebtedness, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of this Security Instrument.

(r) All references to Lender in this Section 51 shall also be construed to refer to HUD as its interests appear (solely as determined by HUD) and all notifications to Lender must also be made to HUD and all Lender approvals and exercises of discretion by Lender under this Section 51 must first have the prior written approval of HUD all so long as the loan secured by this Security Instrument is insured by HUD, provided, that the reference to Lender as an Indemnitee shall be construed to refer to HUD, and Borrower's obligations to indemnify HUD as an Indemnitee shall remain in effect in accordance with this Section 51, notwithstanding the termination or expiration of insurance of the secured loan by HUD.

(s) To the extent any HUD environmental requirements or standards are inconsistent or conflict with the provisions of this Section 51, the HUD requirements or standards shall control so long as the loan secured by this Security Instrument is insured or held by HUD.

52. [Add state requirements for future advances, credit line or open end mortgages]

ATTACHED EXHIBITS. The following Exhibits are attached to this Security Instrument:

X Exhibit A Description of the Land (required).

Exhibit B Modifications to Security Instrument

IN WITNESS WHEREOF, Borrower has signed and delivered this Security Instrument or has caused this Security Instrument to be signed and delivered by its duly authorized representative, as a sealed instrument.

[Signatures and Acknowledgments]

Exhibit A—[Description of the Land]

A–1

Exhibit B—Modifications to Security Instrument

The following modifications are made to the text of the Security Instrument that precedes this Exhibit:

B–1

OMB No. (Exp. 00/00/00)

Public Reporting Burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, DC 20410–3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502–0468), Washington, DC 20503. Do not send this completed form to either of the above addresses.

Multifamily/Health Care Facility Note—(Multistate)

Project #

Project Name:

US $ _____ _____, ____

FOR VALUE RECEIVED, the undersigned ("Borrower") jointly and severally (if more than one) promises to pay to the order of _____, a _____, the principal sum of _____ Dollars (US $_____), with interest on the unpaid principal balance at the annual rate of _____ percent (____%).

1. *Defined Terms.* As used in this Note, (a) the term "Lender" means the holder of this Note, and (b) the term "Indebtedness" means the principal of, interest on, or any other amounts due at any time under, this Note, the Security Instrument or any other Loan Document, including prepayment premiums, late charges, default interest, and advances to protect the security of the Security Instrument under Section 14 of the Security Instrument. "Event of Default" and other capitalized terms used but not defined in this Note shall have the meanings given to such terms in the Security Instrument. Key Principal shall have the meaning set forth in the attached Acknowledgment and Agreement of Key Principal to Personal Liability for Exceptions to Non-Recourse Liability.

2. *Address for Payment.* All payments due under this Note shall be payable at _____, or such other place as may be designated by written notice to Borrower from or on behalf of Lender.

3. *Payment of Principal and Interest.* Principal and interest shall be paid as follows:

(a) Unless disbursement of principal is made by Lender to Borrower on the first day of the month, interest for the period beginning on the date of disbursement and ending on and including the last day of the month in which such disbursement is made shall be payable simultaneously with the execution of this Note.

(b) Interest only at __% per annum on such amount of principal as may be advanced from time to time, computed from the date of such advance, shall be payable monthly commencing on the first day of _____ [month following closing] and on the first day of each month thereafter up to and including the first day of _____ [month before first amortized payment]. Consecutive monthly installments of principal and interest, each in the amount of _____ Dollars (US $_____), shall be payable on the first day of each month beginning on _____, ____ until the entire unpaid principal balance evidenced by this Note is fully paid. Any remaining principal and interest shall be due and payable on _____ or on any earlier date on which the unpaid principal balance of this Note becomes due and payable, by acceleration or otherwise (the "Maturity Date").

(c) Any regularly scheduled monthly installment of principal and interest that is received by Lender before the date it is due shall be deemed to have been received on the due date solely for the purpose of calculating interest due.

4. *Security.* The Indebtedness is secured, among other things, by a multifamily or health care facility mortgage, deed to secure debt or deed of trust dated as of the date of this Note (the "Security Instrument"), and reference is made to the Security Instrument for other rights of Lender as to collateral for the Indebtedness.

5. *Application of Payments.* If at any time Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, Lender shall apply that payment to amounts then due and payable in the manner and in the order set forth in Section 11 of the Security Instrument. Borrower agrees that neither Lender's acceptance of a payment from Borrower in an amount that is less than all amounts then due and payable nor Lender's application of such payment shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.

6. *Acceleration.* If a Class A Event of Default (as defined in the Security Instrument) has occurred and is continuing, the entire unpaid principal balance, any accrued interest, the prepayment premium payable under Section 9, if any, and all other amounts payable to Lender under this Note and any other Loan Document shall at once become due and payable, at the option of Lender, without any prior notice to Borrower. If a Class B Event of Default (as defined in the Security Instrument) occurs and the Indebtedness is accelerated as set forth in the Security Instrument, the entire unpaid principal balance, any accrued interest, the prepayment premium payable under Section 9, if any, and all other amounts payable to Lender under this Note and any other Loan Document shall at once become due and payable. Lender may exercise this option to accelerate regardless of any prior forbearance.

7. *Late Charge.* If any monthly amount payable under this Note or under the Security Instrument or any other Loan Document is not received by Lender within ____ days after the amount is due, Borrower shall pay to Lender, immediately and without demand by Lender, a late charge equal to __ percent of such amount. Borrower acknowledges that its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the loan evidenced by this Note (the "Loan"), and that it is extremely difficult and impractical to determine those additional expenses. Borrower agrees that the late charge payable pursuant to this Section represents a fair and reasonable estimate, taking into account all circumstances existing on the date of this Note, of the additional expenses Lender will incur by reason of such late payment.

8. *Limits on Personal Liability.* (a) Except as otherwise provided in this Section 8, Section 6 of the Security Instrument, Section 19 of the Building Loan Agreement and in Section 46 of the Regulatory Agreement respectively between Borrower and HUD, Borrower and Principals shall have no personal

liability under this Note, the Security Instrument or any other Loan Document for the repayment of the Indebtedness or for the performance of any other obligations of Borrower under the Loan Documents, and Lender's only recourse for the satisfaction of the Indebtedness and the performance of such obligations shall be Lender's exercise of its rights and remedies with respect to the Mortgaged Property and any other collateral held by Lender as security for the Indebtedness.

(b) Borrower and Principals shall be personally liable to Lender for the repayment of a portion of the Indebtedness equal to any loss or damage suffered by Lender as a result of (1) failure of Borrower to pay to Lender upon demand after an Event of Default all Rents to which Lender is entitled under Section 3(a) of the Security Instrument and the amount of all security deposits collected from tenants then in residence; (2) failure of Borrower to apply all insurance proceeds and condemnation proceeds as required by the Security Instrument; or (3) failure of Borrower to comply with Section 16 of the Security Instrument relating to the delivery of books and records, statements, schedules and reports.

(c) Borrower and Principals shall be personally liable to Lender for the repayment of all of the Indebtedness upon the occurrence of any of the following Events of Default: (1) Borrower's acquisition of any property or operation of any business not permitted by Section 35 of the Security Instrument; (2) a transfer or the granting of a lien or encumbrance that is an Event of Default under Sections 18 and 23 of the Security Instrument, other than a transfer consisting solely of the involuntary removal or involuntary withdrawal of a general partner in a limited partnership or a manager in a limited liability company; or (3) fraud or written material misrepresentation by Borrower or any officer, director, partner, member or employee of Borrower in connection with the application for or creation of the Indebtedness or any request for any action or consent by Lender.

9. *Voluntary and Involuntary Prepayments.* (a) A prepayment premium shall be payable in connection with any prepayment made under this Note as provided below:

(1) Privilege is reserved to pay the debt in whole or part in an amount equal to one or more monthly payments on principal due, on the first [*or last*] day of any month prior to maturity upon at least thirty (30) days prior written notice to the holder. If this debt is paid in full while insured under the provisions of the National Housing Act, as amended, all parties liable for payment thereof agree to be jointly and severally bound to pay to the holder hereof such adjusted mortgage insurance premium as may be required by the applicable Regulations. Notwithstanding any provision herein for prepayment charge, such charge shall be applicable only to the amount of prepayment in any one calendar year, which is in excess of fifteen per centum (15%) of the original principal sum of this Note. No default shall exist by reason of nonpayment of any required installment of principal so long as the amount of optional additional prepayments of principal already made pursuant to the privilege of prepayment set forth in this Note equals or exceeds the amount of such required installment of principal.

(2) Upon Lender's exercise of any right of acceleration under this Note, Borrower shall pay to Lender, in addition to the entire unpaid principal balance of this Note outstanding at the time of the acceleration, (i) all accrued interest and all other sums due Lender, and (ii) the prepayment premium calculated pursuant to (1) above.

(3) Any application by Lender of any collateral or other security to the repayment of any portion of the unpaid principal balance of this Note prior to the Maturity Date and in the absence of acceleration shall be deemed to be a partial prepayment by Borrower, requiring the payment to Lender by Borrower of a prepayment premium. The amount of any such partial prepayment shall be computed so as to provide to Lender a prepayment premium computed pursuant to Schedule A without Borrower having to pay out-of-pocket any additional amounts.

(b) Notwithstanding the provisions of subsection (a) above, no prepayment premium shall be payable with respect to (1) any prepayment made no more than __ days before the Maturity Date, or (2) any prepayment occurring as a result of the application of any insurance proceeds or condemnation award under the Security Instrument.

(c) Any permitted or required prepayment of less than the unpaid principal balance of this Note shall not extend or postpone the due date of any subsequent monthly installments or change the amount of such installments, unless Lender agrees otherwise in writing.

(d) Borrower further acknowledges that the prepayment premium provisions of this Note are a material part of the consideration for the Loan, and acknowledges that the terms of this Note are in other respects more favorable to Borrower as a result of the Borrower's voluntary agreement to the prepayment premium provisions.

10. *Costs and Expenses.* Borrower shall pay all expenses and costs, including fees and out-of-pocket expenses of attorneys and expert witnesses and costs of investigation and litigation (including appellate), incurred by Lender as a result of any default under this Note or in connection with efforts to collect any amount due under this Note, or to enforce the provisions of any of the other Loan Documents, including those incurred in post-judgment collection efforts and in any bankruptcy proceeding (including any action for relief from the automatic stay of any bankruptcy proceeding) or judicial or non-judicial foreclosure proceeding.

11. *Forbearance.* Any forbearance by Lender in exercising any right or remedy under this Note, the Security Instrument, or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by Lender of any security for Borrower's obligations under this Note shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right or remedy available to Lender.

12. *Waivers.* Presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace, and diligence in collecting the Indebtedness are waived by Borrower.

13. *Loan Charges.* If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower in connection with the Loan is interpreted so that any interest or other charge provided for in any Loan Document, whether considered separately or together with other charges provided for in any other Loan Document, violates that law, and Borrower is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to

Lender in excess of the permitted amounts shall be applied by Lender to reduce the unpaid principal balance of this Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all Indebtedness that constitutes interest, as well as all other charges made in connection with the Indebtedness that constitute interest, shall be deemed to be allocated and spread ratably over the stated term of the Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of this Note.

14. *Commercial Purpose.* Borrower represents that the Indebtedness is being incurred by Borrower solely for the purpose of carrying on a business or commercial enterprise, and not for personal, family or household purposes.

15. *Counting of Days.* Except where otherwise specifically provided, any reference in this Note to a period of "days" means calendar days, not Business Days.

16. *Governing Law.* This Note shall be governed by the law of the Property Jurisdiction, except as such local law may be preempted by federal law.

17. *Captions.* The captions of the Sections of this Note are for convenience only and shall be disregarded in construing this Note.

18. *Notices.* All notices, demands and other communications required or permitted to be given by Lender to Borrower pursuant to this Note shall be given in accordance with Section 33 of the Security Instrument.

19. *Consent to Jurisdiction and Venue.* Borrower agrees that any controversy arising under or in relation to this Note shall be litigated exclusively in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies, which shall arise under or in relation to this Note. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. In addition to any rights and remedies set forth in the Regulatory Agreement, HUD has rights and remedies under federal law, including but not limited to the right to foreclose pursuant to the Multifamily Mortgage Foreclosure Act of 1981, as amended, 12 U.S.C. § 3701 *et seq.* when HUD is the holder of the Note.

[INSERT THE FOLLOWING IF APPROPRIATE AND ANY OTHER APPROPRIATE PROVISIONS FOR THE JURISDICTION]

20. WAIVER OF TRIAL BY JURY. BORROWER AND LENDER EACH (a) AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS NOTE OR THE RELATIONSHIP BETWEEN THE PARTIES AS LENDER AND BORROWER THAT IS TRIABLE OF RIGHT BY A JURY AND (b) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

[IN THE EVENT THERE ARE MODIFICATIONS TO THE NOTE, INDICATE HERE THAT THERE IS AN ATTACHED RIDER CONTAINING SUCH MODIFICATIONS]

IN WITNESS WHEREOF, Borrower has signed and delivered this Note or has caused this Note to be signed and delivered by its duly authorized representative.

[SIGNATURES]

[Borrower name]

By: _____

[Name & capacity of signatory]

_____

Borrower's Social Security/Employer ID Number.

State [Commonwealth] of _____

Deed of Trust [Mortgage] Note

To: _____

[Borrower]

_____

[Lender]

Project No.:_____–_____

Insured under § _____ of the National Housing Act as amended and Regulations published thereunder in effect on _____, 20____. To the extent of advances approved by the Secretary of Housing and Urban Development acting by and through the Assistant Secretary for Housing-Federal Housing Commissioner.

By: _____

[Title]

Date: _____, 20____ _____

A total sum of $____.____ has been approved for insurance hereunder by the Secretary of Housing and Urban Development acting by and through the Assistant Secretary for Housing-Federal Housing Commissioner.

By: _____

[Title]

Date: _____, 20____ _____

Acknowledgment and Agreement of Key Principal to Personal Liability for Exceptions to Non-Recourse Liability

Key Principal, who has an economic interest in Borrower or who will otherwise obtain a material financial benefit from the Loan, hereby absolutely, unconditionally and irrevocably agrees to pay to Lender, or its assigns, on demand, all amounts for which Borrower is personally liable under Section 8 of the Multifamily Note to which this Acknowledgment is attached (the "Note"). The obligations of Key Principal shall survive any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the Security Instrument. Lender may pursue its remedies against Key Principal without first exhausting its remedies against the Borrower or the Mortgaged Property. All capitalized terms used but not defined in this Acknowledgment shall have the meanings given to such terms in the Security Instrument. As used in this Acknowledgment, the term "Key Principal" (each if more than one) shall mean only those individuals or entities that execute this Acknowledgment.

The obligations of Key Principal shall be performed without demand by Lender and shall be unconditional irrespective of the genuineness, validity, or enforceability of the Note, or any other Loan Document, and without regard to any other circumstance, which might otherwise constitute a legal or equitable discharge of a surety or a guarantor. Key Principal hereby waives the benefit of all principles or provisions of law, which are or might be in conflict with the terms of this Acknowledgment, and agrees that Key Principal's obligations shall not be affected by any circumstances, which might otherwise constitute a legal or equitable discharge of a surety or a guarantor. Key Principal hereby waives the benefits of any right of discharge and all other rights under any and all statutes or other laws relating to guarantors or sureties, to the fullest extent permitted by law, diligence in collecting the Indebtedness, presentment, demand for payment, protest, all notices with respect to the Note including this Acknowledgment, which may be required by statute, rule of law or otherwise to preserve Lender's rights against Key Principal under this Acknowledgment, including notice of acceptance, notice of any amendment of the Loan Documents, notice of the

occurrence of any default or Event of Default, notice of intent to accelerate, notice of acceleration, notice of dishonor, notice of foreclosure, notice of protest, notice of the incurring by Borrower of any obligation or indebtedness and all rights to require Lender to (a) proceed against Borrower, (b) proceed against any general partner or manager of Borrower, (c) proceed against or exhaust any collateral held by Lender to secure the repayment of the Indebtedness, or (d) if Borrower is a partnership or limited liability company, pursue any other remedy it may have against Borrower, or any general partner or any member-manager or manager of Borrower.

At any time without notice to Key Principal, and without affecting the liability of Key Principal hereunder, (a) the time for payment of the principal of or interest on the Indebtedness may be extended or the Indebtedness may be renewed in whole or in part; (b) the time for Borrower's performance of or compliance with any covenant or agreement contained in the Note, or any other Loan Document, whether presently existing or hereinafter entered into, may be extended or such performance or compliance may be waived; (c) the maturity of the Indebtedness may be accelerated as provided in the Note or any other Loan Document; (d) the Note or any other Loan Document may be modified or amended by Lender and Borrower in any respect, including an increase in the principal amount; and (e) any security for the Indebtedness may be modified, exchanged, surrendered or otherwise dealt with or additional security may be pledged or mortgaged for the Indebtedness.

Key Principal acknowledges that Key Principal has received a copy of the Note and all other Loan Documents. Neither this Acknowledgment nor any of its provisions may be waived, modified, amended, discharged, or terminated except by an agreement in writing signed by the party against which the enforcement of the waiver, modification, amendment, discharge, or termination is sought, and then only to the extent set forth in that agreement. Key Principal agrees to notify Lender (in the manner for giving notices provided in Section 33 of the Security Instrument) of any change of Key Principal's address within 10 Business Days after such change of address occurs. Any notices to Key Principal shall be given in the manner provided in Section 33 of the Security Instrument. Key Principal agrees to be bound by Sections 19 and 20 of the Note.

IN WITNESS WHEREOF, Key Principal has signed and delivered this Acknowledgment under seal or has caused this Guaranty to be signed and delivered under seal by its duly authorized representative. Key Principal intends that this Acknowledgment shall be deemed to be signed and delivered as a sealed instrument.

KEY PRINCIPAL(S)

Name: _____
Address: _____
Social Security/Employer ID No.: _____
Name: _____
Address: _____
Social Security/Employer ID No.: _____
Name: _____
Address: _____
Social Security/Employer ID No.: _____
Name: _____
Address: _____
Social Security/Employer ID No.: _____
Name: _____
Address: _____
Social Security/Employer ID No.: _____

OMB Approval No. 0000–0000
(Exp. 00/00/00)

Public Reporting Burden for this collection of information is estimated to average .75 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, DC 20410–3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502–0468), Washington, DC 20503. Do not send this completed form to either of the above addresses.

Recording Requested by:

_____
_____
_____
_____

After Recording return to:

_____
_____
_____
_____

U.S. Department of Housing and Urban Development Regulatory Agreement for Multifamily Projects Under Sections 207, 220, 221(d)(3), 221(d)(4), 223(a)(7), 223(f) and 231 of the National Housing Act, as Amended

Replaces Form HUD–92465, 92466, FHA–1730, and 1733

HUD Project No.:____

Elderly____Non-Elderly ____
Lender____:
Processed under:____ [ ]MAP
[ ]TAP
Original Principal Amount of Multifamily Note:
Date of Note:
Originally endorsed for insurance under Section .
Security Instrument Recorded:
State
County
Date
Book/Volume
Page
Instrument/Document Number
Borrower:
Profit-Motivated_____
Limited Dividend_____
Public Body_____
Non-Profit_____
(Failure to check the appropriate space shall not affect the enforceability or application of this Agreement.)

This Agreement is entered into this____ day of _____, 20____, between_____, a_____ organized and existing under the laws of_____, whose address is_____, its successors, heirs, and assigns (jointly and severally) (Borrower) and the Secretary of Housing and Urban Development, his or her successors, assigns or designates (HUD).

In consideration of, and in exchange for an action by HUD, HUD and the Borrower agree to the terms of this Agreement. The HUD action may be one of the following: the endorsement for insurance by HUD of the Note, the consent of HUD to the transfer of the Mortgaged Property, the sale and conveyance of the Mortgaged Property by HUD, or the consent of HUD for other actions related to the Borrower or to the Mortgaged Property.

Further, the Borrower and HUD execute this Agreement in order to comply with the requirements of the National Housing Act, any related legislation, regulations, and administrative requirements adopted by HUD. This Agreement shall continue during such period of time as HUD shall be the owner, holder, or insurer of the Note, or is obligated to protect rights of tenants of the Mortgaged Property.

Violation of this Agreement or of the regulations and Directives of HUD may subject the Borrower and related parties to adverse actions. Refer to Article VII below.

Agreements: The Borrower and HUD covenant and agree as follows:

I. Definitions

1. *Definitions.* The following terms, when used in this Agreement (including

when used in the above recitals), shall have the following meanings, whether capitalized or not and whether singular or plural, unless, in the context, an incongruity results:

a. "Affiliate" Persons and entities are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or, a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person or entity which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person or entity.

b. "Borrower" means all persons or entities identified as "Borrower" in the first paragraph of the Security Instrument, together with any successors and assignees. Borrower shall include any person or entity taking title to the Mortgaged Property whether or not such person or entity assumes the Note. Whenever the term "Borrower" is used herein, the same shall be deemed to include the Obligor of the debt secured by the Security Instrument and shall also be deemed to be the Mortgagor as defined by the National Housing Act, as amended, implementing regulations and Directives.

c. "Displaced Persons or Families" means a family or families, or a person, displaced from an urban renewal area, or as a result of government action, or as a result of a major disaster determined by the President pursuant to the Disaster Relief and Emergency Assistance Act.

d. "Directives (of HUD)" includes written guidance issued by HUD, at the time of origination and subsequently, relating to HUD's multifamily insurance programs under the National Housing Act, as amended, and any successive legislation. Directives include handbooks, guidebooks, Notices, Mortgagee Letters and other written directives issued by HUD whether or not published in the **Federal Register**.

e. "Distribution" means any disbursal, conveyance or transfer of cash, any asset of the Borrower, or any portion of the Mortgaged Property, including the segregation of cash or assets for subsequent withdrawal as Surplus Cash, other than in payment of expenses that are determined by HUD to be reasonable and necessary.

f. "Elderly project or Elderly portion of project" means a Project or portion of a Project which is designed for occupancy by persons, married or single, who are 62 years of age or older.

g. "Fixtures" means all property which is so attached to the Land or the Improvements as to constitute a fixture under applicable law, whether acquired now or in the future, including: machinery, equipment, engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, computers, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposals, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; playground and exercise equipment and classroom furnishings and equipment.

h. "HUD" means the United States Department of Housing and Urban Development acting by and through the Secretary in the capacity as insurer or holder of the loan secured by the Security Instrument under the authority of the National Housing Act, as amended, the Department of Housing and Urban Development Act, as amended, or any other federal law or regulation pertaining to the loan (as evidenced by the Note) or the Mortgaged Property.

i. "Impositions" and "Imposition Deposits" are defined in the Security Instrument.

j. "Improvements" means the buildings, structures, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions.

k. "Indebtedness" means the principal of, interest on, and all other amounts due at any time under the Note or the Security Instrument, including prepayment premiums, late charges, default interest, and advances to protect the security as provided in the Security Instrument.

l. "Land" means the estate in realty described in Exhibit A.

m. "Leases" means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property (including proprietary leases, non-residential leases or occupancy agreements if Borrower is a cooperative housing corporation), and all modifications, extensions or renewals.

n. "Lender" means the entity identified as "Lender" in the first paragraph of the Security Instrument, or any subsequent holder of the Note, and whenever the term "Lender" is used herein, the same shall be deemed to include the Obligee, or the Trustee(s) and the Beneficiary of the Security Instrument and shall also be deemed to be the Mortgagee as defined by the National Housing Act, as amended, implementing regulations and Directives.

o. "Limited Dividend Borrower" means a limited dividend corporation or other limited dividend entity which is restricted by Federal or State law or by HUD as to rate of return and other aspects of its operation.

p. "Mortgaged Property" means all of the Borrower's present and future right, title and interest in and to all of the following:

(1) The Land;

(2) The Improvements;

(3) The Fixtures;

(4) The Personalty;

(5) All current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated;

(6) All proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, whether or not Borrower obtained the insurance pursuant to Lender's requirement;

(7) All awards, payments and other compensation made or to be made by any municipal, State or Federal authority with respect to the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the

Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;

(8) All contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations;

(9) All proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds;

(10) All Rents and Leases;

(11) All earnings, royalties, instruments, accounts, accounts receivable, supporting obligations, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the loan secured by the Security Instrument and, if Borrower is a cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents;

(12) All Imposition Deposits;

(13) All refunds or rebates of Impositions by any municipal, State or Federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which the Security Instrument is dated);

(14) All tenant security deposits which have not been forfeited by any tenant under any Lease; and

(15) all names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property.

q. "Non-Profit Borrower" means a Borrower which is a corporation or association organized for purposes other than profit or gain for itself or persons identified therewith and which HUD finds is in no way controlled by or under the direction of persons or firms seeking to derive profit or gain therefrom. Minimally, the entity may not make Distributions to any individual member or shareholder.

r. "Note" means the Multifamily/Health Care Facility Note described in the Security Instrument, including all schedules, riders, allonges and addenda, as such Multifamily/Health Care Facility Note may be amended from time to time.

s. "Personalty" means all furniture, furnishings, equipment, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software) and other tangible or electronically stored personal property (other than Fixtures) which are owned or leased by the Borrower now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, and any operating agreements relating to the Land or the Improvements, and any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements, choses in action and all other intangible property and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land.

t. "Principals" are the following legal and natural persons having ownership interests in the Borrower: natural persons who are sole owners, joint venturers, joint tenants, tenants by the entirety, trustees or beneficiaries of trusts, and all general partners; in the case of limited partnerships, limited partners having a twenty-five (25%) percent or more interest in the partnership; in the case of public or private corporations or governmental entities, the president, vice president, secretary, treasurer, and all other executive officers who are directly responsible to the board of directors, or any equivalent governing body, as well as all directors and each stockholder having a ten (10%) percent or more interest in the corporation; in the case of a Limited Liability Company (LLC) or a Limited Liability Partnership (LLP), all managing members or partners, all managers, and all members or partners with a ten (10%) percent or greater governance interest or a twenty-five (25%) percent or greater financial interest.

u. "Project" means the Mortgaged Property and all other assets of whatever nature or wherever located, used in, owned by or leased by the Borrower in conducting the business on the Mortgaged Property, which business is providing housing facilities and other related activities.

v. "Property Jurisdiction" is (are) the jurisdiction(s) in which the Land is located.

w. "Public Body Borrower" means a Federal instrumentality, a State or political subdivision thereof, or an instrumentality of a State or a political subdivision thereof, which certifies that it is not receiving financial assistance from the United States exclusively pursuant to the United States Housing Act of 1937 (with the exception of projects assisted or to be assisted pursuant to Section 8 of such Act) and which is acceptable to HUD.

x. "Reasonable operating expenses" means an expense which arises from the everyday operation and maintenance of the Project and which primarily benefits the Project as opposed to the Borrower.

y. "Rents" means all rents (whether from residential or non-residential space), revenues, issues, profits, (including carrying charges, maintenance fees, and other cooperative revenues) and other income of the Land or the Improvements, including all revenues, gross receipts and all pledges, gifts, grants, bequests, contributions and endowments, parking fees, laundry and vending machine income and fees and charges for food and other services provided at the Mortgaged Property, whether now due, past due, or to become due, and deposits forfeited by tenants.

z. "Residual Receipts" is a term which applies to certain funds held by Non-Profit, Public Body and Limited Dividend Borrowers whose Notes are insured or held by HUD pursuant to Section 220, Section 221(d)(3) and 231 of the National Housing Act. Residual Receipts are calculated by determining an amount of Surplus Cash (defined below).

After the calculation of Surplus Cash, as described below, the Borrower may make any Distributions permitted by this Agreement, HUD regulations and Directives. "Residual Receipts" will be the restrictive cash held by Section 220, Section 221(d)(3) and 231 Non-Profit, Public Body, and Limited Dividend Borrowers remaining after any allowable Distributions. The use of these Residual Receipts is restricted under this Agreement.

aa. "Security Instrument" means the Multifamily/Health Care Mortgage, Deed of Trust Form HUD–94000, or other designation as appropriate by Property Jurisdiction, Assignment of Rents and Security Agreement, and any other security for the Indebtedness, and shall be deemed to be the mortgage as defined by the National Housing Act, as amended, implementing regulations and Directives.

bb. "Surplus Cash" means any cash plus amounts receivable on tenant subsidy payments (earned in the applicable fiscal period) remaining after:

(1) The payment of: (i) All sums immediately due or currently required to be paid under the terms of the Note, the Security Instrument and this Agreement due on the first day of the month following the end of the fiscal period; including without limitation, all

amounts required to be deposited in the Reserve for Replacement or other reserves as may be required by HUD; and (ii) all other obligations of the Project (accounts payable and accrued, unescrowed expenses) unless funds for payment are set aside or deferment of payment has been approved by HUD, and

(2) The segregation and recording of: (i) An amount equal to the aggregate of all special funds required to be maintained by the Borrower; (ii) the greater of the Borrower's total liability or the amount held by the Borrower for tenant security deposits; and (iii) all accounts and accrued items payable within thirty (30) days after the end of the fiscal period.

cc. "State" includes the several States and Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

dd. "Taxes" means all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, could become a lien on the Land or the Improvements.

II. Construction

2. *Construction Funds.* The Borrower shall keep construction funds of the Mortgaged Property separate and apart from operating funds of the Mortgaged Property.

3. *Unpaid Obligations.* Upon final endorsement of the Note, Borrower shall have no unpaid obligations in connection with the purchase of the Mortgaged Property, the construction of the Mortgaged Property, or with respect to the Security Instrument insured by HUD except such unpaid obligations, as have the written approval of HUD as to terms, form and amount.

4. *Mortgagee's Certificate.* The Borrower shall be bound by the terms of the Mortgagee's Certificate insofar as it establishes or reflects obligations of the Borrower and the Borrower agrees that the fees and expenses enumerated in that Certificate have been fully paid or payment has been provided for in the Certificate and that all funds deposited with the Lender will be used for the purposes set forth in the Certificate.

5. *Construction Commencement.* The Borrower shall not commence, and has not commenced, construction of the Mortgaged Property prior to HUD endorsement of the Note, except that this Section 5 is not applicable if HUD has given prior written approval to an early start of construction, or if this Project is an Insurance Upon Completion or a refinance.

6. *Drawings and Specifications.* The Mortgaged Property shall be constructed in accordance with the terms of the Construction Contract, if any, and with the "Drawings and Specifications."

7. *Required Permits.* The Borrower shall obtain all necessary building and other permits and the Mortgaged Property shall not be occupied by any tenant without the prior written approval of HUD and from all other legal authorities having jurisdiction of the Mortgaged Property.

8. *Outstanding Obligations.* The Borrower shall have no obligations as of the date of this Agreement except those approved by HUD and, except for those approved obligations, the Land has been paid for in full and is free from any liens or purchase money obligations.

9. *Accounting Requirements.* The Borrower shall submit an accounting to HUD for all receipts and disbursements during the period starting with the date of first occupancy of the Mortgaged Property and ending, at the option of the Borrower, either on (a) the last day of the month in which the Mortgaged Property is determined by HUD to be acceptably completed; or (b) sixty days from the date the Mortgaged Property is determined by HUD to be acceptably completed. The excess of project income over property disbursements, as determined by HUD, shall be treated as a recovery of construction cost.

III. Financial Management

10. *Payments.* The Borrower shall make promptly all payments due under the Note and Security Instrument.

11. *Reserve for Replacement Fund.* The Borrower shall establish and maintain a Reserve for Replacement account for defraying certain costs for replacing major structural elements and mechanical equipment of the Project or for any other purpose.

a. The Reserve for Replacement shall be held by the Lender or by a safe and responsible depository designated by the Lender pursuant to the requirements of the contract for mortgage insurance. Such funds shall at all times remain under the control of the Lender, whether in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by, the United States of America or in such other investments as may be allowed by HUD.

b. The Borrower shall deposit at endorsement of the Note an initial amount of $_____, if applicable, and the Borrower shall deposit a monthly amount of $_____, concurrently with the beginning of payments towards amortization of the Note unless a different date or amount is established by HUD. At least every ten years, starting from the date of endorsement, and more frequently at HUD's discretion, the Borrower shall submit a written analysis of its use of the Reserve for Replacement during the prior ten years and the projected use of the Reserve for Replacement funds during the coming ten years to HUD. The amount of the monthly deposit may be increased or decreased from time to time at the written direction of HUD without a recorded amendment to this Agreement.

c. The Borrower shall carry the balance in this fund on the financial records as a restricted asset. The Reserve for Replacement shall be invested in interest bearing accounts or investments, and any interest earned on the investment shall be deposited in the Reserve for Replacement for use by the Project in accordance with this Section 11.

d. Disbursements from such fund shall only be made after consent, in writing, of HUD. In the event of a Declaration of Default under the terms of the Security Instrument, pursuant to which the Indebtedness has been accelerated, a written notification by HUD to the Borrower of a violation of this Agreement or at such other times as determined solely by HUD, HUD may direct the application of the balance in such fund to the amount due on the Indebtedness as accelerated or for such other purposes as may be determined solely by HUD.

e. Where the Project is already subject to a Security Instrument insured or held by HUD as of the date hereof and this Agreement is now being executed by the Borrower as of the date hereof, the Reserve for Replacement now to be established shall be equal to the amount due to be in such fund under existing Agreements or charter provisions, and payments hereunder shall begin with the first payment due on the Security Instrument after acquisition, unless some other method of establishing and maintaining the fund is approved in writing by HUD.

12. *Residual Receipts.* Section 221(d)(3) and 231 Non-Profit, Public Body, and Limited Dividend Borrowers shall establish and maintain, in addition to the Reserve for Replacement, a Residual Receipts Fund by depositing thereto, with the Lender, the Residual Receipts, as defined herein, within ninety (90) days after the end of the semiannual or annual fiscal period within which such receipts are realized.

Such fund shall be held by the Lender or by a safe and responsible depository designated by the Lender in an interest bearing account. The Residual Receipts shall be under the control of HUD, and shall be disbursed only on the direction of HUD, who shall have the power and authority to direct that the Residual Receipts, or any part thereof, be used for such purpose as it may determine.

13. *Project Property and Operation; Encumbrances.* (a) The Borrower shall deposit all Rents and other receipts of the Project and all Rents and other receipts of the Project in connection with the financing of the Project, including equity or capital contributions, in the name of the Project in a federally insured depository or depositories and in accordance with Directives. Such funds shall be withdrawn only in accordance with the provisions of this Agreement for reasonable and necessary expenses of the Project or for distribution of Surplus Cash or as reimbursement of advances as permitted by Sections 15 and 16 below. Any person or entity receiving Mortgaged Property other than for payment of reasonable and necessary expenses or repairs or authorized Distributions of Surplus Cash shall immediately deliver such Mortgaged Property to the Project and failing so to do shall hold such Mortgaged Property in trust. (b) The Borrower, except for natural person Borrowers, shall not engage in any business or activity, including the operation of any other Project, or incur any liability or obligation not in connection with the Project, nor acquire an Affiliate. (c) The Borrower shall satisfy or obtain a release of any mechanic's lien, attachment, judgment lien, or any other lien which attaches to any real or personal property of the Project or is used in its operation.

14. *Security Deposits.* Any funds collected as security deposits shall be kept (a) separate and apart from all other funds of the Project; (b) in interest bearing trust accounts, to the extent required by State or local law, and (c) the amount of which shall at all times equal or exceed the aggregate of all outstanding obligations under said account. Security deposit account interest shall be paid on a pro rata basis to tenants or applied to sums due under their leases upon the termination of their tenancy in the Project. The use of tenant security deposits for Project operations is prohibited unless the tenant has forfeited the deposit. The Borrower acknowledges that the unauthorized use of tenant security deposits for Project operations may constitute an improper taking or theft, and such acts may be prosecutable under criminal statutes.

15. *Distributions.* The Borrower shall not make, or receive and retain, nor allow any Affiliate to receive or retain any Distribution of assets or any income of any kind of the Project, except from Surplus Cash. Distributions are governed by the following conditions:

a. No Distribution shall be made from borrowed funds. Distributions shall not be taken prior to the completion of the Project. Distributions shall not be taken after HUD has given notice to the Borrower of a violation under this Agreement or a default has been declared under the Note or Security Instrument. Distributions shall not be taken when a Project is under a forbearance agreement.

b. No Distribution shall be made when either (i) necessary services (utilities, trash removal, security, lawn service or any other services which the Borrower is required to provide) have not been provided, which failure the Borrower should have known about in the exercise of due care; (ii) notices of physical repairs or deficiencies (including but not limited to building code violations) by other Federal, State or local governing bodies and/or by HUD have been issued and remain unresolved to the satisfaction of the issuing public body or (iii) the Borrower has been notified by HUD, the Lender or other Federal, State or local governing body that physical repairs and/or deficiencies exist and the Borrower has not corrected or cured the identified items to HUD's satisfaction. HUD may permit Distributions when there are minor or contested local code violations on a case-by-case basis.

c. Any Distribution of any funds of the Project, which the party receiving such funds is not entitled to retain hereunder, shall be returned to the Project account immediately.

d. All allowable Distributions shall be made only after the end of a semiannual or annual fiscal period, and only as permitted by the law of the applicable jurisdiction. All such Distributions to Section 220 (if so regulated), Section 221(d)(3) and 231 Limited Distribution Borrowers in any one fiscal year shall be limited to 6 percent on the initial equity investment, as determined by HUD, or to such other amounts as may be specified in Directives and the right to such Distributions shall be cumulative. No Distributions may be taken in the case of Section 220 (if so regulated), Section 221(d)(3) and 231 Public Body or Nonprofit Borrowers unless permitted by regulation or Directives. Distributions must be taken out of all Project accounts by all other Borrowers within the accounting period immediately following the computation of Surplus Cash and, if not taken within the identified period, these funds may only be used for reasonable and necessary Project operating expenses and repairs. The computation of Surplus Cash must be prepared at the end of the semiannual or annual fiscal period.

e. Equity or capital contributions shall not be reimbursed from project accounts without the prior written approval of HUD.

16. *Reimbursement of Advances.* Any advances made by the Borrower, on behalf of the Borrower, or for the Borrower must be deposited into the Project account. The Borrower or any entity which advances funds on behalf of the Borrower or for the Borrower for reasonable and necessary operating expenses or repairs may be reimbursed from Surplus Cash at the end of the annual or semiannual period. Such repayment is not considered a Distribution. Monthly reimbursement of the Borrower or any entity that advances funds on behalf of the Borrower or for the Borrower may be allowed with prior written approval by HUD.

17. *Identity of Interest.* If the Project's application for mortgage loan insurance was processed pursuant to HUD's Multifamily Accelerated Processing ("MAP") procedures, the Borrower's Principals shall not have an identity of interest, as defined by HUD in MAP Directives, between the Borrower and the Lender.

18. *Financial Accounting.* The Borrower shall keep the books and accounts of the operation of the Mortgaged Property in accordance with the requirements of Generally Accepted Accounting Principles (GAAP) and of HUD. The books and accounts must be complete, accurate and current at all times. Posting must be made at least monthly to the ledger accounts, and year-end adjusting entries must be posted promptly in accordance with sound accounting principles. Any undocumented Distribution or expense shall be an ineligible project expense, unless otherwise determined by HUD. Books, accounts and records shall be open and available for inspection by HUD, after reasonable prior notice, during normal office hours, at the Project or other mutually agreeable location.

19. *Books of Management Agents.* The books and records of management agents and Affiliates, as they pertain to the operations of the Project, shall be maintained in accordance with GAAP and shall be open and available to inspection by HUD, after reasonable prior notice, during normal office hours,

at the Project or other mutually agreeable location. Every contract executed on behalf of the Project with any management agent or Affiliate shall include the provision that the books and records of such entities shall be properly maintained and open to inspection during normal business hours by HUD at the Project or other mutually agreeable location.

20. *Annual Financial Audit.* Within ninety (90) days, or such longer or shorter period established in writing by HUD, following the end of each fiscal year, the Borrower shall furnish HUD and the Lender with a complete annual financial report based upon an examination of the books and records of the Borrower prepared in accordance with GAAP, audited in accordance with Generally Accepted Auditing Standards (GAAS) and Government Auditing Standards (GAS) and any additional requirements of HUD unless the report is waived in writing by HUD. If the Borrower fails to submit the annual financial report within ninety (90) days of said due date, HUD may thereafter hire a Certified Public Accountant to prepare the report at the expense of the Borrower. The report shall include a certification in content and form prescribed by HUD and certified by the Borrower. The report shall be prepared and certified by a Certified Public Accountant who is licensed or certified by a regulatory authority of a State or other political subdivision of the United States, which authority makes the Certified Public Accountant subject to regulations, disciplinary measures, or codes of ethics prescribed by law. The Certified Public Accountant must have no business relationship with the Borrower except for the performance of the audit and tax preparation unless HUD expressly authorizes other relationships. Auditing costs and tax preparation costs may be charged as an authorized expense to the Mortgaged Property only to the extent they are required of the Borrower itself by State law, the Internal Revenue Service (IRS), the Securities and Exchange Commission, or HUD. Neither IRS audit costs nor costs of tax preparation for the Borrower's partners, members, shareholders, or other persons receiving Distributions from the Borrower may be charged to the Mortgaged Property as a Project expense. Non-profit Borrowers are to follow audit requirements specified in OMB Circular A–133, as revised.

IV. Project Management

21. *Preservation, Management and Maintenance of The Mortgaged Property.* The Borrower (a) shall not commit Waste under the Security Instrument nor permit impairment or deterioration of the Mortgaged Property, (b) shall not abandon the Mortgaged Property, (c) shall restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition, or such other condition as HUD may approve in writing, whether or not litigation or insurance proceeds or condemnation awards are available to cover any costs of such restoration or repair, and (d) shall keep the Mortgaged Property in decent, safe, sanitary condition and good repair, including the replacement of Personalty and Fixtures with items of equal or better function and quality. Obligations (a) through (d) of this Section 21 are absolute and unconditional and are not limited by any conditions precedent and are not contingent on the availability of financial assistance from HUD or on HUD's performance of any administrative or contractual obligations. The Mortgaged Property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other papers and instruments must also be maintained in reasonable condition for proper audit and subject to examination by HUD at the Project or other mutually agreeable location. In the event all or any of the buildings covered by the Security Instrument shall be destroyed or damaged by fire, by an exercise of the power of eminent domain, by failure of warranty, or other casualty, the money derived from any settlement, judgment, or insurance on the Mortgaged Property shall be applied in accordance with the terms of the Security Instrument or as otherwise may be directed in writing by HUD.

22. *Flood Hazards.* If the Improvements are located in a special flood hazard area, the Borrower shall maintain flood insurance covering the Improvements in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, as amended, or its successor legislation, whichever is less, provided that the amount of flood insurance need not exceed the outstanding principal balance of the Note, and flood insurance need not be maintained beyond the term of the Note.

23. *Management Agreement.* The Borrower shall execute a management agreement or other document outlining procedures for operating the Mortgaged Property. Such agreement or document must be acceptable to HUD. The Borrower and the management agent shall submit and maintain a current Management Certification meeting standards established by HUD.

24. *Acceptability of Management of the Mortgaged Property.* The Borrower shall provide management of the Mortgaged Property in a manner deemed to be acceptable by HUD. At HUD's discretion, HUD may require replacement of the management or require the Borrower to conform the Project to HUD's overall management policies.

25. *Termination of Contracts.* Any management contract entered into by the Borrower or any other third-party vendor contract pertaining to the Mortgaged Property shall contain a provision that the contract shall be subject to termination without penalty and without cause upon written request by HUD and shall contain a provision which gives no more than a thirty day notice of termination. Upon such request, the Borrower shall immediately arrange to terminate the contract, and the Borrower shall also make arrangements satisfactory to HUD for continuing acceptable management of the Mortgaged Property effective as of the termination date of the contract.

26. *Contracts for Goods and Services.* The Borrower shall obtain contracts for goods, materials, supplies, and services (hereinafter referred to as "goods and services") at the lowest possible cost (including contracts for laundry services where laundry services are provided), considering quality, durability, and scope of work, and on terms most advantageous to the Mortgaged Property. Such expenses may not exceed amounts customarily paid in the vicinity of the Land for the goods and services received. Reasonable and necessary expenses do not include amounts paid for betterments or Improvements unless determined by HUD to be prudent and appropriate. When acquiring goods and services whose usual costs are expected to exceed the greater of $10,000 or 5 percent of the gross annual revenue of the Mortgaged Property, the Borrower shall solicit written cost estimates to ensure that prices paid by the Borrower for goods and services, including the preparation of the annual audit, are competitive with prices paid in the area for goods and services of similar quality. All contracts, including but not limited to, contracts for goods and services purchased from individuals or companies affiliated with the Borrower or its management agent shall be at costs not in excess of those that would be

incurred in making arms-length purchases on the open market. The Borrower shall keep copies of all written contracts or other instruments which affect the Mortgaged Property, all or any of which may be subject to inspection and examination by HUD at the Project or other mutually agreeable location.

27. *Responsiveness to Inquiries.* At the request of HUD, the Borrower shall promptly furnish operating budgets and occupancy, accounting and other reports and give specific answers to questions upon which information is desired relative to income, assets, liabilities, contracts, operation, and conditions of the Mortgaged Property and the status of the Security Instrument.

28. *Tenant Organizations.* If the Project is subject to 24 CFR 245 Subpart B or any successor HUD regulation covering the rights of tenants to organize, the Borrower shall comply with this Section 28. The Borrower shall not (a) impede the reasonable efforts of resident tenant organizations to represent their members or the reasonable efforts of tenants to organize, or (b) unreasonably withhold the use of any community room or other available space appropriate for meetings which is part of the Mortgaged Property when requested by: (i) a resident tenant organization in connection with the representational purposes of the organization; or (ii) tenants seeking to organize or to consider collectively any matter pertaining to their living environment, which includes the terms and conditions of their tenancy as well as activities related to housing and community development. The Borrower may charge for the use of the Mortgaged Property any fees or costs approved by HUD as may normally be imposed for the use of such facilities or may waive any such fees or costs.

The intention of the signatories to this Agreement is that the tenants are third party beneficiaries of this Section 28, but not to other provisions of this Agreement, which are strictly between HUD and the Borrower, and do not create such third party rights. Further, the signatories intend that an aggrieved tenant may commence a civil action against the Borrower in a court of appropriate jurisdiction to enforce the provisions of this Section 28 or to obtain remedy for its breach, but that such third party beneficiary status is not intended to permit, nor shall it permit a suit against HUD under Section 28. The Borrower agrees that if sued by the tenants under this Section, it shall not have any right to join HUD, nor shall it seek to join HUD, to such suit.

29. *Compliance With Laws.* a. The Borrower shall comply with all applicable: laws; ordinances; regulations; requirements of any governmental authority; lawful covenants and agreements (including the Security Instrument) recorded against the Mortgaged Property; the National Housing Act; regulations and Directives of HUD; including but not limited to those of the foregoing pertaining to: health and safety; construction of improvements on the Mortgaged Property; fair housing; civil rights; zoning and land use; leases; lead-based paint maintenance requirements of 24 CFR Part 35 and maintenance and disposition of tenant security deposits; and, with respect to all of the foregoing, all subsequent amendments, revisions, promulgations or enactments. The Borrower shall at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 29. The Borrower shall take appropriate measures to prevent, and shall not engage in or knowingly permit, any illegal activities at the Mortgaged Property that could endanger tenants or visitors, result in damage to the Mortgaged Property, result in forfeiture of the Mortgaged Property, or otherwise impair the lien created by the Security Instrument or the Lender's interest in the Mortgaged Property. The Borrower represents and warrants to HUD that no portion of the Mortgaged Property has been or will be purchased with the proceeds of any illegal activity.

b. HUD shall be entitled to invoke any remedies available by law to redress any breach or to compel compliance by the Borrower with these requirements, including any remedies available hereunder.

V. Admissions and Occupancy

30. *Dwelling Accomodations and Services.* If the Project is subject to regulation of rent by HUD, the Borrower shall make dwelling accommodations and services of the Project available to eligible tenants at charges not exceeding those established in accordance with a rental schedule approved in writing by HUD.

31. *Lease Term.* Residential accommodations shall not be rented for a period of less than thirty (30) days or for more than 3 years and shall not be used for transient or hotel purposes. Rental for transient or hotel purposes shall mean: (a) Rental for a period of less than 30 days or (b) any rental, if the occupants of the housing accommodations are provided customary hotel services such as room service for food and beverages, maid service, furnishings or laundering of linens, and bellboy service. Residential units in projects with Security Instruments initially endorsed for insurance pursuant to Section 231 of the National Housing Act may be rented for a period of more than 3 years.

32. *Commercial (Non-Residential) Leases.* No portion of the Mortgaged Property shall be leased for any commercial purpose or use without receiving HUD's prior written approval as to terms, form and amount.

33. *Subleases.* All leases of residential units by the Borrower to tenants must prohibit tenants from entering into any subleases which do not run for at least thirty (30) days and must require that all subleases be approved in advance in writing by the Borrower. All leases of residential units by the Borrower to tenants must also prohibit assignment of the leasehold interest by the tenant without the prior written approval of the Borrower. Leases of residential units must prohibit the tenant from granting the right to occupy the premises for a period of less than thirty (30) days or from furnishing hotel services. Assignment and subleasing of units by other than the tenant thereof without the prior written approval of the Borrower shall be prohibited in the lease. Upon discovery of any unapproved assignment, sublease or occupancy, the Borrower shall immediately demand cancellation and/or vacation of the premises, as appropriate, and notify HUD thereof.

34. *Elderly Projects.* For Elderly projects or Elderly portions of projects, the Borrower shall restrict occupancy for elderly units to families where the head of household or spouse is 62 years or older. A single person 62 years of age or older shall constitute a family for the purposes of this Section 34.

35. *Section 231 Projects.* If the Security Instrument is originally endorsed for insurance under Section 231 of the National Housing Act, the Borrower in selecting tenants shall comply with all applicable HUD regulations and Directives.

36. *Families With Children.* The Borrower shall not, in selecting tenants, discriminate against any person or persons by reason of the fact that there are children (individuals who have not attained 18 years of age) in the family. For Elderly projects or Elderly portions of projects, the Borrower shall not discriminate against otherwise eligible applicants for admission to the elderly unit by reason of the fact that there are children in the family.

37. *Displaced Persons or Families.* If the Security Instrument is originally endorsed for insurance under Section 221 of the National Housing Act, the

Borrower, in selecting tenants, shall give to Displaced Persons or Families who are eligible applicants an absolute preference or priority of occupancy at initial occupancy and, on a continuing basis, such preferred applicants shall be given preference over non-preferred applicants in their placement on a waiting list to be maintained by the Borrower and through such further provisions agreed to in writing by the Borrower and HUD.

38. *Rents.* If the Project is subject to regulation of rent by HUD, HUD will at any time entertain a written request for a rent increase that is properly supported by substantiating evidence and HUD shall, within a reasonable time: (a) approve a rental schedule that is necessary to compensate for any net increase, occurring since the last approved rental schedule, in taxes (other than income taxes) and operating and maintenance costs over which the Borrower has no effective control; or (b) deny the increase and state the reasons for its decision.

39. *Charges for Services and Facilities.* If the Project is subject to regulation of rent by HUD, the Borrower shall only charge to and receive from any tenant such amounts as have the prior written approval of HUD and are mutually agreed upon between the Borrower and the tenant for any facilities and/or services not included in the HUD approved rent schedule which may be furnished by, or on behalf of, the Borrower to such tenant upon request.

40. *Prohibition of Additional Fees.* The Borrower shall not charge any Project tenant or prospective Project tenant an admission fee, founders fee, continuing care retirement community fee, life-care fee or similar payment pursuant to any agreement to furnish Project accommodations or services to persons making such payments.

41. *Security Deposits.* The Borrower shall not require as a condition of occupancy or leasing of any unit in the Project, any consideration or deposit other than the prepayment of the first month's rent plus a security deposit in an amount not in excess of one month's rent to guarantee the performance of the lease terms.

VI. Actions Requiring the Prior Written Approval of HUD

42. The Borrower shall not without the prior written approval of HUD:

a. Convey, assign, transfer, pledge, hypothecate, encumber, or otherwise dispose of any of the Mortgaged Property or any interest therein, or permit such conveyance, assignment, transfer, pledging, hypothecation, or encumbrance or disposition, or take any action which gives rights in another to establish or maintain a lien or encumbrance against the Mortgaged Property or any interest therein; provided, however, the Borrower may, and this provision shall not operate to require the Borrower to obtain prior written approval of HUD to, dispose of obsolete or deteriorated items of Fixtures or Personalty if the same are replaced with like items of same or greater quality or value and provided further, that this provision shall not operate to require the Borrower to obtain the prior written approval of HUD for (i) a conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under the Security Instrument, (ii) the Mortgaged Property becoming part of a bankruptcy estate by operation of law under the United States Bankruptcy Code and (iii) an interest acquired by inheritance or by Court decree.

b. Enter into any contract, agreement or arrangement to borrow funds or finance any purchase or incur any liability, direct or contingent, other than for current, reasonable and necessary operating expenses and repairs.

c. Pay out any funds except from Surplus Cash, except for reasonable operating expenses and necessary repairs.

d. Pay any compensation, including wages or salaries, or incur any obligation to do so, to any officer, director, stockholder, trustee, beneficiary, partner, member, or Principal of the Borrower, or to any nominee thereof.

e. Enter into, change, or agree to the assignment of, any contract, agreement or arrangement for supervisory or managerial services or leases for operation of the Project in whole or in part.

f. Convey, assign, or transfer, or permit the conveyance, assignment or transfer of any interest in the Borrower, if the effect of that conveyance, assignment, or transfer is the creation or elimination of a Principal; nor convey, assign or transfer any right to receive the Rents of the Mortgaged Property; provided, however, that this provision shall not operate to require the Borrower to obtain the prior written approval of HUD for (i) a conveyance of any interest in the Borrower at a judicial or non-judicial foreclosure sale under the Security Instrument, (ii) any interest in the Borrower becoming part of a bankruptcy estate by operation of law under the United States Bankruptcy Code and (iii) an interest in the Borrower acquired by inheritance or by Court decree.

g. Remodel, add to, construct, reconstruct or demolish any part of the Mortgaged Property or subtract from any Land, Fixtures, Improvements or Personalty of the Mortgaged Property.

h. Permit the use of the Mortgaged Property for any other purpose except the use for which it was originally intended, or permit commercial use greater than that originally approved by HUD.

i. Receive any endowment which is not pledged as security for its obligations to HUD or the Lender unless the endowment by its terms is restricted to a specific purpose or purposes which do not permit such a pledge.

j. Amend, revise or cancel any provision or portion of the organizational documents of the Borrower, except for amendments or revisions simply to effect changes in interest in the Borrower which are not governed by Section 42f.

k. Institute litigation seeking the recovery of a sum in excess of $25,000, nor settle or compromise any action for specific performance, damages, or other equitable relief, in excess of $25,000, nor dispose of or distribute the proceeds thereof.

l. Reimburse any party for payment of expenses or costs of the Project or for any purpose.

m. Receive any fee or payment of any kind from any managing agent, employee of the Project or of the managing agent, or other provider of goods or services of the Project.

VII. Enforcement

43. *Violation of Agreement.* The occurrence of any one or more of the following shall constitute a Violation under this Agreement:

a. Any failure by the Borrower to comply with any of the provisions of this Agreement;

b. Any fraud or material misrepresentation or material omission by the Borrower, any of its officers, directors, trustees, general partners, members, managers or managing agent in connection with (1) any financial statement, rent roll or other report or information provided to HUD during the term of this Agreement or (2) any request for HUD's consent to any proposed action, including a request for disbursement of funds from any restricted account for which HUD's prior written approval is required; and

c. The commencement of a forfeiture action or proceeding, whether civil or criminal, which, in HUD's reasonable judgment, could result in a forfeiture of the Mortgaged Property or otherwise materially impair HUD's interest in the Mortgaged Property.

44. *Declaration of Default.* At any time during the existence of a violation, HUD may give written notice of the violation to the Borrower, by registered or certified mail, addressed to the addresses stated in this Agreement, or such other addresses as may subsequently, upon appropriate written notice to HUD, be designated by the Borrower as its legal business address. If, after receiving written notice of a violation, that violation is not corrected to the satisfaction of HUD either within thirty (30) days after the date such notice is mailed, or within such shorter or longer time set forth in said notice, HUD may declare a default under this Agreement without further notice. Alternatively, in order to protect the health and safety of the tenants, HUD may declare a default at any time during the existence of a violation without providing prior written notice of the violation. Upon any declaration of default HUD may:

a. If HUD holds the Note, declare the whole of said Indebtedness immediately due and payable and then proceed with the foreclosure of the Security Instrument;

b. If said Note is not held by HUD, notify the holder of the Note of such default and require the holder to declare a default under the Note and Security Instrument, and the holder after receiving such notice and demand, shall declare the whole Indebtedness due and payable and thereupon proceed with foreclosure of the Security Instrument or assignment of the Note and Security Instrument to HUD as provided in HUD regulations and Directives. Upon assignment of the Note and Security Instrument to HUD, HUD may then proceed with the foreclosure of the Security Instrument;

c. Collect all Rents and charges in connection with the operation of the Project and use such collections to pay the Borrower's obligations under this Agreement and under the Note and Security Instrument and the necessary expenses of preserving and operating the Mortgaged Property;

d. Take possession of the Mortgaged Property, bring any action necessary to enforce any rights of the Borrower growing out of the Mortgaged Property's operation, and maintain the Mortgaged Property in decent, safe, sanitary condition and good repair;

e. Apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against any violations of the Agreement, for the appointment of a receiver to take over and operate the Project in accordance with the terms of the Agreement, or for such other relief as may be appropriate, since the injury to HUD arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain;

f. Collect reasonable attorney fees related to enforcing the Borrower's compliance with this Agreement, and

g. With respect to Violations related to felony criminal convictions or civil judgments concerning the operation or management of the Mortgaged Property, direct the Borrower to replace any general partner, limited liability company member or non-member manager, limited liability limited partnership member, officer or director of the Borrower corporation, trustee, beneficiary of a trust, joint venturer, joint tenant or tenant in common with a natural person or entity acceptable to HUD pursuant to HUD's Participation and Compliance regulations and Directives.

45. *Measure of Damages.* The damage to HUD as a result of the Borrower's breach of duties and obligations under this Agreement shall be, in the case of failure to maintain the Mortgaged Property as required by this Agreement, the cost of the repairs required to return the Project to decent, safe and sanitary condition and good repair. This contractual provision shall not abrogate or limit any other remedy or measure of damages available to HUD under any civil, criminal or common law.

46. *Nonrecourse Debt.* Except as provided in Section 8 of the Note and Section 6 of the Security Instrument, no person or entity is liable for payments due under the Note and Security Instrument, or for payments to the Reserve for Replacement or for matters not under their control, except, notwithstanding any provision of State law to the contrary, any person or entity is liable:

a. For funds or property of the Project coming into its possession which, by the provisions hereof, the person or entity is not entitled to retain;

b. For its own acts and deeds or acts and deeds of others which it has authorized in violation of the provisions hereof; and

c. As otherwise provided by law.

VIII. Miscellaneous

47. *Binding Effect.* This instrument shall bind, and the benefits shall inure to, the respective Borrower, its heirs, legal representative, executors, administrators, successors in office or interest, and assigns, and to HUD and HUD's successors, so long as the contract of mortgage insurance continues in effect, and during such further time as HUD shall be the Lender, holder, coinsurer, or reinsurer of the Security Instrument, or obligated to reinsure the Security Instrument, or protect the tenants of the Project.

48. *Paramount Rights and Obligations.* The Borrower warrants that it has not, and will not, execute any other agreement with provisions contradictory of, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict therewith.

49. *Severability.* The invalidity of any clause, part, or provision of this Agreement shall not affect the validity or the remaining portions thereof.

50. *Headings and Titles.* Any heading or title of a section, paragraph or part of this Agreement is intended for convenience only, and is not intended, and shall not be construed, to enlarge, restrict, limit or affect in any way the construction, meaning or application of the covenants or provisions thereunder or under any other heading or title.

51. *Present Assignment.* The Borrower irrevocably and unconditionally assigns, pledges, mortgages and transfers to HUD its rights to the Rents, charges, fees, carrying charges, Project accounts, security deposits, and other revenues and receipts of whatsoever sort which it may receive or be entitled to receive from the operation of the Mortgaged Property, subject to the assignment of Rents in the Security Instrument. Until a default is declared under this Agreement, revocable license is granted to the Borrower to collect and retain such Rents, charges, fees, carrying charges, Project accounts, security deposits, and other revenues and receipts, but upon a Declaration of Default under this Agreement or under the Security Instrument, this revocable license is automatically terminated.

52. *Notices.* Any notice or other communication given or made pursuant to this Agreement to the Borrower, if applicable, shall be made to the following addresses:

Borrower

The Borrower may, at any time, by written notice to HUD, designate a different address to which such communications shall thereafter be directed. Said notice, and any other written notice to HUD pursuant to this Agreement, shall be delivered to the HUD field office which has jurisdiction over the Project.

53. *Uniform Commercial Code Security Agreement.* This Regulatory Agreement is also a security agreement

under the Uniform Commercial Code for any of the Mortgaged Property which, under applicable law, may be subject to a security interest under the Uniform Commercial Code, whether acquired now or in the future, and all products and cash proceeds and non-cash proceeds thereof (collectively, "UCC Collateral"), and Borrower hereby grants to HUD a security interest in the UCC Collateral. Borrower shall execute and deliver to HUD (or the Lender acting on behalf of HUD), upon the request of HUD or the Lender, financing statements, continuation statements and amendments, in such form as HUD may require to perfect or continue the perfection of this security interest. Borrower shall pay all filing costs and all costs and expenses of any record searches for financing statements that HUD may require. Without the prior written consent of HUD, Borrower shall not create or permit to exist any other lien or security interest in any of the UCC Collateral except for the first lien and security interest in favor of the Lender. If an Event of Default has occurred and is continuing, HUD shall have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Regulatory Agreement or existing under applicable law. In exercising any remedies, HUD may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of HUD's other remedies. This Regulatory Agreement constitutes a financing statement with respect to any part of the Mortgaged Property which is or may become a Fixture.

IX. Section 8 Housing Assistance Payments Contracts

The following additional provisions are applicable to Projects for which the Borrower has entered into a Section 8 Housing Assistance Payments Contract:

54. *Definitions.* The following additional definitions are applicable to Projects for which the Borrower has entered into a Section 8 Housing Assistance Payments Contract:

a. "Section 8 units" refers to units assisted under Section 8 of the United States Housing Act of 1937, as amended, pursuant to a Housing Assistance Payments Contract. For purposes of this Agreement, Section 8 units include project-based Section 8 units, but does not include Section 8 certificates, vouchers or housing choice vouchers.

b. "Housing Assistance Payments Contract" refers to a written contract between the Borrower and HUD, or the Borrower and a Public Housing Agency, or the Borrower and a Housing Finance Agency for the purpose of providing project-based housing assistance payments to the Borrower on behalf of eligible families under Section 8 of the United States Housing Act of 1937.

55. *Admission.* The criteria governing eligibility of tenants for admission to Section 8 units and the conditions of continued occupancy shall be in accordance with the Housing Assistance Payments Contract.

56. *Rents.* The maximum rent for each Section 8 unit is stated in the Housing Assistance Payments Contract and adjustments in such rents shall be made in accordance with the terms of the Housing Assistance Payments Contract.

57. *Contractual Obligations.* Nothing contained herein shall be construed to relieve the Borrower of any obligations under the Housing Assistance Payments Contract.

58. *Incorporation by Reference.* The terms of the Housing Assistance Payments Contract are incorporated by reference into this Agreement. In the case of a conflict between this Agreement and the Housing Assistance Payments Contract, the Housing Assistance Payments Contract shall be controlling.

59. *Violation of Housing Assistance Payments Contract.* A violation of the terms of the Housing Assistance Payments Contract may be construed to constitute a violation hereunder in the sole discretion of HUD.

60. *Expiration and Termination of the Housing Assistance Payments Contract.* In the event said Housing Assistance Payments Contract expires or terminates before the expiration or termination of this Agreement, the provisions of this Agreement that pertain to the Housing Assistance Payments Contract shall automatically terminate and shall no longer be effective as of the date of the expiration or termination of the Housing Assistance Payments Contract.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the date first herein above written.

Borrower

(insert name)

By: _____
Authorized Agent
Title

_____
Principal
Title

U.S. Department of Housing and Urban Development

By: _____
Authorized Agent

Each signatory below hereby certifies that the statements and representations contained in this instrument and all supporting documentation thereto are true, accurate, and complete. This instrument has been made, presented, and delivered for the purpose of influencing an official action of HUD (acting by and through the FHA Commissioner) in insuring a multifamily rental or health care facility mortgage loan, and may be relied upon by HUD and the Commissioner as a true statement of the facts contained therein.

_____
Name of Entity:

By: /s/ _____

Printed Name, Title: _____

Dated: _____

By: /s/ _____

Printed Name, Title: _____

Dated: _____

[Add Additional Lines if More Than Two Signatories]

Warning

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions, including but not limited to: (i) fines and imprisonment under 18 U.S.C. 287, 1001, 1010 and 1012; (ii) civil penalties and damages under 12 U.S.C. 1715z–19, 1715z–4a and 1735f–15 and 31 U.S.C. 3729; and (iii) administrative sanctions, claims, and penalties under 24 CFR parts 24, 28 and 30.

Notice: This Document Must Have a Legal Description Attached and Be Executed With All Formalities Required for Recording a Deed to Real Estate (*i.e.*, Notary/Acknowledgement, Seal, Witness or Other Appropriate Formalities).

OMB Approval No. 0000–0000

(Exp. 00/00/00)

Public Reporting Burden for this collection of information is estimated to average .75 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, DC 20410–3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502–0468), Washington, DC 20503. Do not send this completed form to either of the above addresses.

Recording Requested by:

_____

_____

_____

After Recording return to:

_____

_____

_____

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT REGULATORY AGREEMENT FOR HEALTH CARE FACILITIES UNDER SECTION 232 OF THE NATIONAL HOUSING ACT, AS AMENDED

Replaces HUD 92466, 92466–NHL, 2466–e,

HUD Project No.:
Lender:
Original Principal Amount of Multifamily/Health Care Facility Note:
Date of Note:
Security Instrument Recorded:
State
County
Date
Book/Volume
Page
Instrument/Document Number
Borrower:
Profit-Motivated____
Limited Dividend____
Public Body____
Non-Profit____

Type of Facility: The Borrower and Lessee, if applicable, shall suitably equip and operate the Project as a (check applicable provision.):

[ ] Nursing Home
[ ] Intermediate Care Facility
[ ] Board and Care Facility [ ] Assisted Living Facility
[ ] Combination of above (Specify per commitment)_____

Processed under:

[ ] MAP
[ ] TAP

(Failure to check the appropriate spaces shall not affect the enforceability of this Agreement or its application to the appropriate type of Health Care Facility, as determined by reference to the HUD firm commitment for the Project.)

Indicate number of beds and/or units and deviation in such number from the Certificate of Need or other operating authority, if any:_____

This Agreement is entered into this_____day of_____, 20____, between or among_____, a_____organized and existing under the laws of_____, whose address is_____, its successors, heirs, and assigns (jointly and severally) (Borrower),_____, a_____organized and existing under the laws of_____, whose address is_____, its successors, heirs, and assigns (jointly and severally)[Lessee and/or Operator of a Health Care Facility, if applicable], and the Secretary of Housing and Urban Development, his or her successors, assigns or designees (HUD).

In consideration of, and in exchange for an action by HUD, HUD, the Borrower and the Lessee and/or Operator of a Health Care Facility, if applicable, agree to the terms of this Agreement. The HUD action may be one of the following: the endorsement for insurance by HUD of the Note, the consent of HUD to the transfer of the Mortgaged Property, the sale and conveyance of the Mortgaged Property by HUD, or the consent of HUD for other actions related to the Borrower and Lessee, and/or Operator or to the Mortgaged Property.

Further, the Borrower, HUD and the Lessee and/or Operator, if applicable, execute this Agreement in order to comply with the requirements of the National Housing Act, any related legislation, regulations, and administrative requirements adopted by HUD. This Agreement shall continue during such period of time as HUD shall be the owner, holder, or insurer of the Note, or is obligated to protect rights of residents of the Mortgaged Property.

Violation of this Agreement or of the regulations and Directives of HUD may subject the Borrower, {and the Lessee and/or Operator,} if applicable, and related parties to adverse actions. See Article VII below.

Agreements: The Borrower, HUD {and the Lessee and/or Operator} covenant and agree as follows:

I. Definitions

1. *Definitions.* The following terms, when used in this Agreement (including when used in the above recitals), shall have the following meanings, whether capitalized or not and whether singular or plural, unless, in the context, an incongruity results:

a. "Affiliate" Persons and entities are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person or entity which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person or entity.

b. "Assisted Living Facility (ALF)" means a public facility, proprietary facility, or facility of a private non-profit corporation that is licensed and regulated by the State, municipality or other political subdivision where the Project is located. The Borrower must make available to the residents supportive services necessary to carry out activities of daily living, provide separate dwelling units for the residents and provide facilities appropriate for the provision of supportive services.. Residency in an ALF is restricted to persons 62 years of age and older and having a need for assistance in three or more activities of daily living.

c. "Bed Authority" means any and all rights and documentation pertaining to the maximum number of beds allowed, including certificates of need (CoN) where issued, required by and granted or to be granted by the State of jurisdiction and its political subdivisions for operation of the project.

d. "Board and Care Home" means a proprietary residential facility or a residential facility owned by a private nonprofit corporation or association that provides room, board and continuous protective oversight and which facility is regulated by a State in accordance with Section 1616(e) of the Social Security Act.

e. "Borrower" means all persons or entities identified as "Borrower" in the first paragraph of the Security Instrument, together with any successors and assignees. Borrower shall include any person or entity taking title to the Mortgaged Property whether or not such person or entity assumes the Note. Whenever the term "Borrower" is used herein, the same shall be deemed to include the Obligor of the debt secured by the Security Instrument and shall also be deemed to be the Mortgagor as defined by the National Housing Act, as amended, implementing regulations and Directives.

f. "Directives (of HUD)" includes written guidance issued by HUD, at the time of origination and subsequently, relating to HUD's Health Care Facility insurance programs under the National Housing Act, as amended, and any successive legislation. Directives include handbooks, guidebooks, Notices, Mortgagee Letters and other written directives issued by HUD whether or not published in the **Federal Register**.

g. "Distribution" means any disbursal, conveyance or transfer of cash, any asset of the Borrower, or any portion of the Mortgaged Property, including the

segregation of cash or assets for subsequent withdrawal as Surplus Cash, other than in payment of expenses that are determined by HUD to be reasonable and necessary.

h. "Fixtures" means all property which is so attached to the Land or the Improvements as to constitute a fixture under applicable law, whether acquired now or in the future, including: machinery, equipment (including medical equipment and systems), engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, computers, medical systems, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposals, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants.

i. "Governmental Approval" means any license, permit or certificate of need or other approval, necessary and required by the State or the municipality or other political subdivision in which the facility is located in order to operate the Project and to receive benefits under a provider agreement with Medicaid, Medicare or other assistance required by HUD's commitment to insure the Security Instrument.

j. "Health Care Facility" means, but is not limited to, a skilled nursing home facility, intermediate care facility, board and care home and assisted living facility and supplemental loans to finance improvements, additions and equipment to these Health Care Facilities as authorized under the National Housing Act or other applicable federal law.

k. "HUD" means the United States Department of Housing and Urban Development acting by and through the Secretary in the capacity as insurer or holder of the loan secured by the Security Instrument under the authority of the National Housing Act, as amended, the Department of Housing and Urban Development Act, as amended, or any other federal law or regulation pertaining to the loan (as evidenced by the Note) or the Mortgaged Property.

l. "Intermediate Care Facility" means a proprietary facility or a facility of a private nonprofit corporation or association licensed or regulated by the State, municipality or political subdivision where the facility is located. The facility must provide for the accommodation of persons who, because of incapacitating infirmities, require minimum, but continuous care, and are not in need of continuous medical or nursing services. In addition the term Intermediate Care Facility may include such additional facilities as may be authorized by HUD for the nonresidential care of elderly individuals and others who are able to live independently, but who require care during the day.

m. "Impositions" and "Imposition Deposits" are defined in the Security Instrument.

n. "Improvements" means the buildings, structures, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions.

o. "Indebtedness" means the principal of, interest on, and all other amounts due at any time under the Note or the Security Instrument, including prepayment premiums, late charges, default interest, and advances to protect the security as provided in the Security Instrument.

p. "Land" means the estate in realty described in Exhibit A.

q. "Lease(s)" means all present and future leases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property (including proprietary leases and non-residential leases), and all modifications, extensions or renewals. In particular, Lease may also mean, but is not limited to, (1) the agreements between the Borrower/Lessor and the operator/Lessee of the facility by which the Lessee agrees to operate and manage the facility, and/or portion thereof; (2) any agreement between the Health Care Facility and a Lessee/provider of medical and related services proper and necessary for the care and treatment of persons who are acutely ill who require medical or health care customarily, or most effectively, provided for by Health Care Facilities; and (3) an 'Admission Agreement,' which is a resident's lease arrangement with a Nursing Home, Board and Care Home, or ALF.

r. "Lender" means the entity identified as "Lender" in the first paragraph of the Security Instrument, or any subsequent holder of the Note, and whenever the term "Lender" is used herein, the same shall be deemed to include the Obligee, or the Trustee(s) and the Beneficiary of the Security Instrument and shall also be deemed to be the Mortgagee as defined by the National Housing Act, as amended, implementing regulations and Directives.

s. "Lessee of a Health Care Facility", or "Lessee" means an entity which has a lease or other agreement with the Borrower to operate and manage a Health Care Facility to provide housing, medical and related services that are proper and necessary for the care and treatment of the residents.

t. "Limited Dividend Borrower" means a limited dividend corporation or other limited dividend entity which is restricted by Federal or State law or by HUD as to rate of return and other aspects of its operation.

u. "Mortgaged Property" means all of the Borrower's present and future right, title and interest in and to all of the following:

(1) The Land;

(2) The Improvements;

(3) The Fixtures;

(4) The Personalty;

(5) All current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated;

(6) All proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, whether or not Borrower obtained the insurance pursuant to Lender's requirement;

(7) All awards, payments and other compensation made or to be made by any municipal, State or Federal authority with respect to the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and

including any conveyance in lieu thereof;

(8) All contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations;

(9) All proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds;

(10) All Receivables and Leases;

(11) All earnings, royalties, instruments, accounts, accounts receivable, supporting obligations, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the loan secured by the Security Instrument;

(12) All Imposition Deposits;

(13) All refunds or rebates of Impositions by any municipal, State or Federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which the Security Instrument is dated);

(14) All names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property; and

(15) Mortgaged Property also includes, but is not limited to, any and all licenses, Bed Authority, and/or Certificates of Need required to operate the facility and receive the benefits and reimbursements under a provider agreement with Medicaid, Medicare, any State or local program, health care insurers or other assistance providers relied upon by HUD to insure the Security Instrument, to the extent allowed by law and regardless of whether such rights and contracts are held by the Borrower, Lessee or an Operator. Mortgaged Property also includes all receipts, revenues, income and other moneys received by or on behalf of the Health Care Facility, including all accounts receivable, all contributions, donations, gifts, grants, bequests, all revenues derived from the operation of the Health Care Facility and all rights to receive the same, whether in the form of accounts receivable, contract rights, chattel paper, instruments or other rights whether now owned or held or later acquired by the Health Care Facility.

v. "Non-Profit Borrower" means a Borrower which is a corporation or association organized for purposes other than profit or gain for itself or persons identified therewith and which HUD finds is in no way controlled by or under the direction of persons or firms seeking to derive profit or gain therefrom. Minimally, the entity may not make Distributions to any individual member or shareholder.

w. "Note" means the Multifamily/Health Care Facility Note described in the Security Instrument, including all schedules, riders, allonges and addenda, as such Multifamily/Health Care Facility Note may be amended from time to time.

x. "Nursing Home" means a public facility, proprietary facility or a facility owned by a private nonprofit corporation or association licensed or regulated by the State, municipality or political subdivision where the facility is located, for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care but who require skilled nursing and related medical services which are prescribed by or under the direction of persons licensed by the laws of the State where the facility is located. In addition the term Nursing Home may include such additional facilities as may be authorized by HUD for the nonresidential care of elderly individuals and others who are able to live independently, but who require care during the day.

y. "Operator" means any party who operates or manages the Health Care Facility under a management agreement, operating agreement or similar contract with either the Borrower or Lessee.

z. "Personalty" means all furniture, furnishings, equipment, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software) and other tangible or electronically stored personal property (other than Fixtures) which are owned or leased by the Borrower or the Lessee now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, and any operating agreements relating to the Land or the Improvements, and any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements, choses in action and all other intangible property and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land. Personalty also includes all tangible and intangible personal property used for health care (such as major movable equipment and systems), accounts, licenses, bed authorities, certificates of need required to operate the project and to receive benefits and reimbursements under provider agreements with Medicaid, Medicare, State and local programs, payments from health care insurers and any other assistance providers ("Receivables"); all permits, instruments, rents, lease and contract rights, equipment leases relating to the use, operation, maintenance, repair and improvement of the Health Care Facility. Generally, intangibles shall also include all cash and cash escrow funds, such as but not limited to: sinking fund accounts, depreciation reserve fund accounts, mortgage reserve fund accounts, reserve for replacement accounts, bank accounts, residual receipt accounts, all contributions, donations, gifts, grants, bequests and endowment funds by donors and all other revenues and accounts receivable from whatever source paid or payable.

aa. "Principals" are the following legal and natural persons having ownership interests in the Borrower: natural persons who are sole owners, joint venturers, joint tenants, tenants by the entirety, trustees or beneficiaries of trusts, and all general partners; in the case of limited partnerships, limited partners having a twenty-five (25%) percent or more interest in the partnership; in the case of public or private corporations or governmental entities, the president, vice president, secretary, treasurer, and all other executive officers who are directly responsible to the board of directors, or any equivalent governing body, as well as all directors and each stockholder having a ten (10%) percent or more interest in the corporation; in the case of a Limited Liability Company (LLC) or a Limited Liability Partnership (LLP), all managing members or partners, all managers, and all members or partners with a ten (10%) percent or greater governance interest or a twenty-five (25%) percent or greater financial interest.

bb. "Project" means the Mortgaged Property and all other assets of whatever nature or wherever located, used in, owned by or leased by the Borrower or the Lessee in conducting the business on the Mortgaged Property, which business is providing health care facilities and other related activities.

cc. "Property Jurisdiction" is (are) the jurisdiction(s) in which the Land is located.

dd. "Project Revenue" means all income derived from private pay, benefits and reimbursements under provider agreements with Medicaid,

Medicare, State and local programs, payments from health care insurers and any other assistance providers, all rents, charges and fees received from leasing space on the Mortgaged Property, all contributions, donations, gifts, grants, bequests and endowment funds by donors and all other revenues received from any source paid or unpaid, including but not limited to all accounts receivable, undisbursed funds in Surplus Cash, Residual Receipts, escrow accounts and other assistance available for Project operation.

ee. "Public Body Borrower" means a Federal instrumentality, a State or political subdivision thereof, or an instrumentality of a State or a political subdivision thereof, which certifies that it is not receiving financial assistance from the United States exclusively pursuant to the United States Housing Act of 1937 (with the exception of projects assisted or to be assisted pursuant to Section 8 of such Act) and which is acceptable to HUD.

ff. "Reasonable operating expense", means an expense which arises from the everyday operation and maintenance of the Project and which primarily benefits the Project as opposed to the Borrower.

gg. "Receivables" means all receivables (whether from residential or non-residential space), revenues, issues, profits, and other income of the Land or the Improvements, including all revenues, gross receipts and receivables in connection with medical services and care, and all pledges, gifts, grants, bequests, contributions and endowments, parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due, or to become due.

hh. "Residual Receipts" is a term that applies to certain funds held by Non-Profit, Public Body and Limited Dividend Mortgagors whose Notes are insured or held by HUD pursuant to Section 232 of the National Housing Act. Residual Receipts are calculated by determining an amount of Surplus Cash (defined below).

After the calculation of Surplus Cash, as described below, the Borrower may make any Distributions permitted by this Agreement, HUD regulations and Directives. "Residual Receipts" will be the restrictive cash held by Section 232 Non-Profit, Public Body, and Limited Dividend Mortgagors remaining after any allowable Distributions. The use of these Residual Receipts is restricted under this Agreement.

ii. "Security Instrument" means the Multifamily/Health Care Mortgage, Deed of Trust Form HUD–94000M, or other designation as appropriate by Property Jurisdiction, Security Agreement, and any other security for the Indebtedness and shall be deemed to be the mortgage as defined by the National Housing Act, as amended, implementing regulations and Directives.

jj. "Sinking Fund Agreement" or "Depreciation Reserve Fund" means an agreement between the Borrower and Lessee, if applicable and the Lender, in which deposits are made into a separate depreciation reimbursement account to pay future principle payments on the Note, where Medicaid or other third-party reimbursement is on a depreciation plus interest basis.

kk. "Surplus Cash" means any cash plus amounts receivable (earned in the applicable fiscal period) remaining after:

(1) The payment of: (i) all sums immediately due or currently required to be paid under the terms of the Note, the Security Instrument and this Agreement due on the first day of the month following the end of the fiscal period; including without limitation, all amounts required to be deposited in the Reserve for Replacement, sinking fund or other reserves as may be required by HUD; and (ii) all other obligations of the Project (accounts payable and accrued, unescrowed expenses) unless funds for payment are set aside or deferment of payment has been approved by HUD, and

(2) The segregation and recording of: (i) an amount equal to the aggregate of all special funds required to be maintained by the Borrower; (ii) the greater of the Borrower's total liability or the amount held by the Borrower for tenant security deposits; and (iii) all accounts and accrued items payable within thirty (30) days after the end of the fiscal period.

ll. "State" includes the several States and Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

mm. "Taxes" means all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, could become a lien on the Land or the Improvements.

II. Construction

2. *Construction Funds.* The Borrower shall keep construction funds of the Mortgaged Property separate and apart from operating funds of the Mortgaged Property.

3. *Unpaid Obligations.* Upon final endorsement of the Note, Borrower shall have no unpaid obligations in connection with the purchase of the Mortgaged Property, the construction of the Mortgaged Property, or with respect to the Security Instrument insured by HUD except such unpaid obligations, as have the written approval of HUD as to terms, form and amount.

4. *Mortgagee's Certificate.* The Borrower shall be bound by the terms of the Mortgagee's Certificate insofar as it establishes or reflects obligations of the Borrower and the Borrower agrees that the fees and expenses enumerated in that Certificate have been fully paid or payment has been provided for in the Certificate and that all funds deposited with the Lender will be used for the purposes set forth in the Certificate.

5. *Construction Commencement.* The Borrower shall not commence, and has not commenced, construction of the Mortgaged Property prior to HUD endorsement of the Note, except that this Section 5 is not applicable if HUD has given prior written approval to an early start of construction, or if this Project is an Insurance Upon Completion or a refinance.

6. *Drawings And Specifications.* The Mortgaged Property shall be constructed in accordance with the terms of the Construction Contract, if any, and with the "Drawings and Specifications."

7. *Required Permits.* The Borrower shall obtain all necessary building and other permits and the Mortgaged Property shall not be occupied or used by any resident or user without the prior written approval of HUD and from all other legal authorities having jurisdiction of the Mortgaged Property.

8. *Outstanding Obligations.* The Borrower shall have no obligations as of the date of this Agreement except those approved by HUD and, except for those approved obligations, the Land has been paid for in full and is free from any liens or purchase money obligations.

9. *Accounting Requirements.* The Borrower shall submit an accounting to HUD for all receipts and disbursements during the period starting with the date of first occupancy of the Mortgaged Property and ending, at the option of the Borrower, either on (a) the last day of the month in which the Mortgaged Property is determined by HUD to be acceptably completed; or (b) sixty days from the date the Mortgaged Property is determined by HUD to be acceptably completed. The excess of project income over property disbursements, as determined by HUD, shall be treated as a recovery of construction cost.

III. Financial Management

10. *Payments.* The Borrower shall make promptly all payments due under the Note and Security Instrument and, if a lease of the Project is involved, in addition, Lessee shall make all payments required under the Lease consistent with the terms of the Lease.

11. *Reserve for Replacement Fund.* The Borrower shall establish and maintain a Reserve for Replacement account for defraying certain costs for replacing major structural elements and mechanical equipment of the Project or for any other purpose. The Reserve for Replacement shall be bifurcated, as set forth in the Commitment, to cover (1) the costs associated with the replacement of major moveable equipment and (2) the costs associated with major repairs to the physical structure of the Project. The use of a bifurcated fund will ensure that the monies in the Reserve for Replacement are sufficient to pay for the costs associated with not only the replacement of major moveable equipment but also for major repairs to the physical structure of the Project. Separate sub-accounts shall be maintained within the Reserve for Replacement and monies in these two accounts shall not be commingled. Lender shall ensure that amounts are withdrawn from a particular sub-account only for use consistent with that particular sub-account as approved by HUD.

a. The Reserve for Replacement shall be held by the Lender or by a safe and responsible depository designated by the Lender pursuant to the requirements of the contract of mortgage insurance. Such funds shall at all times remain under the control of the Lender, whether in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by, the United States of America or in such other investments as may be allowed by HUD.

b. The Borrower shall deposit at endorsement of the Note, if applicable, (1) an initial amount of $____ in the sub-account designated to cover the costs associated with the replacement of major moveable equipment, and (2) an initial amount of $____ in the sub-account designated to cover the costs associated with major repairs to the physical structure of the Project; and the Borrower shall deposit (1) a monthly amount of $____ to cover the costs associated with the replacement of major moveable equipment, and (2) a monthly amount of $____ to cover the costs associated with major repairs to the physical structure of the Project, concurrently with the beginning of payments towards amortization of the Note unless a different date or amount is established by HUD. At least every ten years, starting from the date of endorsement, and more frequently at HUD's discretion, the Borrower shall submit a written analysis of its use of the Reserve for Replacement during the prior ten years and the projected use of the Reserve for Replacement funds during the coming ten years to HUD. The amount of the monthly deposit may be increased or decreased from time to time at the written direction of HUD without a recorded amendment to this Agreement.

c. The Borrower shall carry the balance in this fund on the financial records as a restricted asset. The Reserve For Replacement shall be invested in interest bearing accounts or investments, and any interest earned on the investment shall be deposited in the Reserve for Replacement for use by the Project in accordance with this Section 11.

d. Disbursements from such fund shall only be made after consent, in writing, of HUD. In the event of a Declaration of Default under the terms of the Security Instrument, pursuant to which the Indebtedness has been accelerated, a written notification by HUD to the Borrower of a violation of this Agreement or at such other times as determined solely by HUD, HUD may direct the application of the balance in such fund to the amount due on the Indebtedness as accelerated or for such other purposes as may be determined solely by HUD.

e. Where the Project is already subject to a Security Instrument insured or held by HUD as of the date hereof and this Agreement is now being executed by the Borrower as of the date hereof, the Reserve for Replacement now to be established shall be equal to the amount due to be in such fund under existing Agreements or charter provisions, and payments hereunder shall begin with the first payment due on the Security Instrument after acquisition, unless some other method of establishing and maintaining the fund is approved in writing by HUD.

12. *Sinking Fund.* Where Medicaid or other third-party reimbursement is on a depreciation plus interest basis, the Borrower and Lessee, if applicable, shall make deposits to the Lender or a depository satisfactory to the Lender under the terms of a Sinking Fund Agreement. The Borrower and Lessee, if applicable, shall comply with the HUD requirements pertaining to the Sinking Fund Agreement as set forth in the Mortgagee's Certificate. Monies in the Sinking Fund will be used to make payments of principal on the Note in later years to the extent that such principal payment exceeds the amount of depreciation reimbursement available for payment to principal at that time.

a. The Sinking Fund Agreement shall provide that in the event of a default under the Security Instrument pursuant to which the Note has been accelerated, HUD may apply or authorize the application of the balance of such fund to the amount due on the Note as accelerated.

b. The Borrower and Lessee, if applicable, shall prepare and file with the Lender by October 1 of each year, a depreciation schedule reviewed by the Borrower's Independent Public Accountant showing the total projected reimbursement for depreciation and amount payable for principal payments coming due in each fiscal year including the current fiscal year.

c. The Mortgagee's Certificate requires the Lender to prepare and file with the Borrower by January 1 of each year, a funding schedule reflecting the amount required to be deposited in the Sinking Fund Account in each project fiscal year, and the cumulative balance in the account at the end of each such project fiscal year. Sums shall be deposited monthly into the account within fifteen (15) days of the close of each month, and shall commence upon the earlier of the commencement of amortization, as established in the commitment issued by HUD, or the initial receipt by the Borrower and the Lessee, if applicable, of depreciation reimbursement from any third-party payer. Such fund must at all times be held by or under the control of the Lender, and must be invested in a manner that conforms to the same standards established by HUD for the investment of reserve for replacement funds.

d. In the event of any conflict or inconsistency between the Sinking Fund Agreement and the Security Instrument, Note, Regulatory Agreement, applicable regulations and Directives, the said Security Instrument, Note, Regulatory Agreement, regulations and Directives will control.

e. Nothing in this Agreement shall impair or prejudice any right that HUD may have with respect to the Sinking Fund, particularly relating to the duty of the Lender to hold such funds for and on behalf of the Borrower.

f. Any Lease must contain provisions consistent with these requirements and all Leases and Operating Agreements must be reviewed and approved in writing by HUD.

g. In the event of any financial default by the Borrower, HUD is authorized

hereby to direct the Lender to cure such default with monies from the Sinking Fund.

h. If the State changes the reimbursement system and the Project is negatively affected, HUD may authorize an amended amortization schedule with respect to contributions to the Sinking Fund.

13. *Residual Receipts.* Section 232 Non-Profit, Public Body, and Limited Dividend Mortgagors shall establish and maintain, in addition to the Reserve for Replacement, a Residual Receipts Fund by depositing thereto, with the Lender, the Residual Receipts, as defined herein, within ninety (90) days after the end of the semiannual or annual fiscal period within which such receipts are realized. Such fund shall be held by the Lender or by a safe and responsible depository designated by the Lender in an interest bearing account. The Residual Receipts shall be under the control of HUD, and shall be disbursed only on the direction of HUD, who shall have the power and authority to direct that the Residual Receipts, or any part thereof, be used for such purpose as it may determine. Any Lease must contain payment provisions covering these deposits as part of the Lease payments.

14. *Project Property And Operation; Encumbrances.* (a) The Borrower shall deposit all receivables and other receipts of the Project and all receivables and other receipts of the Project in connection with the financing of the Project, including equity or capital contributions, in the name of the Project in a federally insured depository or depositories and in accordance with Directives. Such funds shall be withdrawn only in accordance with the provisions of this Agreement for reasonable and necessary expenses of the Project or for distribution of Surplus Cash or as reimbursement of advances as permitted by Sections 15 and 16 below. Any person or entity receiving Mortgaged Property other than for payment of reasonable and necessary expenses or repairs or authorized Distributions of Surplus Cash shall immediately deliver such Mortgaged Property to the Project and failing so to do shall hold such Mortgaged Property in trust. (b) The Borrower, except for natural person Mortgagors, shall not engage in any business or activity, including the operation of any other Project, or incur any liability or obligation not in connection with the Project, nor acquire or contract to enter into any affiliation with any party. (c) The Borrower shall satisfy or obtain a release of any mechanic's lien, attachment, judgment lien, or any other lien which attaches to any real or personal property of the Project or is used in its operation. (d) Delinquent tax penalties shall not be charged to the Project.

15. *Distributions.* The Borrower shall not make, or receive and retain, nor allow any Affiliate to receive or retain any Distribution of assets or any income of any kind of the Project, except from Surplus Cash. Distributions are governed by the following conditions:

a. No Distribution shall be made from borrowed funds. Distributions shall not be taken prior to the completion of the Project. Distributions shall not be taken after HUD has given notice to the Borrower of a violation under this Agreement or a default has been declared under the Note or Security Instrument. Distributions shall not be taken when a Project is under a forbearance agreement.

b. No Distribution shall be made when either (i) necessary services (utilities, trash removal, security, lawn service or any other services which the Borrower is required to provide) have not been provided, which failure the Borrower should have known about in the exercise of due care; (ii) notices of physical repairs or deficiencies (including but not limited to building code violations) by other Federal, State or local governing bodies and/or by HUD have been issued and remain unresolved to the satisfaction of the issuing public body or (iii) the Borrower has been notified by HUD, the Lender or other Federal, State or local governing body that physical repairs and/or deficiencies exist and the Borrower has not corrected or cured the identified items to HUD's satisfaction. HUD may permit Distributions when there are minor or contested local code violations on a case-by-case basis.

c. Any Distribution of any funds of the Project, which the party receiving such funds is not entitled to retain hereunder, shall be returned to the Project account immediately.

d. All allowable Distributions shall be made only after the end of a semiannual or annual fiscal period, and only as permitted by the law of the applicable jurisdiction. All such Distributions to Section 232 Limited Distribution Mortgagors in any one fiscal year shall be limited to 6 percent on the initial equity investment, as determined by HUD, or to such other amounts as may be specified in Directives and the right to such Distributions shall be cumulative. No Distributions may be taken in the case of Section 232 Public Body or Nonprofit Mortgagors unless permitted by regulation or Directives. Distributions must be taken out of all Project accounts by all other Borrowers within the accounting period immediately following the computation of Surplus Cash and, if not taken within the identified period, these funds may only be used for reasonable and necessary Project operating expenses and repairs. The computation of Surplus Cash must be prepared at the end of the semiannual or annual fiscal period.

e. Equity or capital contributions shall not be reimbursed from project accounts without the prior written approval of HUD.

16. *Reimbursement of Advances.* Any advances made by the Borrower, on behalf of the Borrower, or for the Borrower must be deposited into the Project account. The Borrower or any entity which advances funds on behalf of the Borrower or for the Borrower for reasonable and necessary operating expenses or repairs may be reimbursed from Surplus Cash at the end of the annual or semiannual period. Such repayment is not considered a Distribution. Monthly reimbursement of the Borrower or any entity that advances funds on behalf of the Borrower or for the Borrower may be allowed with prior written approval by HUD.

17. *Financial Accounting.* The Borrower shall keep the books and accounts of the operation of the Mortgaged Property in accordance with the requirements of Generally Accepted Accounting Principles (GAAP) and of HUD. The books and accounts must be complete, accurate and current at all times. Posting must be made at least monthly to the ledger accounts, and year-end adjusting entries must be posted promptly in accordance with sound accounting principles. Any undocumented Distribution or expense shall be an ineligible project expense, unless otherwise determined by HUD. Books, accounts and records shall be open and available for inspection by HUD, after reasonable prior notice, during normal office hours, at the Project or other mutually agreeable location.

18. *Books of Management Agents.* The books and records of management agents, Lessees, Operators, managers and Affiliates, as they pertain to the operations of the Project, shall be maintained in accordance with GAAP and shall be open and available to inspection by HUD, after reasonable prior notice, during normal office hours, at the Project or other mutually agreeable location. Every contract executed on behalf of the Project with any of the aforesaid parties shall include the provision that the books and records of such entities shall be properly maintained and open to inspection during normal business hours by HUD

at the Project or other mutually agreeable location.

19. *Annual Financial Audit.* Within ninety (90) days, or such longer or shorter period established in writing by HUD, following the end of each fiscal year, the Borrower shall furnish HUD and the Lender with a complete annual financial report based upon an examination of the books and records of the Borrower prepared in accordance with GAAP, audited in accordance with Generally Accepted Auditing Standards (GAAS) and Government Auditing Standards (GAS) and any additional requirements of HUD unless the report is waived in writing by HUD. If the Borrower fails to submit the annual financial report within ninety (90) days of said due date, HUD may thereafter hire a Certified Public Accountant to prepare the report at the expense of the Borrower. The report shall include a certification in content and form prescribed by HUD and certified by the Borrower. The report shall be prepared and certified by a Certified Public Accountant who is licensed or certified by a regulatory authority of a State or other political subdivision of the United States, which authority makes the Certified Public Accountant subject to regulations, disciplinary measures, or codes of ethics prescribed by law. The Certified Public Accountant must have no business relationship with the Borrower except for the performance of the audit and tax preparation unless HUD expressly authorizes other relationships. Auditing costs and tax preparation costs may be charged as an authorized expense to the Mortgaged Property only to the extent they are required of the Borrower itself by State law, the Internal Revenue Service (IRS), the Securities and Exchange Commission, or HUD. Neither IRS audit costs nor costs of tax preparation for the Borrower's partners, members, shareholders, or other persons receiving Distributions from the Borrower may be charged to the Mortgaged Property as a Project expense. Non-profit Mortgagors are to follow audit requirements specified in OMB Circular A–133, as revised.

IV. Project Management

20. *Equipment.* The Borrower and Lessee, if applicable, shall, pursuant to HUD regulations, and State and local law, suitably equip the Project as a Nursing Home, Intermediate Care Facility, Board and Care Home and/or Assisted Living Facility, as designated in the commitment. The Borrower and Lessee, if applicable, shall perform all obligations of any chattel mortgage, conditional sale, lease or lease-purchase agreement, or other type of financing arrangement designed to acquire equipment for the Project. Any plan for the acquisition of equipment (other than outright purchase) must be approved in writing by the Lender and HUD and shall contain appropriate provision(s) extending to the Lender and its successors or assigns, the option to assume such financing (or leasing) obligation of the Borrower upon default. Further, such financing (or leasing) arrangement shall require the vendor-lessor to furnish written notice of default to the Lender and HUD before exercising any rights or remedies otherwise available to the vendor-lessor. The Borrower shall execute and record a security agreement, chattel mortgage or other appropriate security arrangement (as determined by the Lender and HUD) in favor of the Lender covering the Borrower's interest in all equipment and other Personalty unique to a Health Care Facility except for such equipment and Personalty as HUD may exempt from such coverage, in writing. The security instrument for such Personalty shall provide that a default in the terms of the Note and Security Instrument upon the Land shall also constitute a default thereunder.

21. *Licensure.* Any necessary license, Bed Authority or other Governmental Approval required to operate the Project and to receive benefits under a provider agreement with Medicaid, Medicare or other assistance provider relied upon by HUD in insuring the Note, shall be maintained in full force by the Borrower, and the Borrower shall maintain such provider agreements, except where such licenses, Bed Authority, Governmental Approval or provider agreements are provided and maintained by Lessee or any other party under specific provisions of the Lease or any other agreement. The Lender and HUD shall be provided with the results of any and all licensing inspections. Any problems or violations of State or local requirements must immediately be brought to the attention of the Lender and HUD in writing. All parties hereto recognize and agree that all necessary licenses, Bed Authority and Governmental Approvals are tied to the Project and cannot be separated from the Project without the prior written approval of both the Lender and HUD.

22. *Bed Capacity.* Project bed capacity and Bed Authority shall not be reduced or expanded, nor shall the Borrower and the Lessee, if applicable, cause or allow such capacity or Bed Authority to be reduced or expanded, or converted to any use not originally authorized by HUD at endorsement of the Note for mortgage insurance, without prior HUD approval.

23. *Mortgaged Property and Revenue.* The Mortgaged Property shall not be pledged, assigned, transferred, conveyed, sold or otherwise obligated without HUD's prior written approval regardless of any approval by the Lender. In addition, in the event HUD declares a default under terms of this Agreement or the Lender declares a default under the Security Instrument:

a. HUD may direct the Lender to take immediate possession and use of such Mortgaged Property upon HUD's Declaration of Default and notification of the Borrower or HUD may, with the approval of the Lender or after an assignment of the Security Instrument to HUD, take immediate possession and use of such Mortgaged Property and expend or dispose of such Mortgaged Property at the discretion of HUD. Such assignment shall be made without compensation from HUD or any other party, and shall include the following collateral:

i. Project Revenue, as that term is defined herein, and

ii. Government Approvals (as that term is defined herein) except as the jurisdiction may prohibit such assignment; and

b. These requirements also apply to any operating agreement, management agent contract, managing agreement or contract or Lease for operation of the Project.

24. *Prohibition of Additional Fees.* The Borrower shall not charge any Health Care Facility resident or prospective Health Care Facility resident an admission fee, founders fee, continuing care retirement community fee, life-care fee or similar payment pursuant to any agreement to furnish Project accommodations or services to persons making such payments.

25. *Notification.* The Borrower, and/or the Lessee, and/or the Operator, as applicable, shall immediately notify in writing the Lender and HUD of any suspension or termination of funding under a provider agreement with Medicaid, Medicare, or any other assistance from any source whatsoever within 7 days of Borrower's notification or knowledge of such suspension or termination. Likewise, Borrower and/or Lessee and/or Operator, as applicable, shall notify the Lender and HUD in writing of any violation of any State or federal requirement pertaining to the operation of the Health Care Facility. Further, Borrower, and/or Lessee, and/or Operator, as applicable, shall notify HUD of any suspension or revocation of the license or of any moratorium on admissions or of any State-imposed

delays in payment. In all cases full documentation must be furnished which includes all correspondence with such federal and State authorities.

26. *Preservation, Management and Maintenance of the Mortgaged Property.* The Borrower (a) shall not commit Waste under the Security Instrument nor permit impairment or deterioration of the Mortgaged Property, (b) shall not abandon the Mortgaged Property, (c) shall restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition, or such other condition as HUD may approve in writing, whether or not litigation or insurance proceeds or condemnation awards are available to cover any costs of such restoration or repair, and (d) shall keep the Mortgaged Property in decent, safe, sanitary condition and good repair, including the replacement of Personalty and Fixtures with items of equal or better function and quality. Obligations (a) through (d) of this Section 24 are absolute and unconditional and are not limited by any conditions precedent and are not contingent on the availability of financial assistance from HUD or on HUD's performance of any administrative or contractual obligations. The Mortgaged Property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other papers and instruments must also be maintained in reasonable condition for proper audit and subject to examination by HUD at the Project or other mutually agreeable location. Full documentation shall be maintained to demonstrate that residency of an ALF is restricted as set forth in the definition above. In the event all or any of the buildings covered by the Security Instrument shall be destroyed or damaged by fire, by an exercise of the power of eminent domain, by failure of warranty, or other casualty, the money derived from any settlement, judgment, or insurance on the Mortgaged Property shall be applied in accordance with the terms of the Security Instrument or as otherwise may be directed in writing by HUD.

27. *Flood Hazards.* If the Improvements are located in a special flood hazard area, the Borrower shall maintain flood insurance covering the Improvements in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, as amended, or its successor legislation, whichever is less, provided that the amount of flood insurance need not exceed the outstanding principal balance of the Note, and flood insurance need not be maintained beyond the term of the Note.

28. *Management Agreement.* The Borrower and/or the Lessee, as applicable, may, with the prior written approval of HUD, execute a management contract, management agent agreement or operating agreement or other document outlining procedures for managing or operating the Mortgaged Property. Such agreement or document must be acceptable to HUD and approved in writing by HUD. The requirements of these provisions will be applicable to any party to a management contract or operating agreement or management agent or operator contract executed in connection with the Project. All Operators shall execute this instrument; however, failure to so execute shall in no way impair or prejudice the powers and rights of HUD with respect to the applicability and enforceability against such parties who fail to execute this instrument. Management agents normally will not be required to execute this instrument.

29. *Acceptability of Management or Operation of the Mortgaged Property.* The Borrower shall provide management or operation of the Mortgaged Property in a manner deemed to be acceptable by HUD. At HUD's discretion, HUD may require replacement of the management or operation or require the Borrower to conform the Project to HUD's overall management and/or operation policies.

30. *Termination of Contracts.* Any management contract, management agent agreement or operating agreement entered into by the Borrower, Lessee or any other third-party vendor contract pertaining to the Mortgaged Property shall contain a provision that the contract shall be subject to termination without penalty and without cause upon written request by HUD and shall contain a provision which gives no more than a thirty day notice of termination. Upon such request, the Borrower shall immediately arrange to terminate the contract, and the Borrower shall also make arrangements satisfactory to HUD for continuing acceptable management of the Mortgaged Property effective as of the termination date of the contract.

31. *Contracts for Goods and Services.* The Borrower and/or Lessee and/or Operator, as applicable, shall obtain contracts for goods, materials, supplies, and services (hereinafter referred to as "goods and services") at the lowest possible cost (including contracts for laundry services where laundry services are provided), considering quality, durability, and scope of work, and on terms most advantageous to the Mortgaged Property. Such expenses may not exceed amounts customarily paid in the vicinity of the Land for the goods and services received. Reasonable and necessary expenses do not include amounts paid for betterments or Improvements unless determined by HUD to be prudent and appropriate. When acquiring goods and services whose usual costs are expected to exceed the greater of $10,000 or 5 percent of the gross annual revenue of the Mortgaged Property, the Borrower and/or Lessee and/or Operator, as applicable, shall solicit written cost estimates to ensure that prices paid by the Borrower and/or Lessee and/or Operator, as applicable, for goods and services, including the preparation of the annual audit, are competitive with prices paid in the area for goods and services of similar quality. All contracts, including but not limited to, contracts for goods and services purchased from individuals or companies affiliated with the Borrower and/or Lessee and/or Operator, as applicable, shall be at costs not in excess of those that would be incurred in making arms-length purchases on the open market. The Borrower and/or Lessee and/or Operator, as applicable, shall keep copies of all written contracts or other instruments that affect the Mortgaged Property, all or any of which may be subject to inspection and examination by HUD at the Project or other mutually agreeable location.

32. *Commercial (Non-Residential) Leases.* No portion of the Mortgaged Property shall be leased for any commercial purpose or use without receiving HUD's review of all lease instruments and HUD's prior written approval.

33. *Responsiveness to Inquiries.* At the request of HUD, the Borrower and/or Lessee and/or Operator, as applicable, shall promptly furnish operating budgets and bed use occupancy, accounting and other reports and give specific answers to questions upon which information is desired relative to income, assets, liabilities, contracts, operation, and conditions of the Mortgaged Property and the status of the Security Instrument.

34. *Compliance With Laws.*

a. The Borrower and/or Lessee and/or Operator, as applicable, shall comply with all applicable: Laws; ordinances; regulations; requirements of any governmental authority; lawful covenants and agreements (including the Security Instrument) recorded

against the Mortgaged Property; the National Housing Act; regulations and Directives of HUD; including but not limited to those of the foregoing pertaining to: health and safety; maintenance of the requisite level of professional liability insurance as determined by HUD from time to time; construction of improvements on the Mortgaged Property; fair housing; civil rights; zoning and land use; leases; lead-based paint maintenance requirements of 24 CFR Part 35 and, with respect to all of the foregoing, all subsequent amendments, revisions, promulgations or enactments. The Borrower and/or Lessee and/or Operator, as applicable, and/or Lessee and/or Operator, as applicable, shall at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 34. The Borrower and/or Lessee and/or Operator, as applicable, shall take appropriate measures to prevent, and shall not engage in or knowingly permit, any illegal activities at the Mortgaged Property that could endanger the residents or visitors, result in damage to the Mortgaged Property, result in forfeiture of the Mortgaged Property, or otherwise impair the lien created by the Security Instrument or Lender's interest in the Mortgaged Property. The Borrower and/or Lessee and/or Operator, as applicable, represents and warrants to HUD that no portion of the Mortgaged Property has been or will be purchased with the proceeds of any illegal activity.

b. HUD and/or Lessee and/or Operator, as applicable, shall be entitled to invoke any remedies available by law to redress any breach or to compel compliance by the Borrower with these requirements, including any remedies available hereunder.

V. Lease of Health Care Facility

35. *Lease of Facility.* In cases where a Health Care Facility is leased to any entity (Lessee), the following additional requirements are applicable:

a. Wherever necessary in order to regulate both the Lessee and the Borrower in the same fashion as the Borrower is obligated where there is no lease, the Lessee and the Borrower are herein regulated where, by virtue of the lease, the Lessee holds rights, powers or authorities to act which are contemplated to be held by the Borrower in the absence of a lease. In instances where such powers are held by the Lessee, the term Borrower shall be read to also include Lessee herein. The intent is, and the construction of this subsection shall be, to obligate both the Lessee and the Borrower under this instrument to the extent of their rights, powers or authorities to act under the Lease and to make any Lease consistent with the requirements of this instrument.

b. Within ninety (90) days, or such longer or shorter period established in writing by HUD, following the end of each fiscal year, the Lessee shall furnish HUD and the Borrower with a complete annual financial report based upon an examination of the books and records of the Lessee prepared in accordance with GAAP, audited in accordance with Generally Accepted Auditing Standards (GAAS) and Government Auditing Standard (GAS) and any additional requirements of HUD unless the report is waived in writing by HUD. If the Lessee fails to submit the annual financial report within ninety (90) days of said due date, the Borrower may thereafter hire a Certified Public Accountant to prepare the report at the expense of the Lessee or the Borrower. The report shall include a certification in content and form prescribed by HUD and certified by the Lessee. The report shall be prepared and certified by a Certified Public Accountant who is licensed or certified by a regulatory authority of a State or other political subdivision of the United States, which authority make the Certified Public Accountant subject to regulations, disciplinary measures, or codes of ethics prescribed by law. The Certified Public Accountant may have no business relationship with the Lessee except for the performance of the audit and tax preparation unless HUD expressly authorizes other relationships. Both for profit and non-profit Lessees are to follow audit requirements specified in the HUD Consolidated Audit Guide for Audits of HUD Programs prescribed by HUD.

c. The Lessee, any successors, assigns and subsequent Lessees must sign this Agreement; however, any failure to so sign or formally acknowledge this Agreement shall in no way be a bar to this Agreement being fully binding upon and enforceable against the Lessee, any successors, assigns and subsequent Lessees.

d. The lease and any and all extensions, modifications and renewals thereof, and all of the Lessee's rights and interest thereunder, are hereby subjected and subordinated to the Security Instrument securing the Note and to this Agreement between the Lessee of the Project and HUD, and, in the event of a conflict between the Lease and the Security Instrument, Note or Regulatory Agreement, the Security Instrument, Note or Regulatory Agreement shall control.

e. The Lessee shall be the sole user and/or operator of the improvements and equipment that is stipulated in the lease. The Lessee shall not be an Affiliate of, or have any other Identity of Interest (as defined by HUD) with, the Borrower, Lender or any other party to the Security Instrument transaction except with the prior written approval of HUD. Where there is an affiliation between the Borrower and the Lessee, the Lessee shall, at the time of cost certification, submit an audited operating statement in accordance with current requirements and instructions.

f. Any license, Bed Authority or other Governmental Approval required to operate the Project and to receive benefits under a provider agreement with Medicaid, Medicare or other assistance relied upon by HUD to insure the Security Instrument, and such provider agreements, shall be secured and maintained in full force by the Lessee, except to the extent to which the Borrower is specifically made responsible for such license, Bed Authority, Governmental Approval or provider agreements and their maintenance. See Section 25 above with respect to notification to Lender and HUD which shall be read in connection with this provision.

g. Consistent with, and in addition to, the requirements of Section 19, the Lessee shall, within sixty (60) days following the end of each fiscal year, furnish to the Borrower a complete annual audited financial report on the operation of the Health Care Facility, prepared in accordance with GAAP and based upon examinations of the books and records the Lessee has established and maintained for the operation of the facility. The Lessee acknowledges and understands that this annual audited financial report is a part of the consolidated report that the Borrower must submit to HUD. If the Lessee fails to provide the Borrower with the report, Lessee understands that the Borrower may retain a certified public accountant to prepare the report at the expense of the Lessee and Borrower, Lender or HUD may terminate the Lease for continued non-compliance.

h. As security to HUD for approving the lease, the Lessee shall assign to Borrower, the Lender or HUD, as directed by HUD, any Mortgaged Property in which the Lessee has any interest under the lease or otherwise all in accordance with and in addition to the requirements of Section 232. This includes (but is not limited to) major and minor moveables, the CoN, the license, any and all rights to receivables and other income, and other personalty

necessary to the continued operation and value of the Health Care Facility.

i. Lease payments to the Borrower shall be renegotiated within ninety (90) days of HUD's written request at a sufficiently higher amount to permit the Borrower to make all payments due under the Note, including escrow deposits for taxes, insurance, and special assessments; deposits to the Sinking Fund Account, if applicable; deposits to the reserve for replacement fund; and the Residual Receipts Fund, if applicable, and to perform maintenance required by terms of the Security Instrument and this Agreement for which the Lessee is not obligated to perform under terms of the Lease, if at the end of any the Borrower's annual operating period, where the payments under the Lease have not be sufficient for such purposes.

j. Payments under terms of the lease shall be made when due.

k. Any transfer or change in ownership of the Lessee entity exceeding twenty-five (25) percent financial or governance interest and any transfer or change of the management, operation or control of the Project shall have prior written HUD approval.

l. All payments to Borrower by the Lessee shall be made to HUD upon the Lender's Declaration of Default under the terms of the Security Instrument or upon a Declaration of Default by HUD under the terms of this Agreement and at HUD's written request.

m. The lease shall be canceled without penalty after 30 days from HUD's notification to Lessee and Borrower of any violation under this Agreement, if such violation is not corrected to HUD's satisfaction within such 30 day period.

n. A Lessee shall not sublease a Health Care Facility in its entirety under any circumstances, nor can Lessee sublease commercial space to any sublessee without prior written approval by HUD.

o. A nonprofit Borrower may only lease a Health Care Facility to a nonprofit Lessee and may only use a nonprofit Operator.

p. The CoN, license and receivables and any and all other Personalty shall not be transferred, pledged, hypothecated, mortgaged or securitized other than with respect to the securitization running to the Lender and HUD under the terms of the Security Instrument, the UCC Security Agreement and this instrument. The CoN, license and receivables and other Personalty necessary to the operation and value of the Project must remain tied to the Project and the HUD insured loan for the duration of HUD insurance of the loan. Lessee grants Lender and HUD a power of attorney under the Lease and all related contractual documents to enforce this requirement in the event of default hereunder.

VI. Actions Requiring the Prior Written Approval of HUD

36. The Borrower, Lessee and/or Operator, if applicable, shall not without the prior written approval of HUD:

a. Convey, assign, transfer, pledge, hypothecate, encumber, or otherwise dispose of any of the Mortgaged Property or any interest therein, or permit such conveyance, assignment, transfer, pledging, hypothecation, or encumbrance or disposition, or take any action which gives rights in another to establish or maintain a lien or encumbrance against the Mortgaged Property or any interest therein; provided, however, the Borrower may, and this provision shall not operate to require the Borrower to obtain prior written approval of HUD to, dispose of obsolete or deteriorated items of Fixtures or Personalty if the same are replaced with like items of same or greater quality or value and provided further, that this provision shall not operate to require the Borrower to obtain the prior written approval of HUD for (i) a conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under the Security Instrument, (ii) the Mortgaged Property becoming part of a bankruptcy estate by operation of law under the United States Bankruptcy Code and (iii) an interest acquired by inheritance or by Court decree.

b. Enter into any contract, agreement or arrangement to borrow funds, pledge receivables to obtain lines of credit, finance any purchase or incur any liability, direct or contingent, other than for current, reasonable and necessary operating expenses and repairs.

c. Pay out any funds except from Surplus Cash, except for reasonable operating expenses and necessary repairs.

d. Pay any compensation, including wages or salaries, or incur any obligation to do so, to any officer, director, stockholder, trustee, beneficiary, partner, member, or Principal, or to any nominee thereof.

e. Enter into, change, or agree to the assignment of, any contract, agreement or arrangement for supervisory or managerial services or leases for operation of the Project in whole or in part.

f. Convey, assign, or transfer, or permit the conveyance, assignment or transfer of any interest in the Borrower, if the effect of that conveyance, assignment, or transfer is the creation or elimination of a Principal; nor convey, assign or transfer any right to receive the Receivables of the Mortgaged Property; provided, however, that this provision shall not operate to require the Borrower to obtain the prior written approval of HUD for (i) a conveyance of any interest in the Borrower at a judicial or non-judicial foreclosure sale under the Security Instrument, (ii) any interest in the Borrower becoming part of a bankruptcy estate by operation of law under the United States Bankruptcy Code and (iii) an interest in the Borrower acquired by inheritance or by Court decree.

g. Remodel, add to, construct, reconstruct or demolish any part of the Mortgaged Property or subtract from any Land, Fixtures, Improvements or Personalty of the Mortgaged Property.

h. Permit the use of the Mortgaged Property for any other purpose except the use for which it was originally intended, or permit commercial use greater than that originally approved by HUD.

i. Receive any endowment which is not pledged as security for its obligations to HUD or the Lender unless the endowment by its terms is restricted to a specific purpose or purposes which do not permit such a pledge.

j. Amend, revise or cancel any provision or portion of the organizational documents of the Borrower, except for amendments or revisions simply to effect changes in interest in the Borrower which are not governed by Section 36.f.

k. Institute litigation seeking the recovery of a sum in excess of $25,000, nor settle or compromise any action for specific performance, damages, or other equitable relief, in excess of $25,000, nor dispose of or distribute the proceeds thereof.

l. Reimburse any party for payment of expenses or costs of the Project or for any purpose.

m. Receive any fee or payment of any kind from any managing agent, employee of the Project or of the managing agent, or other provider of goods or services of the Project.

VII. Enforcement

37. *Violation of Agreement.* The occurrence of any one or more of the following shall constitute a Violation under this Agreement:

a. Any failure by the Borrower to comply with any of the provisions of this Agreement;

b. Any fraud or material misrepresentation or material omission by the Borrower, any of its officers,

directors, trustees, general partners, members, managers or managing agent in connection with (1) any financial statement or other report or information provided to HUD during the term of this Agreement or (2) any request for HUD's consent to any proposed action, including a request for disbursement of funds from any restricted account for which HUD's prior written approval is required; and

c. The commencement of a forfeiture action or proceeding, whether civil or criminal, which, in HUD's reasonable judgment, could result in a forfeiture of the Mortgaged Property or otherwise materially impair HUD's interest in the Mortgaged Property.

38. *Declaration of Default.* At any time during the existence of a violation, HUD may give written notice of the violation to the Borrower, the Lessee and/or Operator, if applicable, by registered or certified mail, addressed to the addresses stated in this Agreement, or such other addresses as may subsequently, upon appropriate written notice to HUD, be designated by the Borrower as its legal business address. If, after receiving written notice of a violation, that Violation is not corrected to the satisfaction of HUD either within thirty (30) days after the date such notice is mailed, or within such shorter or longer period of time set forth in said notice, HUD may declare a default under this Agreement without further notice. Upon such Declaration of Default, HUD may:

a. If HUD holds the Note, declare the whole of said Indebtedness immediately due and payable and then proceed with the foreclosure of the Security Instrument;

b. If said Note is not held by HUD, notify the holder of the Note of such default and require the holder to declare a default under the Note and Security Instrument, and the holder after receiving such notice and demand, shall declare the whole Indebtedness due and payable and thereupon proceed with foreclosure of the Security Instrument or assignment of the Note and Security Instrument to HUD as provided in HUD regulations and Directives. Upon assignment of the Note and Security Instrument to HUD, HUD may then proceed with the foreclosure of the Security Instrument;

c. Collect all Receivables and charges in connection with the operation of the Project and use such collections to pay the Borrower's obligations under this Agreement and under the Note and Security Instrument and the necessary expenses of preserving and operating the Mortgaged Property;

d. Take possession of the Mortgaged Property, bring any action necessary to enforce any rights of the Borrower growing out of the Mortgaged Property's operation, and maintain the Mortgaged Property in decent, safe, sanitary condition and good repair;

e. Apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against any violations of the Agreement, for the appointment of a receiver to take over and operate the Project in accordance with the terms of the Agreement, or for such other relief as may be appropriate, since the injury to HUD arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain;

f. Collect reasonable attorney fees related to enforcing the Borrower's compliance with this Agreement, and

g. With respect to Violations related to felony criminal convictions or civil judgments concerning the operation or management of the Mortgaged Property, direct the Borrower to replace any general partner, limited liability company member or non-member manager, limited liability limited partnership member, officer or director of the Borrower corporation, trustee, beneficiary of a trust, joint venturer, joint tenant or tenant in common with a natural person or entity acceptable to HUD pursuant to HUD's Participation and Compliance regulations and Directives.

39. *Measure of Damages.* The damage to HUD as a result of the Borrower's breach of duties and obligations under this Agreement shall be, in the case of failure to maintain the Mortgaged Property as required by this Agreement, the cost of the repairs required to return the Project to decent, safe and sanitary condition and good repair. This contractual provision shall not abrogate or limit any other remedy or measure of damages available to HUD under any civil, criminal or common law.

40. *Nonrecourse Debt.* Except as provided in Section 8 of the Note and Section 6 of the Security Instrument, no person or entity is liable for payments due under the Note and Security Instrument, or for payments to the Reserve for Replacement or for matters not under their control, except, notwithstanding any provision of State law to the contrary, any person or entity is liable:

a. For funds or property of the Project coming into its possession which, by the provisions hereof, the person or entity is not entitled to retain;

b. For its own acts and deeds or acts and deeds of others which it has authorized in violation of the provisions hereof; and

c. As otherwise provided by law.

VIII. Miscellaneous

41. *Binding Effect.* This instrument shall bind, and the benefits shall inure to, the respective Borrower and/or Lessee, if applicable, its heirs, legal representative, executors, administrators, successors in office or interest, and assigns, and to HUD and HUD's successors, so long as the contract of mortgage insurance continues in effect, and during such further time as HUD shall be the Lender, holder, coinsurer, or reinsurer of the Security Instrument, or obligated to reinsure the Security Instrument, or protect the residents of the Project.

42. *Paramount Rights and Obligations.* The Borrower and the Lessee and/or Operator, if applicable warrant(s) that it (they) has (have) not, and will not, execute any other agreement with provisions contradictory of, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict therewith.

43. *Severability.* The invalidity of any clause, part, or provision of this Agreement shall not affect the validity or the remaining portions thereof.

44. *Headings and Titles.* Any heading or title of a section, paragraph or part of this Agreement is intended for convenience only, and is not intended, and shall not be construed, to enlarge, restrict, limit or affect in any way the construction, meaning or application of the covenants or provisions thereunder or under any other heading or title.

45. *Present Assignment.* The Borrower and/or Lessee, if applicable irrevocably and unconditionally assigns, pledges, mortgages and transfers to HUD its rights to the Receivables, charges, fees, carrying charges, Project accounts and other revenues and receipts of whatsoever sort which it may receive or be entitled to receive from the operation of the Mortgaged Property. Until a default is declared under this Agreement, revocable license is granted to the Borrower and Lessee, if applicable to collect and retain such Receivables, charges, fees, carrying charges, Project accounts and other revenues and receipts, but upon a Declaration of Default under this Agreement or under the Security Instrument, this revocable license is automatically terminated.

46. *Notices.* Any notice or other communication given or made pursuant

to this Agreement to the Borrower, Lessee, or Operator, if applicable, shall be made to the following addresses:

Borrower:

Lessee (if applicable):

Operator (if applicable):

The Borrower or Lessee may, at any time, by written notice to HUD, designate a different address to which such communications shall thereafter be directed. Said notice, and any other written notice to HUD pursuant to this Agreement, shall be delivered to the HUD field office which has jurisdiction over the Project.

47. *Uniform Commercial Code Security Agreement.* This Regulatory Agreement is also a security agreement under the Uniform Commercial Code for any of the Mortgaged Property (including all Personalty) which, under applicable law, may be subject to a security interest under the Uniform Commercial Code, whether acquired now or in the future, and all products and cash proceeds and non-cash proceeds thereof (collectively, "UCC Collateral"), and Borrower hereby grants to HUD a security interest in the UCC Collateral. Borrower, and Lessee (if applicable) shall execute and deliver to HUD (or the Lender acting on behalf of HUD), upon the request of HUD or the Lender, financing statements, continuation statements and amendments, in such form as HUD may require to perfect or continue the perfection of this security interest. Borrower and/or Lessee shall pay all filing costs and all costs and expenses of any record searches for financing statements that HUD may require. Without the prior written consent of HUD, Borrower and/or Lessee shall not create or permit to exist any other lien or security interest in any of the UCC Collateral except for the first lien and security interest in favor of the Lender and HUD. If an Event of Default has occurred and is continuing, HUD shall have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Regulatory Agreement or existing under applicable law. In exercising any remedies, HUD may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of HUD's other remedies. This Regulatory Agreement constitutes a financing statement with respect to any part of the Mortgaged Property which is or may become a Fixture.

48. *Identity of Interest.* If the Project's application for mortgage loan insurance was processed pursuant to HUD's Multifamily Accelerated Processing ("MAP") procedures, the Borrower's Principals shall not have an identity of interest, as defined by HUD in MAP Directives, between the Borrower and the Lender.

49. *Applicability.* Notwithstanding any other provision in this Agreement, depending on the type of facility, there may be specific rental housing provisions (some of which may be found in the Regulatory Agreement for Multifamily Projects) that are applicable to either an Assisted Living Facility or a Board and Care Home. Additionally, other State-imposed laws may be required where the State mandates further regulation over admission, occupancy or any other aspect of the facility. In the event such HUD and/or State mandated provisions need to be added hereto, such provisions shall be placed in an Article IX which shall be headed, "Assisted Living Facility," or "Board and Care Home," as appropriate.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the date first herein above written.

Borrower

(insert name)

By: _____
Name and title

_____
Principal
Name and title

_____
Principal
Name and Title

Lessee

By _____
Authorized Agent
Name and Title

U.S. Department of Housing and Urban Development

By _____
Authorized Agent

Each signatory hereby certifies that the statements and representations contained in this instrument and all supporting documentation thereto are true, accurate, and complete. This instrument has been made, presented, and delivered for the purpose of influencing an official action of HUD (acting by and through the FHA Commissioner) in insuring a multifamily rental or health care facility mortgage loan, and may be relied upon by HUD and the Commissioner as a true statement of the facts contained therein.

Name of Entity: _____

By: /s/ _____

Printed Name, Title: _____

Dated: _____

By: /s/ . _____

Printed Name, Title: _____

Dated: _____

[Add Additional Lines if More Than Two Signatories]

Warning

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions, including but not limited to: (i) fines and imprisonment under 18 U.S.C. 287, 1001, 1010 and 1012; (ii) civil penalties and damages under 31 U.S.C. 3729; and (iii) administrative sanctions, claims, and penalties under 24 CFR parts 24 and 28.

NOTICE: THIS DOCUMENT MUST HAVE A LEGAL DESCRIPTION ATTACHED AND BE EXECUTED WITH ALL FORMALITIES REQUIRED FOR RECORDING A DEED TO REAL ESTATE (*i.e.*, NOTARY/ ACKNOWLEDGEMENT, SEAL, WITNESS OR OTHER APPROPRIATE FORMALITIES).

Mortgagee's Certificate

U.S. Department of Housing and Urban Development

Office of Housing

(Execute Original plus two copies)

OMB Approval No. (Exp. 00/00/00)

Public Reporting Burden for this collection of information is estimated to average 0.75 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, DC 20410–3600 and to the Office of Management and Budget, Paperwork Reduction Project (OMB Approval No.), Washington, DC 20503. Do not send this completed form to either of the above addresses.

Project Name:
Project Number:
Lender:
Borrower:

☐ Multifamily Accelerated Processing (MAP)

☐ Traditional Application Processing (TAP)

To the U.S. Department of Housing and Urban Development (HUD):

General

1. The entity executing this Certificate is the Lender under that certain Security Instrument, _____, (the Mortgage) dated _____, 20____, executed by _____, the Borrower, securing a Note evidencing a loan by the Lender to the Borrower in the principal sum of $_____ which the Lender has agreed to make on condition that it be insured by HUD pursuant to the Contract of Insurance comprised of Section ____ of the National Housing Act and its implementing regulations. The Lender understands that the Mortgage, the Note, this Certificate, and any documents submitted with this Certificate are considered to be consistent with and shall be interpreted consistently with HUD's regulations as they pertain to the Contract of Insurance. The Lender agrees to be bound by such regulations and by all Directives of HUD.

2. The Lender submits separately a check for $____ covering the first mortgage insurance premium, together with the other items called for in the HUD commitment dated _____, 20____, and in any extensions or amendments thereof (the Commitment).

The Lender certifies that all conditions of the Commitment have been fulfilled to date.

Construction Loans

3. For all cases involving construction advances, the agreement providing for the advancement of said loan is set forth in a Building Loan Agreement dated _____, 20____, of which a duplicate original and two copies are submitted separately.

4. The Lender submits separately a certified survey of the Mortgaged Property and title evidence as specified in the applicable Directives of HUD together with evidence that the Mortgaged Property is not zoned or restricted so as to prevent the construction of the Improvements.

5. Applications for insurance of advances of mortgage proceeds will be submitted to HUD as required under the applicable Directives of HUD at least five days prior to the date the Lender desires to disburse such advance. Applications for advances will be accompanied by all documentation required by HUD. The Lender agrees that the amount approved for disbursement by HUD will not be released unless the current extension of the title policy evidences that (a) the Mortgage is prior to all liens and encumbrances which may have attached or defects which may have arisen subsequent to the recording of the Mortgage, except such liens or other matters as have been approved by HUD and (b) the Mortgage is prior to all mechanics' and materialmen's liens filed of record subsequent to the recording of the Mortgage, regardless of whether such liens attached prior to the recording date.

Fees and Charges

6. The charges enumerated below are included in mortgage proceeds and will be disbursed by the Lender at such time as is approved by HUD:

(a) HUD application and commitment fee $____

(b) Initial service charge, if any $____ (not exceeding 2%)

(c) Title and recording expense $____ (including cost of surveys, recording fees, mortgage and stamp taxes, etc. associated with initial endorsement)

(d) HUD inspection fee $____

(e) Ground rent during construction $____ (may collect only one year's rent at initial endorsement)

(f) Third party contractor fees $____ (applies only to MAP)

Escrows and Deposits

7. The Lender has received from the Borrower a working capital deposit in the form of (cash or letter of credit) _____ in the sum of $____ which the Lender agrees to maintain and control. Funds in this deposit may be released or allocated for the purposes indicated in the attached Working Capital Escrow Deposit Agreement and for no other purpose unless the Lender obtains the prior written approval of HUD.

8. The Borrower has deposited with the Lender, or subject to the control and order of the Lender in a depository satisfactory to the Lender, the following sums required by the Commitment: (Check and complete applicable paragraphs.)

☐ Cash required, if any, over the proceeds of the Mortgage, to complete the project in the amount of $____. The Lender understands that these funds must be used before any Mortgage proceeds are advanced, except when, with the prior written approval of HUD, the funds will be disbursed on the following pro-rata basis _____.

☐ Cash required, if any, over the proceeds of the Mortgage, for costs to complete the project in the amount of $____ will be represented by a grant/loan from _____, a nongovernmental source. The Lender understands that these funds must be used before any Mortgage proceeds are advanced.

☐ The amount required, if any, over the proceeds of the Mortgage, for costs to complete the project, is $____, and will be represented by a grant/loan from _____, a governmental source.

a. This amount is in the form of _____ (cash or letter of credit). The Lender understands that these funds must be used before any Mortgage proceeds are advanced, except when, with the prior written approval of HUD, the funds will be disbursed on the following pro-rata basis _____; or

b. The Lender has collected an escrow in the amount of $____. This amount represents 10 percent of the grant/loan proceeds being provided from this source. This escrow is in the form of _____ (cash or letter of credit). The agreement providing for the advancement of grant/loan proceeds executed/to be executed among the Lender, HUD, and the governmental agency or instrumentality is attached.

☐ Escrow deposit guaranteeing payment for off-site utilities and streets in the amount of $____. This deposit is in the form of _____ (cash or letter of credit).

☐ Interest rate differential escrow in the amount of $____ which represents the dollar difference between the interest rate in effect after cut-off for cost certification and the permanent interest rate upon which the mortgage debt service is calculated. The escrow is in the form of _____ (cash or letter of credit).

☐ [For certain transactions involving a loan for a Health Care Facility insured under Section 232] The Lender shall require that the Borrower establish and maintain with the Lender, or in a depository satisfactory to the Lender, a Sinking Fund in accordance with the Regulatory Agreement executed by the Borrower (and Lessee, if applicable) and HUD for those Section 232 cases where Medicaid reimbursement is on a depreciation plus interest basis rather than a pass-through of principal and interest on the Mortgage. (Said Sinking Fund will be required in addition to the Reserve for Replacements.) The Lender agrees to administer the Sinking Fund in accordance with the attached Sinking Fund Agreement.

9. The Lender submits separately: (Check applicable paragraphs.)

☐ Off-site bond in the amount of $____.

☐ Evidence to the effect that required off-site utilities and streets will be provided by the public authorities having jurisdiction or by public utility companies serving the Project.

10. The Lender submits separately a duplicate copy of the following assurance for the completion of the project: (Check applicable paragraph.)

☐ Performance bond and payment bond of a HUD-approved Surety in the penal sum of $____ for each bond.

☐ Assurance of Completion Agreement reflecting the deposit with _____ of a fund in the amount of $____ in the form of _____ (cash or letter of credit) which fund has been deposited and is subject to the Lender's order and will be disbursed with the written approval of HUD in the manner and for the purposes provided for in said agreement.

☐ Personal undertaking in the amount of $____. It is understood that HUD reserves the right to decide the acceptability of the principals in the personal undertaking.

11. Attached is the sponsor's guarantee to meet an initial operating deficit as required by the Commitment: (if required, check and complete the applicable paragraph.)

☐ Agreement of Sponsors to Furnish Additional Funds in the amount of $____ and Bond Guaranteeing Sponsor's Performance.

☐ Escrow Agreement evidencing a (U.S. bearer bonds with a market value of at least 115 percent of the required escrow amount, cash, or letter of credit) _____ deposit in the amount of $____.

12. Attached is the sponsor's guarantee to meet the 12-month debt service reserve escrow as required by the Commitment: (Applicable only to certain Section 232 projects. If required, check and complete the applicable paragraph.)

☐ The Lender has accepted a personal note from the Borrower for $____ which the Lender will hold until final completion along with Bond Guaranteeing Sponsor's Performance. Upon final completion, the note will be converted to cash or a letter of credit. The Lender agrees that HUD will treat the Borrower's note as a cash item and reduce the insurance benefits by the amount of the Borrower's note if there is a Mortgage default and the Lender makes a claim for insurance benefits before the Borrower's note is converted to cash.

☐ An escrow deposit in the amount of $____. This deposit is in the form of _____ (cash or letter of credit).

13. The Lender submits separately the appropriate security agreement(s) executed by the Borrower (or Lessee, if appropriate, in the case of Health Care Facilities) covering all of the Personalty which, under applicable law, may be subject to a security interest under the Uniform Commercial Code (UCC), whether acquired now or in the future, and all products and cash proceeds and non-cash proceeds (UCC Collateral). The Lender will file timely appropriate Financing Statements under the UCC. The Lender agrees to file timely the appropriate Financing Statements under the UCC on behalf of HUD pursuant to HUD's rights under the Regulatory Agreement.

14. Beginning with the date on which the first payment toward amortization is required to be made by the terms of the insured Mortgage or at such later date as may be agreed to by HUD in writing, the Lender shall require a monthly deposit with the Lender or in a depository satisfactory to the Lender of one-twelfth (1/12) of the sum set forth in the Commitment constituting a Reserve for Replacements Fund, which fund will be subject to the Lender's order and from which fund withdrawals may be made only upon the receipt of HUD's written permission. For transactions involving mortgages insured under Section 232 of the National Housing Act, the Reserve for Replacement shall be bifurcated, as set forth in the Commitment and in the Regulatory Agreement for Health Care Facilities, to cover (1) the costs associated with the replacement of major moveable equipment and (2) the costs associated with major repairs to the physical structure of the Project. The use of a bifurcated fund will ensure that the monies in the Reserve for Replacement are sufficient to pay for the costs associated with not only the replacement of major moveable equipment but also for major repairs to the physical structure of the Project. Separate sub-accounts shall be maintained within the Reserve for Replacement and monies in these two accounts shall not be commingled. Lender shall ensure that amounts are withdrawn from a particular sub-account only for use consistent with that particular sub-account as approved by HUD. The amount of the monthly deposit may be increased or decreased from time to time at the direction of HUD. These funds will be deposited with the Lender by the Borrower in cash or in the form of obligations of, or guaranteed as to principal by, the United States of America. The Lender will, upon appropriate request by the Borrower, permit the conversion of the whole or a substantial part of such cash deposits into the form of obligations of, or fully guaranteed as to principal by, the United States of America. Notice of any failure to receive the required deposits will be forwarded to HUD within 60 days of the date such deposits are due.

15. In cases where a Residual Receipts Fund is required under the Regulatory Agreement, the Lender shall deposit or place in a depository satisfactory to the Lender all funds received from the Borrower after the end of each semi-annual or annual fiscal period, and will notify HUD if such funds are not received within 90 days of the end of such fiscal period. The Residual Receipts Fund will be subject to the control of the Lender and from which fund withdrawals may be made only upon the receipt of HUD's written permission except for permitted distributions pursuant to the terms of the Regulatory Agreement. These funds will be deposited with the Lender by Borrower in cash or in the form of obligations of or guaranteed as to principal by the United States of America. The Lender will, upon appropriate request by the Borrower, permit the conversion of the whole or a substantial part of such cash deposits into the form of obligations of, or fully guaranteed as to principal by, the United States of America. The Lender agrees to notify HUD in writing of any irregularity with respect to such Residual Receipts Fund immediately upon such irregularity coming to the attention of the Lender.

16. The Lender agrees to furnish HUD with a complete report of the results of any inspection of the Mortgaged Property that the Lender is required to perform under the applicable regulations or Directives of HUD.

17. The Lender certifies that if the Borrower defaults in its obligation to complete construction of the Improvements on the Mortgaged Property, the Lender has the right, transferable to HUD, to complete the Improvements as provided in the Building Loan Agreement. In the event completion of the Improvements is undertaken by either the Lender or by HUD, the undisbursed balance of the Mortgage may be advanced for this purpose and to discharge any valid liens or claims against the Mortgaged Property. Such advances will be considered as made for the account of the Borrower and will be covered by the terms of the Mortgage and the Contract of Insurance.

18. So long as the Contractor or the Borrower, or, upon default, the Contractor's surety or any other person authorized to act on behalf of or in substitution for them shall be willing and able to complete construction of the Improvements, the Lender, upon HUD's request will advance up to the undisbursed balance of the Mortgage and will authorize release of any grant or loan proceeds or other funds available under Paragraph 8 above for that purpose. The term "Contractor" as used above, means any person, corporation or other entity contracting directly with the Borrower for the

construction of all or any portion of the Improvements.

19. The Lender certifies that all insurance policies on the Project required by the terms of the insured Mortgage will have attached thereto a standard mortgagee clause making the loss payable to the Lender and the Secretary, Department of Housing and Urban Development, as their interests may appear.

20. The Lender certifies and agrees that: (Check and complete the following applicable subparagraphs)

☐ (a) The Lender has not imposed and will not impose a financing charge of any kind directly or indirectly, other than the initial service charge as set forth above.

☐ (b) In addition to the initial service charge, the Lender has collected in the form of (cash or letter of credit) _____ for the amount of $____ as a discount or financing charge for the construction loan. Also, an amount of $____ has been collected in the form of (cash or letter of credit) _____ to cover construction loan extension fees. In an attached addendum, the Lender has identified the time frames in which the extension fees must be paid.

☐ (c) The Lender intends to retain the permanent loan and has collected a permanent placement fee of $____. In addition to the initial service charge and permanent placement fee, the Lender has collected in the form of (cash or letter of credit) _____ the amount of $____ as a discount or financing charge for the permanent loan.

☐ (d) The Lender has a firm commitment from _____ to purchase the loan when fully disbursed and fully insured at a financing charge or discount of _____ percent and the Lender has collected in the form of (cash or letter of credit) _____ the amount of $____ to cover said charge or discount.

☐ (e) This project will be financed with (tax-exempt or taxable) _____ bonds. Therefore, the Lender has collected in the form of (cash or letter of credit) _____ the amount of $_____ to cover the costs of issuance. A statement is attached itemizing these costs with an explanation of the necessity of each cost.

☐ (f) Additional financing charges or discount of $____ are to be collected under the attachment hereto for the purpose shown in (b), (c), (d), (e). (Strike inapplicable letters.) The arrangement for the collection of additional financing charges or discount must follow forms and procedures prescribed by HUD.

☐ (g) A servicing fee that is included in the Mortgage rate and an administrative fee for investing the cash held in the Reserve Fund for Replacements and any other interest-bearing escrows required by HUD.

☐ (h) The Mortgage Loan to be made to the Borrower will be financed through funds being provided by a third-party investor through the issuance to the investor of construction and permanent participation certificates pursuant to a participation agreement between the Lender and the investor, with respect to which agreement the Lender has agreed to repay the investor at a stated interest rate according to a fixed payment schedule.

☐. (i) The Mortgage Loan to be made to the Borrower will be financed through funds being provided by a third-party investor through the issuance to the investor of construction and permanent fully modified, pass-through, mortgage-backed securities, guaranteed as to principal and interest by the Government National Mortgage Association.

No financing charges other than charges disclosed herein have been or will be made. Until final endorsement for insurance by HUD, all funds collected pursuant to items (c), (d), or (e) above and not paid over to the permanent lender, plus any funds returned by the permanent lender, shall be held for the account of the Borrower and shall be subject to HUD's control and direction in the event of a claim under the Contract of Insurance.

21. Except for Mortgage advances approved by HUD or notes executed pursuant to section (20)(f) above, the Lender does not have outstanding and will not make loans or advances to the Borrower, any of the sponsors, the general contractor, or the architect for any purpose connected directly or indirectly with this project without prior written approval of HUD. The Lender has not made or offered, and will not make or offer, any guarantees, pledges, reservations of sums to become due or other inducements to any entity or person to make loans or advances which the Lender would be prohibited from making under the terms of this paragraph.

Certifications

22. The Lender certifies that the Lender has not made and will not make payment of any kickback or fee or other consideration, directly or indirectly, to any person who has received payment or other consideration from any other person in connection with this Mortgage transaction, including the purchase or sale of the Mortgaged Property, except for compensation paid or to be paid, if any, for the actual performance of services and approved by HUD.

23. The Lender certifies that in any case where a letter of credit has been accepted instead of cash, (a) such unconditional and irrevocable letter of credit has been issued by (1) another banking institution; (2) the Lender, subject to receiving HUD's written permission prior to initial endorsement; (b) if demand under the letter of credit is not immediately met, the Lender will forthwith provide cash equivalent to the undrawn balance thereunder without recourse to the Borrower, any sponsor, the general contractor or the architect; (c) the Lender has not made and will not make any inducements as described in Section 21 above to procure issuance of letters of credit; and (d) the Lender has made every reasonable effort to satisfy itself that both the Borrower and the institution which issued the letter of credit are aware that demands may be made for cash under the terms of the letter of credit and that no possibility exists that Mortgage proceeds will be available to reimburse the issuing bank for such cash pay-outs.

24. For mortgages funded with the proceeds of State or local bonds, GNMA mortgage-backed securities, other bond obligations as defined by HUD, any of which contain a lock-out and/or penalty provision, the Lender agrees, in the event of a default during the term of the prepayment lock-out and/or penalty (*i.e.*, prior to the date on which prepayments may be made with a penalty of one percent or less), to:

(a) Request a three-month extension of the deadline prescribed by 24 CFR Section 207.258 for filing a notice of the Lender's intention to file an insurance claim and the Lender's election to assign the Mortgage;

(b) assist the Borrower in arranging a refinancing to cure the default and avert an insurance claim , if HUD grants the requested (or a shorter) extension of notice filing deadline;

(c) report to HUD at least monthly on any progress in arranging a refinancing;

(d) otherwise cooperate with HUD in taking reasonable steps in accordance with prudent business practices to avoid an insurance claim;

(e) require any successors or assigns to certify in writing that they agree to be bound by these conditions for the remainder of the term of the prepayment lock-out and/or penalty;

(f) after completion of the Improvements, notify HUD of the delinquency when a payment is not received by the 16th day of the month in which it is due.

25. The Lender certifies to HUD that the following are the only identities of interest, as defined by HUD in MAP Directives, between the Lender and the

Borrower, any Principal of the Borrower, the Contractor, any subcontractor, or the seller of the land:

_____

(must indicate "none" for MAP transactions).

26. The Lender certifies to HUD that no identity of interest, as defined by HUD in MAP Directives, exists between the Lender and the counsel to the Borrower.

27. The Lender certifies to HUD that all funds, escrows, and deposits specified in this Certificate and any and all other funds held in connection with the Mortgage transaction covered by this Certificate shall be funds held for or on behalf of the Borrower pursuant to the Contract of Insurance.

28. For any case involving components stored off-site, the Lender agrees to:

(a) File Financing Statements (UCC–1), in the proper jurisdiction with the proper office;

(b) Make whatever additional filings are necessary to maintain a first lien on the components until they are incorporated into the building(s);

(c) Release the Financing Statement filings as appropriate;

(d) Unconditionally certify by letter to HUD with each disbursement request that the Security Instrument(s) is (are) a "first lien" on the building components covered by the Instrument(s). This certification will be supported by an opinion from the Lender's legal counsel;

(e) In the event of default under the Mortgage, either assign the Lender's security interest to HUD or acquire title through foreclosure to the components intended for use or incorporation into the building(s) and convey title to HUD;

(f) Require a performance bond and payment bond each in an amount equal to 100 percent of the construction contract be used to satisfy the assurance of completion requirements.

29. The Lender certifies that all HUD form closing documents submitted to HUD in connection with this transaction (with the exception of the Opinion by Counsel to the Borrower and the accompanying Certification by the Borrower) conform to those documents the Lender obtained from HUD on ____ and such documents have not been changed or modified in any manner except as suitably identified and specifically approved by HUD field counsel as evidenced by the attached memorandum. It is understood that changes and modifications do not include filling in blanks, attaching exhibits or riders, deleting inapplicable provisions or making changes authorized by applicable HUD regulations and/or Directives. The Lender further certifies that all closing documents submitted to and accepted by HUD in connection with this transaction are listed in the attached memorandum.

30. The Lender agrees to notify HUD in writing immediately upon learning of any violation of the Regulatory Agreement by the Borrower, the Lessee and/or the Operator, as applicable, in certain transactions involving the lease of the Project.

31. The Lender agrees to promptly review any Borrower's request to transfer the Project and not unreasonably withhold the Lender's approval of the transfer. If HUD approves the transfer, the Lender agrees to execute a Release and Assumption Agreement or a Mortgage Modification Agreement incorporating the Regulatory Agreement in the Mortgage. It is understood that the Lender's consent to the transfer will in no way prejudice the Lender's rights under the Contract of Insurance with HUD. The Lender shall not collect any fee in connection with reviewing the transfer except the Borrower may reimburse the Lender for actual expenses incurred by the Lender in connection with reviewing the transfer.

32. The definition of any capitalized term or word used herein can be found in this Mortgagee's Certificate, the Regulatory Agreement between the Borrower and HUD, and/or the Security Instrument by the Borrower. The term "financing charge(s)," as used herein shall mean any charge, direct or indirect, for supplying the loan to or servicing the loan for the Borrower. Whenever used, the singular number shall include the plural, the plural the singular and the use of any gender shall be applicable to all genders.

Each signatory below hereby certifies that the statements and representations contained in this instrument and all supporting documentation thereto are true, accurate, and complete. This instrument has been made, presented, and delivered for the purpose of influencing an official action of HUD (acting by and through the FHA Commissioner) in insuring a multifamily rental or health care facility mortgage loan, and may be relied upon by HUD and the Commissioner as a true statement of the facts contained therein.

_____

Date

_____

Lender

_____

By

Warning

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions, including but not limited to: (i) fines and imprisonment under 18 U.S.C. 287, 1001, 1010 and 1012; (ii) civil penalties and damages under 31 U.S.C. 3729; and (iii) administrative sanctions, claims, and penalties under 24 CFR parts 24, 28 and 30.

(Exp. 00/00/00)

OMB No.

Public Reporting Burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, DC 20410–3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502–0468), Washington, DC 20503. Do not send this completed form to either of the above addresses.

Building Loan Agreement

U.S. Department of Housing Development

Office of Housing

Project #

Project Name:

THIS AGREEMENT, made the ____ day of _____ 20 ____, by and between _____, a _____ organized and existing under the laws of _____ with an office and place of business in, _____ County of _____ and State of _____ (hereinafter called the "Borrower" which shall mean "Mortgagor" as that term is used in the National Housing Act), and _____ a _____ organized and existing under the laws of _____, having an office and place of business at _____ [City] [County] of _____ and State of _____ (hereinafter called the "Lender", which shall mean "Mortgagee" as that term is used in the National Housing Act).

WHEREAS, the Borrower, as the owner in fee simple of, or the owner of the leasehold estate in the property (hereinafter called the "Property") described in Exhibit "A" attached to the Deed of Trust, Mortgage or other security instrument (hereinafter called

the "Mortgage"), which Exhibit "A" is attached hereto and incorporated herein by reference, has obtained a commitment from the Lender for a Mortgage Loan of _____ Dollars ($____.00) to aid the Borrower in the construction or rehabilitation on said property of a Project identified as Project No.____ (hereinafter in accordance with Drawings and Specifications hereinafter referred to, and

WHEREAS, the Borrower understands that the Lender has received a commitment from the U.S. Department of Housing and Urban Development (hereinafter called "HUD") for insurance of said Mortgage Loan under the provisions of the National Housing Act as amended and intends upon execution of the hereinafter mentioned Note and Mortgage to have the Note endorsed for insurance by HUD. HUD is not making the Mortgage Loan.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set out and of other valuable consideration, the receipt of which is hereby acknowledged, the undersigned agree as follows:

(1) The Lender shall make and the Borrower shall take a Mortgage Loan in the principal sum of _____ Dollars ($____.00), to be advanced as hereinafter provided, and to bear interest from the date of each advance at the rate of _____ percent (____%) per annum. The Mortgage Loan shall be evidenced by a credit instrument (hereinafter called the "Note") dated _____ 20____, shall be payable in monthly installments, and shall have a maturity date of _____, 20____. The Note shall be executed by the Lender and payable to the Lender, or order, and shall be secured by Mortgage, of even date, on the property described in the Mortgage. The Mortgage shall constitute a valid first lien on said property and the improvements to be erected thereon, and the only lien thereon except for liens for taxes and assessments not yet payable and other liens acceptable to the Lender and HUD. The Lender shall not advance any Mortgage Loan funds until the Borrower and Lender have submitted to HUD documents required by this Agreement and the HUD Commitment to Insure Advances, and have completed the initial loan closing.

(2) The Borrower shall complete on the Property, by _____ 20 ____, a Project in accordance with Drawings and Specifications filed with HUD and designated HUD Project No. ____, dated _____, last revised _____. Such Drawings and Specifications, which include General Conditions of the Contract for Construction, AIA Document A201–1997 and the Supplementary Conditions of the Contract for Construction, form HUD 92554,have been initialed by the Borrower, the Design Architect, the Architect administering the Construction Contract (hereinafter called the "Architect"), the Contractor and, if applicable, the Contractor's Surety.

(3) Changes in the Drawings and Specifications, or changes by altering or adding to the work contemplated, or orders for extra work must have the prior written approval of the Architect. In addition, any such change or order may be effected only with the prior written approval of the Lender and HUD and under such conditions as either the Lender or HUD may establish.

(4) (a) The Borrower shall make monthly applications on Form HUD No. 92403 for advances of mortgage proceeds from the Lender. Applications for advances with respect to construction items shall be for amounts equal to (i) the total value of classes of the work acceptably completed; plus (ii) the value of materials and equipment not incorporated in the work, but delivered to and suitably stored at the site; less (iii) 10 percent (holdback) and less prior advances. The "values" of both (i) and (ii) shall be computed in accordance with the amounts assigned to classes of the work in the "Contractor's and/or Mortgagor's Cost Breakdown", attached to the Construction Contract and made a part hereof. Each application shall be filed at least 15 days before the date the advance is desired, and the Borrower shall be entitled thereon only to such amount as may be approved by the Lender and HUD.

(b) Upon completion of the improvements, including all landscape requirements and off-site utilities and streets, the Borrower shall furnish to the Lender and HUD satisfactory evidence that all work requiring inspection by municipal or other governmental authorities having jurisdiction has been duly inspected and approved by such authorities and by the rating or inspection organization, bureau, association or office having jurisdiction; and that all requisite certificates of occupancy and other approvals to own and operate the Project have been issued. The balance due the Borrower hereunder shall be payable at such time after completion as HUD authorizes the release of the holdback. However, the Lender may withhold final payment until after the expiration of any period which mechanics and materialmen may have for filing liens.

(c) The Borrower agrees that funds in the amount of $____ required for the completion of the Project over and above the proceeds of the Mortgage Loan, which have been deposited with the Lender for that purpose, shall be advanced by the Lender prior to the advance of any proceeds of the Mortgage Loan. In the alternative, Borrower agrees that said funds shall be advanced by the Lender as set forth in the disbursement agreement dated _____, 20____, approved by the Lender and HUD, to accommodate the pro rata disbursement from multiple governmental funding sources or from low income tax credits [or historic tax credits] identified therein.

(d) The Borrower covenants that it will hold in trust each advance hereunder for application to the items for which such advance was requested and approved.

(e) The Borrower agrees that the Mortgage Loan shall at all times remain in balance. The Lender shall, in accordance with the provisions of this Agreement, continue to advance to the Borrower funds out of the proceeds of the Mortgage Loan upon insurance thereof by HUD, as long as the Mortgage Loan remains in balance and the Borrower is not in default hereunder or under the Note or Mortgage. The Mortgage Loan shall be deemed to be in balance only when the undistributed proceeds of the Mortgage Loan (after provision for reserves, fees, expenses and other deposits required by the Lender or HUD) equal or exceed the amount necessary (based on HUD's estimate of the cost of construction) to pay for all work completed and all materials delivered, for which payment has not been made, and the cost of completing construction of the Project in accordance with the Drawings and Specifications.

(5) The Lender shall advance to the Borrower out of the funds referred to in (4)(c) above, or out of the proceeds of the Mortgage Loan, amounts for application to the charges or items enumerated below, but only to the extent that such charges have accrued, or that the Borrower is otherwise entitled to payment on account of such items.

(a) Interest during construction	$_____
(b) Real estate taxes during construction	_____
(c) Insurance during construction	_____
(d) FHA mortgage insurance premium	_____
(e) FHA examination fee	_____
(f) Initial service charge	_____

(g) Title and recording expense ..... _____
(h) Inspection fee ..... _____
(i) Legal ..... _____
(j) Organizational and audit .... _____
(k) Permanent Loan Fee ..... _____

Total Maximum Advance (Line 45 of HUD–2283 Financial Requirements for Closing) $_____.

(6) The Borrower shall cause either this instrument, waiver of liens or the construction contract under which the improvements are to be erected to be filed in the public records, if the effect thereof will be to relieve the mortgaged property from mechanics' and materialmen's liens. Before any advance hereunder, the Lender may require the Borrower to obtain from the contractor and all subcontractors and materialmen dealing directly with the principal contractor acknowledgments of payment and releases of lien down to the date covered by the last advance, and concurrently with the final payment for the entire Project. Such acknowledgments and releases shall be in the form required by local lien laws and shall cover all work done, labor performed and materials (including equipment and fixtures) furnished for the Project.

(7) The Borrower shall, as a condition precedent to the first advance hereunder, furnish the Lender with a signed, sealed and certified, current survey of the mortgaged property and a Lender's title policy (or other evidence of title) in form, substance and amount satisfactory to the Lender and HUD. Said policy (or other title evidence) shall be extended so as to cover each and every advance of said Mortgage Loan at the time of payment thereof and shall show no mechanics' or materialmen's liens against the mortgaged property. The Borrower shall furnish duplicate originals of said survey and title policy (or title evidence) to HUD.

(8) The Borrower agrees that said Project shall be constructed strictly in accordance with all applicable ordinances and statutes, and in accordance with the requirements of all regulatory authorities, and any rating or inspection organization, bureau, association or office having jurisdiction. The Borrower further agrees that said Project shall be constructed entirely on the aforesaid property and will not encroach upon any easement or right-of-way, or the land of others; and that the buildings when erected shall be wholly within the building restriction lines however established, and will not violate applicable use or other restrictions contained in prior conveyances, zoning ordinances or regulations. The Borrower shall furnish from time to time such evidence with respect thereto as may be required by the Lender or HUD and, upon completion of construction, shall furnish a survey, signed, sealed and certified by a registered surveyor, which shows the Project to be entirely on said property and to be free from any such violations.

(9) If the Borrower at any time prior to the completion of the Project abandons the same or ceases work thereon for a period of more than 20 days, or fails to complete the erection of the Project substantially in accordance with the Drawings and Specifications, or makes changes in the Drawings and Specifications without first securing the written approval required by paragraph 3 hereof, or otherwise fails to comply with the terms hereof, any such failure shall be a default hereunder, and the Lender, at its option, may terminate this Agreement. If the Lender so elects to terminate this Agreement, it may use and apply any funds deposited with it by the Borrower, regardless of the purpose for which such funds were deposited, in such manner and for such purposes as HUD may prescribe. If the Lender elects not to terminate this Agreement, it may enter into possession of the premises and perform any and all work and labor necessary to complete the improvements substantially according to the Drawings and Specifications, and employ watchmen to protect the premises from injury. All sums so expended by the Lender shall be deemed to have been paid to the Borrower and secured by the Mortgage. For this purpose the Borrower hereby constitutes and appoints the Lender its true and lawful attorney-in-fact, with full power of substitution in the premises, to complete the Project in the name of the Borrower. The Borrower hereby empowers said attorney as follows: (a) To use any funds of the Borrower, including any balance which may be held in escrow and any funds which may remain unadvanced hereunder for the purpose of completing the Project in the manner called for by the Drawings and Specifications; (b) to make such additions, changes and corrections in the Drawings and Specifications as shall be necessary or desirable to complete the Project in substantially the manner contemplated by the Drawings and Specifications; (c) to employ such contractors, subcontractors, agents, architects and inspectors as shall be required for said purposes; (d) to pay, settle or compromise all existing bills and claims which may be liens against the mortgaged property, or as may be necessary or desirable for the completion of the Project, or for clearance of title; (e) to execute all applications and certificates in the name of the Borrower which may be required by any of the contract documents; (f) to prosecute and defend all actions or proceedings in connection with the mortgaged premises or the construction of the Project and to take such action and require such performance as it deems necessary under the accepted guaranty of completion; and (g) to do any and every act which the Borrower might do in its own behalf. It is further understood and agreed that this power of attorney, which shall be deemed to be a power coupled with an interest, cannot be revoked. The Borrower hereby assigns and quitclaims to the Lender all sums unadvanced under the Mortgage and all sums held by the Lender in escrow conditioned upon the use of said sums for the completion of the Project, such assignment to become effective only in case of a default by the Borrower.

(10) The Borrower shall provide or cause to be provided workers compensation insurance and public liability and other insurance required by applicable law or by the general conditions included in the Specifications. The Borrower further agrees to purchase and maintain fire insurance and extended coverage on the mortgaged property. All such policies shall be issued by companies approved by the Lender and shall be in form and amounts satisfactory to the Lender and HUD. Such policies shall be endorsed with standard mortgagee clauses making loss payable to the Lender or its assigns; and may be endorsed to make loss during construction payable to the Contractor, as interest may appear. The originals of such policies shall be deposited with the Lender.

(11) The Lender and its agents and HUD and its agents shall, at all times during construction, have the right of entry and free access to the Project and the right to inspect all work done, and materials, equipment, building components and fixtures furnished, installed or stored either on or off the Project property, and to inspect all books, subcontracts and records of the Borrower.

(12) The Borrower shall execute and deliver to the Lender, a security agreement and financing statements, or other similar instrument, covering all property of any kind whatsoever purchased with mortgage proceeds and concerning which there may be any doubt as to such property's being

subject to the lien of the Mortgage under the laws of the state in which the Project is situated.

(13) The Borrower shall furnish to the Lender assurance of completion of the Project in the form specified by the Secretary. Such assurance of completion shall run to the Lender as obligee and shall contain a provision granting to the Lender the authority to assign all rights thereunder to HUD.

(14) (a) The Borrower understands that the wages to be paid laborers and mechanics employed in the construction of the Project are required by the provisions of Section 212(a) of the National Housing Act, as amended, to be not less than the wages prevailing in the locality in which the work will be performed for corresponding classes of laborers and mechanics employed on construction of a similar character, as determined by the Secretary of Labor pursuant to the Davis-Bacon Act and as published in the applicable prevailing wage determination. The Borrower hereby states that it has read the determination by the Secretary of Labor and is fully familiar with the same.

(b) The Borrower shall, as a condition precedent to any advance hereunder, submit to the Lender (i) with each application for advance prior to the final application, certifications, in form approved by HUD, that all laborers and mechanics employed in the construction of the Project whose work is covered by that or any previous application and who have been paid in whole or in part on account of said employment, have been paid at rates not less those contained in the applicable prevailing wage determination; and (ii) with the final application for advance, certifications in form satisfactory to HUD, that the Project has been fully constructed in accordance with the provisions of this Agreement and that all laborers and mechanics employed in the construction of the Project have been paid not less than the said prevailing wage rates. The applicable prevailing wage determination shall be construed to include every amendment to or modification of the determination which may be published prior to the beginning of construction or date the Mortgage is initially endorsed for insurance, whichever occurs first; provided, that if construction has not begun within 90 days after initial endorsement, the applicable prevailing determination shall include any modification of the determination which may be published prior to the beginning of construction.

(c) The Borrower agrees that should any advances hereunder be ineligible for insurance under the National Housing Act by reason of (i) the nonpayment of the said prevailing wage rates, or (ii) violation of any of the applicable labor standards provisions of the Regulations of the Secretary of Labor, the Lender may withhold from the Borrower all payments or advances payable to the Borrower hereunder until the Borrower establishes to the satisfaction of HUD that all laborers and mechanics or other persons employed in the construction of the Project have been paid said prevailing wage rates and that such violation of the said Labor Standards provisions no longer exists. The written statement of any officer of HUD or authorized agent of HUD declining to insure any advance of funds hereunder by reason of such nonpayment or violation shall be deemed conclusive proof that such advances are ineligible for mortgage insurance.

(d) In accordance with Article 1 of the Supplementary Conditions of the Contract for Construction, the Borrower shall insert the labor standards provisions thereof in any contract made for the construction of the Project, or any part thereof, and shall require the Contractor to insert similar provisions in each subcontract relating to the construction of the Project.

(15) The Lender and the Borrower agree that the Mortgage Loan shall be reduced by any amount required by the Agreement and Certification (form HUD No. 93305) between the parties hereto and HUD, which Agreement and Certification is incorporated herein by reference to the same extent as if set forth herein at length.

(16) The Borrower shall furnish such records, papers and documents relating to the Project as the Lender or HUD may reasonably require from time to time.

(17) The Borrower shall not transfer, assign or pledge any right or interest in, or title to, any funds deposited by the Borrower with the Lender, or reserved by the Lender for the Borrower, without the prior written approval of the Lender and HUD.

(18) As used in this instrument, the term "Lender" shall be deemed to include any person to whom the Note and Mortgage referred to above shall be assigned with the knowledge and consent of HUD. This instrument shall be binding upon the parties hereto and their respective successors and assigns.

(19) The Borrower and each of its principals, _____, shall be personally liable to the Lender and or HUD for any advances that are not applied or used in accordance with this Agreement.

(20) HUD is not a party to this Agreement and has no obligation to the Borrower or Lender pursuant to this Agreement. HUD, pursuant to the mortgage insurance contract, has reserved in this Agreement the right to approve or disapprove certain actions to protect the mortgage insurance fund.

[Borrower's Name]
[seal & witness signature if required by law or practice]

By: _____
[title & capacity]

[Lender's Name]
[seal & witness signature if required by law or practice]

By: _____
[title & capacity]

Attachment: Exhibit A

Supplement to Building Loan Agreement (Add to Building Loan Agreement When Borrower Acts as Its Own General Contractor)

U.S. Department of Housing, and Urban Development, Office of Housing

OMB Approval No. 0000–0000 (Exp. 00/00/00)

Public Reporting Burden for this collection of information is estimated to average 0.75 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, DC 20410–3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502–0468), Washington, DC 20503. Do not send this completed form to either of the above addresses.

This Supplement To Building Loan Agreement shall be attached to and incorporated into that certain Building Loan Agreement, form HUD 92441, for HUD Project No. _____.

(21) In consideration of HUD consenting to authorize Borrower to act as its own General Contractor, the parties agree to the following:

(a) All references herein (and in any other documents except the Payment Bond, relating to the construction of the project) to "Contractor" or "General Contractor" shall mean the Borrower identified above. All references to subcontractors shall mean all persons who contract with the Borrower or others in connection with the construction of the project.

(b) All references to "Contract" or "Construction Contract" shall be interpreted to refer to this Building Loan

Agreement and the Drawings and Specifications identified above, which Specifications include the General Conditions of the Contract for Construction (AIA Document A201 (1997), and the Supplementary Conditions of the Contract for Construction (HUD Form–92554). The provisions of this Supplement to Building Loan Agreement and the HUD Supplementary Conditions take precedence over any inconsistent provisions in the AIA A201 General Conditions.

(c) The Borrower shall execute all agreements and certifications required by HUD to be executed by the General Contractor.

(d) The work, which is to be done in accordance with the Drawings and Specifications, shall be commenced within 30 days from the date of this Agreement.

(e) The borrower shall, at all times during construction, keep posted in a conspicuous place on the project site a legible copy of the applicable wage determination published by the Secretary of Labor with respect to this project. In addition, the Borrower shall incorporate into each subcontract a copy of the Supplementary Conditions of the Contract for Construction (HUD–92554) and the applicable wage determination. Any such contract (i) shall include the agreement of the subcontractor to pay no less than the wages contained in the applicable wage determination; (ii) shall authorize periodic inspections by the Lender and HUD of the subcontractor's books, payroll, and accounts with respect to the contract so that it may be determined whether or not prevailing wages are being paid by such contractor, and (iii) shall require that all tiers of subcontractors subscribe to the same provisions with respect to work to be performed on the project.

(f) Upon request the Borrower shall disclose to the Lender and HUD the names of all persons with whom the Borrower contracted or intends to contract or subsequently contracts with respect to work to be performed or materials to be furnished for construction of the project.

(g) The Borrower shall give all required notices and shall comply with all applicable codes, laws, ordinances, rules and regulations, protective covenants, and with the current regulations of the National Board of Fire Underwriters, wherever applicable. The Borrower shall comply with provisions of the "Manual of Accident Prevention in Construction" of the Association of General Contractors of America. The Borrower shall immediately notify the Lender and HUD of the delivery of all permits, licenses, certificates of inspection, certificates of occupancy, and any other certificates and/or instruments required by law, regardless of to whom issued, and shall display same to the Lender or HUD upon request.

(h) HUD and the Lender may inspect work done, materials, equipment and fixtures furnished, installed or stored in and around the project. The Borrower shall furnish an enclosed working space acceptable to the Lender and/or HUD as to location, size, accommodations and furnishings.

(i) HUD shall have the right to interpret the Contract Documents and determine compliance therewith.

(j) The Borrower shall correct any defects due to faulty materials or workmanship which appear within a period of one year from the date of Final Completion. For the purpose of this subparagraph (j), the date of Final Completion shall be the date of the final HUD Representative's Trip Report, provided that the trip report is subsequently endorsed as required by HUD. Final Completion includes all construction requirements, including but not limited to completion of all punch list items, submission of the executed HUD Form 92485, Permission to Occupy—Property Mortgages, As-Built Survey and Surveyor's Report, As-Built Plans and Specifications, warranties, and execution and acceptance of all change orders.

Date _____

Borrower _____

By: _____

OMB No. (Exp. 00/00/00)

Public Reporting Burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, DC 20410–3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502–0468), Washington, DC 20503. Do not send this completed form to either of the above addresses.

Construction Contract

Project Name: _____

HUD Project No.: _____

U.S. Department of Housing and Urban Development

Cost Plus Contract _____

Lump Sum Contract _____

THIS AGREEMENT, made this ____ day of ____, 20, __ between _____ (hereinafter called the "Contractor") and _____ (hereinafter called the "Owner").

The Contractor and the Owner agree as follows:

Article 1: Scope of Contract

A. The Contract between the parties is set forth in the "Contract Documents," which consist of this Agreement and the other documents identified in Article 2 below. Together, these form the entire Contract between the Owner and Contractor, and by this reference these Contract Documents are fully incorporated herein. Any previously existing contract or understanding concerning the work contemplated by the Contract Documents is hereby revoked.

B. Except to the extent specifically indicated in the Contract Documents to be the responsibility of others, the Contractor shall furnish all of the materials and perform all of the work, within the property lines, shown on, and in accordance with, the Drawings and Specifications.

Article 2: Identification of Contract Documents

A. The Contract Documents are identified as follows:

(1) This Agreement. If designated above as Cost Plus Contract, Articles 4 and 13 are applicable to this Agreement. If designated above as Lump Sum Contract, Articles 4A and 13A are applicable to this Agreement.

(2) The General Conditions set forth in the General Conditions of the Contract for Construction, AIA Document A201–1997, expressly excepting those provisions mandating binding arbitration. The provisions of this Agreement take precedence over any inconsistent provisions in the General Conditions.

(3) The Supplementary Conditions of the Contract for Construction, Form HUD–92554.

(4) The HUD Special Conditions are set forth in the Project Manual dated _____, 20, ____ identified as follows:

Document	Title	Pages

(5) The Specifications are those contained in the Project Manual dated _____, as in subparagraph 4, and are as follows:

Section	Title	Pages

(6) The Drawings are as follows, and are dated as shown below:

Number Title Pages Date

(7) The Contractor's and/or Mortgagor's Cost Breakdown, Form HUD–2328, approved by HUD on the date of _____, 20 __, attached hereto as Exhibit ____.

(8) If this is designated a Cost Plus Contract and there is no Identity of Interest between the Contractor and the Owner, the Incentive Payment Computation form, page 2 of Form HUD–92443, and attached hereto as Exhibit ____.

(9) The Prevailing Wage Determination No. _____, dated _____, 20 __.

(10) Completed and fully-executed Appendix 8 of Handbook 4430.1, identifying Identities of Interest among Owner, Contractor, Subcontractors, Architect.

B. The Drawings and the Specifications were prepared by _____ (hereinafter called the "Design Architect"). The architect administering the Construction Contract work is _____ (hereinafter called the "Supervisory Architect.").

C. A master set of the Drawings and of the Project Manual, identified by the signatures of the Owner, the Contractor, the Design Architect, the Supervisory Architect, and the Contractor's Surety or Guarantor, have been placed on file with HUD, and shall govern in all matters that arise with respect to the Contract Documents.

D. Changes in the Drawings, Specifications, or any terms of the Contract Documents, including orders for extra work, changes by altering or adding to the work, orders which will change the design concept, or orders extending the Final Completion Deadline (defined in Article 3) may be effected only with the prior written approval of the Owner's Lender (more particularly identified in paragraph D of Article 11 below, and hereinafter referred to as the "Lender") and HUD, and under such conditions as either the Lender or HUD may establish.

Article 3: Time

A. The Contractor shall commence the work to be performed under this Contract within _____ days of this Agreement and shall bring the work to Final Completion by _____, 20 __ (hereinafter called the "Final Completion Deadline").

B. The Date of Final Completion shall be the date of the final HUD Representative's Trip Report, provided that the trip report is subsequently endorsed as required by HUD. Final Completion includes all construction requirements, including but not limited to completion of all punch list items, executed HUD Form 92485, Permission to Occupy—Property Mortgages, As-Built Survey and Surveyor's Report, As-Built Plans and Specifications, warranties, and execution and acceptance of all change orders.

C. The Final Completion Deadline may be extended in accordance with the terms of the said AIA General Conditions only with the prior written approval of HUD.

D. The Contractor shall correct any defects due to faulty materials or workmanship which appear within one year from the Date of Final Completion.

E. If the work is not brought to Final Completion in accordance with the Drawings and Specifications, including any authorized changes, by the Final Completion Deadline, or by such date to which the Final Completion Deadline may be mutually extended by approved change order, the maximum sum stated in Article 4 or 4A below shall be reduced by $____, as liquidated damages, for each day of delay until the actual Date of Final Completion. When the Owner submits to HUD its Cost Certification, the actual cost of interest, taxes, insurance, mortgage insurance premiums, and construction and permanent loan extension fees, as approved by HUD, for the period from the Final Completion Deadline through the Date of Final Completion, shall be determined. The lesser of the liquidated or actual damages shall be applied. The applicable amount shall be reduced by the project's net operating income, as determined by HUD, for the delay period.

F. The parties have completed the appropriate blank spaces in Articles 4 or 4A below with respect to "Incentive Payment," providing for the payment of an additional sum to the Contractor as an incentive for completing the project earlier than the Final Completion Deadline, or by such date to which the Final Completion Deadline may be extended by approved change order. If the work is brought to Final Completion before the Final Completion Deadline, the contract sums stated in Articles 4 and 4A below shall be increased, as indicated, by an incentive payment calculated in accordance with HUD requirements. In cases requiring cost certification by the Contractor, the Contractor will not be entitled to any incentive payment resulting from early completion if HUD determines that the Contractor's cost certification is fraudulent or materially misrepresents the Contractor's Actual Cost of Construction.

Article 4: Contract Sum—Cost Plus Contract

A. Subject to the provisions hereinafter set out, the Owner shall pay to the Contractor for the performance of this Contract the following items in cash:

(1) The Actual Cost of Construction as defined in Article 13 below; plus

(2) Builder's Profit of $_____.

In no event, however, shall the total cash payable pursuant to this paragraph A exceed $_____.

B. In addition to any cash fee provided for in paragraph A, the Owner shall pay to the Contractor by means other than cash, the following:

(1) A promissory note in the form prescribed by HUD in the amount of $_____. (2) _____

C. If, upon completion, the Contractor shall have received cash payments in excess of (a) the Actual Cost of Construction, plus (b) the Builder's Profit, plus any additional amount to be paid under the provisions of paragraph B, all such excess shall be refunded to the Owner.

D. Incentive Payment, where there is no Identity of Interest between Owner and Contractor:

(1) If there is no Identity of Interest between the Owner and the Contractor and the work is completed prior to the Final Completion Deadline, the Owner shall make an incentive payment to the Contractor. The amount of the payment shall be determined according to Exhibit __, attached hereto, consisting of page 2 of Form HUD–92443, entitled Incentive Payment Computation. Step 3(b) thereof contains a blank that is to be filled in at the time this Construction Contract is executed.

(2) If, upon completion, the Contractor shall have received cash payments in excess of (a) the Actual Cost of Construction, plus (b) the Builder's Profit, plus any additional amount to be paid under the provisions of paragraph B, plus the incentive payment under the provisions of paragraph 1 above, all such excess shall be refunded to the owner.

(3) No incentive payment will be allowed on savings in costs disallowed by HUD or if the Contractor's cost certification is found by HUD to be either fraudulent or to materially misrepresent the Actual Cost of Construction.

E. Incentive Payment, where there is an Identity of Interest between Owner and Contractor:

(1) If there is any Identity of Interest between the Owner and the Contractor, the cash upset figure set forth at the end of paragraph A, immediately above, is

hereby increased by the amount by which $_____ (the estimated sum of mortgage interest, taxes, and property insurance and mortgage insurance premiums applicable to the construction period for this project) exceeds the mortgagor's certified actual cost for these items through the Date of Final Completion, as approved by HUD, provided that construction is completed prior to the Final Completion Deadline, as amended by approved change order, and, further, that in no event shall the total cash payable exceed the actual cost of construction as approved by HUD.

(2) If the aggregate interest rate during the construction period is determined at the time of cost certification to be less than that upon which the mortgage note was endorsed, the estimated amount for interest, line 53 of form HUD–92264, shall be adjusted accordingly and the dollar amount set forth in paragraph E(1) shall be reduced.

Article 4A: Contract Sum—Lump Sum Contract

A. The Owner shall pay the Contractor for the performance of the contract, hereinafter provided, the sum of $_____ (_____and ___ ___/100 dollars).

B. Incentive Payment: If the work is completed prior to the Final Completion Deadline, the Owner shall pay to the Contractor, in addition to the contract sum stated in paragraph A, an amount equal to __% (not to exceed 50%) of the amount by which the sum of the Owner's certified cost of interest, real estate taxes, insurance premiums and Mortgage Insurance premium during construction, as approved by HUD through the Date of Final Completion, is exceeded by HUD's estimates of these same items, which estimate is $____. (Insert that portion of the sum of interest, taxes, insurance, and Mortgage Insurance premium that appears in Section G of Form HUD–92264 attributable to the construction period. If there has been a change in the interest rate charged for the construction period, the dollar amount included in Section G of HUD–92264 must be adjusted. The adjusted amount must be reflected in the savings computation). No incentive payment will be allowed on savings in costs disallowed by HUD or if the Contractor's cost certification is found by HUD to be either fraudulent or to materially misrepresent the Actual Cost of Construction.

Article 5: Requisition and Payment Procedures

A. Each month after the commencement of work hereunder, the Contractor shall make a monthly request on Form HUD–92448 for payment by the Owner for work done during the preceding month. Each request for payment shall be filed at least 15 days before the date payment is desired. Subject to the approval of the Lender and HUD, the Contractor shall be entitled to payment thereon in an amount equal to (1) the total value of classes of the work acceptably completed; plus (2) the value of materials and equipment not incorporated in the work, but delivered to and suitably stored at the site; plus (3) the value of components stored off-site in compliance with applicable HUD requirements; less (4) 10 percent holdback and less prior payments. The "values" of (1), (2) and (3) shall be computed in accordance with the amounts assigned to classes of work in the "Contractor's and/or Mortgagor's Cost Breakdown," attached hereto as Exhibit "A".

B. With its final application for payment by the Owner, the Contractor shall disclose, on a form prescribed by HUD, all unpaid obligations contracted in connection with the work performed under this Contract. The Contractor agrees that within 15 days following receipt of final payment, it will pay such obligations in cash and furnish satisfactory evidence of such payment to the Owner.

C. The balance due the Contractor hereunder shall be payable upon the expiration of 30 days after the work hereunder is fully completed, provided the following have occurred: (1) All work hereunder requiring inspection by municipal or other governmental authorities having jurisdiction has been inspected and approved by such authorities and by the rating or inspection organization, bureau, association or office having jurisdiction; (2) All certificates of occupancy, or other approvals, with respect to all units of the project have been issued by State or local governmental authorities having jurisdiction; and (3) Permission(s) to Occupy (Form HUD–92485) for all units of the project have been issued by HUD; (4) all executed final advance documents required by HUD have been submitted.

Article 6: Receipts, Releases of Liens & Payments for Materials & Equipment

A. The Contractor agrees that within 15 days following receipt of each monthly payment, it will pay in full and in cash all obligations for work done and materials, equipment and fixtures furnished through the date covered by such monthly payment. The Contractor may withhold retainage from the payment due each subcontractor, corresponding to, but not exceeding, the 10 percent holdback specified in item (4) of Article 5, paragraph A.

B. The Owner may require the Contractor to attach to each request for payment its acknowledgment of payment and all subcontractors' and material suppliers' acknowledgments of payment for work done and materials, equipment and fixtures furnished through the date covered by the previous payment.

C. The Contractor agrees that no materials or equipment required by the Specifications will be purchased under a conditional sale contract or with the use of any security agreement or other vendor's title or lien retention instrument.

D. Concurrently with the final payment, the Contractor shall execute a waiver or release of lien for all work performed and materials furnished hereunder, and the Owner may require the Contractor to obtain similar waivers or releases from all subcontractors and material suppliers.

Article 7: Obligations of Contractor

A. The Contractor shall furnish, at its own expense, all building and other permits, licenses, tools, equipment and temporary structures necessary for the construction of the project. The Contractor shall give all required notices and shall comply with all applicable codes, laws, ordinances, rules and regulations, and protective covenants, and with the current regulations of the National Board of Fire Underwriters, wherever applicable. The Contractor shall comply with the provisions of the Occupational Safety and Health Act of 1970. The Contractor shall immediately notify the Owner, the Lender and HUD of the delivery of all permits, licenses, certificates of inspection, certificates of occupancy, and any other such certificates and instruments required by law, regardless of to whom issued, and shall cause them to be displayed to the Owner, the Lender and HUD upon request.

B. If the Contractor observes that the Drawings and Specifications are at variance with any applicable codes, laws, ordinances, rules or regulations, or protective covenants, it shall promptly notify the Supervisory Architect in writing, and any necessary changes shall be made as provided in this Contract for changes in the Drawings and Specifications. If the Contractor performs any work knowing it to be contrary to such codes, laws, ordinances, rules or regulations, or protective covenants, without giving such notice to the Supervisory

Architect, it shall bear all costs arising therefrom.

C. Upon completion of construction, the Contractor shall furnish to the Owner a topographic land survey map showing the location on the site of all improvements constructed thereon, and showing the location of all water, sewer, gas and electric lines and mains, and of all existing utility easements. Such survey map shall be prepared by a licensed surveyor who shall certify that the work is installed and erected entirely upon the land covered by the mortgage and within any building restriction lines on said land, and does not overhang or otherwise encroach upon any easement or right-of-way of others. Such survey shall be accompanied by a Surveyor's Report in the form required by HUD. In addition, the Contractor shall furnish additional surveys when required by the Owner for any improvements, including structures and utilities, not heretofore located on a survey. The Contractor shall furnish copies of such survey required hereunder for the Lender and HUD. The Contractor shall provide progress survey maps from time to time that show the improvements to be entirely within the property and set-back boundaries, and not encroaching upon any easements, as part of applications for payment. The Contractor shall provide updated final survey maps and Reports for Final Closing, in accordance with HUD requirements, including but not limited to Federal regulations, handbooks, and relevant HUD administrative guidance.

D. The Contractor shall assume full responsibility for the maintenance of all landscaping which may be required by the Drawings and Specifications until such time as both parties to this Contract shall receive written notice from HUD that such landscaping has been finally completed. The Owner hereby agrees to make available to the Contractor, for such purpose, without cost to the latter, such facilities as water, hose and sprinkler.

E. The Contractor shall establish an escrow in an amount satisfactory to the Lender and HUD for any work items that are incomplete at the time of Final Closing.

Article 8: Assurance of Completion

The Contractor shall furnish to the Owner assurance of completion of the work in the form of (specify) _____. Such assurance of completion shall run to the Owner and the Lender as obligees and shall contain a provision whereby the surety agrees that any claim or right of action that either the Owner or the Lender might have thereunder may be assigned to HUD.

Article 9: Waiver of Lien or Claim

A. The Contractor shall not file a mechanic's or materialman's lien or maintain any claim against the Owner's real estate or improvements for or on account of any work done, labor performed or materials furnished under this Contract, and shall include in each subcontract a clause which shall impose this requirement on the subcontractor.

B. In jurisdictions where permitted by law, the Owner may require the Contractor to execute a Waiver of Liens that shall be recorded prior to the commencement of construction. The Contractor for itself, subcontractors, suppliers, materialmen, and all persons acting through or under it, shall agree not to file or maintain mechanics' lien or claim against the property described herein, on account of work done, labor performed or materials provided by them.

Article 10: Right of Entry and Interpretation of Contract Documents

A. At all times during construction, HUD, the Lender, and their agents or assigns shall have the right of entry and free access to the project and the right to inspect all work done and materials, equipment and fixtures furnished, installed or stored in and about the project. For such purpose, the Contractor shall furnish such enclosed working space as the Lender or HUD may require and find acceptable as to location, size, accommodations and furnishings.

B. HUD shall have the right to interpret the Contract Documents and to determine compliance therewith.

Article 11: Assignments, Subcontracts and Termination

A. This Contract shall not be assigned by either party without the prior written consent of the other party, the Lender and HUD, except that the Owner may assign the Contract, or any rights hereunder, to the Lender or HUD.

B. The Contractor shall not subcontract all of the work to be performed hereunder without the prior written consent of the Owner, the Lender and HUD.

C. Upon request by the Owner, the Lender or HUD, the Contractor shall disclose the names of all persons with whom it has contracted or will contract with respect to work to be done and materials and equipment to be furnished hereunder.

D. The Contractor understands that the work under this contract is to be financed by a building loan to be secured by a mortgage and insured by HUD, and that the terms of said loan are set forth in a Building Loan Agreement between the Owner as Borrower and _____ as Lender.

E. The Contractor further understands that said Building Loan Agreement provides that, in the event of the failure of the Owner to perform its obligations to the Lender thereunder, the Lender may, as attorney-in-fact for the Owner, undertake the completion of the project in accordance with this Contract. In the event the Lender elects not to undertake such completion, the Contractor's obligations under this contract shall terminate.

Article 12: Roles of HUD and Lender

HUD is the insurer of the Lender's loan made to finance the construction identified herein, pursuant to the Building Loan Agreement referenced above in Article 11. Nothing provided herein, no action or inaction of the parties to this contract, or actions or inaction by any third parties, shall impute to HUD or the Lender status as a party to this Agreement.

Article 13: Certification of Actual Cost—Cost Plus Contract

A. The "Actual Cost of Construction" shall include all items of cost and expense incurred by the Contractor in the performance of this Contract and shall include an allowance for general overhead in the amount set forth in the Contractor's and/or Mortgagor's Cost Breakdown. Allowable items of cost and expense incurred by the Contractor in the performance of this Contract shall include costs and expenses of labor, materials for construction, equipment and fixtures, field engineering, sales taxes, workmen's compensation insurance, social security, public liability insurance, general requirements and all other expenses directly connected with construction. The value of any kickbacks, rebates or discounts received or receivable in connection with the construction of the project shall be subtracted from all items of cost and expense. Any cost or expense attributable to maintaining the Contractor's working capital is not to be included within the "Actual Cost of Construction."

B. The Contractor shall keep accurate records of account of the said Actual Cost of Construction, and shall, upon demand, make such records and invoices, receipts, subcontracts and other information pertaining to the construction of the project available for inspection by the Owner, Lender and HUD.

C. With its final application for payment, the Contractor shall furnish to the Owner a completed "Contractor's Certificate of Actual Cost," which shall be accompanied and supported by an independent public accountant's certificate as to actual cost in form acceptable to HUD.

D. The Contractor shall include in all subcontracts, equipment leases and purchase orders a provision requiring the subcontractor, equipment lessor or supplier to certify its costs incurred in connection with the project, in the event HUD determines there is an Identity of Interest between either the Owner or the Contractor and any such subcontractor, equipment lessor or supplier.

Article 13A: Cost Certification—Lump Sum Contract

In the event HUD determines that there is an Identity of Interest between the Contractor and the Owner, the Contractor shall certify, on a form prescribed by HUD, its cost incurred in the performance of the work under this contract.

Article 14: Designation of Representatives

A. The Owner hereby designates _____ as its representative for all communications involving work performed pursuant to this Agreement.

B. The Contractor hereby designates _____ as its representative for all communications involving work to be performed pursuant to this Agreement.

Article 15: Headings and Titles

Any heading, section title, paragraph or part of this Agreement is intended for convenience only, and is not intended, and shall not be construed, to enlarge, restrict, limit or effect in any way the construction, meaning, or application of the provisions thereunder, or under any other heading or title.

Article 16: Severability

The invalidity of any provision of this Contract shall not affect the validity of any other provision, and all other provisions shall remain in full force and effect.

IN WITNESS WHEREOF, the parties to these presents have executed this contract in six (6) counterparts, each of which shall be deemed an original, as of the year and day first above mentioned.

(Seal) Attest: Owner

(Seal) Attest: Contractor

Note: If Contractor or Owner is a corporation, Secretary should attest.

OMB No. (Exp. 00/00/00)

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SUPPLEMENTARY CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

U.S. Department of Housing and Urban development

Article 1: Labor Standards

A. *Applicability.* The Project or Program to which the construction work covered by this contract pertains is being assisted or insured by the United States of America, and the following Federal Labor Standards Provisions are included in this Contract or related instrument pursuant to the provisions applicable to such Federal assistance or insurance.

B. *Minimum Wages.* Pursuant to section 212 of the National Housing Act, 12 U.S.C. 1715c, the minimum wage provisions contained in this paragraph B do not apply to those projects with mortgages insured under section 221(h)(1) designed for less than 9 families and they do not apply to those projects with mortgages insured under either section 220 or 233 designed for less than 12 families.

1. (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project) will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii)) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The

Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215–0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215–0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs B.1.(ii)(b) or (c) of this Article, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215–0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. Payrolls, records, and certifications.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1 (b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1 (b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215–0140 and 1215–0017.)

(ii)(a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH–347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029–005–00014–1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215–0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR 5.5(a)(3)(i) and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph B.3.(ii)(b) of this Article.

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph B.3.(i) of this Article available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by such Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by such Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman's hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under 29 CFR part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

5. Compliance with Copeland Act Requirements. The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses set forth in subparagraphs 1 through 10 of this paragraph B and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage determination, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all contract clauses referenced in this subparagraph.

7. Contract termination and debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor or a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of Eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of * * * influencing in any way the action of such Administration * * * makes, utters or publishes any statement, knowing the same to be false * * * shall be fined not more than $5,000 or imprisoned not more than two years, or both."

C. *Contract Work Hours and Safety Standards Act.* 1. Applicability and Definitions. This paragraph C of Article 1 is applicable only if a direct form of federal assistance is involved, such as Section 8, Section 202/811 Capital Advance, grants etc., and is applicable only where the prime contract is in an amount greater than $100,000. As used in this paragraph C, the terms "laborers" and "mechanics" include watchmen and guards.

2. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

3. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the immediately preceding subparagraph C.2, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of such subparagraph, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in such subparagraph.

4. Withholding for unpaid wages and liquidated damages. HUD or its designee shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from any moneys payable on account of work performed by the contractor or subcontractor under any such contract, or under any other Federal contract with the same prime contractor, or under any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph 3 of this paragraph C.

5. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraphs 1 through 5 of this paragraph C and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in such subparagraphs 1 through 5.

D. *Section 242 and Title XI Overtime Requirements.* 1. Applicability. This paragraph D of Article 1 is applicable only to projects with mortgages insured or to be insured under Section 242 or Title XI of the National Housing Act.

2. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of eight hours in any calendar day or forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or forty hours in such workweek, as the case may be.

3. Violation; liability for unpaid wages. In the event of any violation of the immediately preceding subparagraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages.

4. Withholding for unpaid wages and liquidated damages. HUD or its designee shall withhold or cause to be withheld from any moneys payable on account of work performed by the contractor or subcontractor under any such contract, or under any other contract subject to the provisions contained in this paragraph D which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages as provided in the clause set forth in subparagraph 3 of this paragraph.

5. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraphs 2 through 5 of this paragraph D and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in such subparagraphs 2 through 5.

E. Certification. For projects with mortgages insured under the National Housing Act that are subject to paragraph B of this Article 1, the Contractor is required to execute the

Contractor's Prevailing Wage Certificate on page 2 of form HUD–92448 as a condition precedent to insurance by HUD of that certain mortgage loan, or an advance thereof, made or to be made by the Lender in connection with the construction of the project.

Article 2: Equal Employment Opportunity

A. Applicability. This Article 2 applies to any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee.

B. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, disability or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment notices to be provided setting forth the provisions of this nondiscrimination clause.

C. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, disability, or national origin.

D. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided advising the said labor union or workers representatives of the Contractor's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

E. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965 and of the rules, regulations, and relevant orders of the Secretary of Labor.

F. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

G. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulations or order of the Secretary of Labor, or as otherwise provided by law.

H. The Contractor will include the provisions of paragraphs A through H in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary of Housing and Urban Development or the Secretary of Labor, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Article 3: Equal Opportunity for Businesses and Lower Income Persons Located Within the Project Area

A. This Article 3 is applicable to projects covered by Section 3, as defined in 24 CFR part 135.

B. The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the unit of local government or the metropolitan area (or non-metropolitan county) as determined by the Secretary of Housing and Urban Development in which the project is located and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the same metropolitan area (or non-metropolitan county) as the project.

Article 4: Health and Safety

A. This Article 4 is applicable only where the prime contract is in an amount greater than $100,000.

B. No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

C. The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 CFR Part 1926, and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3701 *et seq.*

D. The Contractor shall include the provisions of this Article 4 in every subcontract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

OMB No. (Exp. 00/00/00)

Public Reporting Burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, DC 20410–3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502–0468), Washington, DC 20503. Do not send this completed form to either of the above addresses.

Department of Housing and Urban Development, Office of Housing

Guide for Opinion of Borrower's Counsel {For use in HUD Insured Multifamily and Health Care Transactions}

{To Be on Firm Letterhead}
{Insert Date of Endorsement}

Re: Project Name _____

FHA Project No. _____

Location _____

Borrower _____

[LENDER]
[ADDRESS]

[LENDER'S ATTORNEY]
[ADDRESS]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
{INSERT APPROPRIATE HUD ADDRESS}

Ladies and Gentlemen: We are [I am] [general/special] counsel to ____ {INSERT NAME OF BORROWER} (the "Borrower"), a ____, {INSERT TYPE OF ENTITY} organized under the laws of the State of ____ {INSERT STATE} (the "Organizational Jurisdiction), in connection with a mortgage loan (the "Loan") in the [original/increased] amount of _____ Dollars ($_____) from _____ {INSERT NAME AND TYPE OF LENDER} (the "Lender") to the Borrower. The proceeds of the Loan will be used to [construct/rehabilitate/purchase/refinance] that certain [multifamily housing/hospital/extended care facility/nursing home/board and care/assisted living facility] project (the "Project"), commonly known as _____ and located in _____ {INSERT COUNTY AND STATE} (said State to be referred to hereinafter as the "Property Jurisdiction") on the property described in Exhibit B {ATTACH LEGAL DESCRIPTION} (together with all improvements and fixtures thereon) (the "Property"). The Loan is being insured by the Federal Housing Administration (FHA), an organizational unit of the United States Department of Housing and Urban Development ("HUD"), pursuant to a commitment for insurance [of advances OR upon completion OR for refinancing] issued to Lender by _____, Agent of the Federal Housing Commissioner, dated _____ [as amended by that certain letter from _____ to _____, dated _____] ("FHA Commitment"). The Loan is being funded from _____ {DESCRIBE FINANCING SOURCE, *e.g.*, tax-exempt bonds/mortgage backed securities guaranteed by GNMA/ participation certificates, etc.} The Borrower has requested that we [I] deliver this opinion and has consented to reliance by Lender's counsel in rendering its opinion to Lender and to reliance by Lender and HUD in making and insuring, respectively, the Loan and has waived any privity between Borrower and us [me] in order to permit said reliance by Lender, counsel to Lender and HUD. We [I] consent to reliance on this opinion by Lender, counsel to Lender, and HUD.

In our [my] capacity as [general/special] counsel to the Borrower, we [I] have prepared or reviewed the following:

A. The [{DESCRIBE ORGANIZATIONAL DOCUMENTS, *e.g.* for corporations: State certified copies of the articles of incorporation, the by-laws, the borrowing resolution, the incumbency certificate and the good standing certificate(s), fictitious Name Registration, Foreign Corporation Registration; for partnerships: certified copies of the partnership agreement and any amendments thereto, the certificate of limited partnership, and any amendments thereto, the good standing certificate (or its equivalent) if provided in the Organizational Jurisdiction, etc.}] of the Borrower (collectively, the "Organizational Documents");

B. The FHA Commitment [extensions and assignment(s) thereof, if any];

C. The Commitment issued by the Lender and accepted by the Borrower, dated _____, (the "Loan Commitment");

D. The Regulatory Agreement (__) {INSERT APPROPRIATE FORM NO.} by and between HUD and the Borrower, dated _____, (the "Regulatory Agreement");

E. The Note (94001M) in the original principal amount of _____ Dollars ($_____) OR in the increased principal amount of _____Dollars ($_____) by Borrower in favor of Lender, dated _____, (the "Note");

F. [The Security Instrument (Mortgage OR Deed of Trust)] (94000M {WITH APPROPRIATE STATE RIDER ATTACHED_____), executed by Borrower for the benefit of Lender, granting a security interest in the Property, dated _____, (the "Security Instrument");

G. {INSERT THE NUMBER OF UCC's TO BE FILED} Uniform Commercial Code Financing Statements executed by the Borrower as debtor and naming the Lender and HUD as secured parties, to be filed in _____, {INSERT LOCATION(S)} (the Filing Offices), upon the {DESCRIBE EVENTS} (the "Financing Statements");

H. The Security Agreement by and between Borrower and the Lender, granting a security interest under the Uniform Commercial Code, in those items of personalty described therein, dated _____, (the "Security Agreement");

[I. {TO BE INSERTED IF THE SECURITY INSTRUMENT IS ON A LEASEHOLD ESTATE} The Ground Lease executed by {INSERT LESSOR} as lessor and Borrower as lessee recorded in the land records of _____, dated _____, (the "Ground Lease").]

[J. {TO BE INSERTED FOR CONSTRUCTION/REHABILITATION LOANS} The Building Loan Agreement (92441M) executed by Lender and Borrower, dated _____, (the "Building Loan Agreement").]

[K. {TO BE INSERTED FOR CONSTRUCTION/REHABILITATION LOANS} The Construction Contract (92442M) executed by _____ (the "General Contractor") and Borrower, dated _____ (the "Construction Contract").]

L. The Mortgagee's Certificate (92434M), executed by the Lender, dated _____.

M. The Working Capital Escrow (92412M), executed by the Borrower, dated _____.

N. The Agreement and Certification (93305M){INSERT APPROPRIATE FORM NO.}, executed by the Borrower, dated _____.

O. The Mortgagor's Oath (92478M), executed by the Borrower, dated _____.

P. The Borrower's Opinion Certification, pertaining to factual matters relied on by us [me] in rendering this opinion, executed by the Borrower, dated _____, a copy of which is attached hereto as Exhibit __ (the "Certification of Borrower").

Q. A search conducted by _____ dated _____ {no earlier than 30 days before this opinion} of the financing records of the county and Property Jurisdiction [and Organizational Jurisdiction] (the "UCC Search").

[R. A receipt from the insurance company providing flood insurance evidencing payment for the premium, dated _____, (the "Flood Insurance Receipt").]

S. The Title Insurance Policy [or date-down if appropriate in a refinancing, for example] issued by _____ {acceptable company under HUD's regulations}, together with all endorsements, and naming HUD and the Lender as insureds as their interests may appear, dated ____, (the "Title Policy").

[T. The following documents evidencing zoning compliance, _____, {DESCRIBE ALL DOCUMENTS FULLY} (the "Zoning Certificate").]

[U. The building permit(s) issued on _____ by _____ (the "Building Permit").]

[V. The following permits, _____, {DESCRIBE PERMITS} which are required for the operation of the project, issued by on _____ ("Other Permits").]

[W. The Surveyor's Plat OR Survey showing completed project, prepared by _____, dated _____, (the "Survey").]

X. The Surveyor's Report (92457M), executed by _____, dated _____, (the "Surveyor's Report").

[Y. The deferred note (91710M, 91712M or 92223M) executed by Borrower in favor of _____, dated _____, (the "Deferred Note").]

[Z. The Performance Bond (92452M) and the Payment Bond (92452A–M) issued by _____ (Surety) to secure payment and performance of _____ (General Contractor) and running to _____ OR the Completion Assurance Agreement (92450M) executed by the General Contractor, dated _____, (the "Assurance of Completion").]

[AA. The Owner-Architect Agreement (AIA B181 with HUD Supplement) executed by _____ {INSERT DESIGN AND/OR CONSTRUCTION ARCHITECT} and Borrower, dated _____, (the "Owner-Architect Agreement").]

[BB. The Off-Site Bond (92479M) issued by _____ (Surety) to secure the completion of off-site work by _____ (General Contractor) and running to the Lender and HUD OR Escrow Agreement for Off-Site Facilities (92446M) with Schedule "A" executed by _____ dated _____ (the "Assurance of Completion of Off-Site Facilities").]

[CC. The following documents assuring water, electricity, sewer, gas, heat or other utility services (the "Assurance of Utility Services"): _____ {DESCRIBE FULLY.}

[DD. The Contractor's and/or Borrower's Cost Breakdown (92328M) executed by the General Contractor, dated _____, (the "Cost Breakdown").]

[EE. The Latent Defects Bond (93259M) issued by _____ and securing the performance of the General Contractor and running to the Lender and HUD OR Escrow executed by _____, dated _____ (the "Guarantee against Latent Defects").]

[FF. The Escrow Agreement for Incomplete Construction (92456M) with Schedule A executed by the General Contractor, dated _____, (the "On-Site Deposit Escrow").]

[GG. The Contractor's Prevailing Wage Certificate (on page 2 of form 92448M) executed by _____, dated_____, (the "Contractor's Prevailing Wage Certificate").]

HH. The Request for Final Endorsement of Credit Instrument (92023M) and/or Request for Endorsement of Credit Instrument and Certificate of Mortgagee, Borrower and General Contractor (92455M) executed by the Borrower and the Lender, dated_____, (the "Request for Endorsement"). {MODIFY AS APPROPRIATE FOR INSURANCE UPON COMPLETION, REFINANCINGS, ETC.}

[II. The Operating Deficit Escrow (92476a–M) executed by _____, dated _____, (the "Operating Deficit Escrow").]

[JJ. The Repair Escrow executed by _____, dated_____, (the "Repair Escrow").]

[KK. All documents executed by Borrower and any State or local government entity pertaining to development of the Property (the "Public Entity Agreement").]

[LL. The following documents executed or delivered in connection with the financing of the loan with the proceeds of bonds [exempt from federal taxation]:_____{LIST DOCUMENTS IN ACCORDANCE WITH INSTRUCTIONS} (the "Bond Documents").]

MM. The Good Standing Certificate(s) {SEE "A" ABOVE} issued by [Organizational Jurisdiction OR Property Jurisdiction, if different], dated_____{DATE INSERTED MUST BE WITHIN 30 DAYS OF THE DATE OF ENDORSEMENT}, (the "Good Standing Certificate").

[NN. The certificate executed by _____ {INSERT ARCHITECT OR OTHER PROFESSIONAL}, dated_____, (the "Certificate").]

OO. A search conducted by_____ dated [no earlier than 30 days before this opinion] of the public records of the federal District Court and State and local courts in: (i) the jurisdiction where the Property is located; (ii) the jurisdiction(s) where the Borrower is located and does business; and (iii) the jurisdiction where the general partner of the Borrower is organized (the "Docket Search").

Note: Numerical references in parentheses above are to FHA and HUD form numbers.

The documents listed in B through I above are referred to collectively as the "Loan Documents." The documents listed in J through OO are referred to collectively as the "Supporting Documents." The documents listed in A through OO are referred to collectively as the "Documents."

In basing the several opinions set forth in this document on "our [my] knowledge," the words "our [my] knowledge" signify that, in the course of our [my] representation of the Borrower, no facts have come to our [my] attention that would give us [me] actual knowledge or actual notice that any such opinions or other matters are not accurate. Except as otherwise stated in this opinion, we [I] have undertaken no investigation or verification of such matters. Further, the words "our [my] knowledge" as used in this opinion are intended to be limited to the actual knowledge of the attorneys within our [my] firm who have been involved in representing the Borrower in any capacity including, but not limited to, in connection with this Loan. We [I] have no reason to believe that any of the documents on which we [I] have relied contain matters which, or the assumptions contained herein, are untrue, contrary to known facts, or unreasonable.

In reaching the opinions set forth below, we [I] have assumed, and to our [my] knowledge there are no facts inconsistent with, the following:

(a) Each of the parties to the Documents, other than the Borrower (and any person executing any of the Documents on behalf of the Borrower), has duly and validly executed and delivered each such instrument, document, and agreement to be executed in connection with the Loan to which such party is a signatory, and such party's obligations set forth in the Documents are its legal, valid, and binding obligations, enforceable in accordance with their respective terms.

(b) Each person executing any of the Documents, other than the Borrower (and any person executing any of the Documents on behalf of the Borrower), whether individually or on behalf of an entity, is duly authorized to do so.

(c) Each natural person executing any of the Documents is legally competent to do so.

(d) All signatures of parties other than the Borrower (and any person executing any of the Documents on behalf of Borrower) are genuine.

(e) All Documents which were submitted to us [me] as originals are authentic; all Documents which were submitted to us [me] as certified or photostatic copies conform to the original document, and all public records reviewed are accurate and complete.

(f) All applicable Documents have been duly filed, indexed, and recorded among the appropriate official records and all fees, charges, and taxes due and owing as of this date have been paid.

(g) The parties to the Documents and their successors and/or assigns will: (i) act in good faith and in a commercially reasonable manner in the exercise of any rights or enforcement of any remedies under the Documents; (ii) not engage in any conduct in the exercise of such rights or enforcement of such

remedies that would constitute other than fair and impartial dealing; and (iii) comply with all requirements of applicable procedural and substantive law in exercising any rights or enforcing any remedies under the Documents.

(h) The exercise of any rights or enforcement of any remedies under the Documents would not be unconscionable, result in a breach of the peace, or otherwise be contrary to public policy.

(i) The Borrower has title or other interest in each item of (i) real and (ii) tangible and intangible personal property ("Personalty") comprising the Property in which a security interest is purported to be granted under the Loan Documents [and, where Personalty is to be acquired after the date hereof, a security interest is created under the after-acquired property clause of the Security Agreement].

In rendering this opinion we [I] also have assumed that the Documents accurately reflect the complete understanding of the parties with respect to the transactions contemplated thereby and the rights and the obligations of the parties thereunder. We [I] also have assumed that the terms and the conditions of the Loan as stated in the Documents have not been amended, modified or supplemented, directly or indirectly, by any other agreement or understanding of the parties or waiver of any of the material provisions of the Documents. After reasonable inquiry of the Borrower, we [I] have no knowledge of any facts or information that would lead us [me] to believe that the assumptions in this paragraph are not justified.

In rendering our [my] opinion in paragraph 13, we [I] also have assumed that: (i) all Personalty in which a security interest is created under the Documents (other than accounts or goods of a type normally used in more than one jurisdiction) is located at the Property except for the following itemized property:_____ [Certain health care receivables, income, bank accounts, etc. and other such property which is not located within the physical description of the realty should be listed here.]. and (ii) Borrower's [Chief Executive Office] [only place of business] [residence] is located in_____. After reasonable inquiry of the Borrower, we [I] have no knowledge of any facts or information that would lead us [me] to believe that the assumptions and factual exception set forth in this paragraph are not justified.

In rendering this opinion, we [I] have, with your approval, relied as to certain matters of fact set forth in the Certification of Borrower, the Good Standing Certificate(s) [and certain other specified Documents,] as set forth herein. After reasonable inquiry of the Borrower as to the accuracy and completeness of the Certification of Borrower, the Good Standing Certificate(s), [and such other Documents], we [I] have no knowledge of any facts or information that would lead us [me] to believe that such reliance is not justified.

Based on the foregoing and subject to the assumptions and qualifications set forth in this letter, it is our [my] opinion that:

{TO BE USED IN CASES WHERE ORGANIZATIONAL DOCUMENTS WERE PREPARED BY BORROWER'S ATTORNEY}

1. The Borrower is a _____ {INSERT TYPE OF ENTITY} duly organized and validly existing under the laws of the Organizational Jurisdiction. The Borrower is duly qualified to do business and, based solely on the Certificate(s) of Good Standing, copy attached hereto as Exhibit [__], is in good standing under the laws of the Organizational Jurisdiction, [and is qualified to do business as a foreign ____ entity in the Property Jurisdiction based on a review of ____.]

{OR, IF THE BORROWER IS A TRUST OR LIMITED LIABILITY COMPANY (LLC)}

The Borrower is _____ {INSERT NAME OF THE TYPE OF TRUST OR NAME OF LLC} duly formed and validly existing under the laws of the Organizational Jurisdiction [, and is qualified to do business as a foreign _____ entity in the Property Jurisdiction].

{AND, IF THE GENERAL PARTNER OF A PARTNERSHIP BORROWER OR MANAGING MEMBER OF AN LLC BORROWER IS AN ENTITY}

The general partner of the Borrower is a _____ {INSERT TYPE OF ENTITY}, duly organized, validly existing and, based solely on the Certificate(s) of Good Standing, copy attached hereto as Exhibit [__], in good standing under the laws of the Organizational Jurisdiction [and is qualified to do business as a foreign _____ {INSERT TYPE OF ENTITY} in the Property Jurisdiction].

{TO BE USED IN CASES, PRINCIPALLY REFINANCINGS, WHERE ORGANIZATIONAL DOCUMENTS WERE NOT PREPARED BY BORROWER'S ATTORNEY}

1. Based solely on the Certificate(s) of Good Standing, copy attached hereto as Exhibit [__], the Borrower is a ____ {INSERT TYPE OF ENTITY} validly existing under the laws of the Organizational Jurisdiction and in good standing under the laws of the Organizational Jurisdiction [and is qualified to do business as a foreign ____ entity in the Property Jurisdiction].

{OR, IF THE BORROWER IS A TRUST}

The Borrower is _____ {INSERT NAME OF THE TYPE OF TRUST} validly existing under the laws of the Organizational Jurisdiction [and is duly qualified to do business as a foreign ____ entity in the Property Jurisdiction].

{AND, IF THE GENERAL PARTNER OF A PARTNERSHIP BORROWER OR THE MANAGING MEMBER OF AN LLC IS AN ENTITY}

Based solely on the Good Standing Certificate(s), copy attached hereto as Exhibit [__], the general partner of the Borrower is a _____{INSERT TYPE OF ENTITY}, validly existing and in good standing under the laws of _____ {INSERT STATE} [and is qualified to do business as a foreign _____ {INSERT TYPE OF ENTITY} in the Property Jurisdiction].

2. The Borrower has the [corporate/partnership/trust] power and authority and possesses all necessary governmental certificates, permits, licenses, qualifications and approvals to own and operate the Property and to carry out all of the transactions required by the Loan Documents and to comply with applicable federal statutes and regulations of HUD in effect on the date of the FHA Commitment. [In transactions involving health care facilities where there is a lease or other contract affecting the license, Certificate of Need (CoN) and/or receivables, this provision and some of the provisions below may have to be modified accordingly to reflect HUD policy. In such cases, approval must be obtained from the Office of General Counsel, Office of Insured Housing.]

3. The execution and delivery of the Loan Documents by or on behalf of the Borrower, and the consummation by the Borrower of the transactions contemplated thereby, and the performance by the Borrower of its obligations thereunder, have been duly and validly authorized by all necessary [corporate/partnership/trust] action by, or on behalf of, the Borrower.

4. All authorizations, consents, approvals, and permits have been obtained from, appropriate actions have been taken by, and necessary filings have been made with all necessary Organizational and Property Jurisdictions or federal courts or governmental authorities, all as disclosed on Exhibit __, attached hereto, and as listed and set forth in Paragraph(s) 2 and ____ of this opinion [*i.e.* good standing certificate]. To the best of our knowledge, these represent all such authorizations, consents,

approvals, permits, actions and filings that are required in connection with the execution and delivery by the Borrower of the Loan Documents and the ownership [and operation] of the Property.

5. Each of the Loan Documents has been duly executed and delivered by the Borrower and constitute the valid and legally binding promises or obligations of the Borrower, enforceable against the Borrower in accordance with its terms, subject to the following qualifications:

(i) the effect of applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally; and

(ii) the effect of the exercise of judicial discretion in accordance with general principles of equity (whether applied by a court of law or of equity); and

(iii) certain remedies, waivers, and other provisions of the Loan Documents may not be enforceable, but, subject to the qualifications set forth in this paragraph at (i) and (ii) above, such unenforceability will not preclude (a) the enforcement of the obligation of the Borrower to make the payments as provided in the Mortgage and Note (and HUD's regulations), and (b) the foreclosure of the Mortgage upon the event of a breach thereunder.

[6. {TO BE INSERTED WHEN ANY OR ALL OF THE LOAN DOCUMENTS ARE NOT HUD APPROVED FORMS OR WHEN HUD APPROVED FORMS HAVE BEEN REVISED OR MODIFIED IN CONNECTION WITH THE LOAN} The execution and delivery of, and the performance of the obligations under, the Loan Documents will not violate the Organizational Documents of the Borrower or any applicable provisions of local or State law.

[7. {INSERT FOR LOANS INVOLVING CONSTRUCTION OR REHABILITATION} To our [my] knowledge there are no proposed change(s) of law, ordinance, or governmental regulation (proposed in a formal manner by elected or appointed officials) which, if enacted or promulgated after the commencement of construction/rehabilitation, would require a modification to the Project, and/or prevent the Project from being completed in accordance with the plans and specifications, dated _____, executed by _____ {INSERT BORROWER} and _____ {INSERT GENERAL CONTRACTOR}, and _____ {INSERT GENERAL CONTRACTOR}, and referred to in the Construction Contract (the "Plans and Specifications").]

[8. {INSERT IF THERE IS NO ZONING ENDORSEMENT INCORPORATED INTO THE TITLE POLICY} The attached Zoning Certificate states that the Property appears on the zoning maps of [Property Jurisdiction] as being located in a ____ zone. According to the zoning ordinance of the Property Jurisdiction, the use of the Property as a____ is a permitted use in such zone.

or

Based solely on the Zoning Certificate, the Property may be used for _____ as a permitted use.]

[9. {USE FOR NEW CONSTRUCTION OR SUBSTANTIAL REHABILITATION IN CASES WHERE THE DEPARTMENT DOES NOT RECEIVE A CERTIFICATE DIRECTLY FROM THE PROFESSIONAL} Based solely on the Certificate, construction/rehabilitation of the Project in accordance with the Plans and Specifications will comply with all applicable land use and zoning requirements.

{USE FOR REFINANCINGS} Based solely on the Certificate, the Project complies with all applicable land use and zoning requirements.]

10. Based solely on (a) our [my] knowledge and (b) the Certification of Borrower, the execution and delivery of the Loan Documents will not: (i) cause the Borrower to be in violation of, or constitute a default under the provisions of, any agreement to which the Borrower is a party or by which the Borrower is bound, (ii) conflict with, or result in the breach of, any court judgment, decree or order of any governmental body to which the Borrower is subject, or (iii) result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever on any of the property or assets of the Borrower, except as specifically contemplated by the Loan Documents.

11. Based solely on (a) our [my] knowledge, (b) the Certification of Borrower and (c) the Docket Search; there is no litigation or other claim pending before any court or administrative or other governmental body or threatened in writing against the Borrower (or any Principal thereof as defined in the HUD regulations), or the Property, [{TO BE INSERTED WHEN BORROWER IS NOT A SOLE-ASSET BORROWER} or any other properties of the Borrower (or any Principal)] [, except as identified on Exhibit __].

12. The Mortgage is in appropriate form for recordation in _____ {INSERT PROPER NAME OF LOCAL LAND RECORDS OFFICE} of _____ {INSERT COUNTY OR CITY} of the Property Jurisdiction, and is sufficient, as to form, to create the encumbrance and security interest it purports to create in the Property.

13. Filing of the Financing Statements in the Filing Offices will perfect the security interests of both Lender and HUD in the Personalty of the Borrower located in the Project Jurisdiction and in any Personalty which the Borrower is entitled to receive (such as health care receivables), but only to the extent that, under the Uniform Commercial Code in effect in the Project Jurisdiction, a security interest in each described item of Personalty can be perfected by filing. The Filing Offices are the only offices in which the Financing Statements are required to be filed in order to perfect the Lender's and HUD's security interests in the Personalty.

14. The Loan does not violate the usury laws or laws regulating the use or forbearance of money of the Property Jurisdiction.

[15. {FOR USE ONLY IF BORROWER IS A TRUST} The Borrower is an irrevocable trust that has a term consistent with HUD's requirements and the term of the irrevocable trust is not affected by the terms of any of the beneficiaries' interests.] [The laws of the Property Jurisdiction govern the interpretation and the enforcement of the Loan Documents notwithstanding that the Borrower may be formed in a jurisdiction other than the Property Jurisdiction. The Borrower can sue and be sued in the Property Jurisdiction without the necessity of joining any of the beneficiaries of the Borrower, including without limitation, a suit on the Note or a foreclosure proceeding arising under the Mortgage. Venue for any foreclosure proceeding under the Mortgage may be had in [Property Jurisdiction].

[16. {USE IN CASES INVOLVING BOND FINANCING} Based solely on the opinion of _____ {INSERT BOND COUNSEL}, dated as of the date hereof and attached hereto as Exhibit __, to the extent that any of the provisions of the Bond Documents are inconsistent with any of the provisions of the Loan Documents or Supporting Documents, the provisions of the Loan Documents or Supporting Documents shall govern.]

[17. {USE IN CASES WHERE THE DEVELOPMENT OF THE PROPERTY IS GOVERNED BY AN AGREEMENT WITH A PUBLIC ENTITY} Based upon our knowledge and the Certification of Borrower, there is no default under the Public Entity Agreement, and construction in accordance with the Plans and Specifications and within the time frame specified in the Construction Contract will not lead to a default under the Public Entity Agreement.]

In addition to the assumptions set forth above, the opinions set forth above are also subject to the following qualifications:

(i) The Uniform Commercial Code of the Property Jurisdiction requires the periodic filing of continuation statements with ____ [and ____] not more than ____ prior to and not later than the expiration of the ____ year period from the date of filing of the Financing Statements and the expiration of each subsequent __ year period after the original filing, in order to maintain the perfection and priority of security interests and to keep the Financing Statements in effect.

(ii) We express no opinion as to the laws of any jurisdiction other than the laws of the Property Jurisdiction [and the Organizational Jurisdiction, if it is different,] and the laws of the United States of America. The opinions expressed above concern only the effect of the laws (excluding the principles of conflict of laws) of the Property Jurisdiction [and the Organizational Jurisdiction, if it is different] and the United States of America as currently in effect. We assume no obligation to supplement this opinion if any applicable laws change after the date of this opinion, or if we become aware of any facts that might change the opinions expressed above after the date of this opinion.

We [I] confirm that:

(a) Based on the Organizational Documents, the name of the Borrower in each of the Documents and the Title Policy and FHA Commitment is the correct legal name of the Borrower;

(b) The legal description of the Property is consistent in the Documents wherein it appears and in Exhibit B hereto;

(c) We [I] do not have any financial interest in the Project, the Property, or the Loan, other than fees for legal services performed by us, arrangements for the payment of which have been made; and we [I] agree not to assert a claim or lien against the Project, the Property, the Borrower, the Loan proceeds or income of the Project;

(d) Other than as Counsel to the Borrower, we [I] have no interest in the Borrower (or any principal thereof) or the Lender or any other party involved in the Loan transaction and do not serve as [a director, officer or] [an] employee of the Borrower or the Lender. We [I] have no undisclosed interest in the subject matters of this opinion. We [I] do not represent the Lender, any investing lender or investor in the loan transaction, any bridge lender involved in the loan transaction, any lender with a commitment to purchase the loan or any interest therein or any other party involved in the Project or the loan transaction;

(e) [FOR USE IN MAP TRANSACTIONS ONLY] Based solely upon our [my] knowledge and the Certificate of the Borrower, there is no identity of interest between the Borrower and the Lender;

(f) Based solely on the Surveyor's Report and the Surveyor's Plat, flood insurance [is OR is not] required pursuant to 42 U.S.C. 4012a(a); [{INSERT IF FLOOD INSURANCE IS REQUIRED} Based solely on the Flood Insurance Receipt, flood insurance is in effect which satisfies the requirements of 42 U.S.C. 4012a(a);]

(g) To our [my] knowledge, there are no liens or encumbrances against the Property which are not reflected as exceptions to coverage in the Title Policy;

(h) We [I] have reviewed and discussed the terms of the Regulatory Agreement with Borrower;

(i) Based upon the Certification of Borrower and to the best of our [my] knowledge, there are no side-deals (transactions outside the parameters of the HUD form closing documents and the commitment) between Borrower and any party to the transaction) other than as disclosed in the aforesaid Documents; and

(j) This document does not deviate from the format approved by OMB and obtained from HUD on ____ except for such changes as have been identified to and specifically approved by HUD counsel.

The foregoing opinions are for the exclusive reliance of HUD, [Lender OR Lender and Lender's counsel] and any subsequent holder of the Note.

Sincerely,

_____

[Authorized Signature]

Certification/Warning

Each signatory below hereby certifies that the statements and representations contained in this instrument and all supporting documentation thereto are true, accurate, and complete. This instrument has been made, presented, and delivered for the purpose of influencing an official action of HUD (acting by and through the FHA Commissioner) in insuring a multifamily rental or health care facility mortgage loan, and may be relied upon by HUD and the Commissioner as a true statement of the facts contained therein.

Name of Entity: _____

By: /s/ _____

Printed Name, Title: _____

Dated: _____

By: /s/ _____

Printed Name, Title: _____

Dated: _____

{ADD ADDITIONAL LINES IF MORE THAN TWO SIGNATORIES}

Warning

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions, including but not limited to: (i) fines and imprisonment under 18 U.S.C. 287, 1001, 1010 and 1012; (ii) civil penalties and damages under 31 U.S.C. 3729; and (iii) administrative sanctions, claims, and penalties under 24 CFR parts 24 and 28.

(For use in HUD-Insured MULTIFAMILY AND HEALTHCARE Transactions)

Department of Housing and Urban Development Federal Housing Administration

Instructions to Guide for Opinion of Borrower's Counsel

Explanatory Comments

The Guide for this opinion was originally prepared in 1994 in view of changes in opinion practice as reflected by the ABA Accord and various State law bar reports on opinion letters and has been revised to reflect approximately seven years experience in using the Guide. The principal purpose of this Guide remains to achieve a uniform format which can be utilized throughout the Nation and which will be familiar to HUD counsel in all jurisdictions. Such a standardized format is crucial in an era when less resources are available to the Department; however, it should be emphasized that certain limited changes can be authorized by HUD field counsel as required by local law or by the unique or programmatic nature of the transaction (*e.g.* refinancing transactions under Section 241 of the National Housing Act). An effort has been made in these revised instructions to specify examples in more (but not all) of those areas where such changes can be authorized. Otherwise, the format of the Guide must be followed and is not open to negotiation. In this regard, revisions cannot be justified because of a particular Opinion having been approved by another HUD field office. The exercise of discretion by one HUD field counsel in unique circumstances cannot become the basis for any modification to the Opinion. Any

requested modification must be analyzed on its own merit and in a particular context. In these explanatory comments, the document may be referred to as the "Guide" or the "Opinion," depending upon the context.

The Department regards the Counsel to the Borrower as a crucial, central figure in the process of preparing and executing the legal and administrative documents necessary to achieve a closing in those multifamily rental and health care mortgage insurance programs where a note is endorsed for mortgage insurance by the Department. Please note that pursuant to the overall document reform effort for the multifamily rental and health care closing documents, "Mortgagor" is now referred to as "Borrower" and "Mortgagee" is now referred to as "Lender;" however, those new uses are defined to mean "Mortgagor" and "Mortgagee" as those terms are used in the National Housing Act. Pursuant to 24 CFR Part 24, § 24.105(p), attorneys or others in a business relationship with the Borrower are defined as "principals." Counsel to the Borrower has significant obligations to its client (the Borrower), the Lender and the Department. In part, these responsibilities entail the exercise of due diligence to assure the accurate and timely preparation, completion and submission of the forms required by the Department in connection with the transaction. Further, the Counsel to the Borrower and any other attorneys involved in the transaction should be thoroughly familiar with the regulations, procedures and directives of the Department pertaining to each mortgage insurance transaction in which Counsel participates. The Department takes seriously the preparation and completion of the various documents involved in the mortgage insurance process (most of which are HUD form documents) and cannot overemphasize the importance of the following bolded language which must appear in all documents relied upon by the Department in insuring the mortgage loan:

Each signatory below hereby certifies that the statements and representations contained in this instrument and all supporting documentation thereto are true, accurate, and complete. This instrument has been made, presented, and delivered for the purpose of influencing an official action of HUD (acting by and through the FHA Commissioner) in insuring a multifamily rental or health care facility mortgage loan, and may be relied upon by HUD and the Commissioner as a true statement of the facts contained therein.

Name of Entity: _____

By: /s/ _____

Printed Name, Title: _____

Dated: _____

By: /s/ _____

Printed Name, Title: _____

Dated: _____

[Add Additional Lines if More Than Two Signatories]

Warning

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions, including but not limited to: (i) fines and imprisonment under 18 U.S.C. 287, 1001, 1010 and 1012; (ii) civil penalties and damages under 31 U.S.C. 3729; and (iii) administrative sanctions, claims, and penalties under 24 CFR parts 24, 28 and 30.

Please note that this certification/warning also appears in the Opinion and cannot be deleted under any circumstances.

Article IX of the UCC was recently revised in virtually all of the jurisdictions in which HUD insures multifamily rental and health care facility loans. It is imperative that Counsel to the Borrower be aware of these changes in State law and that the UCC documentation be prepared so as to comply with HUD requirements and State law. Furthermore, in connection with health care facility closings, it is imperative that the UCC documentation cover the Certificate of Need (CoN) and the license and that these two documents be tied to the security property covered by the mortgage for the duration of the mortgage. Please note that the Opinion has been amended to cover these points. See G, below, for a more specific discussion of UCC securitization and some major changes by HUD with respect to the legal documentation.

With limited State law related exceptions, HUD anticipates that Borrower's Counsel will be able to follow the Guide in rendering an Opinion in virtually all multifamily rental housing closings involving new construction and substantial rehabilitation and there should be few changes in refinancing and health care transactions. Generally, HUD field counsel should not accept Opinions that otherwise substantially or materially deviate from the Guide. Although we understand that attorneys and law firms may have evolved particular styles and forms of opinion, HUD field counsel do not have time to negotiate each and every Opinion for stylistic changes and differences in thinking among opinions committees. It is essential that the Guide be followed in both style and substance in order to ensure a timely closing. The Counsel to the Borrower is expected to complete a draft Opinion for submission to HUD field counsel at least fifteen days prior to the closing along with the other closing documents. Any deviations must be specifically identified (redlined or highlighted) and discussed with field counsel at that time so that the deviations can be resolved prior to the closing. Any material deviation not required by State or local law or otherwise authorized by these instructions must be brought to the attention of the Assistant General Counsel, Multifamily Mortgage Division, by field counsel along with an explanation by Counsel to the Borrower as to the necessity for the deviation.

It was anticipated that the Guide could be utilized in connection with all types of closings: insured advances or insurance upon completion (for new construction or substantial rehabilitation); final closings (for refinancings, etc.). This has proved to be the case and, furthermore, the Guide format has been adapted and used in Transfers of Physical Assets (TPAs) and hospital mergers, for example. However, numerous questions have been raised—particularly in cases involving Section 241 supplemental loans and the various refinancing transactions under Section 223. Therefore, it is important that the correct options be selected in instances where choices are provided and that appropriate deletions or modifications be made to accommodate unique circumstances or programs. On the other hand, it should be emphasized that this does not authorize field counsel to approve changes to the Guide in cases other than where the Guide is being adapted for a special use, *e.g.* refinancing or equity loan transaction, TPA, etc. Furthermore, HUD has made an administrative policy decision to not require an opinion by Counsel to the borrower for projects within the "Small Projects Mortgage Insurance Pilot Program (SPP)." A Notice will be issued defining small project and clarifying the parameters of the SPP. The Lender will have the option of requiring an opinion by Counsel to the Borrower if the Lender so elects. It is anticipated that the Certification of the Owner will be expanded slightly for use in the SPP to provide assurances and comfort to HUD

in such cases. Otherwise, the Guide or a variation thereof should be utilized in all FHA-insured multifamily rental project and health care facility closings.

The Guide is not intended to serve as a closing checklist; therefore, HUD field counsel may update or modify existing closing checklists as necessary to meet constantly changing program needs and handbook instructions and directives. For example, many deletions from the list of Guide documents are appropriate for various types of refinancings, operating loans, equity loans, etc. whereas several additional documents are necessary in the case of loans for health care facilities (*e.g.* certificate of need, license, etc.), supplemental loans, and certain complex refinancings.

Brackets continue to be used in the Guide to indicate alternate language, insertions, documents, or instructions depending on the applicable facts and underlining is used to indicate blanks that must be completed.

The Guide contains some instructions and definitions and is largely self-explanatory; however, the following expanded instructions and clarifications should provide additional assistance to both private counsel and HUD counsel. The numbers and letters used below relate to the paragraph numbers and letters in the Guide unless page numbers are specifically designated.

Page 1 and Introductory Paragraph

• Letterhead and date: The Opinion must be on the firm letterhead and dated the date of endorsement of the note by HUD.

• Reference: Data regarding the project, name, HUD project number, and location and the name or title of the Borrower must be accurate and inserted in the appropriate blanks.

• Addressees: The Opinion must be delivered to HUD as well as the Lender to establish the explicit right of each to rely on the Opinion. The Lender's counsel may be relying on the Opinion for certain aspects of its opinion. If so, the Opinion must also be addressed to counsel to the Lender. HUD is aware that recent case law has raised issues about the extent to which a Lender can rely upon such an opinion; therefore, the matter of reliance by the Lender could be clarified by the parties at the outset in jurisdictions where the issue has been raised. Regardless of case law, HUD continues to believe that this is a unique transaction where the federal interest as insurer of the Lender is clear from the outset and that it is as a result of the unique federal requirements that Counsel to the Borrower is retained to represent the borrower in such a fashion that the Opinion rendered by Counsel to the Borrower necessarily must be addressed to, and relied upon by, HUD as the insurer of the Lender and the Lender in order for the loan transaction to go forward. In cases where counsel to the Lender elects not to rely upon the Opinion or Counsel to the Borrower does not wish to permit reliance by counsel to the Lender, the Opinion should not be addressed to and/or delivered to the Lender's counsel. Furthermore, Lender and counsel to the Lender are not permitted to rely upon the Opinion with respect to the certification by the Lender that the closing documents, which are mandated by HUD forms and models, comport with the version of such forms and models provided to the Lender by HUD with the exception of the Opinion itself. Counsel to the Borrower must provide such certification with respect to the Opinion.

• Description of the Loan: The loan amount is the original principal amount of the loan being insured unless a modification is necessitated in connection with the closing.

• Source of funds for the Loan: In the second full sentence on page 2 the source of funds must be accurately identified; however, in certain transactions, such as low-income housing tax credit transactions, the source of the funds may not be known at the time the Opinion is rendered. In such cases, a general statement to that effect will suffice. Furthermore, it is important to note that this identification does not have to reach a level of particularity that identifies all individual investors in any case.

List of Documents

• In General: If there are no brackets around a particular document, the document is one which is commonly used for initial endorsements for insured advances completion cases; however, it should be emphasized that it is impossible to list every document for every insured loan. Further, no attempt has been made to list all documents utilized in all types of refinancings and certain specialized programs, *e.g.* certificates of need and licenses for health care programs. Conversely, some documents may not be utilized in a particular transaction and should be deleted from the list in the actual Opinion. Brackets around the name of the document indicate that the document may or may not be used for every loan. If bracketed documents are not used in a particular loan transaction, then delete such documents from the list in the actual Opinion. Each document executed in connection with the loan must be listed by its correct title, showing each party executing it and its date. If documents are dated "as of" a particular date, then such phrase should be included in the description in the text. It is imperative that care must be taken to compile a list that accurately and completely reflects the transaction in the submission to HUD of the initial draft. After HUD review of the initial draft, the Opinion may have to be modified, as necessary, to satisfy HUD. To the extent documents are later found in the closing docket file which do not comport with HUD requirements and which were not shown on the list, HUD reserves the right to refuse to accept or recognize the documents unless the documents are brought into compliance with HUD requirements. This should be explained to the Borrower when reviewing the Regulatory Agreement with the Borrower.

All documents executed in connection with the loan transaction must be listed regardless of whether the document is required by HUD or whether the Borrower is a party to the document. It should be emphasized that Counsel to the Borrower is not assuming responsibility for the content of documents that Counsel does not prepare and/or that the Borrower does not execute. The review is necessary to provide assurance of consistency from document to document. The appropriate HUD or FHA form number, if applicable, must be indicated in parenthesis after each document

A. Organizational Documents: All of the Organizational Documents must be reviewed and care should be taken to ensure adherence to the HUD guidelines and directives pertaining to such documents as set forth in the appropriate closing handbooks and instructions.

G. In the original version of the Guide, the requirement that HUD be named in the Financing Statements as a secured party or as its interests may appear was standardized through requiring the insertion of appropriate language in the Security Agreement. The purpose was to clarify that, under certain circumstances, HUD may assert some rights in the personalty arising under the Regulatory Agreement which would precede an assignment of the Security Instrument. Based upon experience to date, a decision has been made that HUD need not be so named in the Financing Statements filed in the name of the Lender-of-Record; however, it should be emphasized that a separate set of Financing Statements must now be filed in the name of HUD placing HUD in a secondary position with respect to all personalty except certain health care receivables in cases where

such receivables cannot be pledged to a private lender. In the case of such receivables, HUD must be placed in a first position. It is the responsibility of the Lender to ensure that such Financing Statements and Security Agreements are properly filed in the name of said Lender and HUD.

The procedures may vary depending upon whether the jurisdiction has enacted the new Article IX of the UCC or not. Counsel to the Borrower must check to ensure that the Lender has properly filed such Financing Statements and has properly structured the Security Agreement(s). Increasing value and volume of major moveable equipment in the health care area and increasing problems with receivables, the Certificate of Need (CoN) and the license make it more imperative that there be specificity in the UCC documentation with respect to the securitization of such personalty. HUD has made an effort to give HUD maximum contractual protection with respect to the personalty under the newly revised Regulatory Agreement for 232 facilities; however, this does not diminish the need to describe the personalty with specificity in the UCC documentation. With respect to health care facilities, the Security Agreement(s) must cover all personalty, including equipment (with major moveables being described with specificity). Further, all receivables must be specifically described as well as the Certificate of Need (CoN) and the license. Please note that the receivables, CoN and license must all be securitized in favor of the Lender-of-Record (and HUD as appropriate) regardless of whether the facility is operated by the Borrower or by a lessee. This is a major departure from prior practice in some offices and its significance cannot be over-emphasized.

J. Building Loan Agreement: This document is a "bracketed document" which should only be used in cases involving new construction or substantial rehabilitation. Hence, the document is not required in equity loan transactions and most refinancing transactions and many supplemental loan transactions.

K. Construction Contract. See J. above.

L. Mortgagee's Certificate: It has been argued that this document is unnecessary in the context of certain insured secondary loan transactions because the form is used to document the first Lender's consent to the second loan. In insured secondary loan transactions, it should be emphasized that a Mortgagee's Certificate is obtained that is like the Mortgagee's Certificate obtained in a new construction closing. It has nothing to do with the consent of the first lender to the secondary financing transaction. In secondary financing cases (such as under Section 241) where the consent of the first lender is obtained for a second Security Instrument insured by HUD, a separate document (for which there is no specified format) is utilized.

Regardless, the Mortgagee's Certificate is executed by the lender making the loan being insured, which in the cases at issue would be the lender making the second loan, and is one of the most significant closing documents. HUD places great reliance upon the Mortgagee's Certificate and considers it necessary to reveal all fees, side transactions, etc. Furthermore, the document now contains a certification that the closing documents conform to the HUD-approved format except for changes approved by field counsel. In this regard, the document is crucial to HUD's endorsement of the note for insurance. Counsel to the Borrower is not responsible for the execution of the document and only needs to review the document in the capacity as Counsel to the Borrower to be certain that the document conforms to the transaction the Borrower is agreeing to and that the document accurately reflects the fees and escrows, etc. that are required of the Borrower.

It should be noted that the Mortgagor's Certificate has been eliminated and the substantive provisions have been incorporated into the Regulatory Agreement.

P. Certification of Owner: Several persons have questioned whether the references in Paragraph 6 to the Public Entity Agreement and the Regulatory Agreement should be changed so that both refer instead to the Public Entity Agreement. The references should not be changed because HUD wants assurance that there will be no violations of the Regulatory Agreement as a result of events that have occurred with the passage of time; however, the language has been clarified to eliminate several ambiguities. Some types of PEAs may also involve a regulatory agreement and the certification is being clarified to cover both the HUD Regulatory Agreement and the local one.

Q. UCC searches: The UCC Search must be conducted within thirty days of closing and can be conducted by either the title insurance company, a reputable document search firm; the Counsel to the Borrower or any other attorney licensed in the jurisdiction.

R. Flood insurance receipt: Arguments have been made that this document is not necessary in equity loan, supplemental loan and refinancing transactions. Flood plain maps change. In insuring a first or a second Security Instrument, it is just as significant that HUD know whether the property is located in an area where flood insurance is required and, if so, whether the insurance is in effect regardless of whether a prior HUD-insured first Security Instrument is in effect. HUD would not necessarily have the data on file, and it was determined that this is a matter which Counsel to the Borrower could confirm under item (f) near the end of the Guide. Note that no opinion is required, and the factual determinations necessitated by the Guide are considered within the usual duties of Counsel to the Borrower.

S. Title Insurance Policy: Currently the 1992 ALTA Format (with appropriate endorsements) is required by HUD in most jurisdictions.

T. Evidence of zoning compliance: The evidence of zoning compliance will vary depending on the circumstances. The evidence should establish that the building, if constructed according to plans and circumstances, will comply with all zoning requirements. The evidence may be in the form of a letter or certificate from the appropriate local official stating that, if the building is constructed according to the plans and specifications submitted for review, the building will comply with all zoning requirements. In refinancing cases where no construction is involved, the evidence may be in the form of a letter certifying that the existing building(s) is (are) in compliance with outstanding zoning requirements or, if not, the nonconforming variance, etc., is acceptable. If the locality has no zoning ordinance, a letter should be submitted from the chief executive stating such. In those circumstances, it may be necessary to obtain a letter from the local planning body of the county in which the project is located, that the proposed development is compatible with the county's comprehensive plan. If the zoning approval is based upon a variance or other special action, the closing may have to be delayed until the time for appeals has run. In extremely complex cases. an opinion may need to be obtained from legal counsel specializing in local zoning matters. Such letter must be attached as an exhibit and referenced in the appropriate paragraphs of the Opinion.

In cases involving refinancings, it has been suggested by some attorneys that HUD should have zoning information on hand either as a result of the closing of the first HUD-insured loan or due to periodic site reviews. HUD would not normally maintain data pertaining to local zoning law and the data with

respect to the first loan would only be valid with respect to the closing date of that loan. Paragraphs 7, 8 and 9 of the Opinion contain several options with respect to local zoning law. It is important that HUD be assured that there have been no changes in the land use or zoning which would adversely affect the continued use of the property as a rental housing project. In this context, we reemphasize that the attorney responsible for this matter must be licensed in the property jurisdiction.

U. Building permit(s): If no building permit is required, this document is not applicable and should be deleted from the Opinion. (This would also be true with respect to occupancy permits (under V.) unless new permits are required under local law in connection with "pure" refinancing transactions.)

V. Permits required for the operation of the project: Several practitioners have argued that the documentation is unnecessary in refinancing transactions; however, they have not indicated whether such a position would affect their wording of Paragraph 4 of the Guide. In all cases, HUD is concerned that any permits required for the continued operation of the project be proper and in place such that an opinion can be rendered with respect to Paragraph 4. It is crucial in existing projects that HUD be assured that no new requirements have been imposed which would thwart continued operation of the project. If no such permits are required, Paragraph 4 should be amended accordingly. This is a matter that Counsel to the Borrower, as a specialist in the property jurisdiction, should be able to ascertain.

W. Surveyor's plat or survey: The survey must be signed, sealed and dated within 90 days of the closing. In certain refinancing transactions, a survey would not normally be required because no new construction would have taken place and, presumably, nothing would have changed with respect to the building(s) and the site. In such situations, if there is other satisfactory evidence that no site changes have occurred, an administrative waiver would necessitate the deletion of the item from the Opinion. See X. below. If the borrower's attorney were to become aware of any changes, this would have to be addressed in the Opinion and a survey could be required by HUD depending upon the circumstances.

X. Surveyor's Report: Unless there is a title endorsement protecting against any encroachments, etc., there will have to be a surveyor's certificate indicating that nothing has changed since the last survey with respect to encroachments, lot line violations, construction activity, etc. HUD should not be incurring the risk of insuring any loan if there has been any action which would impair the lender's and HUD's respective positions. As an alternative to a surveyor's certificate, the borrower's attorney could rely upon an appropriate certificate from a qualified architect and insert appropriate language in the Opinion.

Z. Assurance of completion (bonds or agreement): This documentation (now bracketed) would not be utilized in a pure refinancing or equity loan transaction and, therefore, would only be used in cases involving some construction where the regulation pertaining to assurance of completion is applicable.

AA. Owner-Architect Agreement: This document (now bracketed like Documents J and K) should only be indicated (where the Guide indicates "{INSERT DESIGN AND/OR CONSTRUCTION ARCHITECT}") in cases involving new construction or substantial rehabilitation.

BB. Off-Site Bond or Agreement: This document should only be used in cases where off-site work is involved. As such, the document would not normally be used in pure equity loan transactions or in refinancing transactions involving no construction.

CC. Assurance of utility services: These documents do not pertain to pure Section 241(f) equity loan transactions and certain refinancing transactions and, therefore, should be deleted in those instances.

FF. Escrow Deposit for On-Site Improvements: If any such improvements are required in connection with an equity loan, supplemental loan or refinancing transaction, the form document specified should be tailored to the situation as determined by field counsel. In a situation where such an escrow is necessary, Counsel to the borrower should modify the form as necessary and present it to field counsel for review.

GG. Contractor's Prevailing Wage Certificate: This item is no longer required in the HUD closing checklist; therefore, some attorneys have taken the position that it can be eliminated from the Opinion. HUD's position remains that the item should be reviewed by Counsel to the Borrower for the purpose of assuring consistency between the documents and performance under the Construction Contract to which the Borrower is a party.

KK. Public Entity Agreement: The references to this document and to the Regulatory Agreement in Paragraph 6 of the Certification of Borrower have created some confusion about whether the reference to the Regulatory Agreement should be changed to Public Entity Agreement. The two separate references were intended; however, a clarification has been made as discussed in P. above.

LL. Bond Documents: This does not include all documents involved in the typical bond financing. It does include those principal documents such as the Prospectus, the Indenture, a sample Bond, etc. All documents executed by the Borrower or which establish or describe any obligations of the Borrower must be included.

NN. Certificate issued by architect or other professional: Normally such a document would not be necessary in the case of a pure Section 241(f) equity loan and certain refinancing transactions and should be deleted unless those circumstances mentioned under the last sentence pertaining to Document X, above, make the certificate appropriate. Note that "Certificate" is a defined term and that the Certificate can come from "an architect or other professional." Consequently, there is no form for the Certificate and HUD field counsel should defer to HUD administrators specializing in architectural and engineering matters in determining the acceptability of the Certificate. It is referenced in Paragraph 9 of the Opinion and should not be confused with the Zoning Certificate that is also a defined term and is referenced in Paragraph 8.

OO. Docket search: The Docket Search can be conducted by either the title insurance company, a reputable document search firm, the Counsel to the Borrower or any other attorney licensed in the jurisdiction. Arguments have been made by private counsel that such a docket search is not necessary in all transactions. One of the main purposes of the new Guide was to clearly define the work to be performed by Counsel to the Borrower. It was determined that such a search was within the scope of the fees permitted as a Security Instrument line item. Such a search is important in the case of an existing subsidized project where matters of public record could reveal circumstances wherein it would be inadvisable for HUD to go forward with insuring another loan.

An argument has also been made that several record searches in separate jurisdictions could be necessitated in some cases and that this would cost a significant amount of money with little benefit. As the Guide was being developed, HUD was cognizant of such a scenario; however, the benefit to HUD of establishing that the public records are clear outweighs the costs to the

borrower of conducting such searches. In the case where a sole-asset borrower is being created, however, a search of the public records in the jurisdiction where the borrower is located (assuming a different location from the others iterated) is unnecessary. The Opinion could be amended in those instances to indicate that particular state of facts; however, all of the other searches would have to be done.

Opinions

1. This paragraph contains several options depending upon whether the Borrower's organizational documents were prepared by Counsel rendering the Opinion and the type of borrower entity. Care should be taken to ensure that the correct option is selected and that the requisite information is inserted correctly. It is intended that, where the borrower entity or general partner of the borrower entity is established by Counsel to the Borrower, no reliance on other sources is permitted and Counsel must opine as to the due organization of the Borrower. If a Certificate of Good Standing is not available in the State, but an equivalent document is (*i.e.*, Certificate of Existence), then the bracketed language must be revised to reflect the name/title of the equivalent document so obtained. Any Certificate of Good Standing or equivalent document issued by the applicable governmental authority must be dated no more than 30 days prior to the date of the Opinion of Borrower's Counsel. If the Borrower is a foreign corporation or partnership, the Opinion must recite the review of all government approvals required to do business in the Property jurisdiction. If a Certificate of Good Standing or equivalent document cannot be obtained from the applicable governmental authority (*e.g.*, for general partnerships, then the Borrower's attorney will be required to do the due diligence necessary to give the opinion or may engage other counsel to render such opinion). If the Property jurisdiction is not the State of formation for the borrower entity, Counsel must also opine that the Borrower is qualified to transact business in the Property jurisdiction. Such opinion may be made solely on the basis of a certificate from the applicable governmental authorities of the Property jurisdiction, and if Counsel is relying on such certificate(s), then the opinion must expressly identify those certificate(s) and they must be attached to the Opinion as an exhibit. If the Borrower is an individual, paragraph one should be deleted from the Opinion.

2. This paragraph provides, among other things, that the Borrower possesses all the necessary governmental certificates, permits, licenses, qualifications and approvals to own and operate the Property. This particular provision has generated considerable controversy—particularly where health care facilities are being constructed or substantially rehabilitated in large, urban jurisdictions having a multitude of regulatory requirements pertaining to ownership and operation. Consequently, field counsel have discretion to permit a modification in which Counsel to the Borrower itemizes those local governmental requirements which have been evaluated and indicates that, after due diligence inquiry and insofar as the attorney is aware, these local requirements comprise the entire universe of such requirements. The Opinion should further state that, based upon such itemized local requirements and compliance therewith (with all permits, certificates, etc. being itemized), the Borrower possesses the power and authority necessary to own and operate the Property and to carry out all of the transactions required by the Loan Documents and to comply with applicable federal statutes and regulations of HUD in effect on the date of the FHA commitment. In many instances involving new construction, some items such as a certificate of occupancy will not have been obtained by the time of closing. In such instances, field counsel have discretion to permit an appropriate clarification with respect to that particular instrument.

11. If the Borrower or any principal of the Borrower is involved in any litigation or there is any litigation pertaining to the Property, all such litigation matter(s) must be disclosed in writing to HUD field counsel in order that the Department can determine whether the endorsement of the loan is possible. Note that litigation involving a principal of the Borrower must be disclosed. Confusion has developed when there has been litigation involving lower tiers of a partnership. If the issue cannot be resolved through reference to the definition of "principal" in the 2530 regulations, HUD field counsel should consult with HUD program administrators and determine whether the litigation should be disclosed. If the litigation involves compliance with civil rights requirements, it must immediately be brought to the attention of appropriate Fair Housing and Equal Opportunity personnel (regardless of whether a "principal" or some lesser component of the Borrower is the subject of the litigation).

13. If any UCC Financing Statements have been filed on the Personalty in conjunction with any transaction other than the Loan, they must be identified to the HUD field counsel as well as details with respect to how such Financing Statements will be terminated at the time of closing.

If the property is an elderly housing project or a health care facility or if the loan otherwise is to be secured by significant amounts of personal property, the matter should be discussed with field counsel. In the event further discussion is necessary, field counsel should contact the Assistant General Counsel, Multifamily Mortgage Division. For projects in which the personalty is mostly household appliances (*e.g.*, refrigerators) or a limited quantity of smaller equipment, the Opinion will be limited as shown. In other instances, the Opinion may have to be expanded particularly with respect to ensuring that items such as receivables, income stream, etc. are security property. Some examples of such expansion are indicated in the new format because of omissions in the past with respect to projects insured by HUD under Section 232 and 242. Further it should be noted that Lender is now required to prepare, have HUD properly execute and file UCC financing statements showing HUD as a secured party in a second position to Lender and in a first position as to certain health care receivables in which a private lender cannot hold a first position. Either a separate or Lender's Security Agreement (depending upon the law of the jurisdiction) will have to also reflect this new requirement.

One or more UCC searches performed not more than 30 days prior to the date of the Opinion must be made and attached to the Opinion.

15. If the Borrower is a trust (other than a land trust), then Paragraph 15 must be included in the Opinion. The second sentence need only be included if the trust was formed in a jurisdiction other than the Property jurisdiction.

16. This Section has been modified to clarify that taxable as well as tax-exempt bond financing is covered and that other third-party source of funds financings are also covered.

Acceptability of Counsel:

• Counsel to the Borrower must opine as to the law of the Property jurisdiction and must also opine as to the law of the State of Borrower's organization, if different from the Property jurisdiction. HUD requires that Counsel to the Borrower be admitted to practice law in each jurisdiction in which such admission is required by the laws or ethical considerations of the bar to be able to give the opinion. If multiple

jurisdictions are involved, two opinions may be required: one with respect to the organization of the Borrower and another with respect to the real property and loan issues. A combination of the Borrower's regular Counsel and special local counsel may be required to satisfy this requirement. If Counsel's satisfaction of these requirements is not evident from the letterhead of the firm, the field counsel should include a written explanation in the Washington docket. In all events, each provision in the Guide must be addressed whether one or more opinions is required to do so.

Signatures:

• The Opinion may be signed by an authorized attorney(s) of the law firm, in the name of such attorney(s).

Certification of Borrower:

• A form of Certification of Borrower is attached. The form represents the minimum amount of information that should be obtained from the Borrower (but additions, revisions and rephrasings are acceptable so long as the Borrower is certifying as to factual matters and not legal conclusions). Please note that one significant addition to the certification is that Counsel to the Borrower has reviewed and discussed the terms of the Regulatory Agreement with the principals (as defined in the HUD regulations) of the Borrower entity. A certification has been added wherein the Borrower either certifies that there are no side-deals, or discloses any side deals in the Certification. The Certification of Borrower must be dated the same date as the Loan Documents.

Identity of Interest:

• Numerous issues have been raised with respect to the confirmation in (d) of the penultimate paragraph of the Guide. A decision was made that the attorney signing the Opinion could not have an identity of interest with any party to the transaction. No waivers are possible in such instance. In instances where other members of the firm have an interest in the Borrower or another entity involved in the transaction, such interest must be disclosed and such interest must be acceptable to field counsel based upon the ethics rules of the applicable bar. Furthermore, any interest must be administratively acceptable to HUD, and 2530 clearance must be obtained. In addition, there appears to be an increasing trend wherein Lenders are insisting upon using counsel to the Lender to handle many aspects of the transaction even though the Opinion is being signed by a separate attorney. There have been some instances where counsel to the Lender has asked to represent the borrower in whole or in part and to provide all or a part of the Opinion. Confirmation (d) has been clarified to reflect the intent of HUD from the inception of the Opinion that any such representation of both parties is not permitted notwithstanding State or local ethics rules.

• Please note that a new confirmation has been added to provide comfort to HUD that there is no identity of interest between the Borrower and the Lender in MAP transactions. HUD imposed this new MAP requirement and it is most important that Counsel to the Borrower explain this to the Borrower as well as the necessity of an accurate representation by the Borrower in the Borrower's Certification to Counsel. This requirement is not applicable to transactions processed under traditional processing and the requirement should be deleted in such cases.

Liens:

• Confirmation (f) contains a statement that there are no liens or encumbrances against the Property. Several attorneys have objected to making the statement because they indicate that, at the time of closing, there may be liens that have actually not been released even though the title company has received funds and/or release documents to do so and intends to process the release after the closing. Except in cases involving the insurance of secondary loans, HUD is only authorized to insure first mortgages; consequently, there cannot be any liens and encumbrances on the property when HUD endorses the note for insurance. As a result, there cannot be any liens outstanding which would prime the insured loan. Hence, Paragraph (f) should not be changed.

Certification as to Regulatory Agreement: A new confirmation has been added as (g) wherein the Counsel to the Borrower confirms through a certification to HUD that Counsel to the Borrower has reviewed and discussed the terms of the Regulatory Agreement with the principals (as defined in the HUD regulations) of the Borrower entity. This certification parallels a similar certification by the Borrower and is deemed necessary to avoid certain principals asserting they were unaware of the requirements of the Regulatory Agreement when HUD attempts to enforce the terms of the Regulatory Agreement against them.

Certification as to Side-Deals: A new confirmation has been added wherein Counsel to the Borrower confirms that, based upon the Certification by the Borrower and to the best of Counsel's knowledge, there are no side deals except as indicted in such Certification.

Reliance on Other Opinions:

The issue of proper wording and format has probably surfaced most often in cases where Counsel to the Borrower is relying on opinions issued by other attorneys. This has occurred most often in cases involving a separate opinion for bond financing documentation, property jurisdiction vs. organizational jurisdiction, zoning, etc. In this area, it is imperative that Counsel to the Borrower specifically reference and attach the additional opinion(s) and that such opinions track the language of the Guide as close as is practical under the circumstances. HUD field counsel should exercise discretion in this area, taking the unique circumstances into account.

Reliance on Opinion by Subsequent Holders of Note:

In the dialogue with the lending industry pertaining to revision of the various closing forms, the lenders made the suggestion that HUD consider the approaches taken by Freddie Mac and Fannie Mae. After a comparative analysis, HUD was the only one of the three which took a position that the Opinion could not be relied upon by subsequent holders of the Note. The 1994 HUD format merely required that the Opinion be made available for informational purposes to prospective purchasers. HUD determined that it would be desirable to permit reliance by subsequent holders in order to simplify and reduce the cost of certain refinancings, modifications, etc. The last paragraph of the current format of the Opinion has been modified to permit such reliance.

{To be used in HUD-Insured MULTIFAMILY AND HEALTH CARE Transactions}

Exhibit A To Opinion of Borrower's Counsel

CERTIFICATION OF BORROWER

This Certification of Borrower is made the _____ day of _____, 20__, by _____, (the "Borrower") for reliance upon by _____ (the "Borrower's Counsel") in connection with the issuance of an opinion letter dated of even date herewith (the "Opinion Letter") by ("Borrower's Counsel") as a condition for the provision of mortgage insurance by the Department of Housing and Urban Development ("HUD") of the $____ loan (the "Loan") from _____ (the "Lender") to Borrower. In connection with the Opinion Letter, the Borrower hereby

certifies to Borrower's Counsel for its reliance, the truth, accuracy and completeness of the following matters:

1. The Organizational Documents are the only documents creating the Borrower or authorizing the Loan, and the Organizational Documents have not been amended or modified except as represented to Counsel and as represented in the Opinion Letter.

2. The terms and conditions of the Loan as reflected in the Loan Documents have not been amended, modified or supplemented, directly or indirectly, by any other agreement or understanding of the parties or waiver of any of the material provisions of the Loan Documents.

3. All tangible personal property of the Borrower in which a security interest is granted under the Loan Documents [other than off-site construction materials and/or accounts or goods of a type normally used in more than one jurisdiction and/or additional collateral personalty] is located at the Property (as defined in the Opinion Letter) and the Borrower's [Chief Executive Office] [only place of business] [residence] is located in _____, except for the following personalty:_____[Include any Bank Accounts, Income, Receivables, Etc.] _____.

4. The execution and delivery of the Loan Documents will not (i) cause the Borrower to be in violation of, or constitute a material default under the provisions of any agreement to which the Borrower is a party or by which the Borrower is bound, (ii) conflict with, or result in the breach of, any court judgment, decree or order of any governmental body to which the Borrower is subject, or (iii) result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, except as specifically contemplated by the Loan Documents.

5. There is no litigation or other claim pending before any court or administrative or other governmental body or threatened against the Borrower or any Principals of the Borrower (as Principal is defined in the HUD regulations in 24 CFR Part 24), the Property, or any other properties of the Borrower [except as identified on Exhibit [__], List of Litigation, in the Opinion Letter.]

6. There is no default under the Public Entity Agreement (PEA) (as defined in the Opinion Letter) nor have events occurred which with the passage of time will result in a default under the PEA and/or the Regulatory Agreement between Borrower and HUD.

7. The source(s) of any funds advanced by Borrower for purposes of meeting any equity requirement of HUD or contributing to the feasibility of the Project or for any other Project purpose (Up-front Funds) is (are):

8. There are no transactions outside the terms of the HUD form documents between Borrower and any party involved in the construction or management of the Project, the Lender, any party providing funds to the Lender or any other party to the Loan (Side-Deals) except as here identified (Borrower understands that, in MAP transactions, no identity of interest (as defined by HUD in outstanding MAP directives) between Borrower and Lender is permitted):

Note: All capitalized terms not defined herein shall have the meanings set forth in the Opinion Letter.

IN WITNESS WHEREOF, the Borrower has executed this Certification of Borrower effective as of the date set forth above.

BORROWER:

•/s/ _____

•/s/ _____

Each signatory below hereby certifies that the statements and representations contained in this instrument and all supporting documentation thereto are true, accurate, and complete. This instrument has been made, presented, and delivered for the purpose of influencing an official action of HUD (acting by and through the FHA Commissioner) in insuring a multifamily rental or health care facility mortgage loan, and may be relied upon by HUD and the Commissioner as a true statement of the facts contained therein.

Name of Entity: _____

By: /s/ _____

Printed Name, Title: _____

Dated: _____

By: /s/ _____

Printed Name, Title: _____

Dated: _____

[Add Additional Lines if More Than Two Signatories]

Warning

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions, including but not limited to: (i) fines and imprisonment under 18 U.S.C. 287, 1001, 1010 and 1012; (ii) civil penalties and damages under 31 U.S.C. 3729; and (iii) administrative sanctions, claims, and penalties under 24 CFR parts 24, 28 and 30.

Residual Receipts Note (Nonprofit Mortgagors)

U.S. Department of Housing and Urban Development, Office of Housing

OMB Approval No. 0000–0000 (exp. 00/00/00)

Public Reporting Burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, DC 20410–3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502–0468), Washington, DC 20503. Do not send this completed form to either of the above addresses.

Project Name: _____

HUD Project No. (the "Project") _____

For value received _____ ("Maker") promises to pay to _____ ("Payee") the sum of ____ Dollars ($____) at _____ with interest at the rate of ____ % (per centum) per annum, which shall not be compounded, subject to the following:

1. Principal and interest on this Note shall be due and payable on the maturity date (the "Maturity Date") which is hereby defined as the maturity date of the note and mortgage (respectively, the "HUD Note" and the "HUD Mortgage") insured by the Secretary of Housing and Urban Development ("HUD") financing the Project, provided that if the HUD Note is prepaid in full, the holder of this Note, at its option and without notice, may declare the whole principal sum or any balance thereof, together with interest thereon, immediately due and payable.

2. So long as HUD or its successors or assigns, are the insurers or holders of the first mortgage on the Project, payments due under this Note shall be payable only from residual receipts of the Project, as the term residual receipts is defined in the regulatory agreement dated (insert date) _____ between HUD and Maker (the "Regulatory Agreement"). The restriction on payment imposed by this paragraph shall not excuse any default caused by

the failure of the Maker to pay the indebtedness evidenced by this Note.

3. Prepayments to principal and interest on this Note may be made only from the Residual Receipts Fund, as that term is defined in the Regulatory Agreement, and only after obtaining the prior written approval of HUD. Such prepayments may be made only after final endorsement of the HUD Note for insurance by HUD and after the end of a semiannual or an annual fiscal period of Maker.

4. Notwithstanding the provisions of paragraphs numbered 2 and 3. above, Maker also may make payments due hereunder from sources other than Project income or assets of the Project.

5. This Note is non-negotiable and may not be sold, transferred, assigned, or pledged by Payee except with the prior written approval of HUD.

6. In the event that the maturity date of the HUD Mortgage is extended and such extension is approved by HUD, then, in such event, the Maturity Date of this Note shall automatically be extended to the extended maturity date of the HUD Mortgage without the consent of Payee.

7. Any unauthorized payments, as determined by HUD, shall be returned to the Project, as the term "Project" is defined in the Regulatory Agreement.

8. This Note is made and delivered in payment of _____.

_____

_____

_____

9. Presentation, demand and notice of demand, non-payment and protest of this Note are waived.

10. The terms and provisions of this Note are also for the benefit of and are enforceable by HUD against either party or any other person.

IN WITNESS WHEREOF Maker has signed this Note on this _____ day of _____, 20_____.

MAKER:

_____

By: _____

Title: _____

[Remainder of this page intentionally left blank.]

Payee hereby certifies that this is a bona fide transaction and that Payee fully understands all the requirements of this Note, and that no prepayment of principal or interest shall be accepted without evidence that HUD has authorized such prepayment. If an unauthorized prepayment is accepted, the funds shall be returned to the Project immediately upon discovery.

PAYEE:

By: _____

Name and Title:

Residual Receipts Note (Limited Dividend Mortgagors)

U.S. Department of Housing and Urban Development
Office of Housing
OMB Approval No. 0000–0000
(exp. 00/00/00)

Public Reporting Burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, DC 20410–3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502–0468), Washington, DC 20503. Do not send this completed form to either of the above addresses.

Project Name: _____

HUD Project No. (the "Project") _____

For value received _____ ("Maker") promises to pay to _____ ("Payee") the sum of ____ Dollars ($____) at _____ with interest at the rate of ___ % (____per centum) per annum, which shall not be compounded, subject to the following:

1. Principal and interest on this Note shall be due and payable on the maturity date (the "Maturity Date") which is hereby defined as the maturity date of the note and mortgage (respectively, the "HUD Note" and the "HUD Mortgage") insured by the Secretary of Housing and Urban Development ("HUD") financing the Project, provided that if the HUD Note is prepaid in full, the holder of this Note, at its option and without notice, may declare the whole principal sum or any balance thereof, together with interest thereon, immediately due and payable.

2. So long as HUD or its successors or assigns, are the insurers or holders of the first mortgage on the Project, payments due under this Note shall be payable only from residual receipts of the Project, as the term residual receipts is defined in the regulatory agreement dated (insert date) _____ between HUD and Maker (the "Regulatory Agreement"). The restriction on payment imposed by this paragraph shall not excuse any default caused by the failure of the Maker to pay the indebtedness evidenced by this Note.

3. Prepayments to principal on this Note may be made only from the Residual Receipts Fund, as that term is defined in the Regulatory Agreement, and only after obtaining the prior written approval of HUD. Such prepayments may be made only after final endorsement of the HUD Note for insurance by HUD and after the end of a semiannual or an annual fiscal period of Maker. No payments of interest shall be made prior to maturity of this Note.

4. Notwithstanding the provisions of paragraphs numbered 2 and 3, above, Maker also may make payments due hereunder from sources other than Project income or assets of the Project.

5. This Note is non-negotiable and may not be sold, transferred, assigned, or pledged by Payee except with the prior written approval of HUD.

6. In the event that the maturity date of the HUD Mortgage is extended and such extension is approved by HUD, then, in such event, the Maturity Date of this Note shall automatically be extended to the extended maturity date of the HUD Mortgage without the consent of Payee.

7. Any unauthorized payments, as determined by HUD, shall be returned to the Project, as the term "Project" is defined in the Regulatory Agreement.

8. This Note is made and delivered in payment of _____

_____

_____

_____

9. Presentation, demand and notice of demand, non-payment and protest of this Note are waived.

10. The terms and provisions of this Note are also for the benefit of and are enforceable by HUD against either party or any other person.

IN WITNESS WHEREOF Maker has signed this Note on this _____ day of ____, 20_____.

MAKER:

_____

By: _____

Title: _____

[Remainder of this page intentionally left blank.]

Payee hereby certifies that this is a bona fide transaction and that Payee fully understands all the requirements of this Note, and that no prepayment of principal or interest shall be accepted without evidence that HUD has authorized such prepayment. If an unauthorized prepayment is accepted, the funds shall be returned to the Project immediately upon discovery.

PAYEE:

By: _____

Name and Title:

Escrow Agreement for Incomplete Construction

U.S. Department of Housing and Urban Development
Office of Housing
OMB Approval No. 0000–0000
(exp. 00/00/00)

Public Reporting Burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, DC 20410–3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502–0468), Washington, DC 20503. Do not send this completed form to either of the above addresses.

This Agreement is effective as of the ____ day of _____, 20____, by and among _____ (hereinafter, the Borrower), and _____ (hereinafter, the Lender, acting as Depository). The terms Lender and Borrower shall be deemed to have the meanings set forth in the HUD regulatory agreement for this transaction.

The Borrower is constructing or substantially rehabilitating a housing project or health care facility identified as HUD Project No. _____ with the proceeds of a loan (hereinafter, the Mortgage Loan) from the Lender. The Mortgage Loan is subject to disbursement under a certain Building Loan Agreement between the Borrower and Lender, dated _____, which Building Loan Agreement is by reference incorporated herein and made a part hereof.

Pursuant to a Commitment dated _____, the Secretary of Housing and Urban Development (hereinafter, HUD) has insured advances of the Mortgage Loan under Section _____ of the National Housing Act, as amended, and regulations and directives issued pursuant thereto.

The Borrower has not yet completed certain improvements (hereinafter, the Improvements) required by the Building Loan Agreement. The Improvements are listed, together with the estimated completion cost, in the attached Exhibit A. The Borrower intends to complete the Improvements.

In order to induce HUD to insure the Mortgage Loan in its maximum approved amount, and in order to induce the Lender to advance the entire approved amount prior to completion of the Improvements, the Borrower agrees to provide security for their completion, based on the estimate in Exhibit A and whatever additional amount is required by HUD.

In consideration of the premises, the parties acknowledge and agree as follows:

1. The Borrower will complete the Improvements on or before the ____ day of _____, 20__ (hereinafter, the completion date). The work will be done and completed, free of liens, in accordance with the Drawings and Specifications referred to in the Building Loan Agreement. The Borrower further agrees to pay for all labor and material necessary to complete the Improvements.

2. The Borrower acknowledges that all work performed pursuant to this Agreement is subject to the labor standards contained in Form HUD–92554M, Supplementary Conditions of the Contract for Construction, or its replacement, as acknowledged from time to time by the original General Contractor in executing the Contractor's Prevailing Wage Certificate on the back of Form HUD–92448, Contractor's Requisition, Project Mortgages, or its replacement. The Borrower expressly agrees to be bound by the terms and provisions of the said Conditions and the Certificate. Prior to the release of any funds deposited hereunder, the Borrower will submit a Contractor's Prevailing Wage Certificate duly executed by each and every contractor performing any of the work and dated subsequent to the completion of such work.

3. The Borrower has deposited with the Lender the cash amount of $_____, receipt of which is acknowledged by the Lender, to be held and disbursed as follows:

a. In the event the Borrower completes the Improvements in accordance with the cited requirements on or before the completion date, and there is no default under the Mortgage Loan, the Lender, upon receipt of written approval from HUD, will return the sum deposited hereunder to the Borrower, without interest.

b. In the event HUD determines that the Borrower has failed to complete the Improvements in the manner or within the time required by this Agreement, the Lender, with the approval of HUD, will have the right, in its discretion, to complete the Improvements, and to pay the cost thereof, including reasonable costs incurred by the Lender as a result of such failure, from the amount deposited under this Agreement. For this purpose, the Borrower irrevocably appoints the Lender as its attorney-in-fact, with full power of substitution, to do and perform for it, the Borrower, in its name, place and stead, all matters and things which the Lender will deem necessary and proper to be done to effectuate the completion of the Improvements, and to apply the amount deposited under this Agreement to the payment of debts, expenses, costs and charges of any kind contracted or incurred in connection therewith. This power of attorney will provide the Lender with full and sufficient authority, and the orders given by the Lender as attorney-in-fact for the Borrower will be good and sufficient vouchers for all payments made by virtue thereof. In this connection, the Lender will have full authority to enter into and upon the project and take charge thereof, together with all materials, appliances, fixtures and other improvements; and, as attorney-in-fact for the Borrower, to call upon and require contractors to complete the Improvements. To the extent that the Lender and/or its contractors complete the Improvements, such work remains subject to the labor standards referenced in Section 2 of this Agreement, and the Lender shall obtain a Contractor's Prevailing Wage Certificate duly executed by each contractor performing any of the work. In the event the Lender completes the Improvements in accordance with this Agreement, any unexpended balance of the sum deposited with the Lender will be returned to the Borrower, without interest, subject to the rights of the Lender and HUD under the Mortgage Loan documents. The Lender will not be responsible for the completion of the Improvements beyond the expenditure of the amount deposited, and if that amount is insufficient, the Lender will be under no obligation to proceed further with the Improvements or to demand additional sums from the Borrower. The power granted herein is coupled with an interest, and the Borrower acknowledges and agrees that all powers granted herein to the Lender may be assigned to HUD.

c. This Agreement is made for the benefit of the Lender and HUD, either of which shall have the right to enforce the provisions herein.

IN WITNESS WHEREOF, the parties have duly executed this Agreement.

Each signatory below hereby certifies that the statements and representations contained in this instrument and all supporting documentation thereto are true, accurate, and complete. This instrument has been made, presented, and delivered for the purpose of

influencing an official action of HUD (acting by and through the Federal Housing Commissioner) in insuring a multifamily rental or health care facility mortgage loan, and may be relied upon by HUD and the Commissioner as a true statement of the facts contained therein.

BORROWER

_____

By: _____

_____

Print name and title

LENDER, acting as DEPOSITORY

_____

By: _____

_____

Print name and title

Warning

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions, including but not limited to: (i) fines and imprisonment under 18 U.S.C. 287, 1001, 1010 and 1012; (ii) civil penalties and damages under 31 U.S.C. 3729; and (iii) administrative sanctions, claims, and penalties under 24 CFR parts 24 and 28.

Request for Final Endorsement of Credit Instrument

U.S. Department of Housing and Urban Development
Office of Housing
OMB Approval No. 0000–0000
(exp. 00/00/00)

Public Reporting Burden for this collection of information is estimated to average 1.0 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, DC 20410–3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502–0468), Washington, DC 20503. Do not send this completed form to either of the above addresses.

Project Name:

_____

Project Number:

_____

Project Address:

_____

Date of Commitment:

_____

Mortgagor:

_____

To the Department of Housing and Urban Development

The undersigned declares that construction of this project is complete*; and that advances have been made to the above mortgagor in accordance with your Certificate of Insurance on the dates and in the amounts set forth in the schedule below; that the undersigned has paid no kickback and no fee or other consideration, directly or indirectly, to any person who has received payment or other consideration from any other person in connection with this mortgage transaction, including the purchase or sale of the mortgaged property, except for compensation paid, if any, for the actual performance of services and approved by you; and that to the best of the undersigned's knowledge and belief the said loan is now eligible for mortgage insurance and accordingly, the undersigned hereby requests final endorsement of the attached credit instrument for mortgage insurance in the total sum of $_____.

SCHEDULE OF ADVANCES

Date	Amount	Date	Amount

Subtotal (amount advanced to date):_____

$_____

A final advance in the following amount will be disbursed immediately upon your final endorsement of the note for insurance when added to the advances previously made._____

$_____

Total:_____

$_____

Mortgagee:

_____

By: (Signature, Title & Date)

_____

X _____

*Minor items of construction still to be completed are covered by an Escrow Deposit Agreement (form HUD–92456), three conformed copies whereof are herewith delivered to you. There is held in escrow as a guarantee of the completion thereof the amounts determined by your office as necessary for such purpose.

Certificate of Mortgagor

_____

Project Number:

_____

To: Department of Housing and Urban Development (HUD)

In order to induce HUD to finally endorse the credit instrument for mortgage insurance, and with the intent that HUD rely upon the statements hereinafter set forth, the undersigned makes the following certifications:

1. That it has received the sum of $_____ which when added to the final advance will total $_____, constituting the full insurable amount of the mortgage for this project.

2. That construction of the project is complete and is in accordance with the plans and specifications approved by HUD; that said mortgage is a good and valid first lien on the property therein described; that the property is free and clear of all liens other than that of subject mortgage except for a lien approved by HUD given in favor of government entity or other HUD-approved lien expressly subordinate to HUD's first lien; that all outstanding unpaid obligations and past due interest payments contracted by or on behalf of the mortgagor entity directly or indirectly, in connection with the mortgage transaction, the acquisition of the property, the construction of the project, or the arrearage relative to any project are listed below:

* (a) HUD-approved notes (copies attached) _____

$_____

(b) Due General Contractor _____

$_____

* (c) Other _____

$_____

3. That, except for the amounts due on notes listed in item (a) of paragraph 2 above, the undersigned agrees to pay the foregoing obligations in cash and to furnish HUD receipts, or other evidence of payment satisfactory to HUD, within 45 days following receipt of the final advance of mortgage proceeds on its "Certificate of Actual Cost:" (form HUD–92330), supported by the documentation required therein. The Mortgagor further agrees that if HUD accepts estimates for any items, the Mortgagor will, at final endorsement, establish a cash escrow in the amount of $_____ to pay all the "to be paid in cash items" identified on its Certification of Actual Cost and debts to third parties who made the original disbursements for an item listed as paid on Form 92330, unless documentation, satisfactory to HUD, evidencing that these amounts were paid by the Mortgagor subsequent to the submission of its Certification of Actual Cost. The Mortgagor understands that the items covered by this cash escrow must be paid within 45 days of the date of final endorsement.

Mortgagor:

_____

By: (Signature & Title)

X

_____

Date:

_____

*Note: This includes any past due amount under the construction loan. (If the space provided is inadequate to list all unpaid obligations, insert the total in each category and attach itemizations. If there are no outstanding obligations, so state.)

Certificate of General Contractor

Project Number:

_____

To the Department of Housing and Urban Development

The undersigned, as general contractor of the above project, makes the following certifications:

1. That construction is in accordance with the plans and specifications which were approved by HUD.

2. That all outstanding unpaid obligations contracted by or on behalf of the undersigned in connection with the construction contract are listed below. (If space below is inadequate, continue listing on an attached sheet and so note.)

(a) _____

$ _____

(b) _____

$ _____

(c) _____

$ _____

3. That, except for unfinished work covered by an approved escrow deposit, the undersigned agrees to pay the foregoing obligations in cash, within 15 days following receipt of payment from owner.

General Contractor:

_____

By: (Signature & Title)

X

_____

Date:

_____

Each signatory below hereby certifies that the statements and representations contained in the part signed by the respective signatory and all supporting documentation thereto are true, accurate, and complete. Each signatory, for its part only, hereby states this instrument has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring a multifamily rental or health care facility mortgage loan, and may be relied upon by HUD as a true statement of the facts contained therein.

Name of Entity: _____

(MORTGAGEE)

By: _____

Printed Name, Title _____

Dated: _____

Name of Entity: _____

(MORTGAGOR)

By: _____

Printed Name, Title _____

Dated: _____

Name of Entity: _____

(GENERAL CONTRACTOR)

By: _____

Printed Name, Title _____

Dated: _____

Warning

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions, including but not limited to: (i) fines and imprisonment under 18 U.S.C. 287, 1001, 1010 and 1012; (ii) civil penalties and damages under 31 U.S.C. 3729; and (iii) administrative sanctions, claims, and penalties under 24 CFR parts 24 and 28.

Lease Addendum

U.S. Department of Housing and Urban Development
Office of Housing
OMB Approval No. 0000–0000
(exp. 00/00/00)

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INSTRUCTIONS FOR LEASEHOLD PROJECTS

These instructions and the following Lease Addendum have been prepared for use in connection with mortgage insurance for multifamily projects given pursuant to the National Housing Act found at 12 U.S.C. 1701, *et seq.* (the "Act"). The lease term and other provisions must comply with the section of the Act under which the mortgage is insured. The lease provisions must not conflict with any regulations or directives promulgated by the Department of Housing and Urban Development ("HUD") with respect to such mortgage insurance. All rent amounts must have prior written approval by HUD.

These instructions and the following addendum are based on the presumption that the lease will be a *ground lease* and all buildings, improvements and fixtures now or hereafter erected will be owned in fee simple by the Tenant and be deemed real estate under local law. The term "Property" shall be defined in the lease as the legally described land except the buildings and improvements now or hereafter located thereon. If the foregoing presumption is not correct the HUD closing attorney must be contacted for further instructions. The provisions of the following addendum must be set forth in the body of the lease or the addendum attached and incorporated by reference.

LEASE ADDENDUM

Notwithstanding any other provisions of this Lease, in the event of any conflict, inconsistency or ambiguity between the provisions of this Lease Addendum ("Addendum") and the provisions of any other part of this Lease, the provisions of this Addendum shall prevail and control. So long as the mortgage insured by the Secretary of the Department of Housing and Urban Development ("HUD"), with respect to

FHA Project No. _____ known as (insert project name) _____ (hereafter the "Mortgage") is in effect and not released; or there is any mortgage of this leasehold or of the buildings, improvements and fixtures now on or hereafter erected on the Property (hereafter the "Improvements") which mortgage is insured by or held by HUD; or in the event the ownership of the Improvements or this leasehold is acquired by HUD, then in any such event, the following provisions shall be and are in full force and effect:

(a) Tenant is authorized to obtain a loan, the repayment of which is to be insured by HUD and secured by a mortgage on this leasehold estate and the Improvements. Tenant is further authorized to execute all documents necessary as determined by HUD and otherwise to comply with the requirements of HUD for obtaining such an insured mortgage loan.

(b) In the event that HUD acquires title to this leasehold estate or otherwise acquires title to Tenant's interest herein, HUD shall have the option to purchase good and marketable fee simple title to the Property and Landlord's interest, if any, in the Improvements (the "Interest"), free of all liens and encumbrances except such as may be waived or accepted by HUD. Such option shall be exercised within twelve (12) months after HUD so acquires such leasehold estate or Tenant's interest. The purchase price shall be the sum of _____ Dollars ($_____) payable in cash, or by Treasury check, provided all rents are paid to date of transfer of title. HUD shall, within said twelve months, give written notice to Landlord of its election to exercise said option to purchase. Landlord shall, within thirty (30) days after HUD gives such notice, execute and deliver to HUD a warranty deed of conveyance to HUD as grantee conveying the said fee and Interest and containing a covenant against the grantor's acts, but excepting therefrom acts of the Tenant and those claiming by, through or under the Tenant. Nothing in this option shall require the Landlord to pay any taxes or assessments that were due and payable by the Tenant.

(c) If approved by HUD, the Tenant may convey, assign, transfer, lease, sublease or sell all or any part of its leasehold interest in the Property and its interest in the Improvements without the need for approval or consent by any other person or entity.

(d)(i) Insurance policies shall be in an amount, and in such company or companies and in such form, and against such risks and hazards, as shall be approved by the Lender of the Mortgage (hereinafter, "Lender," which term, when used herein, also shall be deemed to have the meaning set forth in the HUD regulatory agreement applicable to this transaction) and HUD.

(ii) The Landlord shall not take out separate insurance concurrent in form or contributing in the event of loss with that specifically required to be furnished by the Tenant to the Lender. The Landlord may at its own expense, however, take out separate insurance which is not concurrent in form or not contributing in the event of loss with that specifically required to be furnished by the Tenant to the Lender.

(e)(i) If all or any part of the Property or the Improvements or the leasehold estate shall be taken or damaged by condemnation, that portion of any award attributable to the Improvements or the Tenant's interest in the leasehold estate or damage to the Improvements or the Tenant's interest in the leasehold estate shall be paid to the Lender or otherwise disposed of as may be provided in the Mortgage. Any portion of the award attributable solely to the taking of the Property shall be paid to the Landlord. After the date of taking, the annual ground rent shall be reduced ratably by the proportion which the award paid to Landlord bears to the total value of the Property as established by the amount HUD is to pay, as set forth in paragraph (b) of this Addendum.

(ii) In the event of a negotiated sale of all or a portion of the Property or the Improvements, in lieu of condemnation, the proceeds shall be distributed and annual ground rent reduced as provided in cases of condemnation, but the approval of HUD and Lender shall be required as to the amount and division of the payments to be received.

(f) Landlord may terminate the Lease prior to the expiration date of the full term of this lease ("Expiration Date") after a Tenant default under this lease ("Event of Default") but only under the following circumstances and procedures. If any Event of Default shall occur, then and in any such event, Landlord shall at any time thereafter during the continuance of such Event of Default and prior to any cure, give a written notice of such default(s) ("Notice of Default") to Tenant, the Lender and HUD, specifying the Event or Events of Default and the methods of cure, or declaring that an Event of Default is incurable. If the Event of Default is a failure to pay money, Landlord shall specify and itemize the amounts of such default. Failure to pay money shall be specified as a separate default and not combined with a non-monetary Event of Default. Within sixty (60) days from the date of giving the Notice of Default to Tenant, Tenant must cure a monetary default by paying Landlord all amounts specified in the Notice of Default and must cure any specified Event of Default that is capable of being cured within such period. During the period of 180 days commencing upon the date Notice of Default was given to the Lender and HUD, the Lender or HUD may: (a) Cure any Event of Default; and (b) commence foreclosure proceedings or institute other state or federal procedures to enforce Lender's or HUD's rights with respect to the leasehold or Tenant Improvements ("Foreclosure"). If Tenant, Lender or HUD reasonably undertake to cure any Event of Default during the applicable cure period and diligently pursues such cure, Landlord shall grant such further reasonable time as is necessary to complete such cure. If HUD or Lender commences Foreclosure or other enforcement action within such 180 days, then its cure period shall be extended during the period of the Foreclosure or other action and for 90 days after the ownership of Tenant's rights under the Lease is established in or assigned to HUD or such Lender or a Purchaser at any foreclosure sale pursuant to such Foreclosure or other action. The transfer of the Tenant's rights under the Lease to Lender, HUD or Purchaser, pursuant to such Foreclosure or other action shall be deemed a termination of any incurable Event of Default and such terminated Event of Default shall not give Landlord any right to terminate the Lease. Such Purchaser may cure curable Events of Default within said 90 days. If after the expiration of all of the foregoing cure periods, no cure or termination of an existing Event of Default has been achieved as aforesaid, then and in that event, this Lease shall terminate, and on such date the term of this Lease shall expire and terminate and all rights of Tenant under the Lease shall cease and the Improvements, subject to the Mortgage and the rights of Lender thereunder, shall be and become the property of Landlord. All costs and expenses incurred by or on behalf of Landlord (including, without limitation, reasonable attorneys' fees and expenses) occasioned by any default by Tenant under this Lease shall constitute Additional Rent hereunder. Landlord shall have no right to terminate this Lease except as provided in this paragraph (f).

(g) Upon termination of this Lease pursuant to paragraph (f) above, the Landlord shall immediately seek to obtain possession of the Property and

Improvements. Upon acquiring such possession, the Landlord shall notify HUD and the Lender in writing. The Lender and HUD shall each have six (6) months from the date of receipt of such notice of acquisition to elect to take, as tenant, a new lease on the Property and on the Improvements. Such new lease shall have a term equal to the unexpired portion of the term of this Lease immediately prior to such termination and shall, except as otherwise provided herein, be on the same terms and conditions as contained in this lease, including without limitation, the option to purchase set forth under paragraph (b) above, except that Lender's or HUD's liability for ground rent shall not extend beyond their occupancy under such lease. The Landlord shall tender such new lease to the Lender or HUD within thirty (30) days after a request for such lease and shall deliver possession of the Property and Improvements immediately upon execution of the new lease. Upon executing a new lease, the Lender or HUD shall pay to Landlord any unpaid ground rent due or that would have become due under this Lease to the date of the execution of the new lease, including any taxes which were liens on the Property or the Improvements and which were paid by Landlord, less any net rentals or other income which Landlord may have received on account of the Property and Improvements since the date of default under this Lease.

(h) The Landlord agrees that within ten (10) days after receipt of written request from Tenant, it will join in any and all applications for permits, licenses or other authorizations required by any governmental or other body claiming jurisdiction in connection with any work which the Tenant may do hereunder and will also join in any grants for easements for electric, telephone, telecommunications, cable, gas, water, sewer and such other public utilities and facilities as may be reasonably necessary in the operation of the property or of any Improvements and if, at the expiration of such ten (10) day period, the Landlord shall not have joined in any such application, or grants for easements, the Tenant shall have the right to execute such application and grants in the name of the Landlord, and for that purpose, the Landlord hereby irrevocably appoints the Tenant as its Attorney-in-fact to execute such papers on behalf of the Landlord.

(i) Nothing in this Lease contained shall require the Tenant to pay any franchise, estate, inheritance, succession, capital levy or transfer tax of the Landlord or any income excess profits or revenue tax, or any other tax, assessment charge or levy upon the rent payable by the Tenant under this lease.

(j) All notices, demands and requests which are required to be given by the Landlord, the Tenant, the Lender or HUD shall be in writing and shall be sent by registered or certified mail, postage prepaid, and addressed to the address of the party as given in this instrument unless a request for a change in this address has been sent to the party giving the notice by registered or certified mail prior to the time when such notice is given.

All notices to Lender or HUD shall be as follows:

If to Lender:

_____

_____

_____

_____

If to HUD:

_____

_____

_____

_____

_____

_____

_____

(k) This lease shall not be modified without the written consent of HUD and the Lender.

(l) The provisions of this Addendum benefit the Lender and HUD and are specifically declared to be enforceable against the parties to this lease and all other persons by the Lender and HUD.

Surplus Cash Note

U.S. Department of Housing and Urban Development
Office of Housing
OMB Approval No. 0000–0000
(exp. 00/00/00)

Public Reporting Burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, DC 20410–3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502–0468), Washington, DC 20503. Do not send this completed form to either of the above addresses.

Project Name:
HUD No: _____ (the "Project")
FOR VALUE RECEIVED, _____ ("Maker") promises to pay to _____ ("Payee") the sum of _____ Dollars ($_____), payable at _____ with interest on any remaining balance of principal at _____ per cent (_____%) per annum payable annually, commencing _____, 20__, and thereafter on the first day of _____ until the entire indebtedness has been paid. Any interest not so paid shall not create any default in the terms of this note but shall accrue and be payable in full on the maturity date hereof. In any event, the balance of principal, if any remaining unpaid, plus accrued interest, shall be due and payable on _____, 20__ ("Maturity Date"). [**Note:** The Maturity Date must be on or after the maturity date of the HUD insured mortgage.]

This Promissory Note ("Note") is made on and is subject to the following terms and conditions:

1. In the event that the maturity date of that certain mortgage (the "HUD Mortgage") dated _____ in the principal amount of $_____ made by Maker to _____ ("HUD Lender," which term shall be deemed to have the meaning for "Lender" set forth in the HUD regulatory agreement for this Project) in connection with the HUD Project referenced above is extended and such extension is approved by the Secretary of Housing and Urban Development ("Secretary" or "HUD") then in such event the Maturity Date of this Note shall automatically be extended to the extended maturity date of the HUD Mortgage without the consent of Payee.

2. So long as the Secretary or his/her successors or assigns, are the insurers or holders of the first mortgage on the HUD Project, payments due under this Note shall be payable only from surplus cash of said project, as the term surplus cash is defined in the Regulatory Agreement dated _____, 20__ between HUD and Maker. The restriction on payment imposed by this paragraph shall not excuse any default caused by the failure of the maker to pay the indebtedness evidenced by the Note.

3. In the event that the indebtedness secured by the HUD Mortgage is paid in full and the HUD Mortgage released of record, then the holder of this Note may, at its option, declare the whole principal sum or any balance thereof, together with interest thereon, immediately due and payable.

4. Maker may pay any part or all of the principal of this Note on any interest payment date. Provided, however, no such prepayment of principal in any amount or any payment of interest shall be made except from Surplus Cash in accordance with the conditions prescribed, in the Regulatory Agreement.

5. Notwithstanding the provisions of paragraphs numbered 2 and 4 above, the maker may also make payments due hereunder from sources other than project income or assets of the project.

6. Any unauthorized payments, as determined by HUD, shall be returned to the Project as that term "Project" is defined in the Regulatory Agreement.

7. No prepayment shall be made until after final FHA insurance endorsement of the note secured by the HUD Mortgage.

8. This Note is non-negotiable and may not be sold, transferred, assigned or pledged by payee except with the prior written approval of HUD.

9. Interest on this Note shall not and must not be compounded.

10. The Maker hereby waives presentment, demand, protest and notice of demand, protest and nonpayment of this Note.

11. The terms and provisions of this Note are also for the benefit of and are enforceable by HUD against either party or any other person.

IN WITNESS WHEREOF, the Maker has signed this Note on this _____ day of _____, 20__.

MAKER: _____

By: _____

Name:

Title:

Completion Assurance Agreement

U.S. Department of Housing and Urban Development
Office of Housing
OMB Approval No. 0000–0000
(exp. 00/00/00)

Public Reporting Burden for this collection of information is estimated to average 0.5 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, DC 20410–3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502–0468), Washington, DC 20503. Do not send this completed form to either of the above addresses.

This Agreement made this _____ day of _____, 20 ____, by and between _____, Contractor, having an office at _____, and _____, Borrower (which term also shall be deemed to have the meaning set forth in the HUD regulatory agreement applicable to this transaction), having an office at _____, and _____, Lender (which term also shall be deemed to have the meaning set forth in the HUD regulatory agreement applicable to this transaction), having an office at _____.

WITNESSETH:

Whereas, the Contractor and the Borrower have entered into a Construction Contract dated _____, 20_____ (the Construction Contract), providing for the construction of a housing project described in the Construction Contract, said project being known as Project No. _____, and a copy of the Construction Contract being on file with the Department of Housing and Urban Development (HUD); and

Whereas, the construction of the Project is to be financed by a mortgage loan made to Borrower by the Lender, which loan is secured by a mortgage/deed of trust (hereinafter called the mortgage), to be insured by the Federal Housing Commissioner (hereinafter the Commissioner), pursuant to and under the provisions of the National Housing Act, as amended; and

Whereas, the Lender is unwilling to make advances of mortgage proceeds and the Commissioner is unwilling to insure the mortgage unless the Contractor shall first furnish proper assurance to the Borrower and to the Lender for the performance of the obligations of the Contractor under the Construction Contract, including, but not limited to:

(a) The completion of the Project in accordance with drawings and specifications referred to in the Construction Contract;

(b) The completion of the Project free and clear of any liens, claims or encumbrances whatsoever, except for the lien of the mortgage;

(c) The payment of all mechanics and laborers employed in the construction of the Project at wages prevailing in the locality of the project as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended;

(d) The satisfaction of any loss, damage, expense or claim which the Borrower or Lender may suffer or sustain through the failure of the Contractor to fulfill the provisions of (a), (b), or (c) above or through the failure of the Contractor to fulfill all obligations under the Construction Contract.

Now, Therefore, in consideration of the mutual promises and undertakings hereinafter contained, and for the purpose of inducing the commissioner to insure advances of mortgage money during construction, the parties hereto on behalf of themselves, their successors or assigns respectively, undertake and agree that:

1. The Contractor has deposited with the Lender, or if the Lender so elects, with a depository satisfactory to the Lender, a Completion Assurance Fund; (hereinafter called the Fund), in the amount of _____ Dollars ($_____) to secure or indemnify the Borrower or Lender, as the case may be, for any expenses, loss, or damage suffered or sustained as the result of any default by the Contractor in the performance of the Construction Contract; it being understood and agreed that the Fund shall at all times be under the control of the Lender or its assigns and is deposited in the form of: /____/ Cash; or /____/ an unconditional irrevocable letter of credit issued to the Lender by a bank institution;

2. The Lender shall maintain such Fund as a separate trust account to be disbursed in the following order:

(a) To the Contractor or party making such deposit during the course of construction, as may be deemed necessary by the Lender and with prior written approval of the commissioner, or his/her authorized agent.

(b) To the Borrower such portion of the Fund as deemed necessary by the Commissioner to recover any overpayment to the Contractor.

(c) To the Contractor or party making such deposit, the balance of such fund so deposited remaining upon final endorsement of the Mortgage loan for insurance by the Commissioner or his/her authorized agent; except that there shall be withheld from the payment of said balance an amount equal to two and one-half percent (2½%) of the total amount of the Construction Contract, which sum is to be retained in such account for a period of fifteen (15) months from the date of completion as defined in the Construction Contract. Said sum shall be held as a fund to guarantee against defects in construction due to faulty materials or workmanship or damage to the mortgaged premises resulting from such defects, which defects or damage become apparent within one year after the date of the aforesaid completion. Said sum may be used for the correction of such defects or damage in the event the Contractor fails to make such corrections. The Contractor's liability for such corrections is not limited by the amount of such sum.

(d) To the Lender the entire Fund or balance remaining therein in the event of a default by the contractor under the Construction Contract, to be used by the Lender to indemnify it and the Borrower as the case may be, for any loss, damage or expense whatsoever which they may

suffer by reasons of the Contractor's failure to properly perform the Construction Contract.

In any event, any and all disbursements from the Fund shall be made only upon the prior written approval of the Commissioner, or his/her authorized agent.

3. In the event the Lender assigns the mortgage to the Commissioner at any time during which the Fund has a balance remaining therein in the form of an unconditional irrevocable letter of credit, the Contractor authorizes the Lender to draw the remaining balance of said letter of credit in cash, if so required by the Commissioner, and deliver such cash within forty-five (45) days after the assignment is filed for record to the Commissioner to be held in accordance with the terms of this Agreement.

4. Notwithstanding any of the provisions herein contained, it is expressly understood and agreed by all the parties thereto that in the event of a default by the Contractor in any of its obligations under the Construction Contract, the entire Fund or balance remaining therein may, at the option of the Lender and the Commissioner, be paid to the Commissioner together with an assignment of all rights hereunder granted to the Lender and the Borrower. The Contractor and Borrower hereby consent to the transfer of the rights of the Lender hereunder by assignment in case any other Lender or Lenders should become the Borrower or holder of the mortgage.

5. This Agreement shall not alter or limit the obligations and liabilities of the contractor under the Construction Contract, but shall be deemed to be merely additional security for the performance by the Contractor of the obligations thereunder.

6. It is understood and agreed that in the event the Fund is held by a depository other than the Lender, that said depository is not charged with any duty or responsibility to see to the performance of or compliance with any agreements between any of the parties hereto other than that of paying over the Fund as directed in writing by the Lender, nor to see to the application of the Fund after making disbursement as so directed.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

BORROWER

_____

By: _____

_____

Print name and title

LENDER

_____

By: _____

_____

Print name and title

CONTRACTOR

_____

By: _____

_____

Print name and title

DEPOSITORY

_____

By: _____

_____

Print name and title

Each signatory below hereby certifies that the statements and representations contained in this instrument and all supporting documentation thereto are true, accurate, and complete. This instrument has been made, presented, and delivered for the purpose of influencing an official action of HUD (acting by and through the FHA Commissioner) in insuring a multifamily rental or health care facility mortgage loan, and may be relied upon by HUD and the Commissioner as a true statement of the facts contained therein.

Name of Entity: _____
By:
/s/ _____
Name, Title: _____
Dated: _____

By:
/s/ _____
Name, Title: _____
(Printed)
Dated: _____
Name of Entity: _____
By:
/s/ _____
Name, Title: _____
Title:
(Printed)
Dated: _____
By:
/s/ _____
Name, Title: _____
(Printed)
Dated: _____

Warning

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions, including but not limited to: (i) fines and imprisonment under 18 U.S.C. 287, 1001, 1010 and 1012; (ii) civil penalties and damages under 31 U.S.C. 3729; and (iii) administrative sanctions, claims, and penalties under 24 CFR parts 24 and 28.

Payment Bond

U.S. Department of Housing and Urban Development

Office of Housing

OMB Approval No. 0000–0000 (exp. 00/00/00)

Public Reporting Burden for this collection of information is estimated to average 0.5 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, DC 20410–3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502–0468), Washington, DC 20503. Do not send this completed form to either of the above addresses.

CONTRACTOR/PRINCIPAL (Name and Address):

LENDER (Name and Address):

OWNER (Name and Address):

SURETY (Name and Principal Place of Business):

PROJECT (Name, FHA Number and Location):

CONSTRUCTION CONTRACT:
Date:
Amount:

BOND:
Date:
Amount:

RIDERS TO THIS BOND: __Yes __No

This Payment Bond ("Bond") is issued simultaneously with a Performance Bond-Dual Obligee (the "Performance Bond") issued in connection with the Project. As used herein, "Obligees" shall mean Owner and the additional obligee(s), if any, identified in a Rider to this Bond and "Obligee" shall mean any of the Obligees.

1. Contractor has entered into a construction contract with Owner for the construction of the above-named Project. The construction contract (as the same may now or hereafter be amended by change order or otherwise) is made a part hereof by reference, and is hereinafter referred to as the "Contract."

2. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns, to Obligees, for the use and benefit of Claimants as hereinafter

defined, in the sum of ____ Dollars ($__), to pay for labor, materials and equipment furnished for use in the performance of the Contract. Any approved increase in the total Contract price would increase the monetary obligation of the Obligors accordingly.

3. This obligation shall be null and void if the Contractor promptly makes payment to all Claimants for all labor, material, or equipment used in the performance of the Contract.

4. Contractor and Surety hereby jointly and severally agree with Obligees that every Claimant, who has not been paid in full before the expiration of a period of ninety (90) days after having last performed labor or last furnished materials or equipment, may sue on this Bond for the use of such Claimant, prosecute the suit to final judgment for such sum or sums as may be justly due Claimant, and have execution thereon. No Obligee shall be liable for the payment of any costs or expenses of any such suit.

5. Surety shall have no obligation to Claimants under this Bond unless:

a. Claimants who do not have a direct contract with the Contractor have given notice to any two (2) of the above-named parties, Contractor, Owner or Surety, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the claim, stating that a claim is being made under this Bond and, with substantial accuracy, the amount claimed and the name of the party to whom the materials or equipment were furnished, or for whom the work or labor was done or performed.

b. Any suit, action or proceeding brought by a Claimant under this Bond shall be instituted within one (1) year from the date (i) on which the Claimant gave the notice required by Paragraph 5a, or (ii) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Contract, whichever occurs later. If this limitation is deemed to be in contravention of any controlling law, this Bond is deemed amended so as to be equal to the minimum period of limitation permitted by such law.

6. The amount of this Bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens that may be filed of record against said Project, whether or not the claim for the amount of such lien is presented under and against this Bond. Notwithstanding the foregoing, no amounts paid to Owner without the written consent of Lender shall reduce the liability of Surety to Lender under this Bond.

7. Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders and other obligations.

8. Notice to the Surety, Owner, or Contractor shall be served by mailing the same by registered mail or certified mail, postage prepaid, to the address shown on this Bond or to such other address as may have been previously specified by the recipient in a notice given in accordance herewith.

9. A Claimant is defined as one having a direct contract with Contractor or with a subcontractor of Contractor for labor, materials or equipment used in the performance of the Contract, including without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment was furnished.

SIGNED and SEALED this____day of _____, 20__.

Witness as to Contractor:

_____

CONTRACTOR:

_____

By: _ _____

Name and Title (Printed)

SURETY:

_____

By: _____

Name and Title (Printed)

Project Name: _____

Project Number: _____

ADDITIONAL OBLIGEE RIDER

(Additional obligee only allowed with prior HUD approval as indicated below.)

1. This additional Obligee Rider is attached to and made a part of that certain Payment Bond (the "Payment Bond"), dated ____, 20 __ executed and delivered by _____, as Contractor, and _____, as Surety, in favor of Obligees, in the sum of _____ ($____) with respect to the Project referenced above.

2. All of the terms, conditions and provisions of the Payment Bond are hereby incorporated herein by this reference as if fully set forth herein.

3. All defined terms as set forth in the Payment Bond shall have the same meaning herein.

4. _____ is hereby added to the Payment Bond as an additional named Obligee.

5. Nothing herein shall alter or affect any of the terms, conditions and other provisions of the Payment Bond, including especially but without limitation, the aggregate liability of Surety as described in paragraph 2 of the Payment Bond.

Signed and sealed this ____ day of _____, 20__.

Witness as to Contractor:

_____

_____

CONTRACTOR:

By: _____

_____

Name and Title (Printed)

SURETY:

By: _____

_____

Name and Title (Printed)

Project Name: _____

Project Number: _____

ADDITIONAL SURETY RIDER

(*Additional surety only allowed with prior HUD approval as indicated below.*)

1. This Additional Surety Rider is attached to and made a part of that certain Payment Bond (hereinafter "Payment Bond"), dated ____, 20____ executed and delivered by _____, as Contractor, and _____, as Surety, in favor of Obligees, in the sum of _____ ($____) with respect to the Project referenced above.

2. All of the terms, conditions and provisions of the Payment Bond are hereby incorporated herein by this reference as if fully set forth herein.

3. All defined terms as set forth in the Payment Bond shall have the same meaning herein.

4. _____ (the "Additional Surety") is hereby added to the Payment Bond as an additional named surety.

5. Each surety and additional surety (hereinafter collectively called "Surety") is held and firmly bound, jointly and severally, onto Obligees. Further, each undersigned Surety binds itself in the aforesaid full sum, "jointly and severally," as well as "severally" for the purpose of allowing joint action or singular actions against any or all of them in the full amount of this Payment Bond and for all other purposes each Surety binds itself, jointly and severally with Contractor, for the payment of the full sums above stated. All references in the Payment Bond to "Surety" shall include the Additional Surety.

6. Nothing herein shall alter or affect any of the terms, conditions and other provisions of the Payment Bond,

including especially but without limitation, the aggregate liability of the Surety as described in paragraph 2 of the Payment Bond.

SIGNED AND SEALED this ____ day of _____, 20__.

Witness as to Contractor:

CONTRACTOR:

_____

By: _____

Name and Title (Printed)

SURETY:

_____

By: _____

Name and Title (Printed)

Approved by the United States Department of Housing and Urban Development

By: _____

Performance Bond—Dual Obligee

U.S. Department of Housing and Urban Development

Office of Housing

OMB Approval No. 0000–0000
(exp. 00/00/00)

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CONTRACTOR/PRINCIPAL (Name and Address):

OWNER (Name and Address):

LENDER (Name and Address):

SURETY (Name and Principal Place of Business):

PROJECT (Name, FHA Number and Location):

CONSTRUCTION CONTRACT:

Date:

Amount:

BOND:

Date:

Amount:

RIDERS TO THIS BOND: __Yes __No

This Performance Bond-Dual Obligee ("Bond") is issued simultaneously with a Payment Bond ("Payment Bond") issued with respect to the Project. As used herein, "Obligees" shall mean Owner, Lender and the additional obligee(s), if any, identified in a Rider to this Bond and "Obligee" shall mean any of the Obligees.

1. Contractor has entered into a construction contract with Owner for the construction of the above-named Project. The construction contract (as the same may be now or hereafter amended by change order or otherwise) is made a part hereof by reference, and is hereinafter referred to as the "Contract."

2. Lender has agreed to lend to Owner a sum of money to be secured by a mortgage, deed of trust, or security deed on the Project and to be used in making payments under the Contract, and desires protection as its interests may appear, in event of default by Contractor under the Contract.

3. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns, unto Owner and unto Lender, its successors and assigns, as their respective interests may appear, as OBLIGEES, in the sum of ____ Dollars ($__), for the performance of the Contract. Any approved increase in the total Contract price would increase the obligation of the Obligors accordingly.

4. The condition of this obligation is such that, if Contractor shall perform all the undertakings, covenants, terms, conditions and agreements of the Contract on its part to be performed, and fully indemnify and save harmless Obligees from all costs and damages which they may suffer by reason of failure to do so, and fully reimburse and repay Obligees all expenses which any of the Obligees may incur in making good any such default, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

5. Surety shall not be liable under this Bond to the Obligees, or any of them, unless the said Obligees, or any of them, make payments to the Contractor in accordance with the terms of the Contract as to payments, and perform all the other obligations to be performed under the Contract. However, Surety shall not assert a failure by the Obligees, or any of them, to make payments or perform obligations under the Contract unless each of the Obligees has been given written notice by Surety of any such failure and a reasonable period of time (but in no event less than thirty (30) days from receipt of said notice), in which to cure such failure.

6. Surety agrees that any right of action that any of Obligees herein may have under this Bond may be assigned, without the consent of Contractor or Surety, to the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner, and that such assignment will in no manner invalidate or qualify this instrument.

7. The aggregate liability of Surety hereunder to the Obligees or their assigns is limited to the penal sum above stated, and Surety, upon making any payment hereunder, shall be subrogated to, and shall be entitled to an assignment of, all rights of the payee, either against Contractor or against any other party liable to the payee in connection with the loss which is the subject of the payment. Notwithstanding the foregoing, no amounts paid to Owner without the written consent of Lender shall reduce the liability of Surety to Lender under this Bond.

8. Any suit, action or proceeding by reason of any default whatever shall be instituted within two years after the date the Owner declares the Contractor in default of the Contract. If this limitation is deemed to be in contravention of any controlling law, this Bond is deemed amended so as to be equal to the minimum period of limitation permitted by such law.

9. Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders and other obligations.

10. Notice to the Surety, Owner, or Contractor shall be served by mailing the same by registered mail or certified mail, postage prepaid, to the address shown on this Bond or to such other address as may have been previously specified by the recipient in a notice given in accordance herewith.

SIGNED and SEALED THIS ____ day of _____, 20__.

Witness as to Contractor:

_____

CONTRACTOR:

_____

By: _____

Name and Title (Printed)

SURETY:

_____

By: _____

Name and Title (Printed)

Project Name: _____

Project Number: _____

ADDITIONAL OBLIGEE RIDER

(Additional obligee only allowed with prior HUD approval as indicated below.)

1. This Additional Obligee Rider is attached to and made a part of that certain Performance Bond-Dual Obligee (the "Performance Bond"), dated _____, 20__, executed and delivered by _____, as Contractor, and _____, as Surety, in favor of Obligees, in the sum of _____ ($____) with respect to the Project referenced above.

2. All of the terms, conditions and provisions of the Performance Bond are hereby incorporated herein by this reference as if fully set forth herein.

3. All defined terms as set forth in the Performance Bond shall have the same meanings herein.

4. _____ is hereby added to the Performance Bond as an additional named Obligee.

5. Nothing herein shall alter or affect any of the terms, conditions and other provisions of the Performance Bond, including especially but without limitation, the aggregate liability of the Surety as described in paragraph 3 of the Performance Bond.

Signed and sealed this ____ day of _____, 20__.

Witness as to Contractor:

_____

CONTRACTOR: _____

By: _____

_____

Name and Title (Printed)

SURETY: _____

By: _____

_____

Name and Title (Printed)

Approved by the United States Department of Housing and Urban Development

By: _____

Project Name: _____

Project Number: _____

ADDITIONAL SURETY RIDER

(Additional surety only allowed with prior HUD approval as indicated below.)

6. This Additional Surety Rider is attached to and made a part of that certain Performance Bond-Dual Obligee ("Performance Bond"), dated ____, 20__, executed and delivered by _____, as Contractor, and _____, as Surety, in favor of Obligees, in the sum of _____ ($____) with respect to the Project referenced above.

7. All of the terms, conditions and provisions of the Performance Bond are hereby incorporated herein by this reference as if fully set forth herein.

8. Except as set forth in paragraph 5 below, all defined terms as set forth in the Performance Bond shall have the same meanings herein.

9. _____ ("Additional Surety") is hereby added to the Performance Bond as an additional named surety.

10. Each surety and additional surety (hereinafter collectively called "Surety") is held and firmly bound, jointly and severally, onto Obligees. Further, each undersigned Surety binds itself in the aforesaid full sum, "jointly and severally," as well as "severally" for the purpose of allowing joint action or singular actions against any or all of them in the full amount of this Performance Bond and for all other purposes each Surety binds itself, jointly and severally with the Contractor, for the payment of the full sums above stated. All references in the Performance Bond to "Surety" shall include the Additional Surety.

11. Nothing herein shall alter or affect any of the terms, conditions and other provisions of the Performance Bond, including especially but without limitation, the aggregate liability of the Surety as described in paragraph 3 of the Performance Bond.

SIGNED AND SEALED this ____ day of _____, 20__.

Witness as to Contractor:

_____

CONTRACTOR:

_____

By: _____

_____

Name and Title (Printed)

SURETY:

_____

By: _____

_____

Name and Title (Printed)

Approved by the United States Department of Housing and Urban Development

By: _____

REQUEST FOR ENDORSEMENT OF CREDIT

INSTRUMENT AND CERTIFICATE OF MORTGAGEE, BORROWER AND GENERAL CONTRACTOR

(Insurance upon Completion)

U.S. Department of Housing and Urban Development

Office of Housing

(Execute Original plus two copies)

OMB Approval No.

(Exp. 00/00/00)

Public Reporting Burden for this collection of information is estimated to average 1.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, DC 20410–3600 and to the Office of Management and Budget, Paperwork Reduction Project (OMB Approval No.), Washington, DC 20503. Do not send this completed form to either of the above addresses.

Project Name:

Lender:

☐ Multifamily Accelerated Processing (MAP)

Project Number:

Borrower:

☐ Traditional Application Processing (TAP)

To the U.S. Department of Housing and Urban Development (HUD):

The Lender submits separately the original Note evidencing a loan to the undersigned Borrower, together with a recorded copy of the Security Instrument of even date securing the Note. The Lender requests endorsement of the Note for mortgage insurance in the total sum of $_____, in accordance with Section _____ of the National Housing Act and its implementing regulations.

The Lender submits separately a check for $_____ covering the first mortgage insurance premium, together with the other items called for in the HUD commitment dated _____, 20 ____, and in any extensions or amendments thereof (the Commitment). The Lender certifies that all conditions of the Commitment have been fulfilled to date.

The Lender understands that the Security Instrument, the Note, this Request for Endorsement, and any documents submitted with this Request for Endorsement are considered to be consistent with and shall be interpreted consistently with HUD's regulations as such regulations constitute and pertain to the Contract of Insurance. The Lender agrees to be bound by such regulations and by all Directives of HUD.

The definition of any capitalized term or word used herein can be found in this Request for Endorsement, the Regulatory Agreement between the Borrower and HUD, and/or the Security Instrument by the Borrower. The term "financing charge(s)," as used herein shall mean any charge, direct or indirect, for supplying the loan to or servicing the loan for the Borrower. Whenever used, the singular number shall include the plural, the plural the singular and the use of any gender shall be applicable to all genders.

The Lender submits separately an appropriate security agreement executed by the Borrower (and Lessee, if appropriate, in the case of Health Care Facilities) covering all of the Personalty which, under applicable law, may be subject to a security interest under the Uniform Commercial Code (UCC), whether acquired now or in the future, and all products and cash proceeds and non-cash proceeds (UCC Collateral). The Lender will file timely appropriate Financing Statements under the UCC. The Lender agrees to file timely the appropriate Financing Statements under the UCC on behalf of HUD pursuant to HUD's rights under the Regulatory Agreement.

The Lender submits separately the Sponsor's Guaranty Agreement to meet a subsidy differential in the amount of $_____. (Applicable only to Section 231 and 232 nonprofit projects if required by HUD.)

The Lender agrees to furnish HUD with a complete report of the results of any inspection of the Mortgaged Property that the Lender is required to perform under the applicable regulations or Directives of HUD.

Certificate of Mortgagee

The Lender certifies that:

1. To the best of our knowledge and information, the construction or the required repairs, as the case may be, have been completed in accordance with HUD's requirements, except for such items approved by HUD for delayed completion, and noted hereinafter.

2. Impound accounts for taxes, insurance and mortgage insurance premiums have been established and are adequately funded.

3. The Project is fully covered by insurance as required by the terms of the Security Instrument and the Commitment, and all such insurance policies have attached thereto a standard mortgagee clause making the loss payable to the Lender and the Secretary, Department of Housing and Urban Development, as their interests may appear.

4. The Lender has received and submits to HUD separately (check applicable paragraphs):

☐ a. An Escrow Agreement guaranteeing the completion of off-site improvements as required by HUD. The Borrower has made a cash deposit in the amount of $_____.

☐ b. Evidence that the off-site improvements will be provided by the public authorities having jurisdiction, or by public utility companies serving the Project, at no cost to the Borrower.

☐ c. In the case of new construction or substantial rehabilitation, an Escrow Agreement covering incomplete on-site Improvements. The Borrowor has made a cash deposit in the amount of $_____, at 150% of HUD's estimated cost.

☐ d. Or, in the case of refinancing, an Escrow Agreement covering the delayed repairs. The Borrower has made a cash deposit in the amount of $_____, at 100% of HUD's estimated cost; with an additional ____% required by HUD, in the form of (cash or letter of credit) _____.

5. The Lender has received a guarantee against defects due to faulty workmanship and defective materials and submits separately (check applicable paragraphs):

☐ a. A surety bond in an amount not less than 10% of the cost of construction, running for a period of not less than two years from the date of completion of the Project, as determined by HUD, which bond has been assigned to the Lender (or under which bond the Lender is a joint obligee) and which is assignable to HUD.

☐ b. An agreement between the Borrower, the general contractor and the Lender, under which the Lender is retaining for a period of one year following the date of completion of the Project, as determined by HUD, a sum equal to 2½% of the principal amount of the Security Instrument, in the form of (cash or letter of credit) _____, which sum, upon failure of the Borrower or the general contractor to cure any such defects due to faulty workmanship and defective materials to the satisfaction of HUD and the Lender, can be used for the purpose of curing such defects, or can be applied to the Indebtedness with HUD's consent.

☐ c. If the Project is insured pursuant to Section 223, and required repairs are delayed until after HUD's endorsement, the Lender has obtained an assurance against latent defects in the amount of 2½% of the cost, in the form of (cash or letter of credit) _____, for a period of 12 months, which may be extended for up to 15 months, following the satisfactory completion of repairs.

6. The Lender submits separately an Escrow Agreement evidencing the deposit in the amount of $_____, in the form of (cash or letter of credit) _____, to meet a possible initial operating deficit during the period specified in the Commitment.

7. If the Project is insured pursuant to Section 223, and if required by the Commitment, the Lender has collected cash as an initial deposit to the Reserve Fund for Replacements, in the amount of $_____.

8. Beginning with the date on which the first payment toward amortization is required to be made by the terms of the insured Security Instrument or at such later date as may be agreed to by HUD in writing, the Lender shall require a monthly deposit with the Lender or in a depository satisfactory to the Lender of one-twelfth (1/12) of the sum set forth in the Commitment constituting a Reserve Fund for Replacements which fund will be subject to the Lender's order and from which fund withdrawals may be made only upon the receipt of HUD's written permission. The amount of the monthly deposit may be increased or decreased from time to time at the direction of HUD. These funds will be deposited with the Lender by the Borrower in cash or in the form of obligations of, or guaranteed as to principal by, the United States of America. The Lender will, upon appropriate request by the Borrower, permit the conversion of the whole or a substantial part of such cash deposits into the form of obligations of, or fully guaranteed as to principal by, the United States of America. Notice of any failure to receive the required deposits will be forwarded to HUD within 60 days of the date such deposits are due.

9. In cases where a Residual Receipts Fund is required under the Regulatory Agreement, the Lender shall deposit or place in a depository satisfactory to the Lender all funds received from the Borrower after the end of each semi-annual or annual fiscal period, and will notify HUD if such funds are not received within 90 days of the end of such fiscal period. The Residual Receipts Fund will be subject to the control of the Lender and from which fund withdrawals may be made only upon the receipt of HUD's written permission except for permitted distributions pursuant to the terms of the Regulatory Agreement. These funds will be deposited with the Lender by Borrower in cash or in the form of obligations of or guaranteed as to principal by the United States of America. The Lender will, upon appropriate request by the Borrower, permit the conversion of the whole or a substantial part of such cash deposits into the form of obligations of, or fully guaranteed as to principal by, the United States of America. The Lender agrees to notify HUD in writing of any irregularity with respect to such Residual Receipts Fund immediately upon such irregularity coming to the attention of the Lender.

10. No financing charges other than charges disclosed herein have been made and the Lender agrees that no other charges for financing will be

made. (Check and complete the following applicable subparagraphs, a, b, c, d, e, f, g or h.)

☐ a. No financing charges of any kind have been or will be imposed directly or indirectly.

☐ b. The Lender has collected cash as an initial service charge in the amount of $_____.

☐ c. In addition to the initial service charge, the Lender has collected cash in the amount of $_____ as a discount or financing charge for the construction or rehabilitation loan.

☐ d. The Lender is retaining the permanent loan. In addition to the initial service charge, the Lender has collected cash as a permanent placement fee in the amount of $_____.

☐ e. The Lender has a firm commitment from _____ to purchase the loan when insured at a financing charge or discount of __ percent, and the Lender has collected in the form of (cash or letter of credit) _____ in the amount of $_____ to cover said charge or discount.

☐ f. This Project will be financed with (tax-exempt or taxable) _____ bonds. Therefore, the Lender has collected in the form of (cash or letter of credit) _____ the amount of $_____ to cover the costs of issuance. A statement is attached itemizing these costs with an explanation of the necessity of each cost.

☐ g. Additional financing charges or discounts of $_____ are to be collected pursuant to the attachment hereto for the purpose shown in (c), (d), (e), (f) (strike inapplicable letters). The arrangement for the collection of additional financing charges or discount must follow forms and procedures prescribed by HUD.

☐ h. A servicing fee that is included in the interest rate and an administrative fee for investing the cash held in the Reserve Fund for Replacements and any other interest-bearing escrows required by HUD.

☐ i. The Security Instrument loan to be made to the Borrower will be financed through funds being provided by a third-party investor through the issuance to the investor of construction and permanent participation certificates pursuant to a participation agreement between the Lender and the investor, with respect to which agreement the Lender has agreed to repay the investor at a stated interest rate according to a fixed payment schedule.

☐ j. The Security Instrument loan to be made to the Borrower will be financed through funds being provided by a third-party investor through the issuance to the investor of construction and permanent fully modified, pass-through, mortgage-backed securities, guaranteed as to principal and interest by the Government National Mortgage Association.

11. In the event of a default under the Security Instrument during the term of any prepayment lock-out or penalty, that is, prior to the date on which prepayments may be made with a penalty of one percent (1%) or less, the Lender will do the following:

a. Request a three-month extension of the deadline prescribed by 24 CFR 207.258 for filing a notice of our intention to file an insurance claim and our election to assign the Security Instrument;

b. If you grant the requested extension of the notice-filing deadline, or a shorter period, assist the Borrower in arranging a refinancing to cure the default and avert an insurance claim;

c. Report to HUD at least monthly on any progress in arranging a refinancing;

d. Otherwise cooperate with HUD in taking reasonable steps in accordance with prudent business practices to avoid an insurance claim; and

e. Require any successors or assigns to certify in writing that they agree to be bound by these conditions for the remainder of the term of the prepayment lock-out or penalty.

12. The Lender certifies that in any case where a letter of credit has been accepted instead of cash, (a) such unconditional and irrevocable letter of credit has been issued by (1) another banking institution; (2) the Lender, subject to receiving HUD's written permission prior to endorsement; (b) if demand under the letter of credit is not immediately met, the Lender will forthwith provide cash equivalent to the undrawn balance thereunder without recourse to the Borrower, any sponsor, or the general contractor.

13. The Lender has not paid any kickback or fee or other consideration, directly or indirectly, to any person who has received payment or other consideration from any other person in connection with this transaction, including the purchase or sale of the Mortgaged Property, except for compensation paid or to be paid, if any, for the actual performance of services and approved by HUD.

14. The following are the only identities of interest, as defined by HUD in MAP Directives, between the Lender and the Borrower, any Principal of the Borrower, the Contractor, any subcontractor, or the seller of the land: _____ (must indicate "none" for MAP transactions).

15. No identity of interest, as defined by HUD Directives, exists between the Lender and the counsel to the Borrower.

16. All funds, escrows, and deposits specified in this Request for Endorsement and any and all other funds held in connection with the transaction covered by this Request for Endorsement shall be funds held for or on behalf of the Borrower pursuant to the Contract of Insurance.

17. All HUD form closing documents submitted to HUD in connection with this transaction (with the exception of the Opinion by Counsel to the Borrower and the accompanying Certification by the Borrower) conform to those documents the Lender obtained from HUD on _____ and such documents have not been changed or modified in any manner except as suitably identified and specifically approved by HUD field counsel as evidenced by the attached memorandum. It is understood that changes and modifications do not include filling in blanks, attaching exhibits or riders, deleting inapplicable provisions or making changes authorized by applicable HUD regulations and/or Directives. The Lender further certifies that all closing documents submitted to and accepted by HUD in connection with this transaction are listed in the attached memorandum.

18. The Lender agrees to notify HUD in writing immediately upon learning of any violation of the Regulatory Agreement by the Borrower, the Lessee and/or the Operator, as applicable, in certain transactions involving the lease of the Project.

19. The Lender agrees to promptly review any Borrower's request to transfer the Project and not unreasonably withhold the Lender's approval of the transfer. If HUD approves the transfer, the Lender agrees to execute a Release and Assumption Agreement or a Mortgage Modification Agreement incorporating the Regulatory Agreement in the Mortgage. It is understood that the Lender's consent to the transfer will in no way prejudice the Lender's rights under the Contract of Insurance with HUD. The Lender shall not collect any fee in connection with reviewing the transfer except the Borrower may reimburse the Lender for actual expenses incurred by the Lender in connection with reviewing the transfer.

Each signatory below hereby certifies that the statements and representations contained in this instrument and all supporting documentation thereto are true, accurate, and complete. This instrument has been made, presented, and delivered for the purpose of influencing an official action of HUD (acting by and through the FHA Commissioner) in insuring a

multifamily rental or health care facility mortgage loan, and may be relied upon by HUD and the Commissioner as a true statement of the facts contained therein.

Date _____
Lender _____
By _____

Warning

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions, including but not limited to: (i) fines and imprisonment under 18 U.S.C. 287, 1001, 1010 and 1012; (ii) civil penalties and damages under 31 U.S.C. 3729; and (iii) administrative sanctions, claims, and penalties under 24 CFR parts 24 and 28.

CERTIFICATE OF MORTGAGOR

The undersigned Borrower certifies to HUD:

1. The Borrower possesses the powers necessary for and incidental to the ownership and operation of the Project, as required by the appropriate provisions of the National Housing Act, the regulations, and Directives of HUD.

2. The Borrower has read the foregoing Certificate of Mortgagee, and to the best of its knowledge and belief considers it correct.

3. The project books and records will be kept in accordance with HUD Directives, and will be maintained to permit an accurate audit under HUD Directives. The undersigned further agrees that if the Project has been occupied prior to the date of this certificate, financial reports covering the entire period of occupancy will be furnished to HUD upon request.

4. All funds escrowed with the Lender, as set forth in the Certificate of Mortgagee, may be held by the Lender for the purposes indicated therein, or in the event of a default and with HUD's permission may be applied to the Indebtedness.

5. HUD and its authorized agents and the Lender are hereby granted the right to enter upon the Mortgaged Property at any and all times for the purpose of inspection.

6. No fixtures or personal property acquired for the Project have been purchased on a conditional sale contract or other form of delayed payment.

7. Additionally, the undersigned certifies that:

(a) The Borrower has received the sum of $_____, constituting the full principal amount of the loan for this Project.

(b) Construction or repairs are complete, except as otherwise noted in the Certificate of Mortgagee, and is in accordance with the drawings and specifications or list of repairs required by HUD. The Security Instrument is a good and valid first lien; the property is free and clear of all liens other than that of the _____ or such inferior liens as have been approved by HUD; and all outstanding unpaid obligations contracted by or on behalf of the Borrower, directly or indirectly, in connection with the mortgage transaction, the acquisition of the property, and the construction, substantial rehabilitation or repair of the Project are listed below:

(1) HUD-approved notes (copies attached) $
(2) Due General Contractor $
(3) Other $

(**Note:** If the space provided is inadequate to list all unpaid obligations, insert the total in each category and attach itemizations. If there are no outstanding obligations, so state.)

(c) Except for any amounts due on notes listed in item 7(b)(1) above, the undersigned agrees to pay the foregoing obligations in cash and to furnish HUD with receipts, or other evidence of payment satisfactory to HUD, within 45 days following the date hereof.

Each signatory below hereby certifies that the statements and representations contained in this instrument and all supporting documentation thereto are true, accurate, and complete. This instrument has been made, presented, and delivered for the purpose of influencing an official action of HUD (acting by and through the FHA Commissioner) in insuring a multifamily rental or health care facility mortgage loan, and may be relied upon by HUD and the Commissioner as a true statement of the facts contained therein.

Name of Entity: _____
By:
/s/ _____
Printed Name, Title: _____
Dated: _____
By:
/s/ _____
Printed Name, Title: _____
Dated: _____

Warning

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions, including but not limited to: (i) Fines and imprisonment under 18 U.S.C. 287, 1001, 1010 and 1012; (ii) civil penalties and damages under 31 U.S.C. 3729; and (iii) administrative sanctions, claims, and penalties under 24 CFR parts 24 and 28.

Certificate of General Contractor

The undersigned general contractor certifies to HUD:

1. The construction is in accordance with the drawings and specifications approved by HUD.

2. All outstanding unpaid obligations contracted by or on behalf of the undersigned in connection with the construction contract are listed below:

_____
$_____
_____
$_____
_____
$_____
_____
$_____
_____
$_____
_____
$_____
_____
$_____

(**Note:** If the space provided is inadequate to list all unpaid obligations, insert the total in each category and attach itemizations. If there are no outstanding obligations, so state.)

3. Except for unfinished work funded by an escrow or escrows approved by HUD, the undersigned agrees to pay the foregoing obligations, and to furnish HUD receipts or other evidence satisfactory to HUD, within 15 days following receipt of payment from the Borrower.

Each signatory below hereby certifies that the statements and representations contained in this instrument and all supporting documentation thereto are true, accurate, and complete. This instrument has been made, presented, and delivered for the purpose of influencing an official action of HUD (acting by and through the FHA Commissioner) in insuring a multifamily rental or health care facility mortgage loan, and may be relied upon by HUD and the Commissioner as a true statement of the facts contained therein.

Name of Entity: _____
By:
/s/ _____
Printed Name, Title: _____
Dated: _____
By:
/s/ _____
Printed Name, Title: _____
Dated: _____

Warning

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions, including but not limited to: (i) fines and imprisonment under 18 U.S.C. 287, 1001, 1010 and 1012; (ii) civil penalties and damages under 31 U.S.C. 3729; and (iii) administrative sanctions, claims, and penalties under 24 CFR parts 24 and 28.

Surveyor's Report

U.S. Department of Housing and Urban Development, Office of Housing

OMB Approval No. 0000–0000 (Exp. 00/00/00)

Public Reporting Burden for this collection of information is estimated to average 1.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, DC 20410–3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502–0468), Washington, DC 20503. Do not send this completed form to either of the above addresses.

Instructions: Submit a completed, signed Surveyor's Report with all survey map/plat submissions. See the Surveyor's Instructions for required map/plat submissions. Identify pertinent observed and otherwise known conditions on the Surveyor's Report.

I certify that, on (date) _____, I made a survey of the premises standing in the name of _____ situated at (city, county, state): _____ known as street numbers _____ and shown on the accompanying survey entitled:

I made a careful inspection of said premises and of the buildings located thereon at the time of making such survey, and again, on (date) _____, and on such latter inspection, I found said premises to be standing in the name of: In my professional opinion, the following information reflects the conditions observed on the date of the last site inspection or disclosed in the process of researching title to the premise, and I further certify that such conditions(s) are shown on the survey map/plat dated or has/have been updated thereon under Revision Date

1. Rights of way, old highways or abandoned roads, lanes or driveways, drains, sewer or water pipes over and across said premises:

2. Springs, streams, rivers, ponds or lakes located, bordering on or running through said premises:

3. Cemeteries or family burying grounds located on said premises:

4. Electricity, or electromagnetic/communications signal, towers, antenna, lines, or line supports located on, overhanging or crossing said premises:

5. Disputed boundaries or encroachments. (If the buildings, projections or cornices thereof or signs affixed thereto, fences or other indications of occupancy encroach upon adjoining properties or the like encroach upon surveyed premises, specify all such):

6. Earth moving work, building construction, or building additions within recent months:

7. Building or possession lines. (In case of city or town property specify definitely as to whether or not walls are independent walls or party walls and as to all easements of support or "Beam Rights." In case of country property report specifically how boundary lines are evidenced, that is, whether by fences or otherwise):

8. Recent street or sidewalk construction and/or any change in street lines either completed or proposed by and available from the controlling jurisdiction:

9. Flood hazard.

10. Site used as a solid waste dump, sump, or sanitary landfill.

Surveyor's Name: (print or type) _____

License Number _____

Signature _____

HUD Survey Instructions and Report for Insured Multifamily Projects

U.S. Department of Housing and Urban Development, Office of Housing, Federal Housing Commissioner

OMB Approval No. 0000–0000 (exp. 00/00/0000)

Public reporting burden for this collection of information is estimated to average 0.5 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This information is necessary to secure a marketable title and title insurance for the property that provides security for project mortgage insurance furnished under the FHA multifamily programs. This information assists in making determinations regarding the property's compliance with applicable program regulations, *e.g.*, those pertaining to flood hazard, and in reaching underwriting determinations regarding property suitability and worth for the intended use. This information is mandatory. HUD does not assure confidentiality and there are no sensitive questions.

This survey is to be used in a loan transaction for which the U.S. Department of Housing and Urban Development (HUD) is to insure a multifamily project mortgage.

Its uses will include:

☐ Land title recordation (all cases).

☐ Site grading plan preparation (item 1 below).

☐ Plot plan design/redesign (item 2 below).

Special Project Features:

☐ Care Facility,

☐ Condo/Air-rights, and/or

☐ Other: (Specify)

Standards of Performance: In every instance the survey and map(s) and/or plat(s) must be made in accordance with the requirements for an "ALTA/ACSM Land Title Survey" and in compliance with the:

- Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, as adopted by the American Land Title Association and American Congress on Surveying and Mapping, dated 1999;
- Table A, Optional Survey Responsibilities and Specifications, thereof, items 1 through 4 and 7 through 13 except for subitems 7b and 7c;
- And the following requirements as applicable:

1. Site Grading Involved: Comply with table A, item 5. Contours may not exceed 1-foot vertical intervals, except that 2-foot and 5-foot vertical intervals may be used where the mean site gradient exceeds 5 percent and 10 percent respectively. Where curbs and/or gutters exist, show top of curb and flow line

2. Plot Plan Design/Redesign Involved: Comply with Table A, Item 6.

3. Condo/Air-rights Involved: The surveyor must provide a survey made in accordance with any applicable jurisdictional requirements or, in the absence of such requirements, professionally recognized standards.

4. Flood Hazard Involved: Where any portion of the site is subject to flood hazard, show the 100 year return frequency flood hazard elevation and flood zone for all projects plus the 500 year return frequency, flood hazard elevation, and flood zone for care facility projects. For existing projects

show the site elevation at the entrances, lowest habitable finished floor, and basement for each primary building, and the vehicular parking area that serves each primary building. Take return frequency flood hazard elevations from the applicable Federal Flood Insurance Rate Map. Where such is not available, take the elevations from available State or local equivalent data, or when not available, work in conjunction with owner's engineer.

5. Blanket Easement Involved. Show on the map/plat the location of any facility that is located within or traverses the property under provisions of a blanket easement.

Additional Owner Requirements: The following requirements are not intended to void any other part of this instruction.

Owner's Representative/Contact: _____
Name & Phone No: _____
Address: _____

Surveyor's Report: A current Surveyor's Report (not more than 120 days old) must be included with the survey map(s)/plat(s) submitted to HUD for: project design review, construction contract document sets, as required during construction, upon project completion; and with the map(s)/plat(s) used at initial and final closing.

Certification: The survey map/plat must bear the following certification:

"I hereby certify to the U.S. Department of Housing and Urban Development (HUD), (Borrower), (Sponsor), (Lender), (Title Insurance Underwriter), (Other), and to their successors and assigns, that:

"I made an on the ground survey per record description of the land shown hereon located in (city or town, county, township, etc.), on (date); and that it and this (these) map(s) was (were) made in accordance with the HUD Survey Instructions and Report, form HUD–92457M, and the requirements for an ALTA/ACSM Land Title Survey, as defined in the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys dated 1999.

"To the best of my knowledge, belief and information, except as shown hereon: There are no encroachments either way across property lines; title lines and lines of actual possession are the same; and the premises are free of any (subject to a) 100/500 year return frequency flood hazard, and such flood free (flood) condition is shown on the Federal Flood Insurance Rate Map, Community Panel No. (if none, so state)."

Request for Approval of Advance of Escrow Funds

U.S. Department of Housing and Urban Development Office of Housing

OMB Approval No. 0000–0000 (exp. 00/00/00)

Public Reporting Burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, DC 20410–3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502–0468), Washington, DC 20503. Do not send this completed form to either of the above addresses.

Request for Approval of Advance Payment of Escrow Funds: Completed by the depository. Submit to FHA in triplicate.

Project Name:
Project Number:
Advance Number:
Name of Borrower:
Date of Escrow Agreement:
Payment Amount Requested: $
Escrow Account Balance after this payment: $

The Payment Requested is for:

[ ] offsite facilities
[ ] construction changes
[ ] non-critical repair
[ ] minor movables
[ ] construction costs not paid at final endorsement
[ ] (other) _____

The Remaining Balance is for:

[ ] offsite facilities
[ ] construction changes
[ ] non-critical repair
[ ] minor movables
[ ] construction costs not paid at final endorsement
[ ] (other) _____

The undersigned received the Request for Payment (see page 2) from the above-named Borrower.

To the best of our knowledge, information, and belief, the sum requested is now payable.

We intend to disburse that sum on or about (date): _ upon your approval.

Name of the Depository:
Name/signature of authorizing official/date:

Note: Original and two copies must be signed.

Approval of Advance of Escrow Funds: Completed by the Department of Housing and Urban Development.

Name & Address of Depository:
Disbursement of funds is approved from the Escrow Deposit for:

[ ] offsite facilities
[ ] construction changes
[ ] non-critical repair
[ ] minor movables
[ ] construction costs not paid at final endorsement
[ ] (other) _____

Payment Approved: $
Approval Recommended: (name/signature of Housing Project Manager/date) x_____
Authorizing Agent for the Department of Housing and Urban Development: (name/signature/date)
x_____

Request for Payment to be completed by Borrower. To be submitted to the depository in triplicate.

Project Name: Name/address of Depository:
Project Number:
Amount Requested: $

The undersigned Borrower hereby requests a payment of funds covering advances provided by the Escrow Agreement for:

[ ] offsite facilities heretofore executed on the_____day of_____, 20____, as indicated by the net amount due for work performed up to_____the day of_____, 20____, according to the following statement with respect to all items of construction listed in schedule "A" attached to the Agreement;
[ ] construction costs not paid at final endorsement and listed in Schedule "A" attached to the Agreement;
[ ] construction change(s) as identified by request number(s): _____;
[ ] non-critical repairs pursuant to Section 223(f), [ ] Section 223(a)(7), [ ] Section 232 or
[ ]_____(other).

Item or construction change request number	A. Estimated cost as stated in escrow agreement	B. Amounts from final endorsement escrow	C. Amounts completed [ ] Offsite [ ] 223f [ ] 223(a)(7) [ ] Change orders [ ] 241(f)	D. FHA approved amount
.....	$	$	$	$
Total	$	$	* % $	** % $
Less Retained 10% (Offsite/Construction Change(s))			$	$
Balance: Total Amount due to date			$	$
Less previous payments			$	$
Net amount due on this requisition			$	$

•* Percentage derived from subtotal of Breakdown Items (Col. C divided by Col. A)
•** (Col. D divided by Col. A)

Each signatory below hereby certifies that the statements and representations contained in this instrument and all supporting documentation thereto are true, accurate, and complete. This instrument has been made, presented, and delivered for the purpose of influencing an official action of HUD (acting by and through the FHA Commissioner) in insuring a multifamily rental or health care facility mortgage loan, and may be relied upon by HUD and the Commissioner as a true statement of the facts contained therein.

Name of Entity: _____

By: /s/ _____

Printed Name, Title: _____

Dated: _____

By: /s/ _____

Printed Name, Title: _____

Dated: _____

[ADD ADDITIONAL LINES IF MORE THAN TWO SIGNATORIES]

Warning

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions, including but not limited to: (i) fines and imprisonment under 18 U.S.C. 287, 1001, 1010 and 1012; (ii) civil penalties and damages under 31 U.S.C. 3729; and (iii) administrative sanctions, claims, and penalties under 24 CFR parts 24, 28 and 30.

Offsite and Construction Change Certification:

The undersigned hereby certifies that (mark the appropriate box) [ ] the total cost has been paid in full and in cash from funds other than mortgage proceeds; [ ] upon release of the amount deposited for this offsite item or construction change, payment in full shall be made to the contractor prior to the next request for an insured advance or loan disbursement and a receipt of payment from the general contractor shall be submitted with the next request for an insured advance or loan disbursement. The undersigned further certifies that all work, labor and materials to be paid under this Request are satisfactory and in accordance with the contract documents.

Name of Borrower:

Signature of authorized Borrower Official/date

_____

Architect's Offsite and Construction Change Certification:

I certify, based on my on-site observations (or those of my authorized representative), that to the best of my knowledge, information and belief, the Work covered by the aforementioned is completed.

Architect's Signature/Date:

_____

Inspector's Offsite and Construction Change Certification:

I certify that to the best of my knowledge, information and belief that the aforementioned work has been acceptably completed.

Inspector's Signature/Date:

_____

Escrow Agreement for Noncritical, Deferred Repairs

U.S. Department of Housing and Urban Development

Office of Housing

OMB Approval No. 0000–0000

(exp. 00/00/00)

Public Reporting Burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, DC 20410–3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502–0468), Washington, DC 20503. Do not send this completed form to either of the above addresses.

This Agreement is effective as of the ____ day of _____, between _____Lender, and _____Borrower.

The terms Lender and Borrower shall be deemed to have the meaning set forth in the HUD regulatory agreement for this transaction.

Borrower has acquired or refinanced a housing project or health care facility identified as HUD Project Number_____, with the proceeds of a loan (the Mortgage Loan) from Lender. The United States Department of Housing and Urban Development (HUD) has endorsed and insured the Mortgage Loan pursuant to § _____of the National Housing Act, as amended, the regulations and the directives issued pursuant thereto.

Initial/final endorsement is conditioned upon assurance that funds be available for non-critical repairs deferred until after endorsement of the Mortgage Loan, where repairs are to be completed using mortgage proceeds. Funds deposited with Lender are to be held by Lender under the Contract of Mortgage Insurance for and on behalf of Borrower.

The non-critical, deferred repair cost estimate and list of repairs itemized on Exhibit A are attached to and made part of this Agreement. Borrower agrees to establish an escrow with Lender equal to at least 150 percent of the estimated cost of the repairs.

In consideration of the premises, the parties acknowledge and agree as follows:

1. Cash in the amount of $_____has been withheld from the mortgage

proceeds. A letter of credit may not be substituted for this 100% escrow.

2. An additional cash amount (or letter of credit, at option of Lender) of not less than 50% of the repair cost estimate is hereby placed in escrow, in the amount of $_____.

3. Lender may release funds from the mortgage proceeds portion of the escrow in proportion to the cost of work completed, less a 10 percent holdback. The holdback amount must be held until all work is completed and found acceptable.

4. Funds remaining in the escrow account, including the holdback portion, together with interest, may be released to Borrower when: (a) all repairs have been satisfactorily completed, (b) evidence of clear title has been provided to the field office, and (c) latent defect assurances have been provided by one of the following: (i) an escrow in cash, or letter of credit at the option of Lender equal to 2½ percent, or greater as warranted, of the repair cost maintained for 15 months from completion of repairs to cover situations where the defect is discovered in the twelfth month and additional time is necessary to correct it or (ii) a Surety Bond covered by FHA form 3259 from a surety on the accredited list of the U.S. Treasury for at least 10 percent of the repair cost. The bond runs from the date of completion of repairs.

5. All non-critical deferred repairs must be completed by Borrower within twelve (12) months of endorsement, or such shorter period as HUD and Lender may specify. If Borrower has not completed all repairs by the end of the repair period, including any approved extensions, Lender will complete the repairs using the escrowed funds. For this purpose, Borrower irrevocably appoints Lender as its attorney-in-fact. Lender will provide Borrower with a breakdown of these repairs and the cost of completion, including administrative expenses. Funds remaining in the escrow account after completion of the repair work will be returned to Borrower less reasonable administrative costs incurred in completing the repairs.

6. In cases where actual costs are less than estimated, the maximum insurable loan amount must be recalculated. If the maximum insurable mortgage is reduced due to lower actual costs, the mortgagor must prepay the mortgage: (1) in amounts equal to the scheduled monthly principal payments, to the extent possible; with (2) any remainder going to the Reserve for Replacements Fund.

7. In the event Borrower defaults under the Mortgage Loan, the remaining balance in the repair escrow is to be applied to the obligations of Borrower or to the Mortgage Loan, as directed by HUD.

8. If any amount deposited under this Agreement is in the form of a letter of credit, the letter of credit was issued to Lender by a banking institution, and is unconditional and irrevocable. Lender is not the issuer thereof unless HUD has granted prior written consent. Lender will be responsible to HUD for collection under any letter of credit. In the event a demand for payment under the letter of credit is not immediately met, Lender will immediately provide a cash deposit equivalent to the undrawn balance of the letter of credit.

IN WITNESS WHEREOF, the parties have duly executed this Agreement.

BORROWER:

_____

By: _____

Print name and title _____

LENDER:

_____

By: _____

Print name and title _____

Warning

Any person who knowingly presents a false, fictitious or fraudulent statement or claim in a manner within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability and administrative sanctions, including but not limited to: (i) fines and imprisonment under 18 U.S.C. 287, 1001, 1010 and 1012; (ii) civil penalties and damages under 31 U.S.C. 3729; and (iii) administrative sanctions, claims and penalties under 24 CFR parts 24 and 28.

Agreement of Sponsor To Furnish Additional Funds

U.S. Department of Housing and Urban Development, Office of Housing

OMB Approval No. 0000–0000 (exp. 00/00/00)

Public Reporting Burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, DC 20410–3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502–0468), Washington, DC 20503. Do not send this completed form to either of the above addresses.

This Agreement is given this ____ day of _____, 20__, by _____, having an office at _____, Sponsor of FHA Project No. _____, located in the City/County of _____, State of _____, which Project has been, is being, or will be constructed, rehabilitated, purchased or refinanced from the proceeds of a mortgage (or deed of trust) given by _____, as Borrower (which term, when used herein, also shall be deemed to have the meaning set forth in the HUD regulatory agreement applicable to this transaction). to _____, as Lender (which term, when used herein, also shall be deemed to have the meaning set forth in the HUD regulatory agreement applicable to this transaction), having an office at ____a__.

WHEREAS, the Secretary of Housing and Urban Development has issued his/her commitment to insure said mortgage pursuant to the provisions of the National Housing Act, which commitment is conditioned upon assurance that additional funds in the amount of $_____ be made available for project purposes, primarily for the absorption of any deficit in the operation of the project during the initial period of occupancy; and,

WHEREAS, financing of the project as proposed by the sponsors could not be obtained without the Secretary's endorsement for insurance;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: That for and in consideration of the premises hereinabove set forth, and for the purpose of inducing the Secretary to insure said mortgage, the undersigned hereby jointly and severally agree and undertake with the Secretary to deposit on or before _____ [estimated date of completion], in escrow with a depository satisfactory to the Secretary, $_____ in the following form [specify one]:

__ (a) in cash, or

__ (b) by an unconditional, irrevocable letter of credit issued to the depository by a banking institution, to be held and disbursed by the depository pursuant to the terms of an escrow agreement to be executed at the time of the making of the deposit in the form of HUD Form 2476a.

IN WITNESS WHEREOF, the sponsor has executed this agreement as of the day and year first above written. Each signatory below hereby certifies that the statements and representations contained in this instrument and all supporting documentation thereto are true, accurate, and complete. This instrument has been made, presented,

and delivered for the purpose of influencing an official action of HUD (acting by and through the FHA Commissioner) in insuring a multifamily rental or health care facility mortgage loan, and may be relied upon by HUD and the Commissioner as a true statement of the facts contained therein.

Name of Entity: _____

By: /s/ _____

Printed Name, Title: _____

Dated: _____

By: /s/ _____

Printed Name, Title: _____

Dated: _____

[ADD ADDITIONAL LINES IF MORE THAN TWO SIGNATORIES]

Warning

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions, including but not limited to: (i) fines and imprisonment under 18 U.S.C. 287, 1001, 1010 and 1012; (ii) civil penalties and damages under 31 U.S.C. 3729; and (iii) administrative sanctions, claims, and penalties under 24 CFR parts 24 and 28.

Escrow Agreement: Additional Contribution by Sponsors for Operating Deficit

U.S. Department of Housing and Urban Development

Office of Housing

OMB Approval No. 0000–0000

(exp. 00/00/00)

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This Agreement made this ____ day of ___, 20____, by and between the Lender described more fully below and _____, having an office at _____, Sponsor of HUD Project No. ___, located in the City/County of ___, State of ___, which Project has been, is being, or will be constructed, from the proceeds of a security instrument given by _____, as Borrower (which term, when used herein, also shall be deemed to have the meaning set forth in the HUD regulatory agreement applicable to this transaction), to ___, as Lender (which term, when used herein, also shall be deemed to have the meaning set forth in the HUD regulatory agreement applicable to this transaction), having an office at ____.

WITNESSETH:

WHEREAS, the Secretary of Housing and Urban Development (HUD) has issued his/her commitment to insure said mortgage (or deed of trust), on which insurance Sponsor is relying for financing of the Project, and

WHEREAS, said commitment is conditioned upon assurance that additional funds be made available for Project purposes, primarily for the absorption of any deficit resulting from the operation of the Project during the initial period of occupancy;

NOW, THEREFORE, Sponsor and Lender hereby agree as follows:

1. Sponsor has deposited with ____, Depository, $___, receipt of which is acknowledged by the Depository, to be held and disbursed by the Depository as hereinafter set out, said deposit being [specify one]:

__ (a) cash, or

__ (b) an unconditional irrevocable letter of credit issued to Depository by a banking institution,

2. Said deposit shall be held subject to disbursement at the direction of HUD for a period of _ months following final endorsement of the mortgage loan for insurance plus any additional period by which the beginning of amortization of the loan may be deferred. Disbursements from the escrow may be authorized monthly by HUD to meet any cash deficit in the operation of the Project for the period immediately following substantial completion of construction. In determining the amount of such cash deficit, effect will be given to the Borrower's payments for amortization and deposits in the Reserve for Replacements, but no effect will be given to depreciation, officers' salaries, and management fees paid to the Borrower, Sponsor, Principals (as such term is defined in the HUD regulatory agreement applicable to this transaction) or their nominees.

3. The deposit shall be subject to immediate application to the debt under the Security Instrument (as such term is defined in the HUD regulatory agreement applicable to this transaction) in the event of default thereunder at any time prior to the expiration of the escrow period.

4. IT IS UNDERSTOOD AND AGREED that at the expiration of the escrow period, or at such earlier date as HUD, in his/her sole discretion, determines that the Project has achieved sustaining occupancy and income, any balance remaining on deposit will be returned to Sponsors, without interest.

5. IT IS FURTHER UNDERSTOOD AND AGREED that the Depository will hold and disburse this escrow at the sole direction of HUD; and Sponsor hereby authorizes Lender, in the event the deposit hereunder is other than in cash, to draw against the letter of credit or to sell the bonds to the extent necessary to provide the cash necessary to make the disbursements directed by HUD, and in the event that such letter of credit cannot be converted to cash, the Lender shall immediately provide a cash deposit equivalent to the undrawn balance of the letter of credit.

6. Whenever used herein, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

The parties have executed this Agreement as of the day and year first above written.

SPONSOR:

_____

By: _____

Name and Title

LENDER:

_____

By: _____

Name and Title

Warning

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions, including but not limited to: (i) fines and imprisonment under 18 U.S.C. §§ 287, 1001, 1010 and 1012; (ii) civil penalties and damages under 31 U.S.C. § 3729; and (iii) administrative sanctions, claims, and penalties under 24 CFR parts 24 and 28.

Bond Guaranteeing Sponsors' Performance

U.S. Department of Housing and Urban Development, Office of Housing

OMB Approval No. 0000–0000 (exp. 00/00/00)

Public Reporting Burden for this collection of information is estimated to average 0.5

hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, DC 20410–3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502–0468), Washington, DC 20503. Do not send this completed form to either of the above addresses.

This Agreement is made this ____ day of _____, 20____, by and between _____ Principal(s), having an office at _____, and _____, Surety, having an office at _____.

The Principals have entered into a certain Agreement with the Secretary of Housing and Urban Development (the Secretary) dated _____, 20____, under which the Principals undertake to deposit in escrow the sum of _____ Dollars ($_____) (herein, the Deposit), on or before _____, 20____, in order to meet the requirements of the Secretary's Commitment for Insurance involving a certain housing project known as _____, No. _____ (the Project), located in _____.

The Principals and the Surety are held and firmly bound unto the Secretary in the amount of the Deposit, for the payment whereof the Principals and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally by these presents; and the condition of the obligation is such that if the Principals shall make the Deposit required by the Agreement, or, in the event that the Principals shall default in such obligation the Surety shall, promptly after written notice of such default, make the Deposit on behalf of the Principals, then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The parties hereto have duly executed this Agreement as of the day and year first above written.

PRINCIPAL: _____

By: _____

Print name and title

SURETY: _____

By: _____

Print name and title

Warning

Any person who knowingly presents a false, fictitious or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability and administrative sanctions, including but not limited to: (i) fines and imprisonment under 18 U.S.C. 287, 1001, 1010 and 1012; (ii) civil penalties and damages under 31 U.S.C. 3729; and (iii) administrative sanctions, claims and penalties under 24 CFR parts 24, 28 and 30.

Borrower's Oath (For Residential Housing, but not Section 232 Projects)

U.S. Department of Housing OMB and Urban Development, Office of Housing

OMB Approval No. 0000–0000 (exp. 00/00/00)

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To the Secretary of Housing and Urban Development:

Date _____

Project No. _____

In accordance with the stated intent of Congress and with the HUD Regulatory Agreement between the borrower (which term shall be deemed to have the meaning set forth in the HUD regulatory agreement applicable to this transaction) and HUD, the undersigned hereby certifies:

(1) That, to carry out the intent of Section 513 of the National Housing Act, 12 U.S.C. § 1731b, as amended, so long as the mortgage covering the above numbered project is insured or held under the provisions of the National Housing Act, as amended, no part of the property described in the aforesaid mortgage will be rented for a period of less than thirty days or used for transient or hotel purposes, and said property shall be used principally for residential use;

(2) That, to carry out the intent of Section 207(b) of the National Housing Act, 12 U.S.C. § 1713(b), as amended, in selecting tenants for the property covered by the mortgage to be insured under the above number there will be no discrimination against any family by reason of the fact that there are children in the family, unless the HUD Regulatory Agreement covering the Project provides that the Project is intended primarily for occupancy by elderly persons; and

(3) That the property will not be sold while the mortgage insurance is in effect or the mortgage is held by the Secretary unless the purchaser files with the Secretary a like certification executed by such purchaser under oath.

BORROWER: _____

By: _____

By: _____

Name:

Title

Name:

Title:

[The borrower entity must execute this Oath before a notary public.]

Warning

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions, including but not limited to: (i) fines and imprisonment under 18 U.S.C. 287, 1001, 1010 and 1012; (ii) civil penalties and damages under 31 U.S.C. 3729; and (iii) administrative sanctions, claims, and penalties under 24 CFR parts 24, 28 and 30.

Notary Acknowledgment for Borrower

Note: THE FOREGOING CERTIFICATION MUST BE GIVEN UNDER OATH IN ACCORDANCE WITH STATE LAW REQUIREMENTS FOR TAKING AN OATH.

County of_____))ss.

State of _____))ss

Personally appeared before me this _____ day of _____, 20__,_____ who, after being duly sworn, says that he/she is the _____ of _____, a _____ organized and existing under the laws of the State of _____ and that he/she has authority to execute under oath and has so executed the above certification for and on behalf of such _____, and for her/himself.

[SEAL]

_____

Notary Public

My commission expires: _____

Notary Acknowledgment for Additional Principal

County of _____))ss.

State of_____))ss.

Personally appeared before me this ____ day of _____, 20_____, who, after being duly sworn, says that he/she is a principal in _____, the borrower, and that as such he/she has executed the above certification for her/himself.

[SEAL]

_____

Notary Public
My commission expires: _____

Off-Site Bond—Dual Obligee

U.S. Department of Housing and Urban Development, Office of Housing

OMB Approval No. 0000–0000 (exp. 00/00/00)

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CONTRACTOR/PRINCIPAL (Name and Address):
OWNER (Name and Address):
LENDER (Name and Address):
SURETY (Name and Principal Place of Business):
PROJECT (Name, FHA Number and Location):
OFF-SITE CONSTRUCTION CONTRACT:
Date:
Amount:
BOND:
Date:
Amount:
RIDERS TO THIS BOND: __Yes __ No

This Off-Site Bond is issued in connection with the Project named above. As used herein, "Obligees" shall mean Owner, Lender and the additional obligee(s), if any, identified in a Rider to this Bond and "Obligee" shall mean any of the Obligees.

1. Contractor has entered into a construction contract with Owner for the completion of off-site facilities and utilities necessary to operate the Project successfully. The Off-Site Construction Contract (as the same may now or hereafter be amended by change order or otherwise) is made a part hereof by reference, and is hereinafter referred to as the "Off-Site Contract."

2. Lender has agreed to lend to Owner a sum of money to be secured by a mortgage on said project. The mortgage is to be insured by the Federal Housing Commissioner (hereinafter "FHA").

3. Lender is unwilling to advance said funds to the Owner and FHA is unwilling to insure said mortgage without assurance that all off-site facilities and/or utilities necessary to successfully operate the project will be installed not later than _____.

4. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns, unto Owner and unto Lender, their successors and assigns, as each of their respective interests may appear, as OBLIGEES, in the sum of _____ Dollars ($____) to pay for labor, materials and equipment furnished for use in the performance of the Off-Site Contract. Any approved increase in the total Off-Site contract price would increase the monetary obligation of the Obligors accordingly.

5. The obligations of this Bond shall be null and void if the Contractor installs and completes said off-site facilities and/or utilities, or cause the installation and completion of said off-site facilities and/or utilities according to the Off-Site Contract within the time hereinabove specified, free from all liens and claims of any and all persons performing the labor thereon or furnishing materials therefore, or both.

6. Any suit, action, or proceeding by reason of any default whatever shall be instituted within two years of the date Owner declares Contractor in default of the Off-Site Contract. If this limitation is deemed to be in contravention of any controlling law, this Bond is deemed amended so as to be equal to the minimum period of limitation permitted by such law.

7. Surety hereby waives notice of any change, including changes of time, to the Off-Site Contract or to related subcontracts, purchase orders and other obligations.

8. Notice to Surety, Owner, or Contractor shall be served by mailing the same by registered mail or certified mail, postage prepaid, to the address shown on this Bond or to such other address as may have been previously specified by the recipient in a notice given in accordance herewith.

9. Surety agrees that any right of action that any of the Obligees herein may have under this Off-Site Bond may be assigned, without the consent of Contractor or Surety, to the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner, and that such assignment will in no manner invalidate or qualify this instrument.

[Remainder of this page intentionally left blank.]

SIGNED and SEALED this ____ day of ____, 20__.
Witness as to Contractor:

_____
CONTRACTOR:

_____
By:

_____
Name and Title (Printed)
SURETY:

_____
By:

_____
Name and Title (Printed)

ADDITIONAL OBLIGEE RIDER TO OFF-SITE BOND-DUAL OBLIGEE
(Additional obligee only allowed with prior FHA approval as indicated below)

1. This Additional Obligee Rider is attached to and made a part of that certain Off-Site Bond-Dual Obligee (the "Off-Site Bond"), dated ____, executed and delivered by____, as Contractor, and ____, as Surety, in favor of Obligees, in the sum of____ ($____) with respect to the Project referenced above.

2. All of the terms, conditions and provisions of the Off-Site Bond are hereby incorporated herein by this reference as if fully set forth herein.

3. All defined terms, as set forth in the Off-Site Bond, shall have the same meaning herein.

4. _____ is hereby added to the Off-Site Bond as an additional named Obligee.

5. Nothing herein shall alter or affect any of the terms, conditions and other provisions of the Off-Site Bond, including especially but without limitation, the aggregate liability of the Surety as described in paragraph 4 of the Off-Site Bond.

SIGNED and SEALED this__day of ____, 20__.
Witness as to Contractor:

_____

_____
CONTRACTOR:

_____
By:

_____
Name and Title (Printed)
SURETY:

_____
By:

_____
Name and Title (Printed)
Approved by The United States Department of Housing and Urban Development
By:

_____

ADDITIONAL SURETY RIDER

(Additional surety only allowed with prior FHA approval as indicated below)

1. This Additional Surety Rider is attached to and made a part of that certain Off-Site Bond-Dual Obligee (the "Off-Site Bond"), dated ____, executed

and delivered by _____, as Contractor, and __, as Surety, in favor of Obligees, in the sum of _____ ($____) with respect to the Project referenced above.

2. All of the terms, conditions and provisions of the Off-Site Bond are hereby incorporated herein by this reference as if fully set forth herein.

3. All defined terms, as set forth in the Off-Site Bond, shall have the same meaning herein.

4. _____ is hereby added to the Off-Site Bond as an additional named surety.

5. Each surety and additional surety (hereinafter collectively called "Surety") is held and firmly bound, jointly and severally, onto Obligees. Further, each undersigned Surety binds itself in the aforesaid full sum, "jointly and severally," as well as "severally" for the purpose of allowing joint action or singular actions against any or all of them in the full amount of this Bond and for all other purposes each Surety binds itself, jointly and severally with the Contractor, for the payment of the full sums above stated.

6. Nothing herein shall alter or affect any of the terms, conditions and other provisions of the Off-Site Bond, including especially but without limitation, the aggregate liability of the Surety as described in paragraph 4 of the Off-Site Bond.

[Remainder of this page intentionally left blank.]

SIGNED AND SEALED this ____ day of ____, 20__.

Witness as to Contractor:

_____

CONTRACTOR:

_____

By:

_____

Name and Title (Printed)

SURETY:

_____

By:

_____

Name and Title (Printed)

Approved by The United States Department of Housing and Urban Development

By:

_____

Escrow Agreement For Latent Defects

U.S. Department of Housing and Urban Development, Office of Housing

OMB Approval No. 0000–0000, (exp. 00/00/00)

Public Reporting Burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, DC 20410–3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502–0468), Washington, DC 20503. Do not send this completed form to either of the above addresses.

THIS AGREEMENT is effective the ____ day of _____, 20__ by and between _____, the Lender and _____, the Borrower. The terms Lender and Borrower shall be deemed to have the meanings set forth set forth in the HUD regulatory agreement applicable to this transaction.

The Borrower has completed construction of a project known as _____ and further identified as HUD Project No. _____.

The Borrower is required to furnish a guarantee against latent defects, faulty workmanship and defective materials for a period of one year following the date of final completion of the project; and

The date of final completion of the project was _____, 20__.

In consideration of the premises, the parties acknowledge and agree as follows:

1. The Borrower herewith deposits with the Lender, and the Lender hereby acknowledges receipt of, the sum of $_____ (the Fund) which is an amount equal to 2½% of the total amount of the Construction Contract to be retained for a period of fifteen months from the date of final completion, in the form of cash or an irrevocable, unconditional letter of credit issued to the Lender by a banking institution. The Fund is held by the Lender under the Contract of Mortgage Insurance for and on behalf of the Borrower.

2. The Fund shall be maintained by the Lender to guarantee against defects in the construction due to faulty materials or workmanship, defective materials or damage to the project resulting from such defects, which defects or damage become apparent within one year after the date of final completion. Said Fund may be used for the correction of such defects or damage, as may be required by either the Lender or the U.S. Department of Housing and Urban Development (hereinafter, HUD), in the event the Borrower fails to make such corrections.

3. The Borrower covenants and agrees on demand of either the Lender or HUD to remedy or cause to be remedied all defects in construction due to faulty workmanship, defective materials, or damage to the project resulting from such defects, within 60 days of notification by the Lender or HUD.

4. The Borrower acknowledges that all work performed pursuant to this Agreement is subject to the labor standards contained in Form HUD–92554, Supplementary Conditions of the Contract for Construction, or its replacement, as acknowledged from time to time by the original General Contractor in executing the Contractor's Prevailing Wage Certificate on the back of Form HUD–92448, Contractor's Requisition, Project Mortgages, or its replacement. The Borrower expressly agrees to be bound by the terms and provisions of the said Conditions and the Certificate. Prior to the release of any funds deposited hereunder, the Borrower will submit a Contractor's Prevailing Wage Certificate duly executed by each and every contractor performing any of the work and dated subsequent to the completion of such work.

5. The Lender shall maintain such Fund separate from any escrow that may have been provided to assure completion of any incomplete construction items. The Fund shall be disbursed as follows:

a. In the event the Borrower fails to comply with the provisions of Paragraph 3 of this Agreement, the Lender shall have the right and/or option to proceed to correct all said defects in construction and pay the cost thereof, including all the costs of the Lender, from the Fund. For this purpose, the Borrower hereby irrevocably authorizes and empowers the Lender to do and perform in its name and with full powers of substitution all matters and things which said Lender shall in its judgment deem necessary and proper to be done to effectuate the completion of said repairs and to apply the moneys herewith deposited to the payment of debts contracted or incurred. This warrant of attorney shall be the Lender's full and sufficient authority as attorney-in-fact for the Borrower for all payments made by virtue thereof. The Borrower hereby irrevocably authorizes and empowers the Lender to enter into and upon the said Project and take charge of all materials on the Project and in the name of the Borrower, as its attorney-in-fact, to call upon and require contractors to do that repair work which is their responsibility. To the extent that the Lender and/or its contractors complete

said repairs, such work remains subject to the labor standards referenced in Section 4 of this Agreement, and the Lender shall obtain a Contractor's Prevailing Wage Certificate duly executed by each contractor performing any of the work.

b. The entire Fund or, if any sums were expended in accordance with the above paragraph, any balance remaining therein shall be returned to the Borrower upon the expiration of the time designated above unless there is a default under the Security Instrument.

c. In the event the Borrower completes the repairs in the time period specified at paragraph 3 above, or no defects become apparent within one year after completion of the project and there is no default under the Security Instrument, the Lender shall upon written approval of HUD, return to the Borrower the amount of the deposit, together with interest.

d. Any and all disbursements from said Fund shall be made only upon the prior written approval of HUD.

6. In the event the Mortgage is assigned to HUD at any time during which the Fund has a balance remaining therein in the form of an unconditional letter of credit, the Borrower hereby authorizes the Lender to draw the remaining balance of said letter of credit in cash, if so required by HUD, and to deliver such cash to HUD as required pursuant to paragraph 6 hereof,

7. In the event of a default by the Borrower under the Security Instrument and an assignment of the Security Instrument to HUD, the entire Fund or balance remaining therein shall be paid to HUD together with an assignment of all rights hereunder granted to the Lender. In such event, HUD may apply said funds to sums due under the Note. In the event the Lender elects to foreclose the Security Instrument in lieu of assigning it to HUD, the Lender may apply said funds to sums due under the Note.

8. The Borrower's liability for the correction of defects or damage shall not be limited by the amount of the Fund established hereunder.

IN WITNESS WHEREOF, the parties have duly executed this Agreement.

BORROWER:

By: _____

Print Name and Title

LENDER:

By: _____

Print Name and Title

Warning

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions, including but not limited to: (i) fines and imprisonment under 18 U.S.C. 287, 1001, 1010 and 1012; (ii) civil penalties and damages under 31 U.S.C. 3729; and (iii) administrative sanctions, claims, and penalties under 24 CFR parts 24 and 28.

Escrow Agreement For Working Capital

U.S. Department of Housing and Urban Development, Office of Housing

OMB Approval No. 0000–0000, (exp. 00/00/00)

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THIS AGREEMENT is effective the ____ day of _____, 20 __ by and between _____, the Lender and _____, the Borrower. The terms Lender and Borrower shall be deemed to have the meanings set forth set forth in the HUD regulatory agreement applicable to this transaction.

The Borrower is the owner of a project known as _____ located at and further identified as HUD Project No. _____, which project has been, is being, or will be constructed from proceeds of a Mortgage Loan (or Deed of Trust) in the original principal amount of $_____ (hereinafter, the Mortgage Loan) from the Lender with respect to which Mortgage Loan the Secretary of the United States Department of Housing and Urban Development (hereinafter, HUD) has issued a commitment to insure.

The commitment to insure is conditioned upon a working capital deposit being established and funded as indicated below, which working capital deposit has not been included in the Mortgage Loan proceeds but which could be funded from excess cash available to the Borrower. This requirement applies to both the profit-motivated and the not-for-profit Borrower.

In consideration of the premises, the parties acknowledge and agree as follows:

1. At initial endorsement of the Mortgage Loan, the Borrower has deposited with the Lender, which acknowledges receipt of same, the sum of $_____ (herein called the Deposit) in the form of [specify one]:

a. __ cash, or

b. __ an unconditional, irrevocable letter of credit issued to Lender by a banking institution.

2. The Lender controls the Deposit and it is understood that the funds in the Deposit may be released or allocated for the purposes indicated below and for no other purpose without the prior written approval of HUD:

(i) The cost of equipping and renting the project after final completion of construction of the project (Note: Not applicable to Section 232 Mortgages);

(ii) For accruals during the course of construction, for interest, mortgage insurance premiums, taxes, ground rents, property insurance premiums and assessments, when funds available for these purposes under the Building Loan Agreement have been exhausted, and also for allocation to such accruals after completion of construction.

3. Any balance of said funds, together with interest earned on the funds remaining in the Deposit after the date of sustaining occupancy as determined by HUD, will be returned to the Borrower, provided that the Mortgage Loan is not in default and unless HUD has directed other disposition.

4. The Lender will not make any disbursements from the Deposit without the prior written approval of HUD for projects involving Low-Income Housing Tax Credits, where the Borrower certifies at firm commitment that it will apply any balance of said funds to the reserve for replacement or any other restricted account specified by HUD.

5. The Deposit, if in the form of cash, shall be held by the Lender, in an interest-bearing account that is fully guaranteed by the United States of America. The Lender may draw upon any letter of credit included in the Deposit and convert the same to cash, which cash shall then be held and disbursed pursuant to the terms of this Agreement.

6. The Deposit together with interest, which is being held under the Contract of Mortgage Insurance, shall be subject to immediate application to the mortgage debt in the event of default under the Mortgage Loan at any time before the expiration of the escrow period.

IN WITNESS WHEREOF, the parties have duly executed this Agreement.
BORROWER:

By: _____
Name and Title

LENDER:

By: _____

Name and Title

Warning

Any person who knowingly presents a false, fictitious or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability and administrative sanctions, including but not limited to: (i) fines and imprisonment under 18 U.S.C. 287, 1001, 1010 and 1012; (ii) civil penalties and damages under 31 U.S.C. 3729; and (iii) administrative sanctions, claims and penalties under 24 CFR parts 24 and 28.

Sinking Fund Agreement (For Use in the Section 232 Program)

U.S. Department of Housing and Urban Development, Office of Housing

OMB Approval No. 0000–0000, (exp. 00/00/00)

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THIS AGREEMENT is effective the ____ day of _____, 20__ by and between _____, Lender, and _____, Borrower, and _____ the Lessee/Operator, if any. The terms Lender and Borrower shall be deemed to have the meanings set forth set forth in the HUD regulatory agreement applicable to this transaction.

The Borrower is the owner of a project known as _____ and further identified as Project No. ____, which project is financed by a Mortgage (or Deed of Trust) from the Lender with respect to which Mortgage the Secretary of the United States Department of Housing and Urban Development (HUD) has issued a commitment to insure. The commitment to insure is conditioned upon a Sinking Fund account being established and funded in accordance with the Regulatory Agreement to assure that there are sufficient funds to amortize the principal of the loan. This Sinking Fund is required in addition to the Reserve for Replacement Fund, where Medicaid reimbursement is on a depreciation plus interest basis rather than a pass through of principal and interest on the mortgage. This fund is held by the Lender under the Contract of Mortgage Insurance.

In consideration of the premises, the parties acknowledge and agree as follows:

1. The Borrower agrees to direct and empower the payor of the capital reimbursement funds to deposit such funds into a trust account with the Lender. It is understood that the trust instrument shall be irrevocable unless approved by the Lender and shall provide that the trustee shall immediately segregate from each provider payment an amount representing the excess depreciation component of the capital reimbursement per a schedule prepared by the Lender and pay it into the Sinking Fund held by the Lender. In jurisdictions which do not allow the Borrower to direct and empower the payor of the capital reimbursement fund to deposit funds into a trust account, the Borrower and the Lender enter into this agreement by which the parties are obliged to establish, make payments to and maintain a separate account for the Sinking Fund.

a. By October 1 of each year, Borrower shall prepare and file with the Lender a depreciation schedule reviewed by the Borrrower's independent public account showing the total projected reimbursement for depreciation and amount payable for principal payments coming due in each of Borrower's fiscal years, including the fiscal year during which the Mortgage Loan is paid.

b. By January 1 of each year, the Lender shall prepare and file with the Borrower a funding schedule reflecting the amount required to be deposited in the Sinking Fund in each such project fiscal year and the cumulative balance in the Sinking Fund at the end of each project fiscal year.

c. The amount specified in the sinking fund schedule is to be deposited into the account to pay future principle payments of the Mortgage (Deed of Trust). Sums are deposited monthly into the Sinking Fund within 15 days of the close of each month, and shall commence upon the earlier of: (i) a scheduled commencement of principal amortization of the Loan, or (ii) the receipt by the project of depreciation reimbursement by any third party payor. Such fund shall at all times be under control of the Lender.

2. The Lender agrees:

a. to establish and maintain the Sinking Fund in an interest bearing account in a bank whose capital and surplus are at least $50,000,000 and which is federally insured.

b. to furnish HUD quarterly financial reports on the investments, accounting on balances, deposits and withdrawals to the local field office having jurisdiction unless otherwise directed by HUD.

c. to monitor the Sinking Fund and examine the external auditor's fund balance report and notify HUD whether it complies with the Sinking Fund Agreement between the Borrower and the Lender, and

d. to promptly notify the Borrower and HUD of any irregularities in connection with the Sinking Fund and to take such corrective action as the Lender and HUD deem appropriate.

3. Nothing in this Agreement shall impair or prejudice any right that HUD may have with respect to such funds, particularly relating to the duty of the Lender of record to hold funds for and on behalf of the Borrower under the contract of mortgage insurance.

4. The Sinking Fund constitutes funds held by the Lender for and on behalf of the Borrower, and as such, is unrelated to the bond transaction or any other source of funds for the mortgage loan.

5. The Sinking Fund will be used to make principal payments in the later years of the Mortgage. In the event of default, the Lender shall have the power, only with the prior written approval of HUD or at the express direction of HUD, to apply the Sinking Fund to the payment of amounts due under the Note and related Loan Documents. Withdrawals from the Sinking Fund will be permitted by the Lender to be applied to principle payments due under the Note to the extent allowed by the Regulatory Agreement.

6. In the event of a claim for insurance benefits, the amount of benefits is subject to surcharge if funds have been disbursed from the Sinking Fund in a manner or for purposes not in compliance with the Regulatory Agreement between HUD and the Borrower. No such surcharge shall be made on the basis of the Borrower's failure to make required deposits into the Sinking Fund.

7. In the event the Borrower leases the Health Care Facility to an operator who is responsible for establishing and

maintaining the Sinking Fund with the Lender, the aforesaid Sinking Fund provisions shall be fully applicable to the Lessee/Operator.

IN WITNESS WHEREOF, the parties have duly executed this Agreement.

BORROWER

By: _____
Print Name

LESSEE/OPERATOR, if applicable

By: _____
Print Name and Title

LENDER

By: _____
Print Name

Warning

Any person who knowingly presents a false, fictitious or fraudulent statement or claim in a matter within the jurisdictionof the U.S. Department of Housing and Urban Development is subject to criminal penalities, civil liability and administrative sanctions, including but not limited to: (i) fines and imprisonment under 18 U.S.C. 287, 1001, 1010 and 1012; (ii) civil penalties and damages under 31 U.S.C. 3729; and (iii) administrative sanctions, claims and penalties under 24 CFR parts 24 and 28.

Agreement and Certification

U.S. Department of Housing and Urban Development Office of Housing,

OMB Approval No. 0000–0000, (exp. 00/00/00)

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To the Secretary of Housing and Urban Development:

Date _____

Project No. _____

This Agreement is effective as of the ____ day of _____, 20 __, by and among _____ (hereinafter, Borrower), and _____ (hereinafter, Lender), and (if applicable), _____ (hereinafter, the General Contractor), and the United States Department of Housing and Urban Development (hereinafter, HUD). As used herein, the terms Borrower and Lender shall be deemed to have the meanings set forth, respectively, in the HUD regulatory agreement applicable to this transaction.

Borrower has applied to Lender for a mortgage loan (hereinafter, the Mortgage Loan) for one of the following purposes [check applicable box] in connection with a facility identified as HUD Project No. _____:

/ / Constructing or substantially rehabilitating a housing project or health care facility, the work to be performed by the General Contractor, and Lender has applied to HUD for insurance of the Mortgage Loan in the amount of $_____, under Section ____ of the National Housing Act, as amended, in which case all paragraphs below shall apply;

or

/ / Financing or refinancing, after the completion of repairs (or satisfactory arrangements for completion of repairs), of a housing project or health care facility, and Lender has applied to HUD for insurance of the Mortgage Loan in the amount of $_____, under Section _____ of the National Housing Act, as amended, in which case Paragraphs 1, 2, 6 and 8, below, shall apply;

HUD has issued a Commitment to insure the Mortgage Loan in said amount pursuant to said Section and regulations and directives issued pursuant thereto. The amount of the Mortgage Loan is subject to reduction, as provided in said Act, regulations and directives, and this Agreement is required accordingly.

In consideration of the premises, the parties acknowledge and agree as follows:

1. Prior to receipt of the final advance under the Mortgage Loan, and within the time fixed by the Mortgage Loan documents, Borrower agrees, if required by HUD procedures for cost certification and the National Housing Act, to submit to HUD (a) a fully completed and executed Mortgagor's Certificate of Actual Cost; and (b) a fully completed and executed Contractor's Certificate of Actual Cost, or Subcontractor's Certificate of Actual Cost, on forms prescribed by HUD. Borrower and the General Contractor understand, agree and will insure that each of the certificates of cost is supported by the certificate of an independent Certified Public Accountant or independent public accountant in form acceptable to HUD, if required by HUD procedures for cost certification.

2. Borrower and Lender agree that the total advances under the Mortgage Loan cannot exceed the amount permitted by Section 227 of the National Housing Act, as amended, and the regulations and directives issued pursuant thereto. In the case of Mortgage Loans insured pursuant to Sections 223(a) or 223(f) of the National Housing Act, as amended, Borrower and Lender understand and agree that the Commitment and Mortgage Loan may be reduced to comply with the provisions of said Section 227 and regulations and directives issued pursuant thereto, and Borrower and Lender further agree to execute such instruments as may be required to accomplish such reduction.

3. Borrower agrees that if it receives Mortgage Loan funds in excess of that permitted under the National Housing Act, and the regulations and directives issued pursuant thereto, it will pay upon demand forthwith to Lender any such excess for application to the reduction of the then-outstanding principal balance of the Mortgage Loan. Lender agrees that upon its receipt of such excess the contract of mortgage insurance is reduced accordingly, and Borrower and Lender agree to execute such instruments as may be required to accomplish such reduction. Borrower further agrees that if HUD, for cost certification purposes, accepts estimates for any items, Borrower will, at final endorsement, establish a cash escrow to pay all the "to be paid in cash items" identified in its Certificate of Actual Cost, and to pay debts to third parties who made the original disbursement for an item listed as paid on the Certificate, unless documentation, satisfactory to HUD, is submitted evidencing that Borrower paid these amounts after the submission of its Certificate. Borrower understands that the items covered by this cash escrow must be paid within 45 days of the date of final endorsement, except for those items in dispute, involved in litigation or those items that are non-critical repairs to be completed after endorsement and covered by an appropriate escrow agreement. If Borrower's actual cost is less than the estimates accepted for cost certification purposes, and HUD determines that this difference plus the net amount (total receipts less expenses of perfecting claims) of settlement of claims against bonding companies or others, would have required a reduction of the Mortgage Loan, Borrower understands that prepayment of the Mortgage Loan is required in an amount equal to the scheduled monthly principal payments, to the extent possible, and any remaining balance will be deposited to the project's Reserve Fund for Replacements.

4. Borrower certifies that any financial or business interests or family relationships which exist between Borrower, or any of its officers, directors, stockholders, partners or principals (hereinafter, Principals) with the Architect or with the General Contractor, or subcontractors, suppliers, or equipment lessors, or with any of the Principals of any of the foregoing entities (hereinafter, an Identity of Interest) for the project are herewith listed by name, title, address, relationship and interest: (Attach exhibit if necessary. If None, so state).

_____

_____

_____

_____

_____

_____

5. Borrower agrees to notify HUD in writing, and within 10 days of the event, of any change in relationships covered by paragraph 4 herein. In the event that such change establishes an Identity of Interest between Borrower or its Principals, and the General Contractor or its Principals, Borrower's Certificate of Actual Cost will be accompanied by the Contractor's Certificate of Actual Cost, in the form prescribed by HUD; and, if required by HUD, similar certificates by any subcontractor, supplier, or equipment lessor covered by this paragraph 5. It is agreed that the absence of such notice may be treated by HUD as a representation that no such change in relationship has occurred.

6. Borrower agrees to maintain and keep adequate records of all costs incurred in connection with the project, and to make such records available for examination by HUD upon request.

7. If this Agreement discloses an Identity of Interest between Borrower and the General Contractor, Borrower will include in the construction contract a provision requiring the General Contractor, upon completion of the project, to submit to Borrower for delivery to HUD its Certificate of Actual Cost, in the form prescribed by HUD. Borrower further agrees to include in said contract the requirement that the General Contractor will maintain adequate records of all such costs, and make such records, documents, contracts and accounts available for review upon request by HUD.

8. Borrower agrees that it will include in the construction contract, and require the inclusion in all subcontracts, whether for labor, material, or equipment leases, a provision that if there is, or comes into being, an Identity of Interest between Borrower and any subcontractor; or, in those cases in which the General Contractor is required to certify actual costs, between the General Contractor and any subcontractor, then, if HUD so requires, such subcontractor will submit to HUD a Certificate of Actual Cost in the form and with the audit standards prescribed by HUD, including the deduction of all kickbacks, rebates, adjustments, discounts, or any other arrangements in the nature thereof. For purposes of determining actual cost, no profit or general overhead may be included in the subcontract unless HUD has granted advance written approval of a specific dollar amount or a specific percentage.

9. Borrower agrees that if there comes into being any Identity of Interest between Borrower and the Architect, or between the General Contractor and the Architect, the Architect will immediately be relieved of inspection duties and the maximum Architect's fees allowable for cost certification purposes will be $_____ for design services only, and no fees will be allowed for supervision.

10. If HUD processed the project to include a Builder's and Sponsor's Profit and Risk Allowance (hereinafter, BSPRA) under the National Housing Act, as amended, Borrower and General Contractor agree as follows:

a. The form of construction contract will be cost-plus, with a maximum upset price. So long as the requisite Identity of Interest is maintained through final endorsement of the Mortgage Loan, and subject to paragraph 10.c herein, then in lieu of the General Contractor's fee, Borrower will be entitled to include in its Certificate of Actual Cost a BSPRA. The BSPRA will be determined by applying the profit and risk percentage provided for in Section 227 of the National Housing Act, as amended, and the regulations and directives issued pursuant thereto, that were in effect on the date of the Commitment, to the actual cost, as accepted by HUD, of those items which, under the provisions of the said Act, regulations and directives, are included in computing the BSPRA. For the purpose of determining actual cost, the General Contractor's general overhead will not exceed $_____.

b. If the Identity of Interest between Borrower and General Contractor is not maintained through final endorsement of the Mortgage Loan, then the BSPRA provided for in paragraph 10.a herein will not be applicable. Instead, Borrower will be entitled to include in its Certificate of Actual Cost a Sponsor's Profit and Risk Allowance (hereinafter, SPRA). The SPRA will be determined by applying the profit and risk percentage provided for in Section 227 of the National Housing Act, as amended, and the regulations and directives issued pursuant thereto, that were in effect on the date of the Commitment, to the actual cost, as accepted by HUD, of those items which, under the provisions of the said Act, regulations and directives, are included in computing the SPRA.

c. If more than 50 percent of the actual cost of construction is subcontracted with any one contractor or subcontractor, or more than 75 percent with three or fewer contractors or subcontractors (hereinafter, the 50–75% Rule), the BSPRA provided for in paragraph 10.a herein will not be allowed as an actual cost, and Borrower will be limited to the inclusion on its Certificate of Actual Cost of the SPRA cited in paragraph 10.b herein. Further, in that event, for the purpose of determining actual cost, HUD will not allow any expense for the General Contractor's general overhead.

11. If HUD did not process the project to include a BSPRA, Borrower and General Contractor agree that the provisions of this paragraph 11 apply. If there is an Identity of Interest between Borrower and the General Contractor, or in any other circumstance required by HUD, the form of construction contract will be cost-plus, with a maximum upset price. For the purpose of determining actual cost, the General Contractor's fee will not exceed $_____, and the general overhead will not exceed $____. In the event that the 50–75% Rule is violated, for the purpose of determining actual cost, HUD will not allow any expense for the General Contractor's fee and general overhead. If an Identity of Interest does not exist or is not maintained through final endorsement of the Mortgage Loan, and if authorized by the National Housing Act, as amended, and the regulations and directives issued pursuant thereto, that were in effect on the date of the Commitment, Borrower will be allowed to include in its Certificate of Actual Cost the SPRA cited in paragraph 10.b of this Agreement.

12. Borrower and the General Contractor understand that for purposes of the 50–75% Rule, the terms "contractor" and "subcontractor" include material suppliers and equipment lessors, and any two or more contractors or subcontractors having an Identity of Interest or common ownership are considered as one contractor or subcontractor. Further, it is understood that the 50–75% Rule is not applicable to manufacturers of industrialized housing, trade items performed by persons on the General Contractor's payroll, mobile home park

programs, supplemental loan programs, or rehabilitation programs other than gut rehabilitation.

13. Borrower and the General Contractor further understand and agree that if an Identity of Interest arises between Borrower and the General Contractor following their execution of a lump-sum form of construction contract, allowable costs will be governed by the applicable provisions of paragraphs 11 and 12 of this Agreement.

14. The Contractor and Borrower represent, for themselves and any person or entity with which they are affiliated, as follows:

a. All costs for work to be performed on the Project or related property are reflected in the Construction Contract and in the Contractor's and Mortgagor's Cost Breakdown.

b. There are no agreements, contracts or arrangements, for costs, fees, consideration or compensation to the Contractor, its principals, employees or affiliates other than as recited as the contract sum in Article 4 (in the case of a Cost Plus Contract) or Article 4A (in the case of a Lump Sum Contract) except for BSPRA.

c. Borrower and Contractor acknowledge that the existence of undisclosed, agreements, contracts, or other arrangements concerning construction work to be performed on property covered by a security instrument insured by HUD or concerning the compensation payable for such work, whether or not such agreement, contract or arrangement is with a party to the construction contract, is not permitted in HUD-insured transactions. Borrower and Contractor acknowledge that full disclosure to HUD of all such agreements, contracts or arrangements, if any, is to permit accurate determination of the HUD-insured Mortgage Loan/construction amount. Failure to disclose any such agreements, contracts, or arrangements may constitute grounds for administrative sanctions and /or civil or criminal penalties.

d. No agreement, contract or other arrangement, whether or not disclosed, shall increase the HUD-approved construction amount. The existence of any such agreement, contract or arrangement shall not impute to Lender or HUD of any obligation, financial or otherwise, to Borrower, Contractor, or other third-party.

IN WITNESS WHEREOF, the parties have duly executed this Agreement.

BORROWER

By: _____
Print name and title

GENERAL CONTRACTOR

By: _____
Print name and title

LENDER

By: _____
Print name and title

UNITED STATES DEPARTMENT OF HOUSING & URBAN DEVELOPMENT

By: _____
Print name Authorized Agent

APPENDIX 12—B.2

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

HUD AMENDMENT TO AIA DOCUMENT B181 STANDARD FORM OF AGREEMENT BETWEEN OWNER AND ARCHITECT FOR HOUSING SERVICES FOR HUD PROJECT NO. _____

The provisions of this Amendment supersede and void all inconsistent provisions that may exist between this Amendment and the Agreement.

1. Definition of terms used in this Amendment. If not defined in this Amendment, terms shall have the meaning given them in the Agreement.

a. Agreement. The AIA Document B181, Standard Form of Agreement Between Owner and Architect for Housing Services, between the Owner and the Architect to which this Amendment is attached.

b. HUD. The U.S. Department of Housing and Urban Development.

c. Mortgagee. The Lender, as defined in the HUD regulatory agreement applicable to this transaction.

d. Owner. The Borrower, as defined in the HUD regulatory agreement applicable to this transaction.

e. Subcontractor. Any person or entity providing services, material supplier, equipment lessor or industrialized housing manufacturer/supplier who has a direct contract with the Contractor responsible for construction of the Project.

2. The Owner and the Architect represent that they have complied with outstanding architectural instructions in accordance with the Multifamily Accelerated Processing (MAP) Guide (for projects processed under the MAP Guide) or Handbook 4460.1 REV–2, Architectural Analysis and Inspections for Project Mortgage Insurance (for other projects), including review for compliance with appropriate HUD Minimum Property Standards; the accessible design, construction and alteration requirements of Section 504 of the Rehabilitation Act of 1973 (*see* 24 CFR part 8); the Fair Housing Accessibility Guidelines; the Uniform Federal Accessibility Standards; the accessible design and construction requirements of the Fair Housing Act (*see* 24 CFR 100.205 and ANSI-A117.1–1986, incorporated by reference into 24 CFR part 100); the Americans with Disabilities Act Guidelines, 37 CFR part 1191; and other current HUD directives. The Owner and Architect further represent that they will perform services for one another in accordance with the applicable requirements contained in these HUD directives.

3. No portion of the duties, responsibilities and authority of the Architect or Owner shall be restricted, modified or extended, nor shall this Agreement be assigned in whole to anyone, without the written consent of HUD. Neither the Owner nor the Architect shall contract with anyone currently listed by the General Services Administration as a firm which is disbarred, suspended, proposed for debarment, or declared ineligible by federal agencies or by the General Accounting Office. The Owner and the Architect shall each require from their contractors, consultants and agents similar agreements (a) prohibiting contracts with such persons or entities and (b) requiring previous participation certificates.

4. In order to assure the timely and economical completion of the project, the Owner, the Owner's Mortgagee, the surety under the performance bond or HUD may take control of the project or take responsibility for completion of the project's construction pursuant to said parties' legal rights under the agreements concerning the project. In such event, and notwithstanding the provisions of Paragraph 6.1 of this Agreement, the party taking control or taking responsibility for completion of construction, and any substitute contractor hired by said party, shall have the right to use the Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants. Such use shall be to the same extent and with the same limitations as the Owner under this Agreement or as the Contractor under the AIA Document A201 General Conditions of the Contract for Construction, provided the Owner has paid the Architect in accordance with this Agreement and is not in breach or default thereunder. The Architect's execution of this Amendment shall represent consent by the Architect and the Architect's consultants to such use.

5. The Owner shall provide information to or obtain approval from the Owner's Mortgagee and HUD regarding any action or observation by either the Owner or the Architect that significantly increases the Project's cost or time of construction or decreases the quality of construction.

a. The Architect shall assist the Owner in fulfilling the Owner's obligations to the Mortgagee and HUD by furnishing them with copies of all construction observation reports, certificates for payment, certificate of Substantial Completion, architect's supplemental instructions and other written interpretations of the Contract Documents made in the Architect's official capacity during the project.

b. The certificates for payment and the certificate of Substantial Completion shall be in forms as prescribed by HUD.

6. Notwithstanding the provisions of Article 9.8, the Architect shall:

a. Advise the Owner on:

(1) The type of consultant Owner should employ to specifically identify suspected on-site hazardous materials and preparation of the necessary Specifications for their abatement in accordance with HUD and other jurisdictional requirements, where:

(a) The Phase I Environmental Report supplied by the Owner and/or other Owner

supplied data indicate the potential presence of any hazardous material, or

(b) The Architect observes or is otherwise made aware of potential on-site hazardous materials during the course of performing Project duties, including during the construction phase for the rehabilitation of existing improvements.

(2) The format in which the Owner's consultants should prepare their Specifications for eliminating identified hazardous materials, and

b. Incorporate the Owner's consultant's specifications for abatement of the hazardous conditions into the construction documents, *i.e.*, bid documents, or change orders where hazardous materials are identified during construction.

7. This Agreement shall not be terminated without seven days prior written Notice to the Mortgagee and HUD.

8. The Owner and the Architect recognize the interest of the Mortgagee and HUD and that any action or determination by either the Owner or the Architect is subject to acceptance or rejection by the Mortgagee and by HUD.

9. In addition to any other rights or remedies the Owner may have under this Agreement, if a duly authorized representative of HUD requests that the Architect be replaced due to the Architect's inadequate performance, unjustified delay or misrepresentation of material facts, the Owner may terminate this Agreement after giving the Architect at least seven days' written notice and an opportunity to correct such default.

10. The Architect administering the Construction Contract shall disclose any identity of interest with the Owner, Contractor, and/or any Project subcontractor. An identity of interest is construed to exist where:

a. The Architect has any financial interest in the Project other than the fee for professional service.

b. The Architect advances any funds to the Owner, Contractor and/or any subcontractor; and/or the Contractor and/or any subcontractor advance any funds to the Architect.

c. The Architect has any financial interest in the Owner, Contractor and/or any subcontractor; or the Owner, contractor and/or any subcontractor has any financial interest in the Architect.

d. Any officer, director, stockholder or partner of the Architect has any financial interest in the Owner, Contractor and/or any subcontractor; or any officer, director, stockholder or partner of the Owner, Contractor and/or any subcontractor has any financial interest in the Architect.

e. Any officer, director, stockholder or partner of the Architect is also an officer, director, stockholder or partner of the Owner, Contractor, and/or any subcontractor.

f. The Owner, Contractor and/or any subcontractor, or any officer, director, stockholder or partner of such Owner, Contractor and/or subcontractor provides any of the required architectural services or, while not directly providing an architectural service, acts as a consultant to the Architect.

g. Any family relationships exist between the officers, directors, stockholders or partners of the Architect and officers, directors, stockholders or partners of the Owner, Contractor, and/or any subcontractor that could cause or result in control of or influence over prices paid to the Architect or could result in control of or influence over performance by the Architect.

h. Any side deal, agreement, contract or undertaking, that is inconsistent with related requirements for the relationship between the Owner and Architect as stipulated in the closing documents, except as approved by HUD.

11. All identities of interest known to exist between the Architect and the Owner, Contractor and/or any subcontractor are listed herein. The Architect and Owner shall each inform HUD in writing within 5 working days of its first knowledge of any identity of interest that develops after execution of this Agreement. Upon the discovery of an undisclosed identity of interest, HUD may require the termination of this Agreement in accordance with paragraph 9, above.

List All Identities of Interest:

_____

_____

_____

_____

_____

_____

_____

12. The funds for this Project, including the Architect's funds under this Agreement, will be provided, as the case may be, by the proceeds of a mortgage from a Mortgagee who in turn obtained commitment for mortgage insurance from HUD, in accordance with the National Housing Act, or from a capital advance from the U.S. Treasury pursuant to Section 202 of the Housing Act of 1959 or Section 811 of the Cranston-Gonzalez National Affordable Housing Act. Said Mortgagee, pursuant to the terms of a Building Loan Agreement, or said U.S. Treasury, pursuant to a Capital Advance Agreement, in accordance with HUD's rules and regulations, will agree to advance the proceeds of the mortgage or capital advance to the Owner for completion of the work, but only to the extent that charges accrued and only to the extent and for the purposes specified in the Building Loan Agreement or Capital Advance Agreement. The Building Loan Agreement or Capital Advance Agreement, when executed, shall specify the mortgage or capital advance proceeds available for the Design Phase and for administration of the Construction Contract during the Construction Phase. However, neither the mortgage or capital advance, nor the Building Loan Agreement or Capital Advance Agreement, provide funds for Reimbursable Expenses pursuant to paragraph 10 of this Agreement, Termination Expenses pursuant to paragraph 8 of this Agreement, or Additional Service Compensation pursuant to paragraph 11 of this Agreement. Although the Architect may agree to provide a greater degree of services for additional compensation, require compensation for reimbursable expenses or termination expenses, or require basic compensation in excess of that provided by the Building Loan Agreement or Capital Advance Agreement for such services, the obligation to compensate the Architect for the greater degree of services or the aforesaid expenses shall not be enforceable against the Owner, the Mortgagee, U.S. Treasury, HUD or the Project; provided, however, that any entity or individual other than Owner may agree to be responsible to the Architect for payment thereof and, in such case, shall be identified below.

Provider of additional payment pursuant to paragraph 12 of this Amendment, if any.

_____

_____

Executed as of the __ day of _____, 20__.

OWNER

DATE: _____

ARCHITECT

DATE: _____

[Remainder of this page intentionally left blank.]

Certification

Each signatory below hereby certifies that the statements and representations contained in this instrument and all supporting documentation thereto are true, accurate, and complete. This instrument has been made, presented, and delivered for the purpose of influencing an official action of HUD (acting by and through the FHA Commissioner) in insuring a multifamily rental or health care facility mortgage loan, and may be relied upon by HUD and the Commissioner as a true statement of the facts contained therein.

Name of Entity: _____

By: /s/ _____

Printed Name, Title: _____

Dated: _____

By: /s/ _____

Printed Name, Title: _____

Dated: _____

[ADD ADDITIONAL LINES IF MORE THAN TWO SIGNATORIES]

Department of Housing and Urban Development, acting by and through the Federal Housing Commissioner

Authorized representative: _____

Dated: _____

Warning

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions, including but not limited to: (i) fines and imprisonment under 18 U.S.C. 287, 1001, 1010 and 1012; (ii) civil penalties and damages under 31 U.S.C. 3729; and (iii) administrative sanctions, claims, and penalties under 24 CFR parts 24, 28 and 30.

[FR Doc. 04–16783 Filed 7–30–04; 8:45 am]

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Federal Register

Monday,
August 2, 2004

Part III

Department of State

Office of Protocol; Gifts to Federal Employees From Foreign Government Sources Reported to Employing Agencies in Calendar Year 2003; Notice

DEPARTMENT OF STATE

[Public Notice 4786]

Office of Protocol; Gifts to Federal Employees From Foreign Government Sources Reported to Employing Agencies In Calendar Year 2003

The Department of State submits the following comprehensive listing of the statements which, as required by law, Federal employees filed with their employing agencies during calendar year 2003 concerning gifts received from foreign government sources. The compilation includes reports of both tangible gifts and gifts of travel or travel expenses of more than minimal value, as defined by statute.

Publication of this listing in the **Federal Register** is required by Section 7342(f) of Title 5, United States Code, as added by Section 515(a)(1) of the Foreign Relations Authorization Act, Fiscal Year 1978 (Pub. L. 95–105, August 17, 1977, 91 Stat. 865).

Dated: July 14, 2004.

Grant S. Green, Jr.,

Under Secretary for Management, Department of State.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Furniture: 4′ round table made of hardened lava, with Presidential Seal in mosaic on top, and metal base. Recd—January 17, 2003.	The Honorable Nello Musumeci, President, Catania Regional Province, Italy. Mr. Francesco Seminara, Councilor for Trade, Industry and Handicrafts, Catania Regional Province, Italy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Hardcover book: "Dijbouti: Fleuron de la Mer Rouge," by Mohamed Abdillahi Wais and Houssein Ahmed Hersi. Recd—January 21, 2003. Est. Value—$40. Archives Foreign. Coins (2): 1¼″ gold-tone coin and 1½″ silver-tone coin, both commemorting the 20th anniversary of Djibouti's independence. Medallion: 3″ bronze medallion with "Republique de Djibouti" in relief on one side and "Presidence de la Republique" on the reverse. Recd—January 21, 2003. Est. Value—$295. Archives Foreign. Dish: 4¼″ round silver-plated dish with seal of Djibouti in relief on the bottom. Recd—January 21, 2003. Est. Value—$40. Archives Foreign.	His Excellency, Ismail Omar Guelleh, President of the Republic of Djibouti.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Consumables: Tunisian dates. Recd—January 28, 2003. Est. Value—$60. Handled pursuant to Secret Service policy. Chest: 20½″ x 16″ black and grey leather chest with hinged lid; interior is padded and holds a two-tiered wood lined tray. Recd—January 28, 2003. Est. Value—$280. Archives Foreign.	His Excellency Zine El-Abidine Ben Ali, President of the Republic of Tunisia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Timepiece: Franck Muller "Long Island 1200 QP" watch with black leather band, white gold housing, and perpetual calendar; held in a black leather case. Recd—January 30, 2003. Est. Value—$12000. Archives Foreign.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Desk accessory: Conway Stewart "Churchill Presentation Box," including a "Churchill" pen, a bottle of ink, a cigar, and a small book of Churchill quotations; held in a green leatherette case with gold tooling. Recd—January 31, 2003. Est. Value—$375. Archives Foreign.	The Right Honorable Tony Blair, M.P., United Kingdom.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Clock: 11″ gold-plated silver and enamel clock with date display, paintings of wildlife on three sides, and a blue domed top painted with gold stars; held in a blue leather presentation case. Recd—February 3, 2003. Est. Value—$4000. Archives Foreign.	His Majesty Shaykh Hamad bin Essa Al Khalifa, King of the Kingdom of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Timepiece: 4″ sterling silver clock with piece of amber with sliver eagle in center mounted below clock face. Recd—February 5, 2003. Est. Value—$300. Archives Foreign.	His Excellency Leszek Miller, Prime Minister of the Republic of Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Statue: 13″ silver figural of an oak leaf with acorns; mounted on a round silver base engraved "President of Latvia" with donor's signature and "17th February 2003." Recd—January 17, 2003. Est. Value—$750. Archives Foreign.	Her Excellency The President of the Republic of Latvia and Mr. Imants Freibergs.	Non-acceptnce would cause embarrassment to donor and U.S. Government.
President	Briefcase: 17¾ x 12″ red Barrow & Gale briefcase of the kind traditionally used by Prime Ministers of Great Britain; "President United States of America" and "43" embossed in gold on lid. Recd—February 17, 2003. Est. Value—$1300. Archives Foreign.	His Excellency Sir Christopher Meyer, KCMG, Ambassador of Great Britain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: two 8″ x 6½″ limited edition engravings by Alejandro Macarron Jaime, "Fresmos" (223/250) and "Olivos" (226/250), depicting rural scenes with trees; matted side by side and held in a 22¼″ x 11½″ burled wood frame. Recd—February 21, 2003. Est. Value—$350. Archives Foreign.	His Excellency Jose Maria Aznar, President of the Government of Spain and Mrs. Aznar.	Non-acceptance would cause embarrassment to donor an U.S. Government.
President	Coffee service: gold-tone service consisting of six 2½″ cups and 4¼ saucers, 4″ sugar bowl, 3½″ creamer, 6¼″ coffee pot, 10″ server, and 16″ tray, all with intricate floral motif rendered in enamel. Recd—February 26, 2003. Est. Value—$900. Archives Foreign.	His Excellence Heydar Aliyev, President of the Republic of Azerbaijan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Rug: 80″ x 118″ dark red Afghan area rug. Recd—February 27, 2003. Est. Value—$4500. Archives Foreign.	His Excellency Hamid Karzai, Chairman of the Interim Authority of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Statue: 13″ bronze statue of President Bush with two Afghan children; presentation plaque on base engraved "From All Afghan Children in Appreciation of Your Enduring Support of Our Education." Recd—February 27, 2003. Est. Value—$5000. Archives Foreign.		
President	Medallions (3): 1¾″ bronze, silver and 22K gold medallions with the Pope on one side and Assisi on the reverse. Recd—March 5, 2003. Est. Value—$600. Archives Foreign.	His Eminence Pio Cardinal Laghi	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Consumable: 75 cl bottle of Romariz port. Recd—March 16, 2003. Est. Value—$80. Handled pursuant to Secret Service policy. Medallion 2¼″ sterling silver medallion with enamel sunburst design and fleur de lis on top. Recd—March 16, 2003. Est. Value—$250. Archives Foreign.. Desk accessory: 21″ x 14″ black leather blotter with gold trim. Recd—March 16, 2003: Est. Value—$214. Archives Foreign.	His Excellency Jose Manuel Durao Barroso, Prime Minister of Portugal.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Ceremonial item: 16″ bronze mask from the Bamoun ethnic group, with two-headed snake and spiders depicted on top. Recd—March 20, 2003. Est. Value—$1500. Archives Foreign. Ceremonial item: 32″ bronze royal pipe from the Bamoun ethnic group, with a male face at the base. Recd—March 20, 2003. Est. Value—$2200. Archives Foreign.	His Excellency Paul Biya, President of the Republic of Cameroon.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: 12¼″ x 18″ watercolor painting by Alison Brown of the facade and lawn of a stone building; double-matted and held in a 20½″ x 26″ wooden frame. Recd—April 7, 2003. Est. Value—$550. Archives Foreign.	The Right Honorable Paul Murphy, M.P., Secretary of State for Northern Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Housewares: 5½″ Moser wine glasses (6) with gold detailing and 6¼″ matching goblets (6). Recd—April 9, 2003. Est. Value—$1800. Archives Foreign. Miscellaneous items (2): 8½″ black wool hat with silver 10-chain band around crown and elastic chin strap; and 42″ light brown leather belt (4½″ wide) with geometric floral design and gold tone detailing, including engraved clasps. Recd—April 9, 2003. Est. Value—$200. Archives Foreign.	His Excellency The President of the Slovak Republic and Mrs. Schusterova.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Ax: 36½″ decorative wood and metal long-handled ax with rural Slovak scenes engraved on blade. Recd—April 9, 2003. Est. Value—$125. Archives Foreign.		
	Musical instrument: 60″ woodwind instrument carved with a floral motif and accompanied by a matching 25″ percussion stick. Recd—April 9, 2003. Est. Value—$150. Archives Foreign.		
President	Artwork: 61″ x 38″ scroll with broad black brushstroke image. Recd—May 6, 2003. Est. Value—$800. Archives Foreign.	His Excellency Goh Chok Tong, Prime Minister of the Republic of Singapore.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Desk accessory: black Namiki pen with image of Mount Fuji; held in a black velvet presentation box with small plaque engraved "Presented to HE George W Bush President of the United States of America by Goh Chok Tong Prime Minister of the Republic of Singapore Signing of the USSFTA, 6 May 2003. Recd—May 6, 2003. Est. Value—$300. Archives Foreign..		
President	Household item: 9″ sterling silver mantel clock with round face and set on a half-moon wooden base with five gnus around the edge; held in a red leather presentation case. Recd—May 8, 2003. Est. Value—$3000. Archives Foreign.	His Highness Sheikh Hamad bin Khalifa Al Thani, Amir of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Salakot and baston: ceremonial 10″ woven reed hat and 33½″ wood and silver cane symbolizing social prestige in traditional Filipino culture; accompanied by a 12½″ x 15¾″ framed explanatory certificate with wooden stand. Recd—May 19, 2003. Est. Value—$225. Archives Foreign.	Her Excellency Gloria Macapagal-Arroyo, President of the Republic of the Philippines and Mr. Jose Miguel Arroyo.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Furniture: 40″ x 43″ x 42½″ butaca, or plantation chair, made of Phillippine ebony with a wicker back; accompanied by a 12″ x 15¾″ framed explanatory certificate with wooden stand. Recd—May 19, 2003. Est. Value—$350. Archives Foreign.		
President	Household item: 10¼″ green jade table clock with gold detailing and topped by pearl-studded crown; held in a wooden presentation case. Recd—May 28, 2003. Est. Value—$7500. Archives Foreign.	His Excellency Vladimir Putin, President of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Artwork: 26″ x 18″ watercolor painting of a Krakow street; matted and held in a 34″ x 26″ wooden frame with small presentation plaque from donor, engraved in Polish. Recd—May 30, 2003. Est. Value—$350. Archives Foreign.	His Excellency Aleksander Kwasniewski, President of the Republic of Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Consumables (3): 3.4 oz. Christian Dior "Higher" after-shave lotion, 3.4 oz. eau de toilette, and 5.2 oz. bar of soap. Recd—June 1, 2003. Est. Value—$133. Handled pursuant to Secret Service policy. Desk accessories (2): Waterman "Edson" rollerball and fountain pens; held in a blue case with "Sommet d'Evian 1er–3 uin 2003" embossed in gold on lid. Recd—June 1, 2003. Est. Value—$1345. Archives Foreign. Accessory: Bernard-Richares quartz watch with double movement and Roman and Arabic numerals; engraved on back "Sommet d'Evian 1er–3 uin 2003" and held in a blue leather presentation case. Recd—June 1, 2003. Est. Value—$321. Archives Foreign.. Accessory: 11″ x 7″ x 4½″ brown leather Longchamp toiletry kit. Recd—June 1, 2003. Est. value–$95. Archives Foreign.	His Excellency Jacques Chirac, President of the French Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Box: 4½″ gold-rimmed oyster shell box with gold outline of Bahrain on inside lid and filled with numerous seed pearls; held in a 10¾″ x 3¼″ x 7¼″ wooden presentation case. Recd—June 3, 2003. Est. Value—$2500. Archives Foreign.	His Majesty Shaykh Hamad bin Essa Al Khalifa, King of the Kingdom of Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household item: 16½″ x 9¾″ mantel clock with malachite base and statue of horse on top; clock is elaborately detailed in silver and gold vermeil, and held in a green leather presentation case. Recd—June 3, 2003. Est. Value—$8500. Archives Foreign.	His Royal Highness Abdallah bin Abd al-Aziz Al Saud Crown Prince, First Deputy Prime Minister and Commander of the National Guard of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Desk accessory: 9″ silver limited edition series (1056/2000) Cartier letter opener with time piece embedded in one end; held in a red leather presentation case. Recd—June 4, 2003. Est. Value—$1210. Archives Foreign.	His Majesty King Abdullah II of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Consumables (4): two 500 ml., and two 750 ml. bottles of "Jordan's Treasure" extra virgin olive oil with 2¼" silver-tone corked pourers; held in a 15" x 16¼" wooden presentation box. Recd—June 4, 2003. Est. Value—$172. Handled pursuant to Secret Service policy.		
President	Textile: 77¼" x 117" silk rug depicting the crucifixion of Christ, surrounded by the stations of the cross. Recd—June 5, 2003. Est. Value—$5200. Archives Foreign.	His Highness Sheikh Hamad bin Khalifa Al Thani, Amir of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Desk accessories (3): sterling silver desk set consisting of 7" letter opener, 3¾" x 3¾" pen and ink stand, and 6½" x 1¾" x 4" box with "George W. Bush" engraved on lid and presentation plaque mounted to interior burl wood lining. Recd—June 10, 2003. Est. Value—$1000. Archives Foreign.	His Excellency Thaksin Shinawatra, Prime Minister of the Kingdom of Thailand.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: 12" silver enamel ambavari figural of an elephant with mahout and royal canopy. Recd—June 13, 2003. Est. Value—$2500. Archives Foreign.	His Excellency Lal Krishna Advani, Deputy Prime Minister of the Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Box: 9" x 2½" x 5½" sterling silver box with burl wood interior and coat of arms on lid. Recd—June 13, 2003. Est. Value—$1000. Archives Foreign.	His Royal Highness Crown Prince Vajiralongkorn, Kingdom of Thailand.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Desk accessories (3): 5" sterling silver page marker with sodalite stone on end; 7¾" silver letter opener with sodalite stone on end; and 2" x 2" silver paperweight with large sodalite stone inside. Recd—June 20, 2003. Est. Value—$375. Archives Foreign.	His Excellency Luiz Inacio Lula da Silva, President of the Federative Republic of Brazil.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Miscellaneous item: 32" x 37" wooden model ship intricately detailed with canvas sails and full rigging. Recd—June 26, 2003. Est. Value—$750. Archives Foreign.	The Right Honorable Sir Anerood Jugnauth, K.C.M.G., P.C., Q.C., Prime Minister of the Republic of Mauritius.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Pin: 1¼" American flag lapel pin with 18K gold and silver detailing and sapphires and rubies; held in a polished wooden box. Recd—June 26, 2003. Est. Value—$500. Archives Foreign.	Her Excellency Mireya Moscoso, President of the Republic of Panama.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Miscellaneous item: collection of 15 vermeil reproductions of ornaments made by pre-Columbian goldsmiths in Panama; double-matted and held in a 25½" x 25½" wooden frame. Recd—June 26, 2003. Est. Value—$1750. Archives Foreign.		Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Miscellaneous item: 9″ pure silver replica of a bronze askos, an ancient Greek flask. Recd—June 30, 2003. Est. Value—$500. Archives Foreign.	His Excellency Constantine Simitis Prime Minister of the Hellenic Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Clothing: traditional ensemble of long grey cotton robe and matching pants. Recd—July 8, 2003. Est. Value—$550. Archives Foreign.	His Excellency The President of the Republic of Senegal and Mrs. Wade.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Miscellaneous item: 12″ silver eagle in a 19½″ x 19½″ x 21½″ glass display case. Recd—July 8, 2003. Est. Value—$500. Archives Foreign.	His Excellency Abdoulaye Wade President of the Republic of Senegal.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Game: "The Tribal Heritage Collection" chess set with 14½″ x 14½″ wooden board set on lid of box containing 32 ceramic chess pieces; with plaque engraved "Presented to President George W. Bush, by President Thabo M. Mbeki on the occasion of his visit to the Republic of South Africa 08–11 July 2003". Recd—July 9, 2003. Est. Value—$1750. Archives Foreign. Consumable: 25 year old brandy from western Cape region of South Africa. Recd—July 9, 2003. Est. Value—$70. Handled pursuant to Secret Service policy. Miscellaneous item: 9½″ dimpled glass brandy bottle etched with seal of South Africa; held in a wood and glass display case with plaque engraved "Presented to President George W. Bush by President Thabo M. Mbeki on the occasion of his visit to the Republic of South Africa 08–11 July 2003". Recd—July 9, 2003. Est. Value—$126. Archives Foreign.	Mr. Thabo Mbeki, President of the Republic of South Africa.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: 49½″ x 22″ oil painting of a river and mountains in Uganda; held in a 54″ x 26″ wooden frame. Recd—July 11, 2003. Est. Value—$5600. Archives Foreign.	His Excellency Yoweri Kaguta Museveni, President of the Republic of Uganda.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: 38″ bronze casting of the outline of Nigeria with several figures inside, representing the different tribes of the country; held in a 41″ x 39″ gold-tone frame with plaque engraved "Presented to George W. Bush, President of the United States of America By Chief Olusegun Obasanjo, GCFR President of the Federal Republic of Nigeria". Recd—July 12, 2003. Est. Value—$5500. Archives Foreign.	His Excellency Olusegun Obasanjo, President of the Federal Republic of Nigeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Crystal: set of six Egermann Bohemian crystal sherry glasses with silver detaining and matching decanter. Recd—July 15, 2003. Est. Value—$1224. Archives Foreign.	His Excellency Vladimir Spidla, Prime Minister of the Czech Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: 33″ alabaster sculpture of "The Flight from Carthage", depicting Paris and Helen fleeing to Troy. Recd—July 20, 2003. Est. Value—$4500. Archives Foreign.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Consumable: approximately 300 lb. of lamb. Recd—July 23, 2003. Est. Value—$1500. Transferred to the General Services Administration. Clothing: grey wool poncho with orange design on front and fringed ends. Recd—July 23, 2003. Est. Value—$214. Archives Foreign.	His Excellency The President of the Argentine Nation and Mrs. Kirchner.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Portrait: 22½″ x 32¾″ woven rug with image of President Bush in center; mounted under glass in 26″ x 36¼″ double-sided gold-tone frame. Recd—July 25, 2003. Est. Value—$329. Archives Foreign.	His Excellency Mohammad Aref Noorzai, Minister of Borders and Tribal Affairs of The Islamic Transitional State of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Replica: 35″ wooden model of a ship with full rigging and a wooden stand with presentation plaque. Recd—September 10, 2003. Est. Value—$350. Archives Foreign.	His Highness Sheikh Sabah Al-Ahmed Al-Jaber Al-Sabah, Prime Minister of the State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: original watercolor portraits of the forty-three Presidents of the United States, bound in a 14″ x 18½″ red velvet book studded with precious gems; held in a 17¼″ x 27″ x 5″ polished wooden presentation case with amber mosaic of the United States on lid. Recd—September 26, 2003. Est. Value—$45000. Archives Foreign.	His Excellency Vladimir Putin, President of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Clothing: brown wool jacket with zipper front; traditional orange and black embroidered cap with multi-colored sequins; and 8′ x 3′ green, red, yellow and blue embroidered traditional scarf. Recd—October 1, 2003. Est. Value—$320. Archives Foreign. Household item: 6′ x 9′3″ wool rug with navy blue, red and gold pattern. Recd—October 1, 2003. Est. Value—$1650. Archives Foreign.	His Excellency Mir Zafarullah Khan Jamali, Prime Minister of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Photograph: 9½″ x 7″ photograph of President Bush and President Arroyo; held in a 10½″ x 11½″ wooden frame with the presidential seal of the Philippines in silver. Recd—October 18, 2003. Est. Value—$300. Archives Foreign.	Her Excellency Gloria Macapagal-Arroyo, President of the Republic of the Philippines and Mr. Jose Miguel Arroyo.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Miscellaneous: 8½″ x 13½″ gold neilloware urn with a plaque engraved "To the President of the United States of America. As a token of profound friendship and mutual understanding between our two countries and peoples. 19th October B.E. 2546 (2003)". Recd—October 19, 2003. Est. Value—$200. Archives Foreign.	His Majesty Bhumibol Adulyadej, King of Thailand.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Photograph: 7½″ x 9½″ signed photograph of the King and Queen of Thailand; held in a 11½″ x 15¾″ sterling silver and golf leaf neilloware frame. Recd—October 19, 2003. Est. Value—$500. Archives Foreign.	.....	
President	Clothing (size L): lightweight khaki cotton jacket with a 1″ yellow goat embroidered on the upper left side. Recd—October 19, 2003. Est. Value—$129. Archives Foreign.	Police General Sant Sarutanond, Commissioner General of the Royal Thai Police.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Shirt (size L): teal silk long-sleeve dress shirt. Recd—October 19, 2003. Est. Value—$35. Archives Foreign.	.....	
	T-shirts (2, sizes L and XL): yellow cotton T-shirt with a brown and black goat printed on the front; and a yellow cotton T-shirt with a 1½″ German Shepherd embroidered on the upper left side. Recd—October 19, 2003. Est. Value—$15. Archives Foreign.	.....	
	Household items (7): white with gold trim porcelain Thai tea set, including a 10¼″ plate, five 2″ cups and an 8¼″ x 6″ tea pot. Recd—October 19, 2003. Est. Value—$250. Archives Foreign.	.....	
President	Miscellaneous: 16″ x 2″ silver filigree candelabra in the shape of a traditional Thai barge; held in a 24″ x 10½″ presentation case lined in blue felt with a clear plexiglass cover and a plaque engraved "Presented to The Honorable George W. Bush, President of the United States of America, and Mrs. Laura Bush, By His Excellency Dr. Thaksin Shinawatra, Prime Minister of Thailand." Recd—October 19, 2003. Est. Value—$450. Archives Foreign.	His Excellency The Prime Minister of the Kingdom of Thailand and Khunying Shinawatra.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Miscellaneous: 10″ x 4¼″ sterling silver filigree replica of a Philippine jeepney. Recd—October 20, 2003. Est. Value—$500. Archives Foreign.	The Honorable Franklin M. Drilon, President of the Senate of the Philippines.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Tunic: purple, navy blue and gold traditional silk tunic lined in navy blue silk. Recd October 20, 2003. Est. Value—$2200. Archives Foreign.	His Excellency Thaksin Shinawatra, Prime Minister of the Kingdom of Thailand.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Accessory: ¾″ 18K gold APEC logo lapel pin with diamond and ruby inlay. Recd—October 20, 2003. Est. Value—$450. Archives Foreign.	.....	
President	Artwork: 29″ x 23¼″ oil painting of a horse running; held in a 39½″ x 34″ gold-tone frame with canvas matting. Recd—October 22, 2003. Est. Value—$900. Archives Foreign.	Her Excellency Megawati Soekarnoputri, President of the Republic of Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Clothing (size XL): brown Driza-Bone oilskin coat. Recd—October 23, 2003. Est. Value—$310. Archives Foreign.	The Honorable John Howard, Prime Minister of Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: 20″ x 18″ red glass egg-shaped sculpture "Genesis," with a 7″ x 7″ plaque engraved "Offered to the President of United States, George W. Bush by the President of Romania, Ion Iliescu, 2003 October," by Ioan Nemtoi; with a 7″ x 40″ red glass cylindrical stand. Recd—October 28, 2003. Est. Value—$600. Archives Foreign.	His Excellency, Ion Iliescu, President of Romania.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Miscellaneous: 10″ x 9½″ green and black malachite and heterogenite rock. Recd—November 5, 2003. Est. Value—$125. Archives Foreign.	His Excellency, Joseph Kabila, President of the Democratic Republic of the Congo.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Artwork: 15″ x 21″ oil painting of two deer-like figures with shells and cloth framing the center; held in a 17″ x 23″ wooden frame. Recd—November 5, 2003. Est. Value—$100. Archives Foreign.		
	Artwork: 21″ x 7″ dark wooden sculpture of two children lying next to a woman mounted on a 24″ x 16″ wooden base. Recd—November 5, 2003. Est. Value—$1200 Archives Foreign.		
President	Household item: 49″ x 72″ navy blue, pink and green ornate silk carpet. Recd—November 10, 2003. Est. Value—$1200. Archives Foreign.	His Excellency, Atal Bihari Vajpayee, Prime Minister of the Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Hardcover book: 13″ x 18″ book "Il Palazzi Del Quimale (The Place of Quirinale)," by Louis Godart, with preface by President Carolo Azeglio Ciampi. Recd—November 14, 2003. Est. Value—$350. Archives Foreign.	His Excellency, Carlo Azeglio Ciampi, President of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Artwork: 15″ x 15″ black and white print of areas in ancient Rome, including the colosseum; held in a 27½″ x 27½″ gold-tone frame with ivory and grey matting. Recd—November 14, 2003. Est. Value—$900. Archives Foreign.		
President	Collectables (2): 15½″ x 13½″ desktop models of Marine One and the Royal British helicopters. Recd—November 18, 2003. Est. Value—$500. Archives Foreign.	His Royal Highness, The Prince Andrew, Duke of York.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Miscellaneous: 13¼″ sterling silver ruler engraved "Presented by the Queen and The Duke of Edinburgh, To President George W. Bush on the occasion of his State Visit, November 2003," with the Presidential Seal and the Royal Cypher on the front and the names of the 43 Presidents of the United States with the Presidential Seal on the back, made by Richard O.A. Jarvis. Recd—November 18, 2003. Est. Value—$450. Archives Foreign.	Her Majesty Queen Elizabeth, and His Royal Highness The Prince Phillip, Duke Edinburgh.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Miscellaneous: 29½″ x 24″ wooden replica of the "Protecteur," the sixty-four gun ship that launched for the United States in 1770, made by Gaetan de Chazal and Phillip Berrill. Recd—December 12, 2003. Est. Value—$550. Archives Foreign.	Embassy of the Republic of Mauritius.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Consumables; assortment of edible items and two bottles of wine. Recd—December 30, 2003. Est. Value—$1000. Handled pursuant to Secret Service policy.	His Majesty, Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah, Sultan and Yang Di-Pertuan of Brunei, Darussalam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Miscellaneous: 8½″ x 5½″ x 2″ Sovrani mahogany jewelry box with a sterling silver flora design, in relief, on lid. Recd—December 30, 2003. Est. Value—$400. Archives Foreign.		
	CDs (2): "An Old English Christmas," produced by Craig Duncan; and "County Western Legends," produced by Greg Howard. Recd—December 30, 2003. Est. Value—$30. Archives Foreign.		
	Consumable: 23 ounce Lady McDuffies Gourmet Lemon Cream Cheese Cake. Recd—December 30, 2003. Est. Value—$41. Handled pursuant to Secret Service policy.		

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Desk accessories (3): 5″ limited edition Montblanc Jules Verne Writer's Edition pen set, including a fountain pen, a ballpoint pen, and a mechanical pencil. Recd—December 30, 2003. Est. Value—$2838. Archives Foreign.		
	Household item: 6″ brown pillar candle with gold-tone reindeers in relief. Recd—December 30, 2003. Est. Value—$20. Handled pursuant to Secret Service policy.		
	Miscellaneous: 8″ x 10′ Sovrani silver and mahogany wood frame. Recd—December 30, 2003. Est. Value—$400. Archives Foreign.		
	Consumables: two dozen McDuffies Shortbread Cookies held in a 8″ x 7″ glass jar. Recd—December 30, 2003. Est. Value—$35. Handled pursuant to Secret Service policy.		
	Household item: 22″ x 20″ brown leather ottoman with a removable top. Recd—December 30, 2003. Est. Value—$2500. Archives Foreign.		
First Lady	Accessory: 6¼″ black silk Emily Jo Gibb evening bag with grey floral design and silver-tone handles. Recd—January 24, 2003. Est. Value—$400. Archives Foreign.	The Right Honorable Tony Blair, M.P. United Kingdom.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Flowers: dried Mongolian edelweiss flowers mounted under glass and held in a 6″ x 8¼″ blue wooden frame. Recd—March 19, 2003. Est. Value—$20. Archives Foreign.	His Excellency The President of Mongolia and Mrs. A. Oyunbileg.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Clothing: green Mongolian cashmere cape. Recd—March 19, 2003. Est. Value—$342. Archives Foreign.		
First Lady	Miscellaneous items from donor's charitable organization, Fondation Chantal Biya (5): two 2003 wall calendars, a 2003 date book with gilt-edged pages, a 3″ silver-tone key chain, and a 2¼″ silver-tone brooch with the outline of Africa beneath a red AIDS ribbon. Recd—March 31, 2003. Est. Value—$100. Archives Foreign..	The Honorable Chantal Biya, First Lady of the Republic of Cameroon.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Household items: pair of white bone china demitasse coffee cups with seal of Cameroon, and matching saucers and silver spoons. Recd—March 31, 2003. Est. Value—$130. Archives Foreign.		

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Artwork: 27″ bronze sculpture of a female figure with a water vessel balanced on her head. Recd—March 31, 2003. Est. Value—$1750. Archives Foreign. Jewelry: large bronze bracelet engraved with geometric figures. Recd—March 31, 2003. Est. Value—$500. Archives Foreign.		
First Lady	Collectables: three-piece set of Royal Crown Derby China giftware in the "Old Imari" pattern, including two 3¾″ decorative dishes and a 4½″ box with lid.	Mrs. Cherie Blair, Office of the Prime Minister, United Kingdom.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Jewelry: pair of 14mm South Sea pearl earrings set in 18K yellow gold, accompanied by wooden stand and 12″ x 19″ framed explanatory certificate. Recd—May 19, 2003. Est. Value—$2500. Archives Foreign. Miscellaneous item: 13″ x 4″ x9½″ burl wood jewelry box with removable top tray and seal of the Philippines on lid. Recd—May 19, 2003. Est. Value—$280. Archives Foreign. Hardcover books (5): "Philippine Civics: How We Govern Ourselves," by Conrado Benitez; "Language Lessons," by Sidney C. Newsom; "Character and Conduct," by Sofia R. De Veyra; "Philippine Arithmetics," by Honorio Poblador, et. al.; and "Philippine School Geography," by H. Justin Roddy and David Gibbs. Paperback book: "Bearers of Benevolence: The Thomasites and Public Education in the Philippines," by Mary Racelis and Judy Celine Ick. Miscellaneous item: 12½″ x 15¾″ framed explanatory certificate, with wooden stand. Recd—May 19, 2003. Est. Value—$120. Archives Foreign.	Her Excellency Gloria Macapagal-Arroyo, President of the Republic of the Philippines and Mr. Jose Miguel Arroyo.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Box: 10″ x 5″ x 7″ black lacquer jewelry box with pink and gold floral design. Recd—May 22, 2003. Est. Value—$288. Archives Foreign.	His Excellency, Junichiro Koizumi, Prime Minister of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Miscellaneous item: 6½″ painted wooden egg celebrating the 300th anniversary of St. Petersburg and containing a cream-colored 14″ round crocheted doily and 68″ x 28″ matching table runner. Recd—May 28, 2003. Est. Value—$200. Archives Foreign.	His Excellency, The President of the Russian Federation and Mrs. Putina.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady	Jewelry: matched set of diamond and sapphire jewelry, including earrings, bracelet, ring and necklace; held in a green leather presentation case. Recd—June 3, 2003. Est. Value—$95,500. Archives Foreign.	His Royal Highness, Abdallah bin Abd al-Aziz Al Saud Crown Prince, First Deputy Prime Minister and Commander of the National Guard of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Accessory: 8¾″ sterling silver handbag with floral motif; held in a red silk presentation case. Recd—June 10, 2003. Est. Value—$1500.	His Excellency, Thaksin Shinawatra, Prime Minister of the Kingdom of Thailand.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Fabric: 182″ x 40½″ mauve silk heavily embroidered with gold thread; held in a blue silk presentation case. Recd—June 10, 2003. Est. Value—$400. Archives Foreign.		
First Lady	Jewelry: 15″ necklace and 1¾ earrings made of peridot and amethyst set in 22K gold. Recd—June 24, 2003. Est. Value—$650. Archives Foreign.	Mrs. Sehba Musharraf, First Lady of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household accessory: 16″ purple and green crystal vase in a contemporary design by Adam Jablonski. Recd—June 26, 2003. Est. Value—$365. Archives Foreign.	Mrs. Aleksandra Miller, Office of the Prime Minister of the Republic of Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Table linens: 4 white linen napkins with fruit embroidered in one corner and 4 matching placemats with more elaborate embroidery. Recd—July 8, 2003. Est. Value—$120. Archives Foreign.	His Excellency, The President of the Republic of Senegal and Mrs. Wade.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Artwork: 20½″ ceramic fertility statue of pregnant woman; held in a brown tooled leather presentation case. Recd—July 8, 2003. Est. Value—$425. Archives Foreign.	Mrs. Viviane Wade, Office of the President of the Republic of Senegal.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Home accessory: 41″ x 60″ mohair wall hanging depicting a village scene with children; with fringed end and loops for hanging. Recd—July 10, 2003. Est. Value—$225. Archives Foreign.	Mrs. Barbara Mogae, Office of the President of the Republic of Botswana.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Craft 15¼″ handwoven basket with intricate design in brown, caramel, and cream; accompanied by display stand and brass presentation plaque engraved "With the compliments of the First Lady of the Republic of Botswana, Mrs. Barbara Mogae.".		
First Lady	Housewares (3): rectangular nesting dishes (12¼″ x 6¾″, 9¾″ x 4¾″, and 8″ &times 4″) made of blocks of mother-of-pearl. Recd—July 11, 2003. Est. Value—$200. Archives Foreign.	The Honorable and Mrs. Franklin M. Drilon, Office of the Senate, President, Republic of the Philippines.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Accessory: 23″ x 22″ panuelo (traditional Filipino shoulder wrap) with embroidered floral motif and mother-of-pearl flowers. Recd—July 11, 2003. Est. Value—$104. Archives Foreign.		
First Lady	Home accessories: 88″ x 90″ yellow and blue bed spread with three matching 16″ x 16″ pillow shams. Recd—July 12, 2003. Est. Value—$350. Archives Foreign.	Mrs. Stella Obassanjo, First Lady of the Federal Republic of Nigeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Bowl: 11¾″ handcut lead Bohemian crystal bowl. Recd—July 15, 2003. Est. value—$224. Archives Foreign.	Mrs. Viktoria Spidlova, Office of the Prime Minister of the Czech Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Paperback book and companion CD-Rom: "Under the Torch of the Modern Era: The First Two Centuries of Book-Printing in Bohemia," by Miroslava Hejnova, et. al. Recd—July 15, 2003. Est. Value—$40. Archives Foreign.	.....	
	Accessory: 9″ x 4½″ black suede clutch with jet beadwork. Recd—July. 15, 2003. Est. Value—$120. Archives Foreign.	.....	
	Hardcover book: in Czech, regarding Prague's history. Paperback book and companion CD–ROM: "Persian Manuscripts in the National Library of the Czech Republic," by Michal Farek. Recd—July 15, 2003. Est. Value—$60. Archives Foreign.	.....	
	Leather and clothbound book: reproduction of an illuminated Latin manuscript. Recd—July 15, 2003. Est. Value—$160. Archives Foreign.		
First Lady	Jewelry: silver Damiani choker necklace with 3.12 carats of diamonds in three tiers. Recd—July 21, 2003. Est. Value—$7500. Archives Foreign.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household item: 7½″ sterling silver dish with commemorative medallion embedded in center Recd—September 5, 2003. Est. Value—$350. Archives Foreign.	First Lady Margot Klestil-Loeffler, Office of the President of the Republic of Austria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Accessory: 52″ x 52″ blue silk and cashmere Hermes scarf with scroll pattern. Recd—September 29, 2003. Est. Value—$760. Archives Foreign.	His Excellency Jacques Chirac, President of the French Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household item: 17¾″ double candlestick of blue glass set in rough stone base; held in a blue leather presentation case. Recd—October 1, 2003. Est. Value—$350. Archives Foreign.	Mrs. Bella Kocharyan, Office of the President of the Republic of Armenia.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady	Hardcover book: "Patrimonio Dominicano," by Cesar Ivan Feris Iglesias; inscribed by donor. Recd—October 15, 2003 Est. Value—$40. Archives Foreign.	Her Excellency Rosa Gomez de Mejia, First Lady of the Dominican Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Miscellaneous: 3½" x 3½" yellow ceramic music box in the shape of an island home. Recd—October 15, 2003. Est. Value—$75 Archives Foreign.	.....	
	Miscellaneous: 3" x 4½ black leather credit card case stamped "Codetel" in the lower corner. Recd—October 15, 2003. Est. Value—$52. Archives Foreign.	.....	
	Miscellaneous: 9¼" x 6" wooden box with a silver design in relief on lid and feet. Recd—October 15, 2003. Est. Value—$75. Archives Foreign.	.....	
	Accessory: 62" x 20" pink silk scarf with blue dots and yellow stars. Recd—October 15, 2003. Est. Value—$70. Archives Foreign.	.....	
	Accessory: 23" x 80" ivory silk shawl with amber and coral beads. Recd—October 15, 2003. Est. Value—$125. Archives Foreign.	.....	
	Artwork: 24" x 20" oil painting, "Jardin Japones," of an abstract garden, by Gerad Ellis; held in a 24½" x 20½" gold-tone frame. Recd—October 15, 2003. Est. Value—$150. Archives Foreign.	.....	
First Lady	Miscellaneous: 14" x 19" retractable paper and bamboo Japanese fan with red and white origmai cranes, by matazo Kayama; held on a 10¾" x 3" wooden rest. Recd—October 18, 2003. Est. Value—$3000. Archives Foreign.	His Excellency Junichiro Koizumi Prime Minister of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Jewelry (5): 20" copper and pearl "tamborin" traditional Filipina costume necklace; 2" copper and pearl dangle earringss; 3" copper and pearl decorative comb; adjustable copper and pearl ring; and 8" copper and pearl bracelet. Recd—October 18, 2003. Est. Value—$100. Archives Foreign.	Mrs. Georgina P. de Venecia, Republic of the Philippines.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Miscellaneous: 5¼" x 5" miniature beige pinya fiber blouse and skirt; held in a 9¼" x 9" wooden frame with brown matting. Recd—October 18, 2003. Est. Value—$80. Archives Foreign.		

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Clothing (size XL): ivory pinya fiber jacket with delicate pearl beading and embroidery. Recd—October 18, 2003. Est. Value—$150. Archives Foreign. Accessory: 7½″ pinya fiber beaded evening bag with a silvertone drawstring and beaded handle. Recd—October 18, 2003. Est. Value—$60. Archives Foreign. Accessory: 9″ retractable pinya fiber and bamboo fan. Recd—October 18, 2003. Est. Value—$40. Archives Foreign.		
First Lady	Miscellaneous: 3″ x 4″ gold and silver neilloware apple-shaped box with diamond inlay; held on a 3 ½″ round black stand. Recd—October 19, 2003. Est. Value)—$3500. Archives Foreign. Miscellaneous: 40″ x 22′ blue and grey woven Thai fabric. Recd—October 19, 2003. Est. Value—$400. Archives Foreign.	Her Majesty Queen Sirikit of Thailand.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Accessory: 7½″ x 5 ¼″ gold and black neilloware shell-shaped evening bag. Recd—October 20, 2003. Est. Value—$75. Archives Foreign. Accessory: 7½″ x 4½″ oval-shaped hand woven black evening bag with an 18K gold handle and a diamond inlay clasp. Recd—October 20, 2003. Est. Value—$2500. Archives Foreign.	Khunying Potjaman Shinawatra, Office of the Prime Minister of the Kingdom of Thailand.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Accessory: 7½″ x 3¾″ Adori kangaroo and emu black leather wallet. Recd—October 21, 2003. Est. Value—$70. Archives Foreign. Hardcover book: "Black Kettle and Full Moon," by Geoffrey Blainey; signed by author. Recd—October 21, 2003. Est. Value—$45. Archives Foreign. Hardcover book: "Australia: 300 Years of Botanical Illustration," by Helen Hewson; signed by author. Recd—October 21, 2003. Est. Value—$65. Archives Foreign. Hardcover book: cloth covered collector's edition (332/375) "Australia: 300 Years of Botanical Illustration," by Helend Hewson; signed by author. Recd—October 21, 2003. Est. Value—$268. Archives Foreign. Clothing (size M): brown Driza-Bone oilskin coat. Recd—October 21, 2003. Est. Value—$310. Archives Foreign.	Mrs. Janette Howard, Australia	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady	Miscellaneous (3): 41½″ x 86″ and 35″ x 82″ brown, khaki, olive and black cotton detailed batiks, by KRJ. Daud Wiryo Hadinagoro. Recd—October 22, 2003. Est. Value—$300. Archives Foreign. Jewelry: 3″ round sterling silver brooch with a pearl in the center accompanied by matching 1″ round sterling silver earrings; held in a 5½″ x 6½″ brown lacquer presentation box. Recd—October 22, 2003. Est. Value—$148. Archives Foreign.	Her Excellency Megawati Soekarnoputri, President of the Republic of Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Hardcover book: "The Hassan II Mosque," edited by Daniel Briand. Recd—November 17, 2003. Est. Value—$55. Archives Foreign. Hardcover book: "Interieurs Marocains (Moroccan Interiors)," by Lisa Lovatt-Smith. Recd—November 17, 2003. Est. Value—$40. Archives Foreign. Hardcover book: "Marrakesh: The Secret of its Courtyard Houses," by Michel Lebrun and Quentin Wilbaux. Recd—November 17,2003. Est. Value—$95. Archives Foreign. Paperback book: "The Imperial Cities of Morocco," by Mohamed Metalsi, Jean-Michel Ruiz and Cecile Treal. Recd—November 17, 2003. Est. Value—$28. Archives Foreign. Hardcover book: limited edition (1069/1500) "Enluminures (Illuminations)," by Mohamed Sijelmassi with red felt binding. Recd—November 17, 2003. Est. Value—$110. Archives Foreign.	His Majesty Mohammed VI, King of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Miscellaneous: 7″ x 3¾″ Linley wooden jewelry box lined in blue suede with rosewood inlay of the Royal Cypher. Recd—November 18, 2003. Est. Value—$523. Archives Foreign.	Her Majesty Queen Elizabeth II and His Royal Highness The Prince Phillip, Duke of Edinburgh.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	Consumables: Dean & DeLuca products. Recd—January 2, 2003. Est. Value—$540. Handled pursuant to Secret Service policy. Household item: maroon coffee mug with logo of Qatar printed on side. Recd—January 2, 2003. Est. Value—$15. Archives Foreign. Baskets (2): 19½″ round wicker basket with handles and 19″ x 8″ lidded wicker basket. Recd—January 2, 2003. Est. Value—$45. Archives Foreign.	His Excellency Badr Omar Al-Dafa, Ambassador of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Family	Box: 2¾″ 24K gold-plated "gold dust box," with a lid decorated with small birds. Recd—January 24, 2003. Est. Value—$25. Archives Foreign.	His Excellency Kofi A. Annan, Secretary General of the United Nations.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Desk accessory: 3½″ Tiffany glass paperweight with the logo of the United Nations etched in the center. Recd—January 24, 2003. Est. Value—$445. Archives Foreign.		
First Family	Household items (2): pair of matching white porcelain lidded boxes with green glazed design. Recd—May 14, 2003. Est. Value—$300. Archives Foreign.	His Excellency Roh Moo-hyun, President of the Republic of Korea and Mrs. Kwon Yang-suk.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	Tableware (10 sets): 2″ china cups and 5¾″ saucers commemorating the 300th anniversary of St. Petersburg, Russia, decorated with gold trim and hand painted scenes of the city. Recd—May 28, 2003. Est. Value—$1000. Archives Foreign.	His Excellency The President of the Russian Federation and Mrs. Putina.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	Hardcover book: leatherbound volume with silver-edged pages, in Russian, celebrating the 300th anniversary of St. Petersburg; held in a blue leather case. Recd—May 28, 2003. Est. Value—$300. Archives Foreign.	His Excellency Vladimir Putin President of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	Jewelry: Bvlgari white gold necklace, ring, and earring set of pearls and diamonds. Recd—June 3, 2003. Est. Value—$8500. Archives Foreign.	His Royal Highness Abdallah bin Abd al-Aziz Al Saud, Crown Prince, First Deputy Prime Minister and Commander of the National Guard of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	Jewelry: Bvlgari white gold necklace, ring, and earring set of diamonds and black onyx. Recd—June 3, 2003. Est. Value—$8000. Archives Foreign.	His Royal Highness Abdallah bin Abd al-Aziz Al Saud, Crown Prince, First Deputy Prime Minister and Commander of the National Guard of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	Artwork: 15½″ metal sculpture of a man and woman, with a baby being held aloft in the palm of the man's hand; held in a brown tooled leather presentation case. Recd—July 8, 2003. Est. Value—$1875. Archives Foreign.	His Excellency The President of the Republic of Senegal and Mrs. Wade.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	Table linens: eight 15″ x 17″ orange cloth napkins and matching 100″ x 72″ orange, green and purple table cloth. Recd—July 10, 2003. Est. Value—$150. Archives Foreign.	His Excellency Olusegun Obasanjo, President of the Federal Republic of Nigeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Table linens: three 14″ x 14″ brown cloth napkins, three 14″ x 14″ red cloth napkins, one 12″ x 9½″ green, red, and purple tea cozy and six matching 16″ x 13″ placemats. Recd—July 10, 2003. Est. Value—$55. Archives Foreign.		

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Fabric: 21″ x 86″ and 28″ x 86″ pieces of purple and green woven fabric with fringed ends. Recd—July 10, 2003. Est. Value—$300. Archives Foreign.		
First Family	Artwork: 93½″ x 43″ oil painting of a river valley in Uganda; held in a 95½″ x 45½″ wooden frame. Recd—July 11, 2003. Est. Value—$8200. Archives Foreign.	His Excellency Yoweri Kaguta Museveni President of the Republic of Uganda.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	Artwork (2): 11¼″ x 11″ black and white watercolors of architectural details from the temples at Petra, by Anna Kudribshova; both are matted and held in 20¼″ x 19¼″ silver- and gold-tone frames. Recd—September 18, 2003. Est. Value—$1500. Archives Foreign.	Their Majesties Kind Abdullah II and Queen Rania al Abdullah of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	Artwork: 36″ x 24″ oil painting of three elephants; held in a 44¾″ x 32½″ wooden frame with engraved presentation plaque on bottom. Recd—October 6, 2003. Est. Value—$1350. Archives Foreign.	His Excellency The President of the Republic of Kenya and Mrs. Lucy Kibaki.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	Household item: 28″ x 36″ 19th century antique wooden chest of drawers with ebony and bone inlay and silver keyplates. Recd—October 18, 2003. Est. Value—$2500. Archives Foreign.	Her Excellency Gloria Macapagal-Arroyo, President of the Republic of the Philippines and Mr. Jose Miguel Arroyo.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	Hardcover book: "APEC 2003 Commemorative BTS SkyTrain Tickets," published by Bangkok Mass Transit System Public Company Limited; held in a 10″ x 10½″ black lacquer case printed "The Royal Barge Procession." Recd—October 19, 2003. Est. Value—$80. Archives Foreign. Hardcover book: "Thailand from Space 2003," published by Siam M&B Publishing Company. Recd—October 19, 2003. Est. Value—$50. Archives Foreign. Hardcover book: "A Study of Thai Politics and History through the Mails," by Anatchai Rattakul. Recd—October 19, 2003. Est. Value—$33. Archives Foreign. Calendar: 14″ x 12″ Tourism Authority of Thailand calendar "Unseen Corner of Paradise" and prints of each month's featured photograph (12). Recd—October 19, 2003. Est. Value—$45. Archives Foreign.	His Excellency Thaksin Shinawatra, Prime Minister of the Kingdom of Thailand.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Miscellaneous: 16″ x 12″ black leather briefcase with a gold-tone clasp printed "APEC, Thailand 2003." Recd—October 19, 2003. Est. Value—$160. Archives Foreign.		
	Desk accessory: various sizes of stationery printed "Mr. George W. Bush" on ivory paper; held in a 14″ x 11½″ bird's eye maple wood box lined in beige suede. Recd—October 19, 2003. Est. Value—$125. Archives Foreign.		
	Accessory: 37″ x 94″ hand-woven burgundy silk brocade shawl, by Mr. Veratham Trakulngoenthai; held in a 14″ x 10½″ brown raw silk presentation box. Recd—October 19, 2003. Est. Value—$300. Archives Foreign.		
	Artwork: 19″ x 25″ oil portrait of President Bush, by unknown artist; held in a 24½″ x 30½″ wooden frame with canvas matting. Recd—October 19, 2003. Est. Value—$300. Archives Foreign.		
First Family	Hardcover book: red leather bound, limited edition copy of "Royal Treasures: A Golden Jubilee Celebration," edited by Jane Roberts; held in a 11¼″ x 14¼″ red leather box imprinted with the Royal Cypher. Recd—November 18, 2003. Est. Value—$1200. Archives Foreign.	Her Majest Queen Elizabeth II and His Royal Highness The Prince Phillip, Duke of Edinburgh.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	Desk accessories: 5½″ x 5½″ ivory stationery; held in a 6″ x 6″ sterling silver note pad holder engraved with Arabic characters. Recd—December 4, 2003. Est. Value—$350. Archives Foreign.	Their Majesties King Abdullah II and Queen Rania al Abdullah of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Desk accessory: 4″ x 3″ sterling silver oval paperweight. Recd—December 4, 2003. Est. Value—$150. Archives Foreign.		
	Desk accessory: 7″ sterling silver letter opener engraved with Arabic characters. Recd—December 4, 2003. Est. Value—$100. Archives Foreign.		
	Desk accessory: 11½″ feather fountain tip pen. Recd—December 4, 2003. Est. Value—$100. Archives Foreign.		

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

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	Collectable: 8½″ x 8½″ Rosenthal white porcelain square plate with gold and blue intricate designs on the rim and an Arabic inscription in the center; stamped with the Royal cypher and the Quranic verse, Surrah II:115 on the back. Recd—December 4, 2003. Est. Value—$250. Archives Foreign.		
	Desk accessory: 11¼″ x 9″ mouse pad framed by sterling-silver engraved with Arabic characters. Recd—December 4, 2003. Est. Value—$250. Archives Foreign.		
First Family	Miscellaneous: 20½″ x 16″ white and brown leather chest with hinged lid; interior is padded and holds a two-tiered leather lined wood tray. Recd—December 18, 2003. Est. Value—$280. Archives Foreign.	His Excellency Zine El-Abidine Ben Ali, President of the Republic of Tunisia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Consumables (10 pounds): Tunisian dates. Recd—December 18, 2003. Est. Value—$60. Handled pursuant to Secret Service policy.		
	Consumables (6): bottles of Les Vignes de Tanit wine (2 Rose, 2 Blanc, 2 Rouge), made in Tunisia. Recd—December 18, 2003. Est. Value—$48. Handled pursuant to Secret Service policy.		
	Consumables (8): liter bottles of Tunisian olive oil. Recd—December 18, 2003. Est. Value—$28. Handled pursuant to Secret Service policy.		
First Family	Miscellaneous: 12″ x 7½″ silver peacock. Recd—December 30, 2003. Est. Value—$500. Archives Foreign.	His Excellency Lalit Mansingh, The Ambassador of India and Mrs. Mansingh.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Blakeman, Brad, Deputy Assistant to the President and Director of Appointments and Scheduling.	Desk accessory: Mont Blanc Meisterstuck Solitaire Doue Black Silver Fountaln Pen. Recd—June 4, 2003. Est. Value—$425. Transferred to the General Services Administration.	His Majesty King Abdullah II of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Card, Andrew H., Jr., Assistant to the President and Chief of Staff.	Olive oil (4 bottles, 750ml each): "Jordan's Treasure" extra virgin olive oil with pourers held in custom wooden presentation cabinet with crest. Recd—June 10, 2003. Est. Value—$202. Government Property.	His Majesty King Abdullah II of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Desk accessory: Mont Blanc "Meisterstuck Solitaire Doue" fountain pen with sterline silver cap and black base with Arabic engraving on cap. Recd—June 10, 2003. Est. Value—$470. Government Property.		

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

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Card, Andrew H., Jr., Assistant to the President and Chief of Staff.	Weapon: 13″ sheathed dagger in gold and silver inlaid design with ivory handle and gold chain for hanging on enclosed wooden display rack; held in green leather presentation box with crest on lid. Recd—June 10, 2003. Est. Value—$1500. Government Property.	His Royal Highness Abdallah bin Abd al-Aziz Al Saud, Crown Prince, First Deputy Prime Minister and Commander of the National Guard of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Card, Andrew H., Jr., Assistant to the President and Chief of Staff.	Desk accessory: limited edition Mont Blanc "Marquise de Pompadour" fountain pen in ceramic enamel with 18K gold trim and nib. Recd—June 10, 2003. Est. Value—$4900. Government Property.	His Highness Sheikh Hamad bin Khalifa Al Thani Amir of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Card, Andrew H., Jr., Assistant to the President and Chief of Staff.	Desk accessory: 3½″ x 2¼″ amber mounted on an arched 6″ x 2½″ sterline silver paperweight etched with signature and state parliament building. Recd—June 10, 2003. Est. Value—$600. Government Property.	His Excellency Aleksander Kwasniewski, President of the Republic of Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Card, Andrew H., Jr., Assistant to the President and Chief of Staff.	Household: porcelain tea service for two by Lomonosov, commemorating the 300th Anniversary of St. Petersburg, including a teapot, covered sugar bowl, two small cups with saucers and two cake plates hand decorated with gilt Greek key borders and floral design. Recd—June 10, 2003. Est. Value—$535. Transferred to the General Services Administration.	His Excellency Vladimir Putin, President of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Card, Andrew H., Jr., Assistant to the President and Chief of Staff.	Artwork: 17″ x 6½″ x 7½″ bronze Benin sculpture of a queen with headdress and neckrings, mounted on 4″ x 8″ x 5″ wooden base with plaque engraved "With Compliments of (donor)". Recd—July 12, 2003. Est. Value—$3500. Government Property.	His Excellency Olusegun Obasanjo, President of the Federal Republic of Nigeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Card, Andrew H., Jr., Assistant to the President and chief of Staff.	Watch: Bvlgari "Rettangolo" stainless steel men's wristwatch with black face with automatic date inset at '6' and back engraved with model, serial number and "Il Presidente del Consiglio dei Ministri". Recd—July 21, 2003. Est. Value—$3000. Government Property.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Gottesman, Blake, Personal Aide to the President.	Clothing: 2 lengths of batik cloth (122″ x 50″) and (54″ x 50″) for booboo robe in rust red, white and purple. Recd—July 8, 2003. Est. Value—$275. Government Property.	His Excellency, Olusegun Obasanjo, President of the Federal Republic of Nigeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Household: 16½″ x 14″ batik cotton placemat set for six with matching tea cozy in indigo, brown and white pattern with 3 indigo and 3 brown cotton brocade napkins. Recd—July 8, 2003. Est. Value—$55. Government Property.		
Hadley, Stephen, Assistant to the President and Deputy National Security Advisor.	Artwork: 19″ x 29″ matted color photograph of Arabian horse "BJ Thee Mustafa, 9 Years Old", signed by photographer Gigi Grasso, and held in a 29½″ x 39½″ frame. Recd—May 5, 2003. Est. Value—$250. Archives, Staff Gift.	His Royal Highness, Abdallah bin Abd al-Aziz Al Saud, Crown Prince, First Deputy Prime Minister and Commander of the National Guard of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Hardcover Book: "Legacy of Saudi Arabia, a Tribute to His Royal Highness Abdallah bin Abd al-Aziz Al Saud and the Arabian Horses of the Kingdom," by Cynthia Culbertson, with photographs by Gigi Grasso. Recd—May 5, 2003. Est. Value—$60. Archives, Staff Gift.		
	Paperweight: 3⅛″ round crystal, beveled edge paperweight etched with logo of the al Janadriya Farm on base. Recd—May 5, 2003. Est. Value—$50. Archives, Staff Gift.		
	Medallion: 2½″ gold-tone medallion embossed with logo of Al Janadriya Farm. Recd—May 5, 2003. Est. Value—$40. Archives Staff Gift.		
	Sculpture: 14½″ x 15½ x 4″ dapple grey Arabian horse dressed in royal colors (greens and gold), in standing position on a bronze base affixed to a 16″ x 7″ &times 1¾″ oval wood base. Recd—May 5, 2003. Est. Value—$3000. Archives, Staff Gift.		
Hadley, Stephen, Assistant to the President and Deputy National Security Advisor.	Desk accessory: 6½″ x 4½″ sterling silver box with burl wood lining and royal coat of arms on lid with detailed design in pewter. Recd—June 13, 2003. Est. Value—$500. Government Property.	His Royal Highness Crown Prince Vajiralongkorn Kingdom of Thailand.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Hagin, Joseph W., Assistant to the President and Deputy chief of Staff (Operations).	Clothing: 2 lengths of batik cloth (122″ x 50″) and (54″ x 50″) for booboo robe in orange, yellow, green, white and purple. Recd—July 12, 2003. Est. Value—$275. Government Property.	His Excellency, Olusegun Obasanjo, President of the Federal Republic of Nigeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Household: 16½″ x 14″ batik cotton placemat set for six with matching tea cozy in indigo, gold and green pattern with 3 gold and 3 green cotton brocade napkins. Recd—July 12, 2003. Est. Value—$55. Government Property.		
Haines, Mary A., Deputy Executive Secretary for Scheduling and Advance (National Security Council).	Desk accessory: Nino Cerruti designed pen set "ebonite noir with Iridium point" black and silver fountain pen and ballpoint pen, held in black leather box with royal crest. Recd—June 54, 2003. Est. Value—$496. Government Property.	His Majesty, King Abdullah II of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Jenkins, Gregory, Deputy Assistant to the President and Director of Advance.	Desk accessory: Mont Blanc Meisterstuck Solitair Doue Black Silver Fountain Pen held in leather presentation box with crest on lid. Recd—June 4, 2003. Est. Value—$370. Government Property.	His Majesty, King Abdullah II of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
McClellan, Scott, Deputy Assistant to the President and Deputy White House Press Secretary.	Clothing: 2 lengths of batik cloth (122″ x 50″) and (54″ x 50″) for booboo robe in red, black, white and purple. Recd—July 11, 2003. Est. Value—$275. Government Property.	His Excellency Olusegun Obasanjo, President of the Federal Republic of Nigeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Household: 16½″ x 14″ batik cotton placemat set for six with matching tea cozy in indigo, red and black pattern with 3 red and 3 purple cotton brocade napkins. Recd—July 11, 2003. Est. Value—$55. Government Property.		
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Jewelry: ⅝″ platinum Damiani oval shape band bracelet with 3.79 carats of diamonds set in chevron design. Recd—January 30, 2003. Est. Value—$6500. Government Property.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Artwork: 23½″ x 31½″ oil painting of a street scene on canvas, signed by artist I. Ihthsse.97. Recd—February 10, 2003. Est. Value—$500. Government Property.	His Excellency Lucio Guiterrez Borbua, President of the Republic of Ecuador.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Household: 5¼″ x sterling silver vessel with handle, ilias LaLaoUNIS design inspired from the Mycenaen period (1480BC). Recd—February 27, 2003. Est. Value—$250. Government Property.	His Excellency George Papandreou, Minister of Foreign Affairs of the Hellenic Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Accessory: 34″ Pagonis square silk scarf in blue, yellow and white design of the Hellenic Presidency of the EU. Recd—February 27, 2003. Est. Value—$200. Government Property.		

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

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Rice, Condoleezza, Assistant to the President for National Security Affairs.	Jewelry: 18K gold wide band ring with emerald surrounded by cubic zirconiums. Recd—March 4, 2003. Est. Value—$1000. Government Property.	His Excellency Marshall Mohammed Fahim Khan, Minister of Defense of the Islamic Transitional State of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Rug: 45½″ x 61¼″ hand knotted silk carpet, with pattern in red, dark blue and ivory. Recd—April 15, 2003. Est. Value—$1400. Government Property.	His Excellency Sodiq Safaev, Minister of Foreign Affairs of the Republic of Uzbekistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Household item: silver serving set consisting of two round 2″ x 2″ boxes with lids, two 1″ x 4″ spoons and oval 6⅝″ x 3⅝″ tray etched with gold duck design. Recd—April 30, 2003. Est. Value—$500. Archives, Staff Gift.	His Excellency Ra Jong-Yil, Senior Advisor to the President for National Security of the Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Jewelry set: earrings, necklace and ring of woven 21K gold wire inset with cubic zircons. Recd—May 7, 2003. Est. Value—$750. Government Property.	Lt. General Ehsan Ul Haq, Director General, Inter-Services Intelligence of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Coins: set of 9 pure silver commemorative coins from Uzbekistan presented in rosewood box with brass medallion of national crest inset on top of box. Recd—May 12, 2003. Est. Value—$350. Archives, Staff Gift.	Colonel General Rustam Rasylevich Inoyatov, Chief of Intelligence of the Republic of Uzbekistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Wall plaque: 11″ silver charger etched with colonnade of ruins with a gold crown at the top of a wide rim. Recd—May 15, 2003. Est. Value—$500. Archives, Staff Gift.	General Sa'ad Kheir, Director of the General Intelligence Department, Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Household: porcelain tea service for two by Lomonosov, commemorating the 300th Anniversary of St. Petersburg, including a teapot, covered sugar bowl, two small cups with saucers and two cake plates hand decorated with gilt Greek key borders and floral design. Recd—May 31, 2003. Est. Value—$535. Archives, Staff Gift.	His Excellency Vladimir Putin, President of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Olive oil (4 bottles, 750ml each): "Jordan's Treasure" extra virgin olive oil with pourers held in custom wooden presentation cabinet with crest. Recd—June 4, 2003. Est. Value—$202. Government Property.	His Majesty King Abdullah II of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Desk accessory: Mont Blanc "Meisterstuck Solitaire Doue" fountain pen with sterling silver cap and black base, with Arabic engraving on cap. Recd—June 4, 2003. Est. Value—$470.		

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Jewelry: 2½″ platinum 16-petal flower of diamonds brooch with ½″ grey/white pearl center, designed by Stefan Hafner. Recd—June 5, 2003. Est. Value—$15500. Archives, Staff Gift.	His Highness Sheikh Hamad bin Khalifa Al Thani Amir of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Weapon: 13″ sheathed dagger in gold and silver inlaid design with ivory handle and gold chain for hanging on enclosed wooden display rack; held in green leather presentation box with crest on lid. Recd—June 10, 2003. Est. Value—$1500. Government Property.	His Royal Highness Abdallah bin Abd al-Aziz Al Saud, Crown Prince, First Deputy Prime Minister and Commander of the National Guard of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Artwork: 5⅜″ x 9¼″ silver enameled peacock studded with semiprecious stones. Recd—June 13, 2003. Est. Value—$2500. Archives, Staff Gift.	His Excellency Lal Krishna Advani, Deputy Prime Minister of the Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Artwork: Tuareg ornately tooled leather and silver (metal) hexagon shaped box, lined with maroon velvet, on leather pedestal with top nob in etched silver (metal) and mirror inside lid. Recd—June 23, 2003. Est. Value—$295. Archives, Staff Gift.	His Excellency Amadou Toumani Toure, President of the Republic of Mali.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Artwork: 6½″ x 3″ vermeil Holy Spirit Orchid, National Flower of Panama mounted on black velvet, double matted and held in a 12″ x 16″ shadow box. Recd—June 24, 2003. Est. Value—$500. Archives, Staff Gift.	Her Excellency Mireya Moscoso, President of the Republic of Panama.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Artwork: 17″ x 6½″ x 7½″ bronze Benin sculpture of a queen with headdress and neckrings, mounted on 4″ x 8″ x 5″ wooden base with plaque engraved "With Compliments of (donor)". Recd—July 8, 2003. Est. Value—$3500. Government Property.	His Excellency Olusegun Obasanjo, President of the Federal Republic of Nigeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Household: 7½″ x 4″ silver Chilbo cloisonne vase with pastoral scene in pastel colors on truquoise background. Recd—July 16, 2003. Est. Value—$500. Archives, Staff Gift.	His Excellency Ra Jong-Yil, Senior Advisor to the President for National Security of the Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Jewelry: Damiani 18K gold and diamond (2.64 carats) "Snake" bracelet. Recd—July 21, 2003. Est. Value—$7500. Government Property.	His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Hardcover antique book: 8″ x 6¼″ x 2″ leatherbound "Historiam Evangelii . . . Renovati . . . Monumenta . . .", by Daniele Gerdesio, in Latin from 1744. Recd—July 28, 2003. Est. Value—$1800. Archives, Staff Gift.	His Excellency Ioan Talpes, Head of the National Security Department and Chief of the Presidential Administration, Romania.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Artwork: 8″ x 6⅝″ x 4″ carved light green jade figural consisting of large fruit and reticulated monkey with a separate dark green round 8½″ x 3½″ x 4⅞″ jade stone base. Recd—August 19, 2003. Est. Value—$500. Government Property.	The Honorable Chen Yunlin, Director, Taiwan Affairs Office Chinese Communist Party and State Council.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Desk accessory: 5″ x 3½″ x 1″ Lalique Owl curved crystal desk clock with ¾″ silver trim face with owls in relief and signed "Lalique France". Recd—September 23, 2003. Est. Value—$435. Government Property.	His Excellency Brajesh Mishra, Principal Secretary to the Prime Minister and National Security Advisor, India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Desk accessory: 5½″ x 5½″ ivory stationery held in a 6″ x 6″ sterling silver note pad holder engraved with Arabic characters. Recd—December 4, 2003. Est. Value—$350. Government Property. Desk accessory: 11½″ silver trim black feather quill pen with metal nib. Recd—December 4, 2003. Est. Value—$100. Government Property. Collectable: 8½″ x 8½″ Rosenthal white porcelain square plate with gold and blue intricate designs on the rim and an Arabic inscription in the center; stamped with the Royal cypher and the Quranic verse, Surah II:115 on the back. Recd—December 4, 2003. Est. Value—$250. Government Property. Desk accessory: 11¼″ x 9″ mouse pad framed by sterling silver engraved with Arabic characters. Recd—December 4, 2003. Est. Value—$250. Government Property.	Their Majesties King Abdullah II and Queen Rania al Abdullah of the Hasemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Artwork: 31″ x 15½″ silk embroidered picture of five peonies and butterflies with calligraphy in black in background; double matted and held in a 42½″ x 23½″ wood frame. Recd—December 9, 2003. Est. Value—$450. Government Property.	His Excellency Wen Jiabao, Premier of the State Council of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Desk accessory: 18″ x 6½″ x 13″ slate grey composite BRICS attache case with brown leather trim, combination lock, beige suede and dark brown leather interior desk compartment and silk lined luggage compartment. Recd—December 19, 2003. Est. Value—$390. Government Property.	His Highness Sheikh Sabah Al-Ahmed Al-Jaber Al-Sabah, Prime Minister of the State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	Jewelry set: 20″ gold necklace: collar style 13″ with 4″ center piece 1½″ wide of ornate design and filigree graduating to¾″ width, matching 9″ x ⅞″ band style bracelet, 1″ pierced earrings and 1″ ring held in a 9″ x 12″ x 2½″ blue leather presentation box. Recd—December 19, 2003. Est. Value—$3000. Government Property.		
Rice, Condoleezza, Assistant to the President for National Security Affairs.	Household: 2¾″ x 11¾″ x 7⅝″ rectangular wooden box with fitted lid, decorated with inlaid geometric pattern in bone, ebony and other materials, with lacquer finish. Recd—December 23, 2003. Est. Value—$200. Government Property.	Her Excellency Bouthaina Shaaban, Minister of Expatriate Affairs of the Syrian Arab Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Household: 54″ x 83″ pale green sheer table cloth and eight 12¾″ x 14¾″ napkins with white and gold embroidery. Recd—December 23, 2003. Est. Value—$150. Government Property.		
Tubb, Richard J., Col, USAF, Director, White House Medical Unit.	Clothing: 2 lengths of batik cloth (122″ x 50″) and (54″ x 50″) for booboo robe in orange, indigo, white and turquoise. Recd—July 12, 2003. Est. Value—$275. Government Property.	His Excellency Olusegun Obasanjo, President of the Federal Republic of Nigeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Household: 16½″ x 14″ hand crafted green and white batik cotton brocade placemat set for 6 with matching tea cozy with green napkins. Recd—July 12, 2003. Est. Value—$55. Government Property.		

AGENCY: OFFICE OF THE VICE PRESIDENT

Report of tangible gifts—2003

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
135974/BOYER_C, Mrs. Cheney ..	Eighteen sterling silver place card holders in the Banca, Bahay, Kubo, and Caraboao design. Recd—July 24, 2003. Est. Value—$500. Archives Foreign.	Her Excellency Gloria Macapagal-Arroyo, President of the Republic of the Philippines.	Non-acceptance would cause embarrassment to donor and U.S. Government.
135323/BOYER_C, Mrs. Cheney ..	Five strand pink coral necklace of irregular beads. Recd—June 21, 2003. Est. Value—$350. Archives Foreign.	His Excellency Eugene Y. H. Chien, Minister of Foreign Affairs for Taiwan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: OFFICE OF THE VICE PRESIDENT—Continued

Report of tangible gifts—2003

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
134571/BOYER_C, Mrs. Cheney ..	Samsonite metal suitcase on wheels, containing handmade one piece woman's robe of royal blue silk with attached organza-like overlay and gold embroidery and jewel work; two piece black brocade robe with braiding and hand embroidery; handmade white and orange two piece silk robe in a floral design; and handmade green one piece robe with jewel work and embroidery in a leaf design. Recd—June 10, 2002. Est. Value—$1101. Archives Foreign.	His Highness Shaykh Zayid bin Sultan Al Nahayyan, President of the United Arab Emirates.	Non-acceptance would cause embarrassment to donor and U.S. Government.
132568/BOYER_C, Vice President	Brass plated on tin wine service tray, ewer, and six small goblets. Engraved design on all pieces. Recd—February 26, 2003. Est. Value—$500. Archives Foreign.	His Excellency Ilham Aliyev, President of the Republic of Azerbaijan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
132245/BOYER_C, Vice President	Sterling silver paperweight with large piece of amber in the center. Inscribed "Prezes Rady Ministrow Leszek Miller." Recd—February 5, 2003. Est. Value—$500. Archives Foreign..	His Excellency Leszek Miller, Prime Minister of the Republic of Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
134695/BOYER_C, Vice President	21 karat gold men's ring with a 3 carat emerald surrounded by cubic zirconia. Recd—March 4, 2003. Est. Value—$2500. Archives Foreign..	His Excellency Mohammad Fahim Kahn, Vice President and Defense Minister of Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
134697/BOYER_C, Vice President	Hand painted blue and white porcelain wine decanter with Sterling silver stopper; on one side is small painting of a Portuguese artillery regiment, on the reverse the Portuguese crest. Recd—May 5, 2003. Est. Value—$400. Archives Foreign.	His Excellency Paulo Portas, Minister of State and National Defense for Portugal.	Non-acceptance would cause embarrassment to donor and U.S. Government.
135289/BOYER_C, Vice President	Round pottery vessel with white, blue, and brown glazing and a guava branch handle. Made by Iskandar Jalil, noted Singapore potter. Recd—May 5, 2003. Est. Value—$600. Archives Foreign.	His Excellency Goh Chok Tong, Prime Minister of the Republic of Singapore.	Non-acceptance would cause embarrassment to donor and U.S. Government.
137923/BOYER_C, Vice President	Crystal presentation piece with a golden bowl and silver fish design. Recd—October 30, 2003. Est. Value—$350. Archives Foreign.	His Excellency Li Zhaoxing, Minister of Foreign Affairs of the People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
135971/BOYER_C, Vice President	Korean black lacquer ware box, with inset tray, inlaid with mother of pearl in a crane design. Recd—June 27, 2003. Est. Value—$350. Archives Foreign.	His Excellency Yung-kil Cho, Minister of National Defense of the Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: OFFICE OF THE VICE PRESIDENT—Continued

Report of tangible gifts—2003

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
139525/BOYER_C, Vice President	Wood and leather box containing a quill pen, brown leather strips with attached beads, Rosenthal square porcelain plate, and sterling silver desk set (memo pad holder, paperweight, letter opener, and silver frame for mouse pad). Recd—December 8, 2003. Est. Value—$1150. Archives Foreign.	His Majesty King Abdullah II bin al Hussein of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
135974/BOYER_C, Vice President	Black mother of pearl cufflinks set in 18 karat white gold. Recd—July 24, 2003. Est. Value—$350. Archives Foreign..	Her Excellency Gloria Macapagal-Arroyo, President of the Republic of the Philippines.	Non-acceptance would cause embarrassment to donor and U.S. Government.
133992/BOYER_C, Vice President	Silk rug in colors of beige, cream, navy, peach and golden brown; measures 49 inches by 100 inches. Recd—April 16, 2003. Est. Value—$2200. Archives Foreign.	His Excellency Sodiqu Safayev, Minister of Foreign Affairs of the Republic of Uzbekistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
138985/MURRAY_M, Vice President and Mrs. Cheney.	A large white poinsettia and four dozen white roses. Recd—December 15, 2003. Est. Value—$360. Handled pursuant to Secret Service policy.	His Royal Highness Prince Bandar bin Sultan bin Abdulaziz, Royal Embassy of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
135982/BOYER_C, Vice President Staff.	Blue and white porcelain plate made by Javin, Royal-Kwangju. Given to Steve Yates. Recd—July 24, 2003. Est. Value—$350. General Services Administration.	Hak Kyu Sohn, Governor of Gyeonggi Province, Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance.
David Halpern	Recd.—July 12, 2003. Est. Value—$4,264. Expended for airfare, lodging, ground transportation and meals.	University of Western Australia, Perth, Australia.	Keynote address at the International Weather Conference.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF SCIENCE AND TECHNOLOGY POLICY—Continued

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance.
Kathie L. Olsen	Recd.—July 30, 2003. Est. Value—$477. Expended for airfare.	Norwegian Research Council, Oslo, Norway.	To attend the International Conference on Research of Climate Changes of the Arctic. Olsen had purchased the roundtrip ticket from Oslo to Svalbard through the travel agent for the meeting. When she received the ticket in the mail, her return flight that the travel agency booked to Oslo left Svalbard at 4 am. This was a miscommunication given that she had a series of meetings starting at 9 am in Oslo on the day of the flight. Upon arriving in Oslo, she contacted Scandinavian Airline Service (SAS) and was informed that there were other flights between Svalbard and Oslo that were available. Dr. Olsen requested the change in flight directly with SAS. The meeting organizers contacted SAS in her behalf and she was told that it was impossible to change the ticket. The Organizers of the Meeting proceeded to make a new reservation. When she spoke with the Council, she was informed that the same mistake had been made with other attendees' flight arrangements. The Council made arrangements to change the ticket and refused payment.

OFFICE OF THE U.S. TRADE REPRESENTATIVE, EXECUTIVE OFFICE OF THE PRESIDENT

Report of certain foreign gifts: Calendar Year 2003

Name of recipient	Item description and disposition	Foreign donor	Authority
Amb. Robert B. Zoellick, U.S. Trade Representative.	Woven rug, 06/09/03, $500–$1000. Displayed in formal reception area.	Minister Khan, Pakistan	5 U.S.C. 7342 protocol.
Amb. Robert B. Zoellick	Silver Tea Set, 09/19/03, $1000–$1500. Displayed in head of agency's meeting area.	Minister Dinh Tuyen, Vietnam	5 U.S.C. 7342 protocol.

AGENCY: UNITED STATES DEPARTMENT OF AGRICULTURE

Report of Tangible Gifts—CY 2003

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of the foreign donor and government	Circumstances justifying acceptance
Dr. J.B. Penn, Under Secretary, Farm and Foreign Agricultural Services, USDA.	Hand knotted silk pile directional decorative rug. Tree of Life pattern on pale yellow ground with seven blue birds in the branches of the tree. Arched central panel with major border with white ground and trailing floral design. Long looped beginning white silk fringes and cut end fringes. Dimensions: 26″ x 35.″ November 11, 2003; Appraised value: $600.00. Location: Retained as an official gift in Dr. Penn's office.	Mr. Anwari, Afghanistan Minister of Agriculture.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Ann M. Veneman, U.S. Secretary of Agriculture.	A turned wood vase with tapering stem and neck in black lacquer with painted gilt decoration. The ovoid body is painted with scenes of buildings with sky and trees. An unidentified signature appears in the scene. Height 22″; Diameter of base 8″. June 19, 2003; appraised value: $350.00. Location: USDA/FAS Foreign Visitors Office for transfer to GSA's Property Management Div.	Sergii Ryzhuk, Minister, Ministry of Agricultural Policy, Ukraine.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Ann M. Veneman, U.S. Secretary of Agriculture.	A contemporary carved African hardwood statute of a male hunter with a beard, bow, arrow, pouch and an animal over his shoulder. Base with small animal standing at his feet. Ht. 27½″; Base width 7½″;. June 19, 2003; Appraised value: $1,375.00. Location USDA/FAS Foreign Visitors Office to be transferred to GSA's Property Management Division.	Mr. Joaquim Da Costa DAVIDE, Minister of Industry, Angola.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Ann M. Veneman, U.S. Secretary of Agriculture.	Amber necklace and earrings: A four strand amber necklace, of varied shaped stones, 10″ long. With a pair of stud earrings of a single stone each. In a red fitted box with label: "Rep. Dominicana, Eligio Arguez, Doyas Criollas Sa." June 20, 2003; Appraised value $500.00. Location USDA/FAS Foreign Visitors Office for transfer to GSA's Property Mgt. Division.	Mr. Eligio Jaquez, Secretary of Agriculture, Dominican Republic.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE TREASURY

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identify of foreign donor and government	Circumstances justifying acceptance
Kenneth W. Dam, Deputy Secretary.	Candle holder from the Swarovski Collection. Recd—January 25, 2003. Est. Value—$390. Treasury retained on February 13, 2003.	World Economic Forum, Government of Switzerland.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: DEPARTMENT OF THE TREASURY—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identify of foreign donor and government	Circumstances justifying acceptance
John W. Snow, Secretary of Treasury.	5′ x 7′ Dark red/blue Persian carpet. Recd—February 26, 2003. Est. Value—$900. Treasury retained on August 5, 2003.	Hamid Karzai, President of Afghanistan.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
John W. Snow, Secretary of Treasury.	Silver kanjar (dagger) in holder. Recd—May 21, 2003. Est. Value—$300. Treasury retained on July 31, 2003.	Shaikh Salman Bin Hamad Bin Isa Al-Khai Crown Prince of Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
John B. Taylor, Under Secretary for International Affairs.	Set of sterling silverware for 6. Recd—May 5, 2003. Est. Value—$780. Treasury retained on December 23, 2003.	Islam A. Karimov, President, Republic of Uzbekistan.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

DEPARTMENT OF DEFENSE

Foreign Gifts for State

Name and title of person accepting gift on behalf of the U.S. Government	Gift	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Donald H. Rumsfeld, Secretary of Defense.	Silver Bulgari Watch, Book "Omaggio all'Italia" and Magazine "An Italian Story", 1/14/2003. $1,200.00, $15.00 and No Value, respectively. Total Value $1,215.00. Transferred to GSA.	His Excellency Silvio Berlusconi, Prime Minister, Italy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald H. Rumsfeld, Secretary of Defense.	Silver Decanter and Four Silver Cups with Silver Platter, Gold Bracelet and Book "Egypt—the World of Pharaohs", 1/14/2003, 240.00, $385.00 and $20.00, respectively. Total Value $625.00. Transferred to GSA.	His Excellency Hussein Tantawy, Minister of Defense and Military Production, Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald H. Rumsfeld, Secretary of Defense.	Large Rug 58″ x 94″, 2/27/2003, $400.00. Transferred to GSA.	His Excellency Hamad Karzai, President, Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald H. Rumsfeld, Secretary of Defense.	Gold Horse on Statue, 4/29/2003, $700.00. Transferred to GSA.	His Royal Highness Crown Prince Abdallah bin Abd Al-Aziz Al Saud, First Deputy Prime Minister, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald H. Rumsfeld, Secretary of Defense.	Silver Oasis in Box, 4/29/2003, $320.00. Transferred to GSA.	His Excellency Sultan bin Abd al-Aziz Al Saud, Minister of Defense and Aviation, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald H. Rumsfeld, Secretary of Defense.	Carpet, 9/5/2003, $850.00. Transferred to GSA.	His Excellency Hamad Karzai, President, Afghanistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Donald H. Rumsfeld, Secretary of Defense.	Frankincense Burner and Perfume Decanter and Silver Teapot with Six Teacups, 9/16/2003, $1,050.00 and $990.00, respectively. Total Value $2,040.00. Transferred to GSA.	Sheikh Jaber al-Ahmed al-Sabah, Prime Minister, Kuwait.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
The Honorable Donald H. Rumsfeld, Secretary of Defense.	The Hashemite Coins of H.M. King Al-Hussein bin Ali, 11/3/2003, $1,000.00. Transferred to GSA.	His Majesty King Abdullah bin Hussein and Queen Rania, the Hashemite Kingdom of Jordan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
The Honorable Donald H. Rumsfeld, Secretary of Defense.	Saber Sheath and Scabbard, Portrait of the Secretary of Defense and Plaque, 12/3/2003, $190.00, $100.00 and $10.00, respectively. Total Value $300.00. Transferred to GSA.	His Excellency Safar Abiyev, Minister of Defense, Azerbaijan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

DEPARTMENT OF DEFENSE—Continued

Foreign Gifts for State

Name and title of person accepting gift on behalf of the U.S. Government	Gift	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Donald H. Rumsfeld, Secretary of Defense.	Large Carpet 61″ x 76″, 12/4/2003, $475.00. Transferred to GSA.	His Excellency Hamad Karzai, President, Afghanistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
The Honorable Donald H. Rumsfeld, Secretary of Defense.	Golden Fleece Statue, 12/4/2003, $320.00. Transferred to GSA.	Her Excellency Nino Burjanadze, Interim President of Georgia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
The Honorable Paul Wolfowitz, Deputy Secretary of Defense.	Rug 118″ x 78″, 1/15/2003, 1,400.00. Transferred to GSA.	His Excellency Hamad Karzai, President, Afghanistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
The Honorable Paul Wolfowitz, Deputy Secretary of Defense.	Silver Enameled Chess Set and a Chess Board, 6/8/2003, $420.00. Transferred to GSA.	L.K. Advani, Deputy Prime Minister of India.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Richard B. Myers, Chairman, Joint Chiefs of Staff.	Crystal Eagle, 5/29/2003, $320.00. Transferred to GSA.	Gen. A. Van Daele, Chief of Defense Kingdom of Belgium.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Richard B. Myers, Chairman, Joint Chiefs of Staff.	Rug, 7/30/2003, $300.00. Transferred to GSA.	His Excellency Hamad Karzai, President, Afghanistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Under Secretary of Defense, Policy, The Honorable Douglas Feith.	Lead Vase, 12/16/2003, $325.00. Transferred to GSA.	Ambassador Salem Abdullah Al Jaber Al-Subah of the State of Kuwait and Mrs. Al-Sabah.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Assistant Secretary of Defense, ISA, Peter Rodman and Mrs. Veronique Rodman.	Black Leather Desk Set, Book "The National Remembrance Museum," Silver Stand with Air Freshener Tips, Tall Silver Stand with Air Freshener Tips, two books; :Histoire Communautaire" and "Histoire Des Juifs" and Sliver Plated Jewelry Box, 1/25/2003, $330.00. Transferred to GSA.	Tunisian Foreign Minister Ben Yahia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Assistant Secretary of Defense, ISA, Peter Rodman.	Two Area Rugs; 93″ x 40″ (Black) and 84″ x 42.5″ (Burgandy), and Book "Marrakesh, The Secret of its Courtyard Houses", 1/26/2003, $295.00. Transferred to GSA.	Taib Fassi Fihiri, Minister Delegate for Foreign Affairs and Cooperation of Morocco.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Assistant Secretary of Defense, ISA, Peter Rodman.	Gold Bracelet and Sterling Pitcher, 12/12/2003, $700.00. Transferred to GSA.	Egyptian Field Marshal Hussein Tantawy, Commander in Chief of the Armed Forces Minister of Defense and Military Production.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Assistant Secretary of Defense, ISA, Peter Rodman.	Lead Vase, 12/16/2003, $325.00. Transferred to GSA.	Ambassador Salem Abdullah Al Jaber Al-Sabah of the State of Kuwait and Mrs. Al-Sabah.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. Veronique Rodman	Silver Necklace, 12/12/2003, $300.00. Transferred to GSA.	Lt. Gen Hamdy Weheba, Chief of Staff of the Egyptian Armed Forces.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Dr. William J. Luti, DASD, Near Eastern & South Asian Affairs.	Crystal Bowl, 12/12/2003, $325.00. Transferred to GSA.	Ambassador Salem Abdullah Al Jaber Al-Sabah of the State of Kuwait and Mrs. Al-Sabah.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Dr. Marin Strmecki, Special Assistant to the Secretary of Defense for Afganistan.	Large Rug, Marble Box, Robe, Beaded Necklace, Marble Fish, Marble Elephant and Shawl, 12/17/2003, $1,400.00, $40.00, $150.00, $4.00, $15.00, $20.00 and $150.00, respectively. Total Value $1,779.00. Transferred to GSA.	First Deputy Minister of Defense Abdul Rahim Wardar, Afghanistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE NAVY

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Vern Clark, Chief of Naval Operations.	18K gold with cubic zirconia cufflinks with matching tie bar. Recv'd—June 4, 2002. Est. Value—$600.00–$800.00. Delivered to GSA April 30, 2003.	Abd el alim Mohamed Tamer, Egyptian, CNO.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Connie Clark, Spouse of the Chief of Naval Operations.	18K gold necklace with matching earrings. Recv'd—January 19, 2003. Est. Value—$500.00–$700.00. Washington Navy Yard, Bldg. 36 Rm. 135.	Azza Tamer, spouse of Abd el alim Mohamed Tamer, Egyptian CNO.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
VADM Robert F. Willard, USN, COMSEVENTHFLT.	One men's and one women's Classique Aussie Opal Wristwatches. Recv'd—December 1, 2003. Est. Value—$1,518.00. Delivering to COMPACFLT for Disposition.	Delegation from Townsville, Australia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Vern E. Clark, Chief of Naval Operations.	Recv'd—January 18, 2003. Est. Value—$339.26. Expended for hotel room.	Abd el Alim Mohamed Tamer, Egyptian CNO.	Official counterpart visit.
L. G. Goff, Deputy EA to the Chief of Naval Operations.	Recv'd—January 18, 2003. Est. Value—$339.26. Expended for hotel room.	Abd el Alim Mohamed Tamer, Egyptian CNO.	Deputy EA to CNO.
P. Bock, Aide-de-Camp, Chief Naval Operations.	Recv'd—January 18, 2003. Est. Value—$339.26. Expended for hotel room.	Abd el Alim Mohamed Tamer, Egyptian CNO.	Aide-de-Camp to CNO.
VADM Robert F. Willard, USN, COMSEVENTHFLT.	Recv'd—February 5, 2003. Est. Value—$328.00. Expended for hotel room.	Japan Maritime Self-Defense Force.	To conduct discussions with senior Japanese naval officers and tour Sapporo businesses.
VADM Robert F. Willard, USN, COMSEVENTHFLT.	Recv'd—March 25, 2003. Est. Value—$852.00. Expended for hotel room.	Singapore Ministry of Defense	To conduct discussions with senior Japanese naval officers and tour Sapporo businesses.
LT Elaine Luria, USN, COMSEVENTHFLT, Aide.	Recv'd—February 5, 2003. Est. Value—$328.00. Expended for hotel room.	Japan Maritime Self-Defense Force.	To conduct discussions with senior Japanese naval officers and tour Sapporo businesses.
LT Elaine Luria, USN, COMSEVENTHFLT, Aide.	Recv'd—March 25, 2003. Est. Value—$852.00. Expended for hotel room.	Singapore Ministry of Defense	To conduct discussions with Singaporean government and military officials.

AGENCY: DEPARTMENT OF COMMERCE

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Samuel W. Bodman, Deputy Secretary of Commerce.	Brown textured leather briefcase. 14¼" x 16½". Recd—01/15/03. Appraised Value—$325. Location—HCHB Vault.	Sir Anerood Fugnauth, Prime Minister of the Republic of Mauritius.	Courtesy and Appreciation.
Samuel W. Bodman, Deputy Secretary of Commerce.	Partial model of a Bahrain ship, in .925 silver (sterling). Recd—3/2/03. Appraised Value—$350. Purchased by Deputy Secretary.	Institute of Technology, Bahrain ...	Courtesy and Appreciation.
Samuel W. Bodman, Deputy Secretary of Commerce.	Icon—gold leaf/pigment icon 3 standing figures w/writing in Cyrillic over each. Recd—07/15/03. Appraised Value—$300. Purchased by Deputy Secretary.	Prefect Brasov, Romania	Courtesy and Appreciation.
Samuel W. Bodman, Deputy Secretary of Commerce.	Art Glass Vase, 12", 5½" in diameter, landscape scene. Recd—7/15/03. Appraised Value—$300.00. Purchased by Deputy Secretary.	Prime Minister Adrian Nastase, Bucharest, Romania.	Courtesy and Appreciation.

AGENCY: DEPARTMENT OF COMMERCE—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Samuel W. Bodman, Deputy Secretary of Commerce.	Painting—Harvest Oil on canvas, Image—20½" x 24½", frame 25½. Recd—7/17/03. Appraised Value—$750. Purchased by Deputy Secretary.	Atanas Iantchev, Bristol Myers-Bulgaria.	Courtesy and Appreciation.
Samuel W. Bodman, Deputy Secretary of Commerce.	A dress ceremonial Dagger in a silver filigree sheath, 11½" x 5½"; Framed under plexiglas. Recd—09/08/03. Appraised Value—$300. Purchased by Deputy Secretary.	Yemen Aref Abdulrahman, Mohammed BaNafea, Abdul Salam.	Courtesy and Appreciation.
Samuel W. Bodman, Deputy Secretary of Commerce.	A crystal sculpture w/a gilt replica of Kuwait City, Height 8". Recd—10/18/03. Appraised Value—$650. Location—Rm H5838.	Rashid Al-Tabtabaee, Kuwait	Courtesy and Appreciation.
Donald L. Evans, Secretary of Commerce.	Hand-painted wooden lacquered box. Recd—02/13/03. Appraised Value—$550. Location—Secretary's Office.	Vagit Alekperov, Chairman of LukOil.	Appreciation/Diplomatic Formality.
Donald L. Evans, Secretary of Commerce.	Hand-woven rug, 100% wool 23½" x 54" in Width, 61½" In Length. Recd—02/24/03. Appraised Value—$750. Location—Purchased by Deputy Secretary.	Heidar Aliyev, President Azerbaijan.	Appreciation/Diplomatic Formality.
Donald L. Evans, Secretary of Commerce.	Sterling silver plate, 9" in diameter. Recd—02/28/03. Appraised Value—$650. Location—Secretary's Office.	Georgi Parvanov, President of Bulgaria.	Appreciation/Diplomatic Formality.
Donald L. Evans, Secretary of Commerce.	Collection of contemporary Russian postage stamps. Recd—03/03/03. Appraised Value—$1,250. Location—Secretary's Office.	Leonid Reiman, Minister, Russian Federation.	Appreciation/Diplomatic Formality.
Donald L. Evans, Secretary of Commerce.	Wooden egg within brass filigree cage. 6" high, hand-painted. Recd—03/03/03. Appraised Value—$325. Location—Secretary's Office.	Leonid Reiman, Minister, Russian Federation.	Appreciation/Diplomatic Formality.
Donald L. Evans, Secretary of Commerce.	Hand-woven rug, 100% wool in Bokhara style, 34" x 48". Recd—04/14/03. Appraised Value—$675. Location—Purchased by Secretary.	Elyor Ganiev, Deputy Prime Minister of Uzbekistan.	Appreciation/Diplomatic Formality.
Donald L. Evans, Secretary of Commerce.	Hand-knotted wool pile rug 6'4" x 5'8" Recd—06/06/03. Appraised Value—$650. Location—Secretary's Office.	Humayun Akhtar Khan, Minister, Commerce of Pakistan.	Appreciation/Diplomatic Formality.
Donald L. Evans, Secretary of Commerce.	Porcelain Plate by Lomonosov, Porcelain, Russia, 13½" in Diameter. Recd—09/24/03. Appraised Value—$300. Location—Secretary's Office.	Vagit Alekperov, President of LukOil, Russia.	Appreciation/Diplomatic Formality.
Donald L. Evans, Secretary of Commerce.	Pair of plique a jour enamel stemmed goblets, .925 silver. Recd—09/26/03. Appraised Value—$500. Location—Secretary's Office.	German O. Gref, Minister, Trade & Economic Development, Russia.	Appreciation/Diplomatic Formality.
Donald L. Evans, Secretary of Commerce.	Plique a jour enamel tea set, .925 silver, 2 saucers/2 spoons. Recd—09/26/03. Appraised Value—$700. Location—Secretary's Office.	German O. Gref, Minister, Trade & Economic Development, Russia.	Appreciation/Diplomatic Formality.

AGENCY: DEPARTMENT OF COMMERCE—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Donald L. Evans, Secretary of Commerce.	Hand knotted wool rug, low pile. 70″ x 45″. Recd—10/16/03. Appraised Value—$400. Location—Room 5847.	Sayed Mustafa Kazemi, Minister of Commerce for Afghanistan.	Appreciation/Diplomatic Formality.
Donald L. Evans, Secretary of Commerce.	Hand knotted wool rug 108″ x 8 1.5″ Recd—10/16/03. Appraised Value—$800. Location—Room 5847.	Sayed Mustafa Kazemi, Minister of Commerce for Afghanistan.	Appreciation/Diplomatic Formality.
Donald L. Evans, Secretary of Commerce.	Sculpture horse & cart statue. Recd—10/16/03. Damaged in Shipping. Appraised Value (prior) $850. Location—HCHB Vault.	Sayed Mustafa Kazemi, Minister of Commerce for Afghanistan.	Appreciation/Diplomatic Formality.

DEPARTMENT OF ENERGY

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Spencer Abraham, Secretary of Energy.	Plaque, Russian, carved dark amber Russian emblem over light amber background, the emblem of crowned double-headed eagle holding sceptre and orb and chest fronted by shield depicting St. George on horseback lancing a dragon, all in molded wood frame with hinged foot, 11″h x 10″w, in locking blue presentation box. Received—March 12, 2003. Estimated Value—$900.00. Reported to GSA June 30, 2003; pending transfer to GSA.	Alexander Rumyanstev, Minister of Atomic Energy, Russia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Spencer Abraham, Secretary of Energy.	Chess set, Russian, wood box with hinged lid being a playing board with squares of light and dark amber chunks set in clear resin, surrounded by border of dark amber resin, with inset wood numbers 1–8 and letters a–h, 3¼″h x 16½″w, box interior containing amber playing pieces including 4 horse heads, rest as turned round bottles/jars/urns. Received—April 28, 2003. Estimated Value—$2,200.00. Reported to GSA June 30, 2003; pending transfer to GSA.	Igor Yusufov, Minister of Energy, Russia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

DEPARTMENT OF ENERGY—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Spencer Abraham, Secretary of Energy.	Box with oil and stone samples: hardwood box, lid with applied silvertone band surrounding plaque "Kingdom of Saudi Arabia" plus roundel of foliate scroll arabesques surmounted by Saudi emblem of palm tree over crossed sabres, interior of lid having goldtone band surrounding brass plaque "With the compliments of Al-Naimi/Minister of Petroleum & Mineral Resources/Kingdom of Saudi Arabia", interior with piercecut brasstone rectangle fitted with cylindrical rock from Manifa Reservoir", beneath a clear crystal stoppered jar of oil over label "A Sample of Arabian Light Crude Oil from the Arab (D) Reservoir; box overall 4¾"h x 13"w x 16"d. Received—April 30, 2003; Estimated Value—$450.00. Reported to GSA June 30, 2003; pending transfer to GSA.	H.E. Ali Al-Naimi, Minister of Petroleum & Mineral Resources.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Spencer Abraham, Secretary of Energy.	Statue, Qatarian, falcon perched on gauntlet, covered in sterling silver plus gilt beak/talons/buttons/edge of glove, feet wrapped in redtone spiral twist cord, 15"h x 4¾"w x 5"d, mounted on 2 tier rectangular base painted black and plaqued "The Falcon" and "Qatar Petroleum", in carrying box clad in simulated crocodile skin with 4 locks. Received—April 30, 2003. Estimated Value—$650.00. Reported to GSA June 30, 2003; pending transfer to GSA.	Abdullah Bin Hamad Al-Attiyah, Minister of Energy, Qatar.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Colin L. Powell, The Secretary of State of the United States.	Table decoration—10¼" H, silver of elephant form decorated with polychrome enamel, faux pearls, howdah with rider and mahout, India, 20th/21st century. Date Received: 1/1/2003. Estimated Value: $350.00. Disposition: Pending transfer to the General Services Administration.	Lalit Mansingh, Ambassador of India to the United States.	Non-acceptance would cause the donor or the U.S. Government embarrassment.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Colin L. Powell, The Secretary of State of the United States.	Box—lidded, 6½"L, Xolui lacquer with polychrome fairy tale scene to lid, by O. Kotoff, Russia, 20th/21st century. Date Received: 1/1/2003. Estimated Value: $550.00. Disposition: Pending transfer to the General Services Administration.	Igor Ivanov, Minister of Foreign Affairs of the Russian Federation.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Colin L. Powell, The Secretary of State of the United States.	Rug—59½" x 84", wool on wool, dark blue field with rust and doubly terminated medallion, six borders with rust main, 20th/21st century. Date Received: 2/27/2003. Estimated Value: $850.00. Disposition: Pending transfer to the General Services Administration.	Hamid Karzai, President of the Transitional Islamic State of Afghanistan.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Colin L. Powell, The Secretary of State of the United States.	Rug—52" x 32", wool on wool, red field with snowflake motif to center, six borders with ivory main, 20th/21st century. Date Received: 4/18/2003. Estimated Value: $450.00. Disposition: Pending transfer to the General Services Administration.	Rusta Azimov, Deputy Prime Minister of the Republic of Uzbekistan.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Colin L. Powell, The Secretary of State of the United States.	Sculpture—7½ x 9½, pierced and carved olive green serpentine depicting leaves and fruit, China 20th/21st century, wood base. Date Received: 4/21/2003. Estimated Value: $350.00. Disposition: Pending transfer to the General Services Administration.	Chen Yun-lin, Minister of the Taiwan Affairs Office, The State Council of China.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Colin L. Powell, The Secretary of State of the United States.	Cufflinks—small size, 18 karat yellow gold doubles, each a lapis lazuli "button" inlaid with yellow gold wire. Date Received: 4/28/2003. Estimated Value: $650.00. Disposition: Pending transfer to the General Services Administration.	Maria Soledad Alvear Valenzuela, Minister of Foreign Relations of Chile.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Colin L. Powell, The Secretary of State of the United States.	Dessert forks and spoon—99 silver decorated with blue enamel, ends marked "Made in Korea" and with Korean yin and yang, boxed, 20th/21st century. Date Received: 4/30/2003. Estimated Value: $360.00. Disposition: Pending transfer to the General Services Administration.	Ra Johg-Il, Senior Advisor to the President for National Security of the Republic of Korea.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Colin L. Powell, The Secretary of State of the United States.	Clock—desk clock, 10½"L, wood base with applied pierced brass sheet, mounted with two sterling silver antelopes flanking a sterling silver cylinder mounted with a quartz clock movement, 20th/21st century. Date Received: 5/9/2003. Estimated Value: $3,000.00. Disposition: Pending transfer to the General Services Administration.	Sheikh Hamad bin Khalifa Al Thani, Amir of the State of Qatar.	Non-acceptance would cause the donor or the U.S. Government embarrassment.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Colin L. Powell, The Secretary of State of the United States.	Lithograph—color, 11″ x 15¼″, dramatic red landscape, #3/100, by H.R.H. Prince Khalid al-Faisal al-Saud, published by Anthony Bailey, 2000, matted and framed. Date Received: 5/13/2003. Estimated Value: $500.00. Disposition: Pending transfer to the General Services Administration.	Prince Bandar bin Khaled Al Faisal Al-Saud, Ambassador of the Kingdom of Saudi Arabia to the United States.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Colin L. Powell, The Secretary of State of the United States.	Place card holders, sterling silver, fitted box. Date Received: 5/19/2003. Estimated Value: $360.00. Disposition: Pending transfer to the General Services Administration.	Gloria Macapagal-Arroyo of the Republic of the Philippines.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Colin L. Powell, The Secretary of State of the United States.	Cufflinks, 18 karat yellow gold, each with a mother of pearl plaque. Date Received: 5/19/2003. Estimated Value: $550.00 Disposition: Pending transfer to the General Services Administration.	Gloria Macapagal-Arroyo, President of the Republic of the Philippines.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Colin L. Powell, The Secretary of State of the United States.	Dagger—silver hilt and scabbard, by Al mannai, 20th/21st century, 30ozsT including steel blade. Date Received: 5/21/2003. Estimated Value: $750.00. Disposition: Pending transfer to the General Services Administration.	Shaikh Salman bin Hamad Al-Khalifa, Crown Prince and Commander-in-Chief of the Bahrain Defense Force.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Colin L. Powell, The Secretary of State of the United States.	Clock—Mantel, 15½″h, porcelain with blue "net" decoration overall, reserves decorated with polychrome scenes, bird finial, two hunters flanking clock face, wood base with porcelain feet, 20th/21st century. Date Received: 5/31/2003. Estimated Value: $450.00. Disposition: Pending transfer to the General Services Administration.	Igor Ivanov, Minister of Foreign Affairs of the Russian Federation.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Colin L. Powell, The Secretary of State of the United States.	Coins—Vatican: one sterling silver medal commemorating 25 years of John Paul II's pontificate surrounded by 8 Vatican coins in "Euro" denominations, proof: 2 euro, 1 euro, .5 euro, .2 euro, .1 euro, .05 euro, .02 euro, .01 euro, fitted case. Date Received: 6/2/2003. Estimated Value: $650. Disposition: Pending transfer to the General Services Administration.	John Paul II, The Pope, Holy See	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Colin L. Powell, The Secretary of State of the United States.	Letter Opener—miniature sword 13″L, silver with applied gold decoration, ivory handle, wood stand. Date Received: 6/3/2003. Estimated Value: $1,500.000. Disposition: Pending transfer to the General Services Administration.	Abdallah bin Abd al-Aziz Al Saud, Crown Prince, First Deputy Prime Minister and Commander of the National Guard of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Colin L. Powell, The Secretary of State of the United States.	Coins—5 silver, 5 bronze, 1 copper and 1 gold, Roman and Islamic periods, inlaid wood case. Date Received: 6/3/2003. Estimated Value: $750.00. Disposition: Pending transfer to the General Services Administration.	Emile Lahoud, President of the Republic of Lebanon.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colin L. Powell, The Secretary of State of the United States.	Pen—black plastic, 18 karat white gold nib, sterling silver cap with gold plating, Mont Blanc, together with a notepad in sterling silver with gilt crown having a framed print of Petra to lid. Date Received: 6/4/2003. Estimated Value: $900.00. Disposition: Pending transfer to the General Services Administration.	Abdullah II bin al Hussein, King of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colin L. Powell, The Secretary of State of the United States.	Pen—ink, burgundy plastic case with 18 karat yellow gold nib and overlay, cap set with 15 rubies 3mm, Mont blanc, Commemorative of Catherine II. Date Received: 6/5/2003. Estimated Value: $3,000.00. Disposition: Pending transfer to the General Services Administration.	Shaikh Abdullah bin Khalifa al Thani, Prime Minister of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colin L. Powell, The Secretary of State of the United States.	Box—cigarette box, sterling silver with burl wood lining, lid mounted with gold and enamel coat of arms, 20th/21st century, 22ozsT. Date Received: 6/12/2003. Estimated Value: $600.00. Disposition: Pending transfer to the General Services Administration.	Maha Vajiralongkorn, Crown Prince of Thailand.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colin L. Powell, The Secretary of State of the United States.	Cufflinks, 18 karat yellow gold, each a cast ball in the manner of Amoldo Pomodoro. Date Received: 6/12/2003. Estimated Value: $750.00. Disposition: Pending transfer to the General Services Administration.	Franco Frattini, Minister of Foreign Affairs of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colin L. Powell, The Secretary of State of the United States.	Watch—Men's gold watch with diamonds. Date Received: 6/15/2003. Estimated Value: $3,200.00. Disposition: Pending transfer to the General Services Administration.	Heydar Aliyev, President of the Republic of Azerbaijan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colin L. Powell, The Secretary of State of the United States.	Dinnerware—porcelain with silver border, 20th/21st century; gravy boat, soup tureen, vegetable dish, platter, sugar and creamer, 6 each dinner plates, rim soups, salad plates, cereal bowls, cups & saucers. Date Received: 6/19/2003. Estimated Value: $550.00. Disposition: Pending transfer to the General Services Administration.	Manzur Morshed Khan, Minister of Foreign Affairs of the People's Republic of Bangladesh.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Colin L. Powell, The Secretary of State of the United States.	Bowl—9¼" diameter x 5"H, 900 silver, reposed and chased, 30ozsT. Date Received: 6/21/2003. Estimated Value: $600.00. Disposition: Pending Transfer to the General Services Administration.	Samdech Hun Sen, Prime Minister of the Kingdom of Cambodia.	Non-acceptance would cause the donor or the U.S. Government embarrassment.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Colin L. Powell, The Secretary of State of the United States.	Box—lidded, pull out tray, 14¼″ x 20¾″ x 6″H, black lacquer with mother of pearl inlay, 20th/21st century, fitted box. Date Received: 6/27/2003. Estimated Value: $450.00. Disposition: Pending Transfer to the General Services Administration.	Cho, Yung Kil, Minister of National Defense of the Republic of Korea.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Colin L. Powell, The Secretary of State of the United States.	Sculpture, 4″ x 7½″, bronze, figures in a canoe, by Sid Forman, 20th/21st century. Date Received: 7/12/2003. Estimated Value: $300.00. Disposition: Pending Transfer to the General Services Administration.	Nkosazana Dlamini-Zuma, Minister of Foreign Affairs of the Republic of South Africa.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Colin L. Powell, The Secretary of State of the United States.	Coins, Jordan, 1916–24, in case: 1 Hashimi dinar gold, 20 Qirshan silver, 10 qirshan silver, 5 qirshan silver, 1 qirsh copper, ½ qirsh copper, ¼ qirsh copper, ⅛ qirsh copper, minted in Mecca. Date Received: 9/19/2003. Estimated Value: $750.00. Disposition: Pending Transfer to the General Services Administration.	Abdulla II bin al Hussein, King of the Hashemite Kingdom of Jordan.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Colin L. Powell, The Secretary of State of the United States.	Book, "Royal Barge Procession", fitted case and box, 2003, Thailand. Date Received: 10/18/2003. Estimated Value: $25.00. Disposition: Pending Transfer to the General Services Administration.	Surakiart Sathirathai, Minister of Foreign Affairs of the Kingdom of Thailand.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Colin L. Powell, The Secretary of State of the United States.	Brief case, black leather. Date Received: 10/18/2003. Estimated Value: $225.00. Disposition: Pending Transfer to the General Services Administration.	Surakiart Sathirathai, Minister of Foreign Affairs of the Kingdom of Thailand.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Colin L. Powell, The Secretary of State of the United States.	Picture frame, 12″ x 12″, repose silver, 20th/21st century. Date Received: 10/18/2003. Estimated Value: $400.00. Disposition: Pending Transfer to the General Services Administration.	Surakiart Sathirathai, Minister of Foreign Affairs of the Kingdom of Thailand.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Colin L. Powell, The Secretary of State of the United States.	Calendar, paper, 2004 Thailand "Unseen Corner of Paradise". Date Received: 10/18/2003. Estimated Value: $15.00. Disposition: Pending Transfer to the General Services Administration.	Surakiart Sathirathai, Minister of Foreign Affairs of the Kingdom of Thailand.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Colin L. Powell, The Secretary of State of the United States.	Etching, color, 7⅜ x 5⅜, Bucharest scene, #81/99, by Val Lonescu, 20th century. Date Received: 10/27/2003. Estimated Value: $50.00. Disposition: Pending transfer to the General Services Administration.	Ion Iliescu, President of Romania	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Colin L. Powell, The Secretary of State of the United States.	Book, "Inmescu", by Alexandru Cebuc, 2003. Date Received: 10/27/2003. Estimated Value: $30.00. Disposition: Pending transfer to the General Services Administration.	Ion Iliescu, President of Romania	Non-acceptance would cause the donor or the U.S. Government embarrassment.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Colin L. Powell, The Secretary of State of the United States.	Book, "Brancusi", by Radu Varia, 1986. Date Received: 10/27/2003. Estimated Value: $80.00. Disposition: Pending transfer to the General Services Administration.	Ion Iliescu, President of Romania	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Colin L. Powell, The Secretary of State of the United States.	Blouse, cotton, embroidered, Rumania. Date Received: 10/27/2003. Estimated Value: $50.00. Disposition: Pending transfer to the General Services Administration.	Ion Iliescu, President of Romania	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Colin L. Powell, The Secretary of State of the United States.	Medal—Order, Star of Rumania, medal, badge, and lapel pin, boxed, with documentation. Date Received: 10/27/2003. Estimated Value: $200.00. Disposition: Pending transfer to the General Services Administration.	Ion Iliescu, President of Romania	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Colin L. Powell, The Secretary of State of the United States.	Rug, 69″ x 49″, wool on cotton, light blue field with snowflake medallions, intricate astragals, five borders, 20th/21st century. Date Received: 12/2/2003. Estimated Value: $500.00. Disposition: Pending transfer to the General Services Administration.	Habib Ben Yahia, Minister of Foreign Affairs of the Republic of Tunisia.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Colin L. Powell, The Secretary of State of the United States.	Sculpture, 11½″ L, silver filigree, dove, red glass eye, marble base, 20th/21st century. Date Received: 12/2/2003. Estimated Value: $750.00. Disposition: Pending transfer to the General Services Administration.	Zine El-Abidine Ben Ali, President of the Republic of Tunisia.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Colin L. Powell, The Secretary of State of the United States.	Ship's model, 10″ x 10¼″, silver filigree with coral cabochons, 20th/21st century, 28 ozsT. Date Received: 12/3/2003. Estimated Value: $500.00. Disposition: Pending transfer to the General Services Administration.	Abdelaziz Bouteflika, President of the People's Democratic Republic of Algeria.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Colin L. Powell, The Secretary of State of the United States.	Saddle, leather with embroidered leather trappings, plywood trunk. Date Received: 12/3/2003. Estimated Value: $450.00. Disposition: Pending transfer to the General Services Administration.	Abdelaziz Bouteflika, President of the People's Democratic Republic of Algeria.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Amada Philpot, Special Agent—Diplomatic Security.	Watch—Raymond Weil (Ladies). Date Received: 9/30/2003. Estimated Value: $600.00. Disposition: Pending transfer to the General Services Administration.	Shaykh Hamad bin Jasim bin Jabir Al Thani, Minister of Foreign Affairs of the State of Qatar.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Christian Edwards, Protocol Officer	Pen—Black plastic body, sterling silver and gold filled cap, Mont Blanc. Date Received: 6/4/2003. Estimated Value: $450.00. Disposition: Pending transfer to the General Services Administration.	Abdullah II bin al Hussein, King of the Hashemite Kingdom of Jordan.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Christopher Keenan, Special Agent—Diplomatic Security.	Watch—Movado (Men's). Date Received: 9/27/2003. Estimated Value: $440.00. Disposition: Pending transfer to the General Services Administration.	Shaykh Hamad bin Jasim bin Jabir Al Thani, Minister of Foreign Affairs of the State of Qatar.	Non-acceptance would cause the donor or the U.S. Government embarrassment.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Daphne Martinez, Protocol Officer	Coin, gold, 40th anniversary, 47.54 grams of 22 karat yellow gold, plastic cases. Date Received: 9/20/2003. Estimated Value: $675.00. Disposition: Pending transfer to the General Services Administration.	Shaykh Saad al-Abdullah al-Salim Al Sabah, Crown Prince and Prime Minister of State of Kuwait.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Dean Lewis, Protocol Officer	Coin, gold, 40th anniversary, 47.54 grams of 22 karat yellow gold, plastic cases. Date Received: 9/20/2003. Estimated Value: $675.00. Disposition: Pending transfer to the General Services Administration.	Shaykh Saad al-Abdullah al-Salim Al Sabah, Crown Prince and Prime Minister of State of Kuwait.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Donald Burnham Ensenat, The Chief of Protocol of the United States.	Pen—Montblanc. Date Received: 6/13/2003. Over Minimum Value. Disposition: Pending transfer to the General Services Administration.	Abdullah II bin al Hussein, King of the Hashemite Kingdom of Jordan.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Donald Burnham Ensenat, The Chief of Protocol of the United States.	Pen—ball point, green plastic body, chrome plated mounts, Harry Winston. Date Received: 6/13/2003. Estimated Value: $325.00. Disposition: Pending transfer to the General Services Administration.	Abdullah bin al-Aziz Al Saud, Crown Prince, First Deputy Prime Minister and Commander of the National Guard of the Kingdom of Saudi Arabia.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Ed Seitz, Special Agent—Diplomatic Security.	Watch—Raymond Weil (Men's). Date Received: 9/26/2003. Estimated Value: $526.40. Disposition: Pending transfer to the General Services Administration.	Shaykh Hamad bin Jasim bin Jabir Al Thani, Minister of Foreign Affairs of the State of Qatar.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
James A. Baker, III, Special Presidential Envoy.	Watch—dual time zone—engraved "Presidence de la Republique Francaise" (Men's). Date Received: 12/16/2003. Over Minimum Value. Disposition: Pending transfer to the General Services Administration.	Jacques Chirac, President of the French Republic.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
James A. Baker, III, Special Presidential Envoy.	Watch—Bvlgari Rettangolo—engraved "Il Residente del Consiglio dei Ministri" (Men's). Date Received: 12/17/2003. Over Minimum Value. Disposition: Pending transfer to the General Services Administration.	Silvio Berlusconi, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Jeffrey Dee, Special Agent—Diplomatic Security.	Watch—Sector (Men's). Date Received: 9/27/2003. Over Minimum Value. Disposition: Pending transfer to the General Services Administration.	Shaykh Hamad bin Jasim bin Jabir Al Thani, Minister of Foreign Affairs of the State of Qatar.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
John E. Herbst, U.S. Ambassador to Uzbekistan.	Rug—hand-woven silk/cotton blend rug. Date Received: 7/9/2003. Estimated Value: $600.00. Disposition: Pending transfer to the General Services Administration.	Azimov, Deputy Prime Minister of the Republic of Uzbekistan.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
John R. Bolton, Under Secretary of State.	Jewelry—Necklace, earrings, bracelet and ring—sterling silver w/stone. Date Received: 6/18/2003. Estimated Value: $40.00. Disposition: Pending transfer to the General Services Administration.	Ali Abdullah Saleh, President of the Republic of Yemen.	Non-acceptance would cause the donor or the U.S. Government embarrassment.

AGENCY: DEPARTMENT OF STATE—Continued

[Report of tangible gifts]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
John R. Bolton, Under Secretary of State.	Sword—sterling silver. Date Received 6/18/2003. Estimated Value: $1,000.00. Disposition: Pending transfer to the General Services Administration.	Ali Abdullah Saleh, President of the Republic of Yemen.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Keith Sims, Special Agent—Diplomatic Security.	Watch—Movado (Men's). Date Received: 9/29/2003. Estimated Value: $695.00 Disposition: Pending transfer to the General Services Administration.	Shaykh Hamad bin Jasim bin Jabir Al Thani, Minister of Foreign Affairs of the State of Qatar.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Keith Sims, Special Agent—Diplomatic Security.	Watch—Movado (Men's). Date Received: 9/29/2003. Estimated Value: $526.40 Disposition: Pending transfer to the General Services Administration.	Shaykh Hamad bin Jasim bin Jabir Al Thani, Minister of Foreign Affairs of the State of Qatar.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Matt B. Sweeney, Special Agent—Diplomatic Security.	Watch—Wittnauer (Men's). Date Received: 9/28/2003. Estimated Value: $526.40. Disposition: Pending transfer to the General Services Administration.	Shaykh Hamad bin Jasim bin Jabir Al Thani, Minister of Foreign Affairs of the State of Qatar.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Michael K. Kems, Special Agent—Diplomatic Security.	Watch—Wittnauer (Men's). Date Received: 9/27/2003. Over Minimum Value. Disposition: Pending transfer to the General Services Administration.	Shaykh Hamad bin Jasim bin Jabir Al Thani, Minister of Foreign Affairs of the State of Qatar.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Robert A. O'Bannon, Special Agent—Diplomatic Security.	Watch—TechnoMarine XS Magnum (Men's). Date Received: 10/21/2003. Estimated Value: $684.00. Disposition: Pending transfer to the General Services Administration.	Shaykh Hamad bin Jasim bin Jabir Al Thani, Minister of Foreign Affairs of the State of Qatar.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Sean R. Hicks, Special Agent—Diplomatic Security.	Watch—TechnoMarine (Men's). Date Received: 10/6/2003. Estimated Value: $684.00. Disposition: Pending transfer to the General Services Administration.	Shaykh Hamad bin Jasim bin Jabir Al Thani, Minister of Foreign Affairs of the State of Qatar.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Shane R. Winder, Special Agent—Diplomatic Security.	Watch—Raymond Weil TechnoMarine (Men's). Date Received: 9/29/2003. Estimated Value: $526.40. Disposition: Pending transfer to the General Services Administration.	Shaykh Hamad bin Jasim bin Jabir Al Thani, Minister of Foreign Affairs of the State of Qatar.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Siobhan Leonard, Special Agent—Diplomatic Security.	Watch—Raymond Weil (Ladies). Date Received: 9/30/2003. Estimated Value: $526.40. Disposition: Pending transfer to the General Services Administration.	Shaykh Hamad bin Jasim bin Jabir Al Thani, Minister of Foreign Affairs of the State of Qatar.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Timothy Leeds, Special Agent—Diplomatic Security.	Watch—Movado (Men's). Date Received: 10/2/2003. Estimated Value: $400.00. Disposition: Pending transfer to the General Services Administration.	Shaykh Hamad bin Jasim bin Jabir Al Thani, Minister of Foreign Affairs of the State of Qatar.	Non-acceptance would cause the donor or the U.S. Government embarrassment.
Winston Whittington, Special Agent—Diplomatic Security.	Watch—TechnoMarine (Men's). Date Received: 10/1/2003. Estimated Value: $685.00 Disposition: Pending transfer to the General Services Administration.	Shaykh Hamad bin Jasim bin Jabir Al Thani, Minister of Foreign Affairs of the State of Qatar.	Non-acceptance would cause the donor or the U.S. Government embarrassment.

AGENCY: CENTRAL INTELLIGENCE AGENCY

[Record of tangible gifts—2003]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
George J. Tenet, Director, Central Intelligence.	Silvered metal scabbard dagger (Jambiya), 20th Century, in a burgundy velvet fitted case. Rec'd—January 21, 2003. Est. value: $300.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
George J. Tenet, Director, Central Intelligence.	Rug, 10.6 x 8.4, post 1950's, red ground enclosing four medallions on blue to red ground, navy blue guard border. Rec'd—March 18, 2003. Est. value: $600.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
George J. Tenet, Director, Central Intelligence.	Yellow gold rose diamond and tourmaline four-piece ensemble, modern, consisting of: a tassel pendant and beaded necklace, pair of pierced type earrings and a ring, in a gray velvet case. Rec'd—May 05, 2003. Est. value: $500.00.To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
George J. Tenet, Director, Central Intelligence.	Baccarat molded and cut glass luster candlestick with etched glass hurricane shade, modern. H: 21 inches. Rec'd—July 23, 2003. Est value: $300.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
George J. Tenet, Director, Central Intelligence.	Nain silk rug, 9.8 x 6.6, modern, ivory ground with palmette and trellising vine field centering a pulled lobed medallion on olive green to ivory ground, ivory spandrels, palmette and trellising vine guard border on olive green ground. Rec'd—November 13, 2003. Est. value: $2,500.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
George J. Tenet, Director, Central Intelligence.	Goum silk rug. 3.9 x 2.7, modern, emerald green ground with palmette and trellising vine filed centering a pulled star medallion on red ground, lavender floral spandrels, floral and trellising vine guard border on red ground. Rec'd—March 08, 2002. Est. value: $400.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
George J. Tenet, Director, Central Intelligence.	Caucasian rug, 6.6 x 5, modern, red ground with palmette and trellising vine and um field centering a pulled medallion on navy blue-to-red ground, flowering um vase and trellising vine guard border on navy blue ground. Rec'd—October 30, 2003. Est. value: $300.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: CENTRAL INTELLIGENCE AGENCY—Continued

[Record of tangible gifts—2003]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
An Agency Employee	Isphahan rug, 7.11 x 5.2, modern, red ground with palmette and trellising vine field centering a pulled star medallion on navy blue ground, palmette and trellising vine guard border on navy blue ground with signature cartouche and woven Setrafiani/Esphahan. Note: silk warp. Rec'd—April 14, 2003. Est. value: $2,500.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Rug, 10.2 x 6.10, modern, brown ground with seven vertical rows of gulls, multi guard boarder on primary brown ground. Rec'd—November 01, 2002. Est. value: $500.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Lalique molded and frosted glass center bowl of Stalking Leopards amidst palm fronds, inscribed Lalique/France. D: 9¾ inches. Rec'd—June 16, 2003. Est value: $400.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	One-ounce gold bouillon 'Ary Dubai', in a plastic sleeve. 99.9 percent pure. Rec'd—Unknown. Est value: $400.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Hallmark, 18 karat yellow gold chain link necklace, modern, in a light green velvet case. L: 21½ inches Weight: 1 oz. Rec'd—Unknown. Est value: $350.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	(22 karat yellow gold) chain necklace with melee diamond star pendant, modern, in a blue velvet case. Rec'd—Unknown. Est value: $300.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Olivewood relief plaque of The Last Supper, modern, in a rustic self olivewood frame, Overall: 18 x 27 inches. Rec'd—Unknown. Est value: $300.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Embossed silver foliate footed bowl and six individuals dishes, each embossed with floral reserves against a punchwork groud, in a red vinyl and red velvet lined fitted case. D of largest bowl: 8 inches. Rec'd—Unknown. Est value: $300.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: CENTRAL INTELLIGENCE AGENCY—Continued

[Record of tangible gifts—2003]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
An Agency Employee	Unmarked gold mounted ivory five-piece ensemble, modern, consisting of: a leaf pendant necklace, pair of leaf pierced earrings, four-section tubular bracelet and a ring, in a emerald green velvet fitted case. Rec'd—June 20, 2003. Est value: $300.00 To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
An Agency Employee	Gretata-Duval (Middle Eastern 20th Century) Figures Gathered in a Town Square signed Gretata-Duval, lower left oil on canvas. 22 x 18 inches. Rec'd—January 01, 2003. Est value: $300.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: NASA

[Report of travel or expenses of travel]

Name	Description and value	Donor government	Justificaton
Jeffrey A. Hoffman, NASA HAQ, Code M.	Rec'd—March 14, 2003. Value: $2,200.000. Airfare, Hotel and Meals.	Foundation for Strategic Research (Paris, France).	Participation in conference on the role of research Universities in High Technology and the Trans-Atlantic Relationship.

U.S. HOUSE OF REPRESENTATIVES

[Report of travel or expenses of travel]

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
M. Douglass Bellis, Deputy Legislative Counsel.	Room in Rose Hall, Jamaica while speaking at conference on legislative drafting, July 15–July 18, 2003.	University of West Indies	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii)
Terrance W. Gainer, Chief of Police.	Six nights' lodging at Hilton Tel Aviv and meals; ground transportation including day trip to Jerusalem in government vehicle, January 10, 2003–January 17, 2003.	Israel	Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii).

UNITED STATES SENATE

[Report of travel or expenses of travel—calendar year 2003]

Name and title of person accepting travel expenses consistent with the interests of the U.S. Government	Brief description of travel or expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Mr. & Mrs. Lamar Alexander, U.S. Senator and spouse.	August 26–27, 2003. Transportation via Government of Botswana aircraft from Gaborne to Kasane and back.	Government of Botswana	Official transportation within Botswana offered by the President of Botswana and accepted for reasons of security and protocol.

UNITED STATES SENATE—Continued

[Report of travel or expenses of travel—calendar year 2003]

Name and title of person accepting travel expenses consistent with the interests of the U.S. Government	Brief description of travel or expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Mr. Bruce J. Artim, Fellow, Committee on the Judiciary.	May 25–28, 2003. Transportation and meals within the country of Chile.	Government of Chile	Official travel to gather information in advance of the signing and Congressional Action on the U.S.-Chile Free Trade Agreement.
Mr. Steve Biegun, Staff Member, Majority Leader.	August 26–27, 2003. Transportation via Government of Botswana aircraft from Gaborne to Kasane and back.	Government of Botswana	Official transportation within Botswana offered by the President of Botswana and accepted for reasons of security and protocol.
Mr. Christopher E. Campbell, Professional Staff Member, Committee on the Judiciary.	May 25–28, 2003. Transportation and meals within the country of Chile.	Government of Chile	Official travel to gather information in advance of the signing and Congressional Action on the U.S.-Chile Free Trade Agreement.
Mr. & Mrs. Mike DeWine, U.S Senator and spouse.	August 26–27, 2003. Transportation via Government of Botswana aircraft from Gaborne to Kasane and back.	Government of Botswana	Official transportation within Botswana offered by the President of Botswana and accepted for reasons of security and protocol.
Mr. & Mrs. Mike Enzi, U.S. Senator and spouse.	August 26–27, 2003. Transportation via Government of Botswana aircraft from Gaborne to Kasane and back.	Government of Botswana	Official transportation within Botswana offered by the President of Botswana and accepted for reasons of security and protocol.
Mr. and Mrs. William Frist, Senate Majority Leader and spouse.	August 26–27, 2003. Transportation via Government of Botswana aircraft from Gaborne to Kasane and back.	Government of Botswana	Official transportation within Botswana offered by the President of Botswana and accepted for reasons of security and protocol.
Mr. Andy Olson, Staff Member, Office of Senator Frist.	August 26–27, 2003. Transportation via Government of Botswana aircraft from Gaborne to Kasane and back.	Government of Botswana	Official transportation within Botswana offered by the President of Botswana and accepted for reasons of security and protocol.
Mr. David Schiappa, Secretary for the Majority.	August 26–27, 2003. Transportation via Government of Botswana aircraft from Gaborne to Kasane and back.	Government of Botswana	Official transportation within Botswana offered by the President of Botswana and accepted for reasons of security and protocol.
Mr. George Tolbert, Photographer, Sergeant at Arms.	August 26–27, 2003. Transportation via Government of Botswana aircraft from Gaborne to Kasane and back.	Government of Botswana	Official transportation within Botswana offered by the President of Botswana and accepted for reasons of security and protocol.
Ms. Sally Walsh, Director, Inter-Parliamentary Services.	August 26–27, 2003. Transportation via Government of Botswana aircraft from Gaborne to Kasane and back.	Government of Botswana	Official transportation within Botswana offered by the President of Botswana and accepted for reasons of security and protocol.
Mr. John Warner, U.S. Senator	August 26–27, 2003. Transportation via Government of Botswana aircraft from Gaborne to Kasane and back.	Government of Botswana	Official transportation within Botswana offered by the President of Botswana and accepted for reasons of security and protocol.

UNITED STATES SENATE

[Report of tangible gifts—calendar year 2003]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Hillary Rodham Clinton, U.S. Senator.	Recd.—January 28, 2003. Gold pin in the shape of a drum. Est. Value—Unknown. Deposited with the Secretary of the Senate.	First Lady of Liberia	Non-Acceptance would cause donor embarrassment.
Hillary Rodham Clinton, U.S. Senator.	Recd.—January 28, 2003. Small handbag by artist Geon Man Lee. Est.Value—Unknown. Deposited with the Secretary of the Senate.	Seung Youn Kim, Ambassador for International Economic & Trade, Republic of Korea.	Non-Acceptance would cause donor embarrassment.
Hillary Rodham Clinton, U.S. Senator.	Recd.—April 10, 2003. Copy of earrings in exhibition case for the 5th/6th century. Est. Value—Unknown. Displayed in SR–476.	Park Kwan Yong, Speaker of the National Assembly, Seoul, South Korea.	Non-Acceptance would cause donor embarrassment.
Hillary Rodham Clinton, U.S. Senator.	Recd.—November 29, 2003. Replica of a Kuwaiti sailboat with gold plating. Est. Value—Unknown. Deposited with the Secretary of the Senate.	Presented on behalf of the Emir of Kuwait by H.H. Sheika Amthal Al-Ahmed Al-Jaoer Al-Sabah.	Non-Acceptance would cause donor embarrassment.
Chuck Hagel, U.S. Senator	Recd.—May 27, 2003. Limited edition gold coin from State of Bahrain. Est. Value—$3,000. Displayed in SR–247A.	H.H Sheikh Hamad Bin Isa Al-Khalifa, Crown Prince & Commander in Chief of the Bahrain Defense Force.	Non-Acceptance would cause donor embarrassment.
Carl Levin, U.S. Senator	Recd.—February 18, 2003. Silverplated engraved bowl. Est. Value—$101. Deposited with the Secretary of the Senate.	President Pervez Musharraf of Pakistan.	Non-Acceptance would cause donor embarrassment.
Carl Levin, U.S. Senator	Recd.—February 18, 2003. Handcrafted, round wooden table with a gold decorative design. Est. Value—$101. Deposited with the Secretary of the Senate.	General Muhammad Yusaf Khan, Pakistan Army.	Non-Acceptance would cause donor embarrassment.
Richard Lugar, U.S. Senator	Recd.—February 24, 2003. Abstract hanging sculpture by artist Oh Yi-Yang. Est. Value—$100. Displayed in SD–450.	Dr. Dai-Chul Chyung, Member of the South Korean National Assembly.	Non-Acceptance would cause donor embarrassment.
Richard Lugar, U.S. Senator	Recd.—April 9, 2003. Six Crystal Glasses. Est. Value—Over $100. Displayed in SD–450.	Rudolf Schuster, President of the Slovak Republic.	Non-Acceptance would cause donor embarrassment.
Richard Lugar, U.S. Senator	Recd.—June 10, 2003. Crystal Decanter. Est. Value—Over $100. Displayed in SD–450.	Dr. Borut Pahor, President of the National Assembly of the Republic of Slovenia.	Non-Acceptance would cause donor embarrassment.
Richard Lugar, U.S. Senator	Recd.—October 8, 2003. Black vase with blue flowers. Est. Value—Over $100. Displayed in SH–521.	Prime Minister Victor Yanukouych of the Ukraine.	Non-Acceptance would cause donor embarrassment.
Richard Lugar, U.S. Senator	Recd.—October 15, 2003. Elegant pen set. Est. Value—Over $100. Displayed in SD–450.	King Abdullah and Queen Rania of Jordan.	Non-Acceptance would cause donor embarrassment.
Richard Lugar, U.S. Senator	Recd.—November 4, 2003. Embellish bottle and glasses. Est. Value—Over $100.Displayed in SD–450.	The Honorable Sergey Mironov, Speaker the Russian Federation Council.	Non-Acceptance would cause donor embarrassment.
John F. Reed, U.S. Senator	Recd.—November 26, 2003. Rug from Afghanistan. Est. Value—$1000. Displayed in SH–728.	President Karzai of Afghanistan	Non-Acceptance would cause donor embarrassment.

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August 2, 2004

Part IV

Securities and Exchange Commission

17 CFR Part 270
Investment Company Governance; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–26520; File No. S7–03–04]

RIN 3235–AJ05

Investment Company Governance

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is adopting amendments to rules under the Investment Company Act of 1940 to require investment companies ("funds") that rely on certain exemptive rules to adopt certain governance practices. The amendments are designed to enhance the independence and effectiveness of fund boards and to improve their ability to protect the interests of the funds and fund shareholders they serve.

DATES: *Effective date:* September 7, 2004.

Compliance date: January 16, 2006.

FOR FURTHER INFORMATION CONTACT: Catherine E. Marshall, Attorney, Office of Investment Adviser Regulation, (202) 942–0719; C. Hunter Jones, Assistant Director, Office of Regulatory Policy, (202) 942–0690, Division of Investment Management, Securities and Exchange Commission, 450 Fifth St., NW, Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to: rules 0–1(a) [17 CFR 270.0–1(a)]; 10f–3 [17 CFR 270.10f–3]; 12b–1(c) [17 CFR 270.12b–1(c)]; 15a–4(b)(2) [17 CFR 270.15a–4(b)(2)]; 17a–7(f) [17 CFR 270.17a–7(f)]; 17a–8(a)(4) [17 CFR 270.17a–8(a)(4)]; 17d–1(d)(7) [17 CFR 270.17d–1(d)(7)]; 17e–1(c) [17 CFR 270.17e–1(c)]; 17g–1(j)(3) [17 CFR 270.17g–1(j)(3)]; 18f–3(e) [17 CFR 270.18f–3(e)]; 23c–3(b)(8) [17 CFR 270.23c–3(b)(8)]; and 31a–2 [17 CFR 270.31a–2] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the "Investment Company Act" or the "Act").[1]

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[1] Unless Otherwise noted, all references to statutory sections are to the Investment Company act of 1940.

I. Background

In January 2004, the Commission proposed amendments to improve the governance standards of investment companies (*i.e.*, funds).[2] These amendments provide for greater independence of fund boards in the case of funds that rely upon certain exemptive rules that allow funds to engage in transactions that would otherwise be prohibited under the Investment Company Act and that present conflicts of interest between the fund and its management company. These amendments expand upon the fund governance amendments we adopted in 2001, which require that any fund that relies upon those exemptive rules must have a governance structure that provides, among other things, for a board that has a majority of independent directors.[3] In light of recent developments, we now believe that the 2001 amendments do not go far enough in addressing the need for independent fund boards.[4]

We proposed these rule amendments, along with a number of other initiatives,[5] in the wake of a troubling series of enforcement actions involving late trading of mutual fund shares, inappropriate market timing activities, and misuse of nonpublic information about fund portfolios.[6] When we

[2] Investment Company Governance, Investment Company Act Release No. 26323 (Jan. 15, 2004) [69 FR 3472 (Jan. 23, 2004)] ("Proposing Release"). In 2001, we adopted amendments that require any fund that relies upon certain exemptive rules to have (i) a board that has a majority of independent directors; (ii) the independent directors select and nominate independent directors; and (iii) independent directors, if they hire counsel, hire only counsel that does not have substantial ties to fund managers. Role of Independent Directors of Investment Companies, Investment Company Act Release No. 24816 (Jan. 2, 2001) [66 FR 3734 (Jan. 16, 2001)] ("2001 Adopting Release").

[3] In this Release we are using "independent director" to refer to a director who is not an "interested person" of the fund, as defined by the Act. *See infra* note 23.

[4] As one commenter on the proposal noted, "The current requirement for a bare majority of independent directors does not adequately assure that these directors will dominate the decision-making process." Letter from Consumer Federation of America, *et al.*, to Jonathan G. Katz, Secretary, SEC (Mar. 10, 2004), File No. S7–03–04 ("Consumer Federation Letter").

[5] *See, e.g.*, Disclosure Regarding Approval of Investment Advisory Contracts by Directors of Investment Companies, Investment Company Act Release No. 26350 (Feb. 11, 2004) [69 FR 7852 (Feb. 19, 2004)] (proposing release) and 26486 (June 23, 2004) [69 FR 39798 (June 30, 2004)] (adopting release); Investment Adviser Codes of Ethics, Investment Company Act Release No. 26337 (Jan. 20, 2004) [69 FR 4040 (Jan. 27, 2004)] (proposing release) and 26492 (July 2, 2004) [69 FR 41696 (July 9, 2004)] (adopting release); Disclosure of Breakpoint Discounts by Mutual Funds, Investment Company Act Release Nos. 26298 (Dec. 17, 2003) [68 FR 74732 (Dec. 24, 2003)] (proposing release) and 26464 (June 7, 2004) [69 FR 33262 (June 14, 2004)] (adopting release) ("Breakpoint Disclosure"); Disclosure Regarding Market Timing and Selective Disclosure of Portfolio Holdings, Investment Company Act Release Nos. 26287 (Dec. 11, 2003) [68 FR 70402 (Dec. 17, 2003)] (proposing release) and 26418 (Apr. 19, 2004) [69 FR 22300 (Apr. 23, 2004)] (adopting release) ("Market Timing Disclosure"); Mandatory Redemption Fees for Redeemable Fund Securities, Investment Company Act Release No. 26375A (Mar. 5, 2004) [69 FR 11762 (Mar. 11, 2004)]; Prohibition on the Use of Brokerage Commissions to Finance Distribution, Investment Company Act Release No. 26356 (Feb. 24, 2004) [69 FR 9726 (Mar. 1, 2004)]; Amendments to Rules Governing Pricing of Mutual Fund Shares, Investment Company Act Release No. 26288 (Dec. 11, 2003) [68 FR 70388 (Dec. 17. 2003)].

[6] *See, e.g., In the Matter of Alliance Capital Management, L.P.*, Investment Company Act Release No. 26312A (Jan. 15, 2004) (finding that an investment adviser violated its fiduciary duty to the fund by failing to disclose agreements, and making special accommodations, to permit select investors to engage in market timing transactions in exchange for the maintenance of "sticky assets," and finding that the investment adviser divulged material nonpublic information about portfolio holdings); *In the Matter of Putnam Investment Management, LLC*, Investment Company Act Release No. 26255 (Nov. 13, 2003) (finding that an investment adviser failed to disclose potentially self-dealing transactions in shares of funds managed by several of its employees, failed to have procedures reasonably designed to prevent misuse of material nonpublic information, and failed to reasonably supervise the employees who committed violations); *In the Matter of James Patrick Connelly Jr.*, Investment Company Act Release No. 26209 (Oct. 16, 2003) (finding that a former executive of an investment adviser to a fund complex approved agreements that permitted select investors to engage in market timing transactions in certain funds in the complex, in exchange for the maintenance of sticky assets); *In the Matter of Steven B. Markovitz*, Investment Company Act Release No. 26201 (Oct. 2, 2003) (finding that a former hedge fund trader violated the federal securities laws and defrauded investors by engaging in late trading of mutual fund shares). *See also In the Matter of Pilgrim Baxter & Associates, Ltd.*, Investment Company Act Release No. 26470 (June 21, 2004) (finding that the investment adviser violated the federal securities laws by failing to disclose to funds' board of directors or shareholder that its principal was engaged in self-dealing transactions through significant ownership stake in a hedge fund engaged in market timing of fund managed by him, by permitting market timing despite prospectus disclosure to the contrary, and by disclosing material nonpublic portfolio information to a broker-dealer whose customers engaged in market timing the funds); *In the Matter of Strong Capital Management, Inc.*, Investment Company Act Release No. 26409 (May 20, 2004) (finding that investment adviser violated its fiduciary duties to the funds by (i) failing to disclose to the funds' boards or shareholders the conflicts of interest created when the adviser

proposed these amendments, we expressed concern that the enforcement actions in many cases reflected a serious breakdown in management controls. We observed that, in some cases, the fund was used for the benefit of fund insiders, often the management company or its employees. In addition, we had recently adopted a new rule creating the position of fund chief compliance officer, which reports directly to the board on compliance matters.[7] The proposed fund governance standards would complement that rule by placing fund boards in a better position to demand that management adhere to the highest of compliance standards.

Our proposed rules also reflected broader concerns with the governance of mutual funds. We noted that the Act and our rules rely heavily on fund boards of directors to manage the conflicts of interest that advisers have with funds they manage. We noted that a fund adviser is frequently in a position to dominate the board because of the adviser's monopoly over information about the fund and its frequent ability to control the board's agenda. We questioned the ability of a management-dominated board to undertake the many important tasks assigned to the board by the Act and our rules, including negotiating the advisory fee, approving a 12b–1 plan, and resolving conflicts between the fund and the management company.[8]

We proposed to amend ten commonly used exemptive rules under the Investment Company Act ("Exemptive Rules")[9] to require the funds relying on those rules to follow improved governance standards.[10] These rules rely on the independent judgment and scrutiny of directors, including independent directors, in overseeing activities that are beneficial to funds and fund shareholders but that involve inherent conflicts of interest between the funds and their managers. These are the same Exemptive Rules that we amended in 2001. These further amendments provide for greater fund board independence and are designed to enhance the ability of fund boards to perform their important responsibilities under each of the rules.[11]

The proposal engendered a substantial amount of interest. We received nearly 200 comments from fund investors, management companies, independent directors to mutual funds, as well as members of Congress. We also received several comments from organizations that had a more general interest in corporate governance issues. Most commenters supported our efforts to strengthen fund governance, but many were divided on some of our proposals. Some commenters believed the proposed amendments did not go far enough; others recommended certain modifications.

We recognize that these amendments might not have prevented all of the abuses that were uncovered in the enforcement actions discussed above. Nevertheless, if funds are to engage in the transactions permitted by the Exemptive Rules[12] and effectively

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allowed hedge fund to market time certain funds and that the chairman frequently traded certain funds, including a fund for which he served as portfolio manager, (ii) providing hedge fund manager nonpublic portfolio information for certain funds, and (iii) filing fund prospectuses that failed to disclose that the adviser would make exceptions to the disclosed policies discouraging market timing in instances where the fund's chairman or the adviser benefited); *In the Matter of Massachusetts Financial Services Company*, Investment Company Act Release No. 26409 (Mar. 31, 2004) (sanctioning fund investment adviser for failing to disclose to the fund board that the adviser had entered into arrangements with approximately 100 broker-dealers under which the fund adviser agreed to make certain cash payments or direct fund brokerage to certain broker-dealers in return for preferred treatment in promoting fund sales).

[7] Compliance Programs of Investment Companies and Investment Advisers, Investment Company Act Release No. 26299 (Dec. 17, 2003) [68 FR 74714 (Dec. 24, 2003)] ("Compliance Programs").

[8] Directors are generally responsible under state law for the oversight of all of the operations of a mutual fund, and the Investment Company Act assigns many specific responsibilities to fund boards. For example, fund boards must evaluate and approve a fund's advisory contract and may unilaterally terminate the contract. *See* section 15 of the Act [15 U.S.C. 80a–15].

[9] The Exemptive Rules are:

Rule 10f–3 (permitting a fund to purchase securities in a primary offering when an affiliated broker-dealer is a member of the underwriting syndicate, if the fund directors, including a majority of the independent directors, approve procedures governing the purchases and review quarterly reports on purchases);

Rule 12b–1 (permitting use of fund assets to pay distribution expenses pursuant to a plan approved by the fund directors, including a majority of the independent directors);

Rule 15a–4(b)(2) (permitting a fund board to approve an interim advisory contract without shareholder approval when the adviser or a controlling person receives a benefit in connection with the assignment of the contract, if the fund directors, including a majority of the independent directors, review and approve the contract);

Rule 17a–7 (permitting securities transactions between a fund and another client of the fund investment adviser, if the fund directors, including a majority of the independent directors, approve procedures governing the transactions and review quarterly reports on transactions);

Rule 17a–8 (permitting mergers between certain affiliated funds if the fund directors, including a majority of the independent directors, request and evaluate information about the merger and determine that the merger is in the best interests of the fund and its shareholders);

Rule 17d–1(d)(7) (permitting a fund and its affiliates to purchase joint liability insurance policies if the fund directors, including a majority of the independent directors, annually determine that the policies are in the best interests of the fund and its shareholders);

Rule 17e–1 (specifying conditions under which a fund may pay commissions to affiliated brokers in connection with the sale of securities on an exchange, including a requirement that the fund directors, including a majority of the independent directors, adopt procedures for the payment of the commissions and review quarterly reports of any commissions paid);

Rule 17g–1 (permitting a fund to maintain joint insured bonds and requiring fund independent directors to annually approve the bond);

Rule 18f–3 (permitting a fund to issue multiple classes of voting stock, if the fund board of directors, including a majority of the independent directors, approves a plan for allocating expenses to each class); and

Rule 23c–3 (permitting the operation of an interval fund by enabling a closed-end fund to repurchase shares from investors, if the directors adopt a repurchase policy for the fund and review fund operations and portfolio management in order to assure adequate liquidity of investments to satisfy repurchase payments).

Last October we proposed a new exemptive rule, rule 15a–5, that also would be conditioned on meeting the fund governance standards that are currently included in these ten exemptive rules. *See* Exemption from Shareholder Approval for Certain Subadvisory Contracts, Investment Company Act Release No. 26230 (Oct. 23, 2003) [68 FR 61720 (Oct. 29, 2003)]. As we stated when we proposed the fund governance amendments we are adopting today, if we adopt rule 15a–5, we intend to condition its use on compliance with the revised fund governance standards. *See* Proposing Release, *supra* note 2, at n.16.

[10] These rules (i) exempt funds or their affiliated persons from provisions of the Act that can involve serious conflicts of interest and (ii) condition the exemptive relief on the approval or oversight of independent directors. *See* Proposing Release, *supra* note 2, at text accompanying n.16.

[11] For the reasons discussed throughout this Release, we believe that amending the Exemptive Rules to provide for greater board independence and to enhance a board's ability to perform the responsibilities under those rules is necessary and appropriate in the public interest and is consistent with the protection of investors and the purposes of the Act. *See, e.g.*, section 6(c) (authority of the Commission to conditionally exempt a person or transaction if it is "necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title."). Each of the Exemptive Rules permits a fund to engage in transactions or conduct that presents significant conflicts of interest and that otherwise would be restricted or prohibited by the Act. As the Commission already determined when it made similar amendments to the Exemptive Rules in 2001, establishing conditions for the Exemptive Rules based on the independence of the fund board is appropriate to address the types of conflicts Congress identified in the Act. The amendments therefore are well within the Commission's broad authority to "conditionally or unconditionally exempt any person, security, or transaction" from any provision of the Act. *See also infra* Statutory Authority section.

[12] As we stated when we proposed the fund governance amendments that we adopted in 2001, the amended rules do not require all funds to adopt these measures. Although the Commission urges all funds to consider adopting the measures to strengthen the independence of their boards, funds that do not rely on any of the Exemptive Rules will not be subject to these requirements. *See* Role of Independent Directors of Investment Companies, Investment Company Act Release No. 24082 (Oct. 14, 1999) [64 FR 59826 (Nov. 3, 1999)] ("1999 Proposing Release") at text preceding n.34.

manage the conflicts of interest inherent in those transactions, greater board independence is needed. We are adopting them substantially as proposed.

II. The Role of Independent Directors

Before we discuss the rules we are today adopting, we wish to take this opportunity to make some observations about the role of fund directors and, in particular, independent directors.

A. Managing Conflicts of Interest

Fund independent directors play a central role in policing the conflicts of interest that advisers inevitably have with the funds they advise. Many fine individuals today ably serve investors in this capacity. We do not intend that this rulemaking, or the statements we have made about the need for reform of the mutual fund regulatory framework or mutual fund governance, be construed in any way as a challenge to their integrity or commitment to investors. Our efforts today are designed to strengthen the role that independent directors play and to support their work on behalf of fund shareholders. The amendments are intended largely to preserve the current system of fund governance that on the whole has served mutual fund investors well, while addressing its weaknesses.

To be truly effective, a fund board must be an independent force in fund affairs rather than a passive affiliate of management.[13] Its independent directors must bring to the boardroom "a high degree of rigor and skeptical objectivity to the evaluation of management and its plans and proposals," particularly when evaluating conflicts of interest.[14] They must commit their time and energy, and devote themselves to the principles set forth in the Investment Company Act and state corporate and trust law under which the fund is organized.

While the Investment Company Act contains many important requirements with which a fund must comply, the paramount principle that must prevail, and should animate all decisions directors are called upon to make, is that a fund must be managed on behalf of its investors rather than on behalf of the adviser or other affiliated persons of the fund.[15] Directors should be highly skeptical of arguments that merely rationalize the resolution of conflicts in favor of the fund adviser, and should seek results that advance the best interest of fund shareholders.

B. Approving the Advisory Contract and Advisory Fees

Section 15(c) of the Act prohibits a person from serving as an investment adviser to a fund except pursuant to a contract that has been approved by a majority of directors who are not parties to the contract or interested persons of any such party, *i.e.*, the independent directors. Section 15(c) requires fund boards to consider whether to approve the terms of the contract, including the amount of the advisory fee based on, among other things, information provided by the fund adviser. These procedural requirements do not supplant the state law duties of loyalty and care that oblige directors to act in the best interest of the fund when considering important matters the Act entrusts to them, such as approval of an advisory contract and the advisory fee.[16] Nor does the disclosure of the advisory fee in the prospectus relieve the independent directors of the obligation to negotiate the amount of the fee and assure that fund shareholders share in the economies of scale achieved by the growth in fund assets, by, when appropriate, reducing advisory fees.[17]

Section 15(c) also provides that the directors of a fund have a duty to request and evaluate, and the investment adviser has a duty to furnish, the information reasonably necessary to evaluate the terms of an advisory contract. Directors should frame their information requests broadly to obtain complete information relevant to their consideration of the advisory contract, and should include inquiries related to the adviser's material conflicts of interest with the fund and how the adviser deals with those conflicts. Regardless of the scope of the information request, fund advisers have an affirmative obligation under section 206 of the Advisers Act to disclose material information regarding conflicts of interest to the fund and its board.[18]

We reiterate our statement in the Proposing Release that fund

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[13] *See* Division of Corporation Finance, Securities and Exchange Commission, Staff Report on Corporate Accountability (Sept. 4, 1980) (printed for the use of Senate Committee on Banking, Housing, and Urban Affairs, 96th Cong., 2d Sess.) at F2 (noting importance of corporate boards of directors in overseeing performance of corporate management).

[14] Donald C. Langevoort, *The Human Nature of Corporate Boards: Law, Norms, and the Unintended Consequences of Independence and Accountability*, 89 Geo. L. J. 797, 798 (2001). "[T]here are industries where the case for independence is compelling. The best example here is the mutual fund industry, where conflicts of interests are commonplace and traditional checks on managerial overreaching, such as vigorous shareholder voting and hostile tender offers do not exist." *Id.* at 814.

[15] Section 1(b)(2) of the Act [15 U.S.C. 80a–1(b)(2)] ("[T]he national public interest and the interest of investors are adversely affected * * * (2) when investment companies are organized, operated, managed, or their portfolio securities are selected, in the interest of directors, officers, investment advisers, depositors, or other affiliated persons thereof, in the interest of underwriters, brokers, or dealers, in the interest of special classes of their security holders, or in the interest of other investment companies or persons engaged in other lines of business, rather than in the interest of all classes of such companies' security holders * * *").

[16] *See* S. Rep. No. 91–184, at 4902–03 (1969) ("The directors of a mutual fund, like directors of any other corporation, will continue to have * * * overall fiduciary duties as directors for the supervision of all of the affairs of the fund."); Burks v. Lasker, 441 U.S. 471, 478–79 (1979) ("The [Investment Company Act] does not purport to be the source of authority for managerial power; rather, the Act functions primarily to '[impose] *controls* and *restrictions* on the internal management of investment companies.' * * * The ICA and the [Investment Advisers Act] * * * do not require that federal law displace state laws governing the powers of directors unless the state laws permit action prohibited by the Acts, or unless 'their application would be inconsistent with the federal policy underlying the cause of action' * * *.") (emphasis in original) (citations omitted). *See also* Green v. Fund Asset Management, L.P., 245 F.3d 214, 226 (3d Cir. 2001).

[17] *See* Stanley J. Friedman, *The Role of Outside Directors in Negotiating Investment Company Advisory Agreements*, 24 Rev. Sec. & Commod. Reg. 49, 57 (1991) ("[T]he negotiation of investment advisory agreements and renewals is a [serious] business in which the participation of independent directors who are 'qualified, fully informed, and * * * conscientious' will not only benefit the investment company and its shareholders but will also greatly enhance the position of the investment adviser in litigation."); American Bar Association, *Fund Director's Guidebook*, 59 Bus. Law. 201, 223 (2003) ("The 1940 Act contains important provisions governing the relationship between the adviser and the fund's board of directors in *negotiating* an advisory contract.") (emphasis added); David A. Sturms, Mutual Fund Regulation, Part III: Regulation of the Adviser and the Fund Portfolio, PLIREF–MFR § 6:7 (2002) ("[T]he 1940 Act sets forth a specific framework for governing the relationship between the adviser and the fund's board of directors in *negotiating* an advisory contract.") (emphasis added); Review of Current Investigations and Regulatory Actions Regarding the Mutual Fund Industry: Fund Operations And Governance: Hearings before the Senate Committee on Banking, Housing, and Urban Affairs, 108th Cong., 2d Sess., 7–8 (Feb. 26, 2004) (statement of David S. Ruder, Professor, Northwestern University School of Law ("[Fund directors] must bargain with the adviser regarding the costs of its services * * *")) (*http://banking.senate.gov/files/ruder.pdf*). *See also* Schuyt v. Rowe Price Prime Reserve Fund, Inc., 663 F. Supp. 962, 986 (S.D.N.Y. 1987) ("This is not a case where a contract was rubber-stamped by docile individuals; this is a case where competent, aggressive individuals analyzed the facts and *actively bargained* to obtain a better deal for the Fund.") (emphasis added); SEC, Public Policy Implications of Investment Company Growth, *reprinted* in H.R. Rep. No. 89–2337, at 127 (1966) ("Advisory Fees and the Limitations of Disclosure").

[18] 15 U.S.C. 80b–6. *See* SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 201 (1963) (noting that an investment adviser may not trade on the market effect of his recommendations without "fully and fairly revealing his personal interests in these recommendations to his clients"); Vernazza v. SEC, 327 F.3d. 851, 860 (9th Cir. 2003) (noting that investment advisers had a duty to disclose any potential conflicts of interest accurately and completely). *See also In the Matter of Putnam Investment Management, LLC, supra* note 6.

shareholders stand to benefit substantially when the process of negotiation between fund independent directors and investment advisers leads to lower fees.[19] We reaffirm the views we expressed in a statement accompanying a recently settled enforcement proceeding, that the best way to ensure that funds obtain fair and reasonable fees is through a marketplace of vigorous, independent and diligent mutual fund boards, coupled with fully informed investors who are armed with complete, easy-to-digest disclosure about the fees paid and the services rendered.[20] We have recently adopted and proposed new disclosure requirements designed to provide fund investors with this information.[21]

C. Selecting and Nominating Candidates for Independent Directors

The incumbent independent directors of most funds have the responsibility to select and nominate new independent directors.[22] The Investment Company Act provides minimum criteria for persons to qualify as independent directors, and independent directors who satisfy those criteria meet the requirements of the Act.[23] We urge independent directors to look beyond those requirements and examine whether a candidate's personal or business relationships suggest that the candidate will not aggressively represent the interests of fund investors. Persons who have served as executives of the fund adviser or who are close family members of employees of the fund, its adviser or principal underwriter would, in our view, be poor choices for candidates, although they may meet the minimum statutory requirements.[24] We recognize that "legal" independence does not equate with "real" independence. We therefore encourage independent directors, in selecting and nominating other independent directors, to identify individuals who have the background, experience, and independent judgment to represent the interests of fund investors.[25]

III. Discussion of New Rules

We are amending the ten Exemptive Rules under the Act[26] to require that any fund that relies upon any of those rules[27] satisfy the fund governance standards set forth in rule 0–1(a)(7): (i) at least 75 percent of the directors of the fund must be independent directors or, if the fund board has only three directors, all but one of the directors must be independent directors; (ii) the chairman of the board must be an independent director; (iii) the board must perform a self-assessment at least once annually; (iv) the independent directors must meet separately at least once a quarter; and (v) the independent directors must be affirmatively authorized to hire their own staff.[28] We are also amending rule 31a-2 as proposed, to require that a fund retain copies of written materials that the board considers when approving the fund's advisory contract.[29]

A. Board Composition

As discussed above, when Congress passed the Investment Company Act, it relied on independent directors to protect the interests of fund investors. A principal purpose of the amendments is to strengthen the independent directors' control of the fund board and its agenda, so that the interests of investors are paramount. Although the Exemptive Rules currently require a simple majority of the board to be independent and the independent directors to separately approve the transactions covered by those rules, we are concerned that many boards continue to be dominated by their management companies. Accordingly, the amendments provide that each fund relying on any Exemptive Rule must have a board of directors whose independent directors constitute at least 75 percent of the board or, if the fund has only three directors, all but one of the directors must be independent.[30] Most commenters supported the 75 percent amendment.[31] Some commenters recommended that we adopt an even higher percentage.[32] We

[19] Proposing Release, *supra* note 2, at n.30 and accompanying text.

[20] *See* Statement of the Commission Regarding the Enforcement Action Against Alliance Capital Management, L.P., SEC Press Release 2003–176 (Dec. 18, 2003).

[21] *See, e.g.*, Market Timing Disclosure, *supra* note 5; Breakpoint Disclosure, *supra* note 5; Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, Investment Company Act Release No. 26372 (Feb. 27, 2004) [69 FR 11244 (Mar. 9, 2004)]; Confirmation Requirements and Point of Sale Disclosure Requirements for Transactions in Certain Mutual Funds and Other Securities, and Other Confirmation Requirement Amendments, and Amendments to the Registration Form for Mutual Funds, Investment Company Act Release No. 26341 (Jan. 29, 2004) [69 FR 6438 (Feb. 10, 2004)]; Fund of Funds Investments, Investment Company Act Release No. 26198 (Oct. 1, 2003) [68 FR 58226 (Oct. 8, 2003)].

[22] As in effect before these amendments, the Exemptive Rules have required that, for any fund relying on any of the rules, the independent directors must select and nominate other independent directors of the fund. *See, e.g.*, rule 10f–3(c)(11)(i) [17 CFR 270.10f–3(c)(11)(i)]. Before we proposed to amend the Exemptive Rules in 1999, we had already included a similar condition in rule 12b–1 and rule 23c–3. *See* Bearing of Distribution Expenses by Mutual Funds, Investment Company Act Release No. 11414 (Oct. 28, 1980) [45 FR 73898 (Nov. 7, 1980)]; Repurchase Offers By Closed-End Management Investment Companies, Investment Company Act Release No. 19399 (Apr. 7, 1993) [58 FR 19330 (Apr. 14, 1993)]. *See also* 1999 Proposing Release, *supra* note 11, at n.30.

[23] In this Release we are using "independent director" to refer to a director who is not an "interested person" of the fund, as defined by the Act. Section 2(a)(19) of the Act [15 U.S.C. 80a–2(a)(19)] defines "interested person" of a fund to include (i) any affiliated person of the fund; (ii) any member of the immediate family of any natural person who is an affiliated person of the fund; (iii) any interested person of any investment adviser of or principal underwriter for the fund; (iv) any person, or partner or employee of any person, who acted as legal counsel for the fund during the last two completed fiscal years of the fund; (v) any person who executed portfolio transactions for the fund or loaned money or property to the fund during the past six months, or any affiliated person of such a person; and (vi) any natural person who the Commission has determined is an interested person because of his or her material business or professional relationship with the fund during the past two years.

[24] *See* Investment Company Institute, *Report of the Advisory Group on Best Practices for Fund Directors: Enhancing A Culture of Independence and Effectiveness* (June 24, 1999), at 12–13 ("ICI Advisory Group Report") (recommending that former officers or directors of a fund's investment adviser, principal underwriter, or certain of their affiliates not serve as independent directors of the fund); Investment Company Institute, *Resolution of the Board of Governors of the Investment Company Institute* (Oct. 3, 2003) (resolving that ICI members adopt practices to disqualify persons with certain family relationships from serving as independent directors of funds) (*http://www.ici.org/issues/dir/03_fund_gov_best_stmt.html*).

[25] The annual self-assessment performed by the board under the amended rules also may enable independent directors to identify subject areas, such as valuation of portfolio securities, in which the board needs future independent directors to have expertise. *See infra* Section III.C.

[26] *See supra* note 9.

[27] The fund governance conditions of the Exemptive Rules apply to investment companies, including registered investment companies and business development companies, if they rely on these rules.

[28] Rule 0–1(a)(7) [17 CFR 270.0–1(a)(7)], which defines the term "fund governance standards," incorporates the following fund governance requirements with which funds have had to comply since 2001 in order to rely upon any of the Exemptive Rules: (i) a fund's board must have a majority of independent directors, (ii) the fund's independent directors must select and nominate any other independent directors, and (iii) any person acting as legal counsel to the independent directors must be an "independent legal counsel." *See* 2001 Adopting Release, *supra* note 2. The majority independence condition also is being revised to a 75 percent independence condition.

[29] We are also adopting technical amendments to rule 10f–3 to revise certain cross-references within the rule.

[30] *See* rule 0–1(a)(7)(i).

[31] We received approximately 98 comments on this proposed amendment. Comments were submitted from investors, directors (both interested and independent), funds, trade associations, and fund service providers.

[32] *See, e.g.*, Letter from Tom Walker to Jonathan G. Katz, Secretary, SEC (Mar. 9, 2004), File No. S7–03–04 (recommending that fund boards be completely independent); Letter from John and Judy Hesselberth to Jonathan G. Katz, Secretary, SEC

Continued

do not believe that we need to go that far—there are good arguments for maintaining a management presence on the board. Other commenters questioned whether a slightly lower super-majority requirement (*e.g.*, two-thirds) would suffice.[33] We believe the 75 percent requirement adopted by Congress in section 15(f) of the Act will better assure that the independent directors can carry out their fiduciary responsibilities.[34] This requirement was designed to help resolve ongoing conflicts of interest, which can result from the sale of an advisory firm.

Requiring that each fund that relies upon any Exemptive Rule have a board of directors whose independent directors constitute at least 75 percent of the board, will help ensure that independent directors carry out their fiduciary responsibilities. Management controls the day-to-day activities of the fund and has significantly greater access to information about the fund than do the independent directors. This information gives the management directors a significant advantage over the independent directors in setting the board's agenda and potentially dominating board deliberations. The amendments seek to resolve this imbalance. As one commenter noted, "For fund boards to have credibility as they fulfill this responsibility, the board must be firmly under the control of those directors whose sole responsibility is to look out for the interests of shareholders." [35]

A fund board whose independent directors constitute at least 75 percent of the fund board should strengthen the hand of the independent directors when dealing with fund management,[36] and may assure that independent directors maintain control of the board [37] and its agenda.[38]

The final rule differs from the proposed rule in one respect. The proposed rule would have required simply that any fund relying on an Exemptive Rule have a board of directors with at least 75 percent independent directors. Some commenters from funds with small boards expressed concern about the costs of hiring new directors to meet this requirement. A 75 percent standard would require a three-person board with two independent directors to either replace its inside director with an independent director, hire an additional independent director to satisfy the new standard, or seek the resignation of the interested director. We are sensitive to the costs of our rules and therefore have modified the final rule to include an exception for boards with three directors. The final rule provides that a board with three directors satisfies the independence requirement if all but one of the directors (*i.e.*, two directors) are independent.[39]

B. Independent Chairman of the Board

We are adopting an amendment to require that any fund that relies on an Exemptive Rule have a chairman of its board who is an independent director.[40] We received approximately 152 comments on this amendment, which was the most controversial among the fund governance standards we proposed. The comments were divided between those supporting and those opposing the amendment. Those supporting the amendment,[41] including investors and investor groups, stated that an independent chairman would provide many benefits, including better protection of fund shareholders.[42]

A fund board's primary responsibility is to protect the interest of the fund and its shareholders, which may be adversely affected by the substantial ongoing conflicts of interest of the fund management company.[43] The consequences of these conflicts are well demonstrated by many of our ongoing enforcement actions involving late trading, inappropriate market timing and misuse of nonpublic portfolio information.[44] We believe that a fund board is in a better position to protect the interests of the fund, and to fulfill the board's obligations under the Act and the Exemptive Rules,[45] when its chairman does not have the conflicts of interest inherent in the role of an executive of the fund adviser.[46]

(Feb. 24, 2004), File No. S7–03–04 (recommending that the percentage be 100%).

[33] *See, e.g.*, Letter from Association for Investment Management and Research to Jonathan G. Katz, Secretary, SEC (Mar. 19, 2004), File No. S7–03–04.

[34] *See, e.g.*, Letter from John E. Murray, Jr., Lead Director, The Federated Funds, to Jonathan G. Katz, Secretary SEC (Mar. 11, 2004), File No. S7–03–04 ("Murray Letter"). A few commenters recommended that the independence requirements established by the Investment Company Act be tightened. Letter from Independent Directors of the Vanguard Funds to Jonathan G. Katz, Secretary, SEC (Mar. 10, 2004), File No. S7–03–04. See section 2(a)(19) (definition of "interested person").

[35] Consumer Federation Letter, *supra* note 4. *See also* Letter from David Certner, Federal Affairs, AARP, to Jonathan G. Katz, Secretary, SEC (Mar. 12, 2004), File No. S7–03–04 ("Certner Letter") ("By requiring that three-quarters of board members—including the chairman—be independent, the proposed rule helps to ensure that this oversight function will be controlled by individuals whose sole obligation is to ensure that shareholders' interests are protected").

[36] As we noted when we proposed these amendments, section 15(f) of the Act, which provides a safe harbor for the sale of an advisory business, requires that fund directors who are independent of the adviser constitute at least 75 percent of the fund board for three years following the assignment of the advisory contract, and that no unfair burden be imposed on the fund. 15 U.S.C. 80a-15(f). This increased independence of the board was designed to help protect the fund from receiving unfair treatment in circumstances involving potential conflicts of interest. *See* S. Rep. No. 75, 94th Cong., 1st Sess. 140 (1975) ("These conditions are designed to prevent any unfair burden from being imposed on the investment company in connection with such a transaction."). Because the Exemptive Rules permit certain transactions that involve potential harm to the fund as a result of conflicts of interest, *see supra notes* 10–11 and accompanying text, we anticipate that a 75 percent level of independence will similarly equip fund boards to monitor and guard against such harms in connection with the activities of the fund undertaken in reliance on those Rules.

[37] As one commenter noted, a 75 percent level can be more effective than a simple majority in ensuring control of the board by independent directors if one or more independent directors are absent from a board meeting. *See* Consumer Federation Letter, *supra* note 4 ("[I]f one or more of the independent directors has a mediocre attendance record, the majority [of independent directors] may in reality function as a minority.").

[38] Control of the board and its agenda by fund management can hinder the ability of the directors to oversee the fund's operations under the Exemptive Rules. *See, e.g.*, Repurchase Offers by Closed-End Management Investment Companies, Investment Company Act Release No. 19399 (Apr. 7, 1993) (58 FR 19330 (Apr. 14, 1993)] (noting the need for active independent director involvement in the oversight of rule 23c–3 because the determination of the amount of each repurchase offer presents a potential conflict of interest between the investment adviser and shareholders: the investment adviser may be interested in making a small repurchase offer in order to retain maximum assets under management).

[39] *See* rule 0–1(a)(7)(i).

[40] *See* rule 0–1(a)(7)(iv).

[41] *See, e.g.*, Certner Letter, *supra* note 35. *See also* Letter from James J. McMonagle to William H. Donaldson, Chairman, SEC (Jan. 14, 2004), File No. S7–03–04 ("McMonagle Letter"); Letter from Patricia Rizzolo to Jonathan G. Katz, Secretary, SEC (Feb. 24, 2004), File No. S7–03–04.

[42] *See supra* note 11.

[43] *See* 2001 Adopting Release, *supra* note 2. *See also* S. Rep. No. 76–1775, at 6–7 (1940); S. Rep. No. 91–184, at 5–6 (1969); Division of Investment Management, Protecting Investors: A Half Century of Investment Company Regulation 255–263 (1992).

[44] *See supra* note 4.

[45] *See supra* note 9 (describing the responsibilities of fund directors and independent directors to oversee fund activities pursuant to the Exemptive Rules).

[46] A number of our Exemptive Rules require the board to address the fund's activities in circumstances involving these conflicts of interest. *See, e.g.*, rule 12b–1(b)(2) (requiring the fund board to approve the plan for using fund assets to pay for the distribution of fund shares); Bearing of Distribution Expenses by Mutual Funds, Investment Company Act Release No. 11414 (Oct. 28, 1980) [45 FR 73898 (Nov. 7, 1980)] (noting the conflicts of interest between the fund and its adviser when fund assets are used for distribution of shares); rule 17a–8 (requiring directors to request and evaluate information reasonably necessary to determine that the merger of the fund with an affiliated fund is in the fund's best interests, and to determine that the interests of fund shareholders will not be diluted as a result of the merger); Investment Company Mergers, Investment Company Act Release No. 25666 (July 18, 2002) [67 FR 48511 (July 24, 2002)] (discussing some of the factors that directors should

The board chairman can play an important role in setting the agenda of the board, and in establishing a boardroom culture that can foster the type of meaningful dialogue between fund management and independent directors that is critical for healthy fund governance. The chairman can play an important role in providing a check on the adviser, in negotiating the best deal for shareholders when considering the advisory contract, and in providing leadership to the board that focuses on the long-term interests of investors.[47] We believe that a fund chairman is in the best position to fulfill these responsibilities when his loyalty is not divided between the fund and its investment adviser.

Those opposing the amendment, including some independent directors, argued that it would deprive the independent directors of the ability to choose for themselves the most qualified and capable candidate to serve as chairman and thereby undermine the directors' ability to carry out their responsibilities.[48] To be clear, the amendments we are adopting today do not prevent the independent directors from choosing the most qualified and capable candidate. That candidate, however, cannot serve two masters.

Some asserted that independent directors would not have sufficient knowledge or be as well prepared to lead the board through its many tasks, unless the board chairman is affiliated with the adviser and therefore is able to obtain needed information from the advisory firm.[49] They similarly argued that the independent chairman might be drawn into the day-to-day management of the fund. As noted above, we believe a board chairman typically plays an important role in setting the agenda of the board and determining what information is provided to the board. An independent chairman will undoubtedly consult with management in carrying out its functions, as well as in leading the board through its various tasks. But the final decisions in setting the agenda will be made by someone independent of management.[50] Moreover, the chairman is in a unique position to set the tone of meetings, and to encourage open dialogue and healthy skepticism. We believe an independent chairman is better equipped to serve this role. Finally, representatives of management would still be responsible for the day-to-day operations of the fund, would continue to be able to serve as fund directors and would have access to information from the adviser. We do not believe that this amendment will deprive the board of management's knowledge and judgment.

If the board is to provide effective oversight of the management company, there may be times when it must be prepared to say "no" to the manager's chief executive officer.[51] We do not mean to suggest that the relationship between the board and the management company need be adversarial. Indeed, we believe that a crucial challenge to every fund board involves establishing an appropriate balance between cooperation *with* the management company and oversight *of* the management company. Our primary concern, and the one that has led us to adopt this amendment, is that too often the proper balance has not been achieved, particularly where an executive of the adviser has exerted a dominant influence over the board. While having an independent chairman should not disadvantage a board that is properly balanced, it may significantly benefit one that is not.

Some have argued that the Commission needs to demonstrate conclusively that there is a link between having an independent chairman and increased performance or decreased fund expenses.[52] The Commission considered its own and its staff's experience, the many comments received, and other evidence, in addition to the limited and conflicting empirical evidence. From this, we

consider in approving affiliated fund mergers); rule 15a–4 (permitting temporary contract between fund and investment adviser without shareholder approval); Temporary Exemption for Certain Investment Advisers, Investment Company Act Release No. 23325 (July 22, 1998) [63 FR 40231 (July 28, 1998)] at text accompanying notes 24–25 (noting the responsibility of the board under rule 15a–4 to determine that the scope and quality of services under the temporary contract are at least equivalent to those under the previous contract, and noting that the board is empowered to terminate the temporary contract upon short notice, in order to allow it to act quickly if advisory services decline in quality).

[47] *See* Letter from Anne J. Mills, Trustee, to Jonathan G. Katz, Secretary, SEC (Feb. 2, 2004), File No. S7–03–04 (stating that while appointing a lead independent director has improved involvement of independent trustees, "it is still difficult to influence the Board meeting agenda to assure full discussion of the more important items. Having an independent chair will significantly change the dynamics of the board meetings."); Letter from Ashok N. Bakhru, Chairman of the Board and Independent Trustee, Goldman Sachs Trust and Goldman Sachs Variable Insurance Trust, to Jonathan G. Katz, Secretary, SEC (Mar. 9, 2004), File No. S7–03–04 (supporting the amendment and adding that "It has been our experience that the chairman can provide an important and meaningful role in the preparation of board agenda and in fostering the dialogue between fund management and the independent directors on fund-related matters.").

[48] *See* Letter from Investment Company Institute to Jonathan G. Katz, Secretary, SEC (March 10, 2004), File No. S7–03–04; Murray Letter, *supra* note 34.

[49] *See* Letter from F. Pierce Linaweaver, Chairman of the Committee of Independent Directors, T. Rowe Price Mutual Funds, to Jonathan G. Katz, Secretary, SEC (Feb. 25, 2004), File No. S7–03–04.

[50] *See* Letter from Chairman Michael G. Oxley, House Committee on Financial Services, to William H. Donaldson, Chairman, SEC (May 20, 2004), File No. S7–03–04 ("I believe the Commission's independent chairman proposal would eradicate the self-dealing by interested, management-affiliated chairmen and its harmful effects on mutual fund shareholders.") ("Chairman Oxley Letter").

[51] We received a particularly insightful comment letter from a fund independent director who stated that his board's appointment of an independent chairman was instrumental in causing the board to switch fund advisers. *See* McMonagle Letter, *supra* note 41 (stating that the mutual fund of which the author was an independent director changed the advisory contract from one adviser to another, and observing that "[i]f the Chairman of the [mutual fund's board] had not been independent, I am satisfied that we would not have moved the advisory contract.") (emphasis omitted). *See also* Letter from David S. Ruder, Chairman, and Allan S. Mostoff, President and Treasurer, Mutual Fund Directors Forum, to Jonathan G. Katz, Secretary, SEC (May 14, 2004), File No. S7–03–04 (stating that the Mutual Fund Directors Forum will recommend as a best practice that fund boards be chaired by an independent director, because that approach would enhance the power and authority of independent directors and eliminate the chairman's conflicts of interest).

[52] We are not aware of any conclusive research that demonstrates that the hiring of an independent chairman will improve fund performance or reduce expenses, or the reverse. Commenters did not refer us to any pre-existing studies that spoke to this issue. One commenter submitted a study that it commissioned in response to the proposal, that sought to ascertain a correlation between independent chairmen and the performance and expenses of funds. With regard to performance, the study found a correlation between funds with management chairmen and higher performance. The study noted, however, that this correlation may be due to "other important differences [than independence of the chairmen] that may have impacted performance results," such as the prevalence of independent chairmen among bank-sponsored fund groups. With regard to fund expenses, the study found, depending on the method of calculation, lower (but not statistically significant) expenses associated with independent chairmen funds, or higher expenses for those types of funds. The study stated that the expense analysis comparisons were less clear than with the performance results, and "differ considerably depending on what expense measure is used." *See* Geoffrey H. Bobroff and Thomas H. Mack, Assessing the Significance of Mutual Fund Board Independent Chairs, A Study for Fidelity Investments (Mar. 10, 2004) (attached to Letter from Eric D. Roiter, Senior Vice President and General Counsel, Fidelity Management & Research Company to Jonathan G. Katz, Secretary, SEC (Mar. 18, 2004), File No. S7–03–04)). On the other hand, some commenters viewed the data differently and concluded that "[i]ndependently-chaired funds did only slightly better in terms of returns, but at lower cost * * *. Even accepted at face value, Fidelity's data constitute muddy and unpersuasive evidence for continuing to allow senior management company officials to sit in the fund chairman's chair." Remarks by John C. Bogle, Founder and Former CEO, The Vanguard Group, before the Institutional Investor Magazine Mutual Fund Regulation and Compliance Conference (May 5, 2004), File No. S7–03–04. *See also* Letter from John A. Hill, Chairman, The Putnam Funds, to William H. Donaldson, Chairman, SEC (May 12, 2004), File No. S7–03–04.

believe that having independent chairmen can provide benefits and serve other purposes apart from achieving high performance of the fund. In this regard, corporate governance experts have pointed more generally to the value that an independent chairman brings to a corporate board of directors.[53]

We harbor no illusions that the designation of an independent chairman will address all of the compliance and other problems confronting funds.[54] The rules we are adopting today are part of a larger package of regulatory reforms designed both to prevent the compliance failures of yesterday and to strengthen a fund board's ability to deal with compliance challenges of the future. A key element of that larger package is our rule requiring each fund to designate a chief compliance officer who reports directly to the fund board.[55] With the information about fund compliance matters now required by our rule 38a–1, and the information about advisory contract renewal required by section 15(c) of the Act, fund boards are better able to fulfill their responsibilities.[56]

We carefully considered alternatives suggested to us by commenters, including designation of a lead independent director and increased reliance on board committees chaired by independent directors. A lead independent director could provide useful leadership to the independent directors when dealing with the board chairman,[57] and independent committee chairmen may provide important services to the fund. Neither of these arrangements, however, would create a position that is likely to be filled by a person with sufficient stature within the fund complex to serve as an effective counterweight to a fund chairman who may also be the chief executive officer of the management company.[58] Further, as commenters pointed out, "[a]ppointing a lead director does nothing to ensure that independent directors control the agenda, information requests, and terms of board debate." [59] Commenters recommended a variety of other alternatives, including having the audit committee chair set the agenda. We believe that the board's agenda should be under the control of an independent director.

Our action today should not be construed as diminishing the value that executives of the adviser, including the adviser's chief executive officer, bring to the fund boardroom. We fully expect that these executives will continue to serve on fund boards, although not in the capacity of chairman, and thus will have every opportunity to engage the board on issues important to the fund investors as well as the management company.[60] Similarly, to the extent that some executives of the adviser leave fund boards in order to meet the supermajority requirement, we expect that they will continue to participate, in appropriate circumstances, in board and board committee deliberations.

C. Annual Self-Assessment

We are also amending the Exemptive Rules to require fund directors to evaluate, at least once annually, the performance of the fund board and its committees.[61] This evaluation must include a consideration of the effectiveness of the committee structure of the fund board [62] and the number of funds on whose boards each director serves. Most commenters supported this amendment, and we are adopting it as proposed.

This annual self-assessment requirement is intended to improve fund performance by strengthening directors' understanding of their role and fostering better communications and greater cohesiveness. Moreover, the requirement should help fund boards to identify potential weaknesses and deficiencies in the board's performance. The amendment does not require that the board's self-assessment be in writing. Nevertheless, we would expect that the minutes of the board would reflect the substance of the matters discussed during the board's annual self-assessment.[63]

D. Separate Sessions

We are also amending the Exemptive Rules to require independent directors to meet at least once quarterly in a separate session at which no directors who are interested persons of the fund are present.[64] Commenters supported

[53] *See* Ira M. Millstein and Paul W. MacAvoy, *Proposals for Reform of Corporate Governance, in* The Recurrent Crisis in Corporate Governance 95, 119 (2003) ("The first important initiative is for the [corporate] board * * * to develop an identified independent leadership, by separating the roles of chairman of the board and CEO and appointing an independent director as chairman. Independent leadership is critical to positioning the board as an objective body distinct from management. * * * The board cannot function without leadership separate from the management it is supposed to monitor. On behalf of the shareholders, the board must be enabled to obtain the information necessary to monitor * * * the performance of management * * *."). *See also* Consumer Federation Letter, *supra* note 4 ("In light of the fact that the board's chief responsibility is to police conflicts of interest and ensure that shareholders' interests are protected, it is also symbolically important that the chairman be independent. Putting a representative of the investment adviser in this position creates the appearance, and inevitably in some cases, the reality, that the fox is guarding the henhouse.").

[54] One commenter, however, provided statistics indicating that a large majority of mutual fund families implicated in recent scandals have had management-affiliated chairmen at some point during the alleged or admitted violations. Chairman Oxley Letter, *supra* note 50.

[55] *See* Compliance Programs, *supra* note.7.

[56] Section 15 requires that fund directors, including a majority of independent directors, approve the fund's advisory contract each year. The directors must approve the advisory contract initially, and annually thereafter if it continues in effect for more than two years. Section 15(a) and (c) of the Act [15 U.S.C. 80a–15(a) and (c)]. It also requires that the directors first obtain from the adviser the information reasonably necessary to evaluate the contract so that directors would have adequate information upon which to base their decision about the advisory contract generally and the advisory fee in particular. Section 15(c) of the Act [15 U.S.C. 80a–15(c)].

[57] *See* ICI Advisory Group Report, *supra* note 24, at 25 (recommending that independent directors designate one or more lead independent directors).

[58] *See* Letter from Fergus Reid III to William H. Donaldson, Chairman, SEC (May 18, 2004), File No. S7–03–04 ("The Lead Director concept is flawed—A lead director is immediately at a disadvantage when dealing with a strong interested chairman. To assert him or herself, the lead director must oppose or go around the wishes of an interested chairman. This creates tension and ill will and is rarely politically expedient"). The by-laws of some funds may state that the board chairman is an officer of the fund. Under the amendments we are adopting today, a fund in those circumstances that relies on an Exemptive Rule would need to amend its by-laws, because an officer of the fund is an interested person of the fund. *See* section 2(a)(19)(A)(i) of the Act [15 U.S.C. 80a–2(a)(19)(A)(i)] (definition of "interested person"). Funds whose by-laws do not contain such a requirement also may wish to amend their by-laws to require that the chairman be an independent director, as a good corporate practice, to help ensure that a fund relying upon any Exemptive Rule satisfies these fund governance standards. In either case, funds would have to disclose the appointment of any new chairman and the changes to by-laws in their filings with the Commission.

[59] *See* Consumer Federation Letter, *supra* note 4.

[60] Rule 0–1(a)(7)(iv) provides that a fund may rely on an Exemptive Rule only if an independent director serves as chairman of the board of directors of the fund, presides over meetings of the board of directors and has substantially the same responsibilities as would a typical chairman of a board of directors. In response to the amendments we are adopting today, some funds might be tempted to circumscribe the role of the independent chairman to preserve the current role of an interested board chairman. We caution against such action, which may result in the loss of multiple exemptions from provisions of the Act and multiple violations of the Act. For example, a fund could not designate an interested director to preside over meetings or set meeting agendas, or name an interested director as a "co-chairman" of the board. We would not, however, consider temporary performance of a chairman's duties (*e.g.*, due to a chairman's illness or inability to attend) by an interested director (*e.g.*, by a vice chairman) as a failure to meet the requirements of rule 0–1(a)(7)(iv).

[61] *See* rule 0–1(a)(7)(v).

[62] The requirement is designed to focus the board's attention on the need to create, consolidate or revise the various board committees, such as the audit, nominating or pricing committees, and to facilitate a critical assessment of the effectiveness of current board committees.

[63] *See* Proposing Release, *supra* note 2, at n.37.

[64] *See* rule 0–1(a)(7)(vi).

this provision, which is designed to give independent directors the opportunity for a frank and candid discussion among themselves regarding the management of the fund, including its strengths and weaknesses.[65] The rule does not specify the matters that should be discussed by the independent directors at the separate executive sessions, although we expect that the independent directors would use this forum to discuss, among other things, their views on the performance of the fund adviser and other service providers.

E. Independent Director Staff

The final amendment to the Exemptive Rules we are adopting today requires funds to explicitly authorize the independent directors to hire employees and to retain advisers and experts necessary to carry out their duties.[66] Commenters supported this amendment, which is designed to enable independent directors to hire employees and others who will help them deal with matters beyond their expertise. We expect that the amendment should help independent directors address complex matters and provide them with an understanding of the practices of other mutual funds.[67] Fund shareholders should receive substantial benefits because we expect that these requirements will help to ensure that independent directors are better able to fulfill their role of representing shareholder interests.[68]

F. Recordkeeping for Approval of Advisory Contracts

Finally, we are amending rule 31a–2, the fund recordkeeping rule, to require that funds retain copies of the written materials that directors consider in approving an advisory contract under section 15 of the Investment Company Act.[69] Commenters supported this amendment, and we are adopting it as proposed.[70] The amendment requires funds to retain the materials for at least six years, the first two years in an easily accessible place.

The recordkeeping amendment is designed to improve the documentation of a fund board's basis for approving an advisory contract, which would assist our examination staff in determining whether fund directors are fulfilling their fiduciary duties when approving advisory contracts. The amendment underscores the importance of the information requests that precede the directors' consideration of the advisory contract. Further, it may encourage independent directors to request more information, and this information may enable them to obtain more favorable terms in advisory contracts.

IV. Effective Date; Compliance Date

The amendments to the Exemptive Rules will become effective on September 7, 2004.

After January 15, 2006: (i) persons may rely upon any of the Exemptive Rules (rules 10f–3, 12b–1, 15a–4(b)(2), 17a–7, 17a–8, 17d–1(d)(7), 17e–1, 17g–1(j), 18f–3, and 23c–3) only if they comply with all of the "fund governance standards" as defined in rule 0–1(a)(7);[71] and (ii) funds must begin to comply with the recordkeeping requirements of amended rule 31a–2.

V. Paperwork Reduction Act

As discussed in the Proposing Release, the amendment to rule 31a–2 contains a "collection of information" requirement within the meaning of the Paperwork Reduction Act of 1995[72] because the amendment to rule 31a–2 will require funds to retain copies of the written materials that boards consider in approving advisory contracts under section 15(c) of the Investment Company Act. Funds have to retain these materials for at least six years, the first two years in an easily accessible place for our examiners. This collection of information is necessary for our staff to use in its examination and oversight program. Responses provided in the context of the Commission's examination and oversight program are generally kept confidential. The collection of information requirement is mandatory and is in the form of an amendment to a currently approved collection of information requirement, the title of which is "Rule 31a–2, 'Records to be preserved by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.';" An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The approved collection of information associated with rule 31a–2 to be revised by the amendments

[65] We anticipate that the frank and candid discussion among the independent directors also would cover the fund's activities pursuant to the Exemptive Rules. The independent directors, for example, could discuss the use of fund assets to pay for the distribution of fund shares under rule 12b–1 and the fund's 12b–1 plan adopted by the board. *See supra* note 46.

[66] *See* rule 0–1(a)(7)(vii). The amendment does not *require* independent directors to hire employees or retain advisers or experts.

[67] Some of the Exemptive Rules, for example, require that fund directors oversee complex transactions. *See, e.g.*, rule 10f–3 (permitting funds to purchase securities in a primary offering when an affiliated broker-dealer is a member of the underwriting syndicate if the fund's board, including a majority of its independent directors, (i) approves procedures regulating purchases of these securities and (ii) determines at least quarterly that the purchases complied with the board-approved procedures). The rules also require directors of funds relying on the rules to exercise vigilance in protecting funds and their investors. *See, e.g.*, Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate, Investment Company Act Release No. 22775 (July 31, 1997) [62 FR 42401 (Aug. 7, 1997)], at n.52 and accompanying text (the fund's board should be "vigilant" not only in reviewing the fund's compliance with the procedures required by rule 10f–3, but also "in conducting any additional reviews that it determines are needed to protect the interests of investors"). Directors may need to hire staff to help conduct these reviews.

[68] One of the most useful advisers independent directors should consider engaging is their own counsel. Although we are not requiring independent directors to have their own counsel, we agree with the American Bar Association's view that "[t]he complexities of the Investment Company Act, the nature of the separate responsibilities of independent directors and the inherent conflicts of interest between a mutual fund and its managers effectively require that independent directors seek the advice of counsel in understanding and discharging their special responsibilities." American Bar Association, *Report of the Task Force on Independent Director Counsel, Subcommittee of Investment Companies and Investment Advisers, Committee on Federal Regulation of Securities, Section of Business Law: Counsel to the Independent Directors of Registered Investment Companies* at 3 (Sept. 8, 2000). *See generally* James D. Cox, *Symposium: Lessons from Enron, How Did Corporate and Securities Law Fail? Managing and Monitoring Conflicts of Interests: Empowering the Outside Directors with Independent Counsel*, 48 Vill. L. Rev. 1077 (2003). If independent directors do hire their own counsel, and their fund relies on any of the Exemptive Rules, such counsel must be an "independent counsel." Rule 0–1(a)(7)(iii).

[69] *See* rule 31a–2(a)(6). *See also supra* note and accompanying text.

[70] We did not receive specific comment on the detailed questions on which we sought comment pursuant to section 31(a)(2) of the Act [15 U.S.C. 80a–30(a)(2)), *i.e.*, whether there are feasible alternatives to the proposed amendment that would minimize the recordkeeping burdens, the necessity of these records in facilitating the examinations carried out by our staff, the costs of maintaining the required records, and any effects that the proposed recordkeeping requirements would have on firms' internal compliance policies and procedures. We have nevertheless considered those issues in the course of adopting this recordkeeping rule amendment. We do not believe that there are any feasible alternatives to the amendment that would minimize recordkeeping burdens, and, as discussed above, the records are necessary to facilitate the examinations carried out by our staff. Finally, we are not aware of any adverse effects that the recordkeeping requirement will have on the nature of firms' internal compliance policies and procedures. In fact, we anticipate that the recordkeeping requirement will facilitate fund internal compliance programs because the fund's compliance staff will be able to monitor the information on which directors rely in approving the fund's advisory contract.

[71] After the effective date but before the compliance date of the amendments, a person that relies on an Exemptive Rule must continue to meet the fund governance requirements of the Exemptive Rules we adopted in 2001 concerning a majority of independent directors, independent director self-selection and self-nomination, and independent legal counsel. *See* Proposing Release, *supra* note 2.

[72] 44 U.S.C. 3501 to 3520.

displays control number 3235–0179. The Commission submitted the collection to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. OMB has approved the collection of information under control number 3235–0179 (expiring on July 31, 2007).

The amendment to the collection of information requirement for rule 31a–2 is necessary for our compliance examiners to determine whether fund boards have met the requirements of section 15 of the Investment Company Act when approving investment advisory contracts. Our compliance examiners will review these materials to gauge a fund board's fulfillment of the requirements of section 15 of the Act.

As discussed above, we are adopting the amendment to rule 31a–2 and this collection of information requirement as proposed. In the Proposing Release, our staff estimated that each fund will spend a total of 0.5 hours annually and a total of $9.46 for clerical time to comply with this amendment.[73] In the Proposing Release, we solicited comments on the accuracy of these estimates. None of the comments received specifically addressed our estimates of the costs associated with the collection of information requirement.[74] Our staff continues to estimate that each fund will spend a total of 0.5 hours annually and a total of $9.46 for clerical time to comply with this amendment. Because of the increase in the number of registered funds to 5,132 funds, however, our staff estimates that the total hour burden of the collection of information requirement for all funds is 2,566 hours and a total of $48,548.72 annually to comply with this amendment.

VI. Cost-Benefit Analysis

We are sensitive to the costs and benefits imposed by our rules. As discussed in section III above, these amendments require that funds relying on any of the Exemptive Rules adopt certain governance practices that are designed to enhance the independence and effectiveness of fund boards. We also are adopting amendments to require that funds maintain materials considered by a fund board when approving an advisory contract. In the Proposing Release, we identified probable costs and benefits of each of these proposed amendments that we are adopting today, and we requested public comment on our analysis of the costs and benefits of each of these amendments.

We expect that funds and fund shareholders are likely to benefit from the amendments because they are designed to strengthen the role of independent directors so that fund boards can more effectively manage conflicts of interest, monitor service providers, and protect the interests of fund shareholders. Boards that satisfy these conditions should be more effective at exerting an independent influence over fund management and other fund service providers because the fund independent directors are more likely to be primarily loyal to the fund shareholders rather than the fund adviser.

A. Benefits

The amendments seek to promote strong fund boards that effectively perform their oversight role. By increasing the independence of fund boards, the amendments are designed to improve the quality of the oversight of the process for the benefit of fund investors. Vigilant and informed oversight by a strong, effective and independent fund board may help to prevent problems such as late trading and market timing. These benefits may increase investor confidence in fund management. While these benefits are not easily quantifiable in terms of dollars, we believe they are real, and that the amendments will strengthen the hand of independent directors to the advantage of shareholders.[75] A fund board whose independent directors constitute at least 75 percent of the fund board should strengthen the hand of the independent directors when dealing with fund management, and may assure that independent directors maintain control of the board and its agenda.[76]

We expect that requiring fund boards to be chaired by an independent director will provide similar benefits to increasing the percentage of independent directors. Because the chairman of a fund board can have a substantial influence on the fund board agenda and on the fund boardroom's culture, we expect that this requirement will advance meaningful dialogue between the fund adviser and independent directors and will support the role of the independent directors in overseeing the fund adviser. Further, we expect that the opportunity for frank and candid discussions among independent directors that will result from the rule amendments will increase the effectiveness of the independent directors.[77]

The amendment to require an annual self-assessment of the effectiveness of the board and its committees is intended to improve fund performance by strengthening directors' understanding of their role and fostering better communications and greater cohesiveness. Moreover, the requirement for fund boards to perform an annual self-assessment should help fund boards to identify potential weaknesses and deficiencies. All but one of the comments received expressed support for a requirement that boards perform a self-assessment.

We expect that the requirement that independent directors must meet at least once quarterly in separate sessions, without the presence of directors who are interested persons, likewise will improve fund performance by strengthening the role of independent directors and fostering better communications and greater cohesiveness among the independent directors. Commenters were supportive of this proposal.

We expect that the amendment to require funds to explicitly authorize independent directors to hire employees and to retain advisers and experts will help independent directors address complex matters and provide them with an understanding of the practices of other mutual funds. Fund shareholders should receive substantial benefits because we expect that these requirements will help to ensure that independent directors are better able to fulfill their role of representing shareholder interests. Most commenters expressed support for this amendment. These commenters agreed that fund boards already have the authority to hire

[73] In the Proposing Release, we estimated that 5,124 funds would incur costs under this requirement. To calculate these costs, our staff used $18.92 per hour as the average cost of clerical time. We now estimate that there are 5,132 registered funds that may incur costs under this amendment.

[74] *See* Letter from James H. Bodurtha, Chair, Directors' Committee, Investment Company Institute, to Jonathan G. Katz, Secretary, SEC (Mar. 10, 2004), File No. S7–03–04 (stating that "We believe that the retention costs should be minimal and should not be a consideration in the implementation of this proposal. Requiring retention, in our opinion, will not change practices in terms of the volume of information requested by directors in connection with their review of the advisory contract.") ("ICI Letter").

[75] For a more complete discussion of the benefits to shareholders and boards in overseeing a fund's activities under the Exemptive Rules, *see supra* Section III.

[76] The majority of commenters generally agreed that increasing the independence of fund boards was beneficial to fund shareholders. Some commenters recommended that the percentage of independent directors be greater than 75 percent or that the conditions for being an independent director be stricter.

[77] Commenters were divided as to the relative benefits of this requirement. *See supra* text following note 40.

employees, but that this is a useful amendment.

Finally, the recordkeeping amendment is designed to improve the documentation of a fund board's basis for approving an advisory contract, which will assist our examination staff in determining whether fund directors are fulfilling their fiduciary duties when approving advisory contracts. The amendment to rule 31a–2 underscores the importance of the information requests that precede the directors' consideration of the advisory contract. Further, it may encourage independent directors to request more information, and this information may enable them to obtain more favorable terms in advisory contracts. Comments generally were supportive of this amendment.

B. Costs

The amendments will impose additional costs on funds that rely on an Exemptive Rule by requiring them to satisfy the fund governance standards in rule 0–1(a)(7). The amendments will require that independent directors constitute at least 75 percent of the fund board or, if the fund board has only three directors, will require that all but one director be independent.[78] Therefore, a fund that does not already meet this standard may: (i) Decrease the size of its board and allow some interested directors to resign; (ii) maintain the current size of its board and replace some interested directors with independent directors; or (iii) increase the size of its board and elect new independent directors. If a fund holds a shareholder election, it will incur costs to prepare proxy statements and hold the shareholder meeting. A fund also will incur costs of finding qualified candidates and compensating those new independent directors.[79] As noted in the Proposing Release, our staff has no reliable basis for determining how funds would choose to satisfy this requirement and therefore it is difficult to determine the costs associated with electing independent directors.[80] As discussed in section III above, under the proposed amendments, boards that have three directors, unlike fund boards that have four or more directors, would have to be composed of all independent directors in order to meet the 75 percent requirement or, alternatively, would incur costs to increase their board size to four directors. In response to concerns about the effect of the requirement on boards with only three directors, the exception to the 75 percent requirement we are adopting permits boards with three directors to have all but one director be independent.

The amendments also require: (i) An independent director to be chairman of the board; (ii) directors to perform an evaluation of the board and its committees, at least once annually; (iii) independent directors to meet in an executive session at which no director who is an interested person of the fund is present, at least once quarterly; and (iv) independent directors to be given specific authority to hire employees and retain experts. As discussed in the Proposing Release, our staff is not aware of any out-of-pocket costs that would result from the first three items because these requirements could be satisfied at a regularly scheduled board meeting.[81] A few comments expressed concern about costs of requiring separate executive sessions at least once quarterly. However, as discussed in the Proposing Release, we expect that most funds would choose to satisfy this requirement by having directors meet at a breakout session of regularly scheduled board meetings, which would impose no additional transportation and little or no accommodation costs for the directors. Therefore, we expect that the costs of complying with this requirement would be minimal. With regard to the fourth item, our staff is not aware of any costs associated with hiring employees or retaining experts because boards typically have this authority under state law, and the rule would not require them to hire employees or retain experts.

Our staff expects that the amendment to require funds to retain copies of materials considered by the board in approving advisory contracts would result in some increased recordkeeping costs. Our staff anticipates that the increased costs will be limited, however, because many if not most funds already maintain the documents that the proposed amendment would require them to keep. Even for firms that do not already maintain such records, our staff anticipates that the costs of the amendment will be limited.[82] This recordkeeping proposal merely requires the retention of documents already prepared. Further, as with other records, funds would be able to maintain the required records electronically. For purposes of the Paperwork Reduction Act, our staff estimated that each fund will spend a total of 0.5 hours of clerical time annually, at a total of $9.46, to comply with this proposal. We requested comment on the number of funds that already retain these materials, and on the costs of retaining such materials. We did not receive any comments specifically addressing this issue.[83]

VII. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis ("FRFA") has been prepared in accordance with 5 U.S.C. 604 relating to the amendments to the Exemptive Rules and the Commission's rules on investment company governance. An Initial Regulatory Flexibility Analysis ("IRFA") was prepared in accordance with 5 U.S.C. 603 and was published in the Proposing Release.[84]

A. Reasons for and Objectives of the Amendments

As described in Section I of this Release and in the Proposing Release, the Investment Company Act relies heavily on fund boards of directors to manage conflicts of interest that the fund adviser inevitably has with the fund. The reasons for these amendments are that the breakdown in fund management and compliance controls evidenced by our enforcement cases raises troubling questions about the ability of many fund boards, as presently constituted, to effectively oversee the management of funds. The objectives of the amendments, which apply to funds relying on any of the Exemptive Rules, are to enhance the independence and effectiveness of fund boards and to improve their ability to protect the interests of the funds and fund shareholders they serve and to effectively oversee management of the fund.

[78] As indicated in the Proposing Release, our staff estimated that nearly sixty percent of all funds currently meet this requirement. *See* Proposing Release, *supra note* 2 .

[79] Under some circumstances a vacancy on the board may be filled by the board of directors. *See* section 16(a) of the Investment Company Act [15 U.S.C. 80a–16(a)].

[80] With respect to the requirements related to independent selection and nomination of other independent directors and independent legal counsel, this amendment incorporates the current requirements of the Exemptive Rules, and therefore these amendments do not impose new costs.

[81] There may, however, be indirect costs associated with these provisions. An independent chairman, for example, may choose to hire staff for assistance in carrying out his or her responsibilities as chairman. We have no reliable basis for estimating those costs.

[82] For purposes of the Paperwork Reduction Act, our staff estimates that each fund would spend approximately 0.5 hours annually maintaining records of documents reviewed by fund boards when approving advisory contracts. *See* Proposing Release, *supra* note 2, at Section IV.

[83] *See* ICI Letter, *supra* note 74.

[84] *See* Proposing Release, *supra* note 2, at Section VI.

B. Significant Issues Raised by Public Comment

In the IRFA, we requested comment on any aspect of the IRFA and specifically requested comment on the number of small entities that would be affected by the proposed amendments, the likely impact of the proposal on small entities, and the nature of any impact, and empirical data supporting the extent of the impact. We received a few comments on the impact on small entities.[85] Four commenters expressed concern about the costs associated with hiring new directors for funds with small boards to satisfy the requirement that 75 percent of the board be independent. These commenters also stated that the costs associated with the amendments would be great for small entities because of the costs of retaining independent legal counsel, the cost of paying for more directors, the costs of holding separate meetings for independent directors, the costs of hiring staff for independent directors and the costs of having an independent director serve as chairman.[86]

C. Small Entities Subject to the Amendments

A small business or small organization (collectively, "small entity") for purposes of the Regulatory Flexibility Act is a fund that, together with other funds in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[87] Of approximately 5,132 registered investment companies, approximately 233 are small entities.[88] As discussed above, the amendments would require funds relying on an Exemptive Rule to comply with rule 0–1(a)(7) and all funds to retain records under rule 31a–2. Whether these amendments to the Exemptive Rules would affect small entities would depend on whether the small entities rely on an Exemptive Rule.[89] Under rule 31a–2, all small entities would be required to maintain records of materials considered by a fund board when approving an advisory contract.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The amendments do not introduce any new mandatory reporting requirements. The amendments contain new mandatory recordkeeping requirements. Any fund, regardless of size, is required to maintain records of written materials that directors consider to approve an advisory contract. The amendments also introduce new compliance requirements for any fund that relies on an Exemptive Rule. Any fund that relies on an Exemptive Rule is required to satisfy the fund governance standards in rule 0–1(a)(7), including having: (i) A board of directors whose independent directors constitute at least 75 percent of the board;[90] (ii) an independent director be chairman of the board; (iii) directors perform an evaluation of the board and its committees, at least once annually; (iv) independent directors meet in an executive session at which no director who is an interested person of the fund is present, at least once quarterly; and (v) independent directors be given specific authority to hire employees and other advisers.

E. Agency Action to Minimize the Effect on Small Entities

We are concerned about the impact of these amendments on small entities. In response to comments about the impact of the proposed 75 percent independence requirement on small fund boards, we are adopting an alternative for fund boards with only three directors.[91] Unlike fund boards composed of four or more directors, fund boards with only three directors would have to be composed of all independent directors in order to meet the 75 percent requirement or, alternatively, would have increase their board size to four directors. We are adopting an alternative to the 75 percent requirement for boards composed of three directors that would permit all but one director to be independent. With respect to the establishment of other special alternatives for small entities, we do not presently think this is feasible or necessary because these amendments are designed to strengthen the role of independent directors so that fund boards can more effectively manage conflicts of interest, monitor service providers, and protect the interests of fund shareholders. The need to strengthen the role of independent directors arises in part from problems uncovered in enforcement actions and settlements. Excepting small entities from the amendments could disadvantage fund shareholders of small entities and compromise the effectiveness of the amendments. Because we believe that small entities are as vulnerable to the problems uncovered in recent enforcement actions and settlements as large entities, shareholders of small entities are equally in need of more independent fund boards. Thus, specific measures must be undertaken by all funds, regardless of size, to increase the independence of boards to provide better oversight of service providers and compliance matters, to better manage conflicts of interest and to better protect fund shareholders.

VIII. Consideration of Promotion of Efficiency, Competition and Capital Formation

Section 2(c) of the Investment Company Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. The amendments requiring that funds adopt certain governance practices if they rely on any of the Exemptive Rules are designed to enhance the independence and effectiveness of fund boards. The amendment to require that funds maintain materials considered by a fund board when approving an advisory contract is designed to improve the documentation of a fund board's basis for approving an advisory contract, which would assist our examinations staff in determining whether fund directors are fulfilling their fiduciary duties when approving advisory contracts. We do not expect these amendments to have a significant effect on efficiency, competition and capital formation with regard to funds because the costs associated with the amendments are minimal and many funds have already adopted the required practices. To the extent that these amendments do affect competition or capital formation, we believe that the

[85] These commenters defined small entities as entities with assets ranging from assets under $218 million to assets under $100 million, as opposed to assets under $50 million.

[86] These amendments that we proposed and are adopting, however, do not require independent directors to retain independent legal counsel or to hire staff for independent directors, nor do these amendments require funds to increase the size of their boards.

[87] 17 CFR 270.0–10.

[88] Some or all of these entities may contain multiple series or portfolios. If a registered investment company is a small entity, the portfolios or series it contains are also small entities.

[89] We now estimate that there are 5,132 registered funds, of which 233 are small entities. As discussed in the Proposing Release, our staff estimates that approximately 90 percent of all registered investment companies, or 4,619 funds, rely on at least one Exemptive Rule. If 90 percent of all small entities rely on at least one Exemptive Rule, then approximately 210 funds that are small entities would rely on at least one Exemptive Rule and would therefore be affected by the amendments to the Exemptive Rules. *See* Proposing Release, *supra* note 2.

[90] If the board consists of three directors, however, the board need only include two independent directors.

[91] We estimate that 30 funds that are small entities have boards with only three directors.

effect will be positive because the amendments are likely to reduce the risk of securities law violations such as late trading in mutual funds and market timing violations, and thus increase investor confidence in mutual funds. In the Proposing Release, we solicited comments on our analysis of the impact of these amendments on efficiency, competition and capital formation. We did not receive any comments on our analysis.

Statutory Authority

We are amending rule 0–1(a) and the Exemptive Rules pursuant to the authority set forth in sections 6(c), 10(f), 12(b), 17(d), 17(g), 23(c), and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–10(f), 80a–12(b), 80a–17(d), 80a–17(g), 80a–23(c), and 80a–37(a)]. We are amending rule 31a–2 under the Investment Company Act pursuant to the authority set forth in sections 12(b) and 31(a) [80a–12(b) and 80a–30(a)].

Text of Rules

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

■ For the reasons set out in the preamble, the Commission is amending Title 17, Chapter II of the Code of Federal Regulations as follows.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 1. The authority citation for Part 270 is amended by adding the following citation in numerical order to read as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

* * * * *

Section 270.0–1(a)(7) is also issued under 15 U.S.C. 80a–10(e);

* * * * *

■ 2. Section 270.0–1 is amended by adding paragraph (a)(7) to read as follows:

§ 270.0–1 Definition of terms used in this part.

(a) * * *

(7) *Fund governance standards.* The board of directors of an investment company ("fund") satisfies the *fund governance standards* if:

(i) At least seventy-five percent of the directors of the fund are not interested persons of the fund ("disinterested directors") or, if the fund has three directors, all but one are disinterested directors;

(ii) The disinterested directors of the fund select and nominate any other disinterested director of the fund;

(iii) Any person who acts as legal counsel for the disinterested directors of the fund is an independent legal counsel as defined in paragraph (a)(6) of this section;

(iv) A disinterested director serves as chairman of the board of directors of the fund, presides over meetings of the board of directors and has substantially the same responsibilities as would a chairman of a board of directors;

(v) The board of directors evaluates at least once annually the performance of the board of directors and the committees of the board of directors, which evaluation must include a consideration of the effectiveness of the committee structure of the fund board and the number of funds on whose boards each director serves;

(vi) The disinterested directors meet at least once quarterly in a session at which no directors who are interested persons of the fund are present; and

(vii) The disinterested directors have been authorized to hire employees and to retain advisers and experts necessary to carry out their duties.

■ 3. Section 270.10f–3 is amended by:

■ a. Revising the reference to "paragraphs (b)(1)(iv) and (b)(2)(i)" to read "paragraphs (c)(1)(v) and (c)(2)(i)" in paragraph (c)(3);

■ b. Revising the reference to "paragraph (b)(10)(iii)" to read "paragraph (c)(10)(iii)" in paragraph (c)(9);

■ c. Revising the reference to "paragraphs (b)(10)(i) and (b)(10)(ii)" to read "paragraphs (c)(10)(i) and (c)(10)(ii)" in paragraph (c)(12)(i);

■ d. Revising the reference to "paragraph (b)(10)(iii)" to read "paragraph (c)(10)(iii)" in paragraph (c)(12)(ii); and

■ e. Revising paragraph (c)(11).

The revision reads as follows:

§ 270.10f–3 Exemption for the acquisition of securities during the existence of an underwriting or selling syndicate.

* * * * *

(c) * * *

(11) *Board composition.* The board of directors of the investment company satisfies the fund governance standards defined in § 270.0–1(a)(7).

* * * * *

■ 4. Section 270.12b–1 is amended by revising paragraph (c) to read as follows:

§ 270.12b–1 Distribution of shares by registered open-end management investment company.

* * * * *

(c) A registered open-end management investment company may rely on the provisions of paragraph (b) of this section only if its board of directors satisfies the fund governance standards as defined in § 270.0–1(a)(7);

* * * * *

■ 5. Section 270.15a–4 is amended by revising paragraph (b)(2)(vii) to read as follows:

§ 270.15a–4 Temporary exemption for certain investment advisers.

* * * * *

(b) * * *

(2) * * *

(vii) The board of directors of the investment company satisfies the fund governance standards defined in § 270.0–1(a)(7).

■ 6. Section 270.17a–7 is amended by revising paragraph (f) to read as follows:

§ 270.17a–7 Exemption of certain purchase or sale transactions between an investment company and certain affiliated persons thereof.

* * * * *

(f) The board of directors of the investment company satisfies the fund governance standards defined in § 270.0–1(a)(7); and

* * * * *

■ 7. Section 270.17a–8 is amended by revising paragraph (a)(4) to read as follows:

§ 270.17a–8 Mergers of affiliated companies.

* * * * *

(a) * * *

(4) *Board composition.* The board of directors of the Merging Company satisfies the fund governance standards defined in § 270.0–1(a)(7).

* * * * *

■ 8. Section 270.17d–1 is amended by revising paragraph (d)(7)(v) to read as follows:

§ 270.17d–1 Applications regarding joint enterprises or arrangements and certain profit-sharing plans.

* * * * *

(d) * * *

(7) * * *

(v) The board of directors of the investment company satisfies the fund governance standards defined in § 270.0–1(a)(7).

* * * * *

■ 9. Section 270.17e–1 is amended by revising paragraph (c) to read as follows:

§ 270.17e–1 Brokerage transactions on a securities exchange.

* * * * *

(c) The board of directors of the investment company satisfies the fund governance standards defined in § 270.0–1(a)(7); and

* * * * *

■ 10. Section 270.17g–1 is amended by revising paragraph (j)(3) to read as follows:

§ 270.17g–1 Bonding of officers and employees of registered management investment companies.

* * * * *

(j) * * *

(3) The board of directors of the investment company satisfies the fund governance standards defined in § 270.0–1(a)(7).

* * * * *

■ 11. Section 270.18f–3 is amended by revising paragraph (e) to read as follows:

§ 270.18f–3 Multiple class companies.

* * * * *

(e) The board of directors of the investment company satisfies the fund governance standards defined in § 270.0–1(a)(7).

* * * * *

■ 12. Section 270.23c–3 is amended by revising paragraph (b)(8) to read as follows:

§ 270.23c–3 Repurchase offers by closed-end companies.

* * * * *

(b) * * *

(8) The board of directors of the investment company satisfies the fund governance standards defined in § 270.0–1(a)(7).

* * * * *

■ 13. Section 270.31a–2 is amended by:

■ a. Removing the word "and" at the end of paragraph (a)(4);

■ b. Removing the period at the end of paragraph (a)(5) and adding in its place "; and"; and

■ c. Adding paragraph (a)(6) to read as follows:

§ 270.31a–2 Records to be preserved by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.

(a) * * *

(6) Preserve for a period not less than six years, the first two years in an easily accessible place, any documents or other written information considered by the directors of the investment company pursuant to section 15(c) of the Act (15 U.S.C. 80a–15(c)) in approving the terms or renewal of a contract or agreement between the company and an investment adviser.

* * * * *

Dated: July 27, 2004.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Dissent of Commissioners Cynthia A. Glassman and Paul S. Atkins Investment Company Governance, Release No. IC–26520

We write jointly to dissent from the Commission's adoption of amendments to rules under the Investment Company Act of 1940 ("Investment Company Act" or "Act") that generally require a fund's board of directors: (1) To be composed of directors, at least 75 percent of whom are independent, and (2) to be led by an independent director as its chairperson.[1] We support the rulemaking's commendable objective of strengthening investor protection for fund shareholders. However, we fear that the path chosen to achieve this objective may lead in the opposite direction—at a substantial cost to fund shareholders. Because the fund industry is a $7.6 trillion industry, it is easy to ignore or lose sight of the fact that the costs of regulatory requirements are ultimately paid by fund shareholders, for whom small differences in fees are of great importance.[2]

As the release indicates, although the benefits of the amendments are difficult to quantify, a majority of the Commission "believe[s] they are real."[3] The majority postulates that the new independence requirements will "strengthen the hand of the independent directors when dealing with fund management, and may assure that independent directors maintain control of the board and its agenda."[4] However, despite the existence of empirical data that could have been analyzed to evaluate potential benefits, the proponents provided no such analysis. Moreover, the majority speculates sanguinely that the benefits of these amendments will come at "minimal" cost to funds.[5] Positing that empirical evidence is unnecessary, the majority dismisses pleas for more deliberate action.[6] A particular standard of independence is not, in and of itself, a legitimate regulatory objective. Therefore, before we mandate that all funds meet any particular independence standard, it must be objectively linked (by more than anecdotal evidence and "gut impression") to real benefits for shareholders.

Existing Independence Requirements Are Sufficient To Ensure Meaningful Influence

Existing statutory and regulatory requirements already ensure that independent directors can make their voices heard and heeded. In enacting the Investment Company Act, Congress prescribed a fund board's independence requirements. Section 10(a) of the Investment Company Act requires that at least forty percent of a fund's board be independent.[7] Section 10(b)(2) of the Act requires, in effect, that independent directors comprise a majority of a fund's board if the fund's principal underwriter is an affiliate of the fund's adviser.[8] Moreover, certain board actions cannot be taken without approval by a majority of the independent directors. Most importantly, section 15(c) provides that a majority of the independent directors must approve advisory and underwriting contracts.[9] Certain Commission exemptive rules also require a majority vote by the independent directors in specific areas of conflict.[10] In addition, three years ago the Commission conditioned ten of its commonly-used exemptive rules on fund boards' having a majority of independent directors.[11] These rules are the same rules the Commission is amending today.[12]

The existing independence requirements already enable independent directors to set the agenda and determine the outcome of

[1] The change is effected by making these governance requirements conditions of ten commonly used exemptive rules. Because these rules are used by virtually all funds, these requirements are effectively universally applicable.

[2] *See, e.g.*, Securities and Exchange Commission, *Invest Wisely: An Introduction to Mutual Funds* (available at: http://www.sec.gov/investor/pubs/inwsmf.htm#key) ("Even small differences in fees can translate into large differences in returns over time. For example, if you invested $10,000 in a fund that produced a 10% annual return before expenses and had annual operating expenses of 1.5%, then after 20 years you would have roughly $49,725. But if the fund had expenses of only 0.5%, then you would end up with $60,858—an 18% difference.").

[3] *See* Section VI.A of the Adopting Release ("Benefits").

[4] *See* Adopting Release, text accompanying note 75.

[5] *See* Section VIII of the Adopting Release (Consideration of Promotion of Efficiency, Competition and Capital Formation").

[6] *See* Securities and Exchange Commission, Open Meeting Webcast, June 23, 2004 (available at: http://www.sec.gov/news/openmeetings.shtml) (dissenting views on the value of empirical data).

[7] *See* section 10(a). 15 U.S.C. 80a–10(a). Congress initially considered, but later rejected a majority independence requirement because of concerns "that if a person is buying management of a particular person and if the majority of the board can repudiate his advice, then in effect, you are depriving the stockholders of that person's advice." Investment Trusts and Investment Companies: Hearings on H.R. 10065 Before the House Subcomm. on Interstate and Foreign Commerce, 76th Cong., 3d Sess. 109–110 (1940) (testimony of David Schenker). Since approximately 90 percent of funds utilize these exemptive rules, the majority is effectively mandating these changes for all funds. *See* Adopting Release at note 88. Given the clearly stated, legislatively prescribed independence mandates, we question whether the Commission is acting outside its authority under the Investment Company Act.

[8] 15 U.S.C. 80a–10(b)(2). *See also* section 10(c) (a majority of the board of a registered investment company may not consist of persons who are officers, directors, or employees of any one bank or bank holding company).

[9] 15 U.S.C. 80a–15(c). *See also* section 32(a)(1) of the Act (a fund's auditor must be selected by the vote of a majority of the fund's independent directors).

[10] Rule 17a–7, for example, requires that fund directors, including a majority of the independent directors, determine at least quarterly that all affiliated purchase and sale transactions were made in compliance with procedures adopted by the board, including a majority of the independent directors. 17 CFR 270.17a–7.

[11] Role of Independent Directors of Investment Companies, Investment Company Act Release No. 24816 (Jan. 2, 2001) [66 FR 3734 (Jan. 16, 2001)] ("2001 Adopting Release").

[12] *See* Adopting Release at note 8.

decisions made by the board.[13] As the Commission noted three years ago, a majority requirement is sufficient to "permit, under state law, the independent directors to control the fund's "corporate machinery," *i.e.*, to elect officers of the fund, call meetings, solicit proxies, and take other actions without the consent of the adviser."[14] "[I]ndependent directors who comprise the majority of a board can have a more meaningful influence on fund management and represent shareholders from a position of strength."[15] A majority of independent directors also can insist, if they determine that it would be beneficial, on an independent chairperson.

We are particularly troubled that the Commission has not shown that the reforms from three years ago were inadequate to achieve the stated goals. The new independence conditions took effect on July 1, 2002, so the Commission has allowed itself only two years to observe the effects of the amendments. Most importantly, the Commission has not even attempted the barest systematic assessment of the effectiveness either of those reforms or, more generally, of the statutory and rule-based fund governance requirements. We are also troubled that at the same time the majority raises the requirement for the number of independent directors, it notes that the directors who are legally "independent" may not really be independent.[16] The majority's concerns suggest a possible need for a change in the statutory definition of "interested person" under section 2(a)(19) of the Act rather than for an increase in the number of independent directors.[17]

A Seventy-Five Percent Independence Threshold Is Unnecessary

The majority's choice of seventy-five percent is puzzling. The majority points to the only section in the Investment Company Act that dictates this percentage, section 15(f).[18] The majority does not explain that section 15(f) is a safe harbor provision that "make[s] clear that an investment adviser can make a profit on the sale of its business subject to two principal safeguards to protect the investment company and its shareholders."[19] Congress did not intend for it to serve as a universally-applicable requirement for fund boards.

The Commission could have imposed a two-thirds independence requirement, which most funds already satisfy, is consistent with best practices recommendations from the Investment Company Institute,[20] and was contemplated (but rejected in favor of a majority requirement) in connection with the 2001 fund governance changes.[21] Instead, the majority has chosen a seventy-five percent minimum, which forces approximately half of funds to make changes.[22] Again, the majority fails to give any real consideration to the costs of this change. The Adopting Release acknowledges that "our staff has no reliable basis for determining how funds would choose to satisfy [the seventy-five percent] requirement and therefore it is difficult to determine the costs associated with electing independent directors."[23] Fund boards are able to avoid incurring the costs of hiring new independent directors by reducing the number of directors, but even this approach is likely to impose some costs, not the least of which is the loss of the insight and experience of directors who are removed from the board. Funds that conclude that it is in the interest of fund shareholders to retain existing interested directors will need to hire additional independent directors, a costly prospect.[24]

Mandating an Independent Chairperson Is Unwarranted

The rulemaking is characterized as being part of the solution to the late trading, market timing, and other fund abuses that have come to light over the past year. Its proponents claim that the enforcement cases we have brought to date in this area exhibit a telling pattern—approximately eighty percent of the funds involved had inside chairpersons.[25] However, because approximately eighty percent of *all* fund firms have interested chairpersons, this number suggests only that funds with inside chairpersons are proportionally implicated in the abusive activity. A common feature of these enforcement actions is that boards were not told of the formal or informal arrangements permitting market timing. An inside chairperson with access to information about day-to-day operations might be more likely than an independent chairperson to discover practices that are harmful to fund shareholders.[26]

When the amendments were proposed, we asked that a more thorough analysis be undertaken before effecting these significant changes in an industry that is of such importance to so many investors.[27]

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[13] Last year, the staff noted the power already possessed by fund independent directors: "(A)lmost all funds have boards with at least a majority of independent directors. Thus, one could question whether there is a need to mandate that a fund's chairman be independent because independent directors representing a majority of a fund's board already are in a position to control the board and, if they deemed it appropriate, could already influence the agenda and the flow of information to the board." Memorandum from Paul F. Roye, Director, Division of Investment Management, to William H. Donaldson, Chairman, SEC, re Correspondence from Chairman Richard H. Baker, House Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises, at 50 (June 9, 2003) (available at: http://financialservices.house.gov/media/pdf/02-14-70%20memo.pdf) ("Baker Memorandum").

[14] 2001 Adopting Release at text accompanying note 22.

[15] 2001 Adopting Release at text accompanying note 23.

[16] *See* Section II.C of the Adopting Release.

[17] "Independent director" is a term commonly used to refer to a director who is not an "interested person" as defined in section 2(a)(19). 15 U.S.C. 80a-2(a)(19). The Commission, of course, would need to petition Congress for such a change. Indeed, last year the staff asked Congress to consider revising section 2(a)(19) of the Act to give the Commission "rulemaking authority to fill gaps in the statute that have permitted persons to serve as independent directors despite relationships that suggest a lack of independence from fund management." *See* Baker Memorandum, *supra* note 13, at 47.

[18] 15 U.S.C. 80a-15(f). Section 15(f) requires funds to maintain boards comprising at least seventy-five percent independent directors for the three-year period after an adviser has sold its advisory business to another entity. This provision was added by Congress to limit the effects of *Rosenfeld* v. *Black*, 445 F.2d 1337 (2d Cir. 1971). In that case, the court had held that it was a violation of an adviser's fiduciary duty to transfer an advisory contract to another adviser for profit.

[19] Committee on Banking, Housing and Urban Affairs, Report No. 94-75 to Accompany S. 249 (Apr. 14, 1975).

[20] *See* Investment Company Institute, Report of the Advisory Group on Best Practices for Fund Directors: Enhancing a Culture of Independence and Effectiveness at 10-12 (June 24, 1999) (available at: *http://www.ici.org/pdf/rpt_best_practices.pdf*).

[21] *See* 2001 Adopting Release at note 25. The majority, conceding that "there are good arguments for maintaining a management presence on the board," portrays itself as reasonable because it rejected the higher independence percentages recommended by some commenters. *See* Adopting Release at note [31] and accompanying text (citing Letter of Tom Walker to Jonathan G. Katz, Secretary, SEC (Mar. 9, 2004)), File No. S7-03-04 ("While your changes are moving in the right direction in advocating for a more independant [*sic*] boards. I believe it still allows for too much room for cornyism [*sic*] and nepotism to play out on what should be truley [*sic*] independant [*sic*] directors."); Letter of John and Judy Hesselberth to Jonathan G. Katz, Secretary, SEC (Feb. 24, 2004), File No. S7-03-04 ("In addition the requirement that 75% of the directors of a mutual fund must be outside directors is sound. It probably should be 100%, but 75 is a step in the right direction from the current 50%.").

[22] *See* Letter from Craig S. Tyle, General Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, SEC (Mar. 10, 2004), File No. S7-03-04 (stating that "a change from the current (common industry] practice of a two-thirds supermajority to a seventy-five percent requirement would mean that at least half of all fund boards would have to change their current composition, according to Institute data.").

[23] Adopting Release at text accompanying note [79] (footnote omitted).

[24] A survey found that in 2002, the median compensation for independent directors at the 50 largest fund groups was $113,000 a year and at the smaller fund groups was $18,000. *See* Rick Miller, In Off Year, these Cats Get Fatter: Fund Board Directors Collect a Big Pay Raise, Investment News, April 7, 2003, at 1 (reporting results of a survey conducted by Management Practice Inc.). This amount, of course, does not include up-front search costs and annual non-compensation costs associated with a director's performance of his or her duties.

[25] *See, e.g.*, Letter from Congressman Michael G. Oxley to Chairman William H. Donaldson (May 20, 2004).

[26] In pointing out this and other potential benefits that an interested chairperson might bring to a fund board, we do not intend to suggest that *all* boards should select an interested chairperson. To the contrary, we maintain that what works well for one fund board might not work well for every other fund board. Under certain circumstances, a fund board might conclude that an independent chairperson is essential. *See, e.g.*, Tom Lauricella, Strong Steps Down from Fund Board but Stays on as Head of Firm, Wall St. J., Nov. 3, 2003, at C12 (reporting that following Richard Strong's resignation from his post as chairman of the board of the Strong Mutual Funds, "(t]he independent Strong directors have begun a search to replace Mr. Strong with a chairman who is independent from Strong Capital management").

[27] At the Commission Open Meeting during which the Commission voted to propose the

Continued

Proponents of the rule undertook no such analysis, and the Commission did not use its resources to conduct such an analysis. The burden of proof lies with the regulator seeking to overturn the status quo rather than with the regulated.[28] The empirical data we did receive suggest that the amendments might *not* be beneficial. The data show a correlation between an inside chairperson and superior performance and no statistically significant negative effect on fees.[29] Indeed, many of the funds that report the best performance and lowest fees have inside chairpersons.[30]

A fact largely ignored by this rulemaking is that independent directors are not the only ones charged with protecting the interests of fund shareholders. An investment adviser has a fiduciary duty to act in the best interests of a fund it advises.[31] Further, *all* fund directors have a fiduciary duty to shareholders.[32] It is true that fund managers serve two constituencies—shareholders of the adviser and shareholders of the fund. The interests of these two groups are not, however, entirely at odds. Interested fund directors have an incentive to maximize fund performance because good performance matters to fund investors, who factor it into their investment decisions. Thus, market forces compel fund advisers to offer fund shareholders good performance for a reasonable fee in order to preserve the integrity and hence, marketability, of its brand. This rulemaking overlooks these market forces and seems to suggest that there is no counterweight to the pressure to impose fees on the fund.

Concluding nonetheless that investors would benefit from an independent chairperson, the majority ignores the costs fund investors will bear by the adoption of this requirement.[33] The majority did not identify "any out-of-pocket costs" associated with the independent chairperson requirement. Yet an estimated eighty percent of funds will need a new chairperson. If a sitting independent director accepts the position, the fund will need to pay him more to accept the new responsibilities.[34] If none of the sitting independent directors wants the job or none is qualified,[35] the fund will need to launch an expensive search. It may be difficult for funds to find an individual with the requisite industry experience whom they can afford to hire.

Moreover, in order to be effective at carrying out his or her responsibilities, an independent chairperson likely would have to hire a staff.[36] The majority addresses this issue only in passing by stating that the "staff is not aware of any costs associated with hiring employees or retaining experts because boards typically have this authority under state law, and the rule would not require" that an independent chairperson hire employees.[37] We cannot support a rule that rests upon such tortured logic and circular reasoning. As some commenters have noted, it is ironic that the majority, in its zeal to strengthen the independence of fund boards, has enacted a measure that takes away that independence of the board to select its own chairperson.[38]

The Commission Failed To Examine Alternatives

We fear that the Commission is acting simply to appear proactive. The Commission already has taken significant steps to address the recently uncovered abuses in the fund industry and to identify and address other potentially problematic issues. We have brought enforcement actions under existing laws and regulations to punish the wrongdoers.[39] We have also initiated meaningful regulatory reform. Recently, for example, we adopted requirements regarding the disclosure of market-timing policies,[40] enhancing the disclosure provided by funds about how their boards evaluate and approve investment advisory contracts,[41] and requiring funds and advisers to designate chief compliance officers.[42] In addition, we are considering initiatives on fair value pricing,[43] increased transparency of fund transaction costs and expenses,[44] pricing of

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amendments, Commissioner Glassman requested that proponents and/or staff provide empirical data that would support the amendments.

[28] The application of "Total Quality Management," the management philosophy of W. Edwards Deming, and a later variant, "Six Sigma," would emphasize the importance of discerning whether the fund advisers' fraudulent activity (the variation from desired results) derives from a common cause or something aberrant in a particular adviser's management process—that is, a special cause. If common causes are to blame for the fraudulent activity, then the system is flawed and redesign is necessary. Special causes require more targeted solutions. As discussed below, the fact that funds with independent chairpersons seem proportionally implicated in this fraudulent activity indicates that the lack of an independent chairperson is not a common cause for the fraudulent activity by fund advisers. In addition, the empirical data that we have found this far supports this observation. Consequently, a redesign of the fund governance system is not indicated by the data. The majority's redesign of the system will not, and cannot be expected to, cure the flaws of the system.

[29] *See* Geoffrey H. Bobroff and Thomas H. Mack, Assessing the Significance of Mutual Fund Board Independent Chairs; A Study for Fidelity Investments (Mar. 10, 2004) (attached to letter from Eric D. Roiter, Senior Vice President and General Counsel, Fidelity Management & Research Company to Jonathan G. Katz, SEC (Mar. 10, 2002), File No. S7–03–04)). In an effort to support its position and rebut challenges that it has not considered any empirical evidence, the majority laments the fact that commenters did not submit any pre-existing studies and dismisses the findings of this study, which was commissioned in response to the Commission's request for comments on the proposed amendments. *See* Adopting Release at note 51. The majority's intimation that the data must be discounted because of the "prevalence of independent chairmen among bank-sponsored fund groups" is troubling if it is intended to suggest that bank-sponsored mutual funds are inherently inferior to their non-bank counterparts. We acknowledge that one study cannot conclusively resolve the debate about independent chairpersons, but its conclusions contribute to the debate. Boards of directors, not the Commission, should weigh the evidence to decide whether an independent chairperson would be beneficial for their fund shareholders.

[30] *Id.*

[31] *See Rosenfeld* v. *Black*, 445 F.2d 1337 (2d Cir. 1971); *Brown* v. *Bullock*, 194 F. Supp. 207, 229, 234 (S.D.N.Y.), aff'd, 294 F.2d 415 (2d Cir. 1961). *See also* section 36(b) of the Investment Company Act [15 U.S.C. 80a–35(b)] (investment adviser of a fund has a fiduciary duty with respect to the receipt of compensation paid by the fund). More generally, investment advisers owe a fiduciary duty to their clients. *SEC* v. *Capital Gains Research Bureau*, 375 U.S. 180, 191 (1963) (interpreting section 206 of the Investment Advisers Act of 1940).

[32] In addition to standard state law duties applicable to all corporate directors, fund directors have fiduciary duties under the Investment Company Act. *See* section 36(a) of the Investment Company Act. [15 U.S.C. 80a–35(a)].

[33] *See* Section VI.B ("Costs") of the Adopting Release.

[34] According to one estimate, an independent chairperson could command a 25 to 50% premium over other board members. *See* Beagan Wilcox, Wanted: Independent Chairmen, Board IQ, July 6, 2004 (citing estimate of Meyrick Payne, senior partner, Management Practice).

[35] Independent directors have "diverse backgrounds in business, government or academia." Investment Company Institute, Understanding the Role of Mutual Fund Directors, at 6. Fund independent directors without experience in the fund industry can apply their experiences in other areas to perform their responsibilities as independent directors, but may not be adequately equipped to handle responsibilities of board chairperson.

[36] Of necessity, both the independent chairperson and his or her staff are likely to be dependent on fund management and, therefore, may lose independent perspective on matters facing the board. Sir Derek Higgs recognized this in his review of corporate governance in Britain. *See* Derek Higgs, Review of the Role and Effectiveness of Non-Executive Directors (Jan. 2003) at 24 (explaining that, even if a chairperson is independent prior to appointment, thereafter he or she will work closely with management in carrying out his or her duties, so "[a]pplying a test of independence at this stage is neither appropriate nor necessary.").

[37] *See* Section VI.B ("Costs") of the Adopting Release.

[38] The majority reassures independent directors that the amendments "do not prevent the independent directors from choosing the most qualified and capable candidate." *See* Adopting Release, at text following note 47. We contend that a conscientious board might reasonably determine that the most qualified and capable candidate is someone with the deep familiarity with day-to-day fund operations. The majority apparently believes they know better.

[39] *See* Adopting Release at note 5.

[40] Disclosure Regarding Market Timing and Selective Disclosure of Portfolio Holdings, Investment Company Act Release No. 26418 (Apr. 19, 2004) [69 FR 22300 (Apr. 23, 2004)].

[41] Disclosure Regarding Approval of Investment Advisory Contracts by Directors of Investment Companies, Investment Company Act Release 26486 (June 23, 2004) [69 FR 39798 (June 30, 2004)].

[42] Compliance Programs of Investment Companies and Investment Advisers, Investment Advisers Act Release No. 2204 (Dec. 17, 2003) [68 FR 74714 (Dec. 24, 2003)].

[43] These initiatives are described in Mandatory Redemption Fees for Redeemable Fund Securities, Investment Company Act Release No. 26375A at Section II.F (Mar. 5, 2004) [69 FR 11762 (Mar. 11, 2004)].

[44] *See* Confirmation Requirements and Point of Sale Disclosure Requirements for Transactions in Certain Mutual Funds and Other Securities, and Other Confirmation Requirement Amendments, and Amendments to the Registration Form for Mutual Funds, Investment Company Act Release No. 26341 (Jan. 29, 2004) [69 FR 6438 (Feb. 10, 2004)] and Request for Comments on Measures to Improve Disclosure of Mutual Fund Transaction Costs,

fund shares,[45] and fund distribution arrangements.[46]

We were hopeful when these board governance amendments were proposed that alternative measures would be considered. Requiring a fund to disclose prominently whether or not it had an independent chairperson, for example, would allow shareholders to decide whether that matters to them or not. Alternatively, we could have endorsed the lead independent director concept by requiring a fund's independent directors to appoint a lead director to represent the views of the fund's independent directors to fund management.[47] We could have required additionally that each major board committee be chaired by an independent director, who would have the authority to set the agenda of the committee. The advantage of these alternatives, in addition to being less costly, is that they leave the decision about the independent chairperson to the independent directors or the marketplace, rather than impose the requirement by regulatory fiat. The majority failed to give serious consideration to these alternatives.[48]

Under the cover of "good atmospherics" and the shroud of "investor protection," the majority has decided to adopt measures the benefits of which are illusory, but the costs of which are real. We conclude that the majority has not justified this forced restructuring of the corporate governance of the vast majority of funds and fear that it provides investors with a false sense of security.

For the foregoing reasons, we respectfully dissent.

Cynthia A. Glassman,
Commissioner.

Paul S. Atkins,
Commissioner.

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Investment Company Act Release No. 26313 (Dec. 18, 2003).

[45] Amendments to Rules Governing Pricing of Mutual Fund Shares, Investment Company Act Release No. 26288 (Dec. 11, 2003) [68 FR 70388 (Dec. 17, 2003)].

[46] Prohibition on the Use of Brokerage Commissions to Finance Distribution, Investment Company Act Release No. 26356 (Feb. 24, 2004) [69 FR 9726 (Mar. 1, 2004)].

[47] In 1999, the Investment Company Institute's Advisory Group on Best Practices for Fund Directors included among its recommendations the designation of one or more persons as a lead director. *See* Investment Company Institute, Report of the Advisory Group on Best Practices for Fund Directors: Enhancing a Culture of Independence and Effectiveness at 25 (June 24, 1999) (available at: *http://www.ici.org/pdf/rpt_best_practices.pdf*).

[48] The majority acknowledged that these alternatives could be useful, but explained that funds would have difficulty finding persons of "sufficient stature" to act as "an effective counterweight to a fund chairman who may also be the chief executive officer of the management company." *See* Adopting Release at text accompanying note 57. We question whether funds will find it easier to fill the position of independent chairperson with a person able both to act as an "effective counterweight" and also to fulfill the routine administrative responsibilities of running a fund board.

Federal Register

Monday,
August 2, 2004

Part V

The President

Memorandum of July 23, 2004—National Guard Support for 2004 Democratic and Republican National Conventions and Other Appropriate Events

Federal Register
Vol. 69, No. 147
Monday, August 2, 2004

Presidential Documents

Title 3—

The President

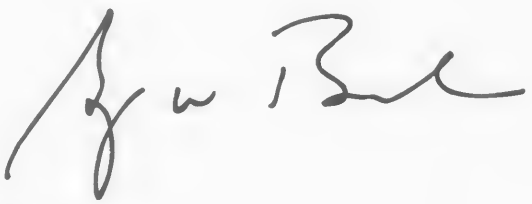
Memorandum of July 23, 2004

National Guard Support for 2004 Democratic and Republican National Conventions and Other Appropriate Events

Memorandum for the Secretary of Defense

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to you the functions and authority of the President contained in section 325 of title 32, United States Code, with respect to activities related to the 2004 Democratic and Republican National Conventions, and other appropriate events as you determine from time to time in consultation with the Assistant to the President for Homeland Security.

You are further authorized and directed to make necessary arrangements to fund this activity from the proper appropriations and to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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- Architect-engineer services contracting; comments due by 8-9-04; published 6-8-04 [FR 04-12935]
- Commercial items acquisition; comments due by 8-9-04; published 6-8-04 [FR 04-12937]
- Reporting contract performance outside United States; comments due by 8-9-04; published 6-8-04 [FR 04-12934]
- Technical data conformity; written assurance; comments due by 8-9-04; published 6-8-04 [FR 04-12936]

Personnel, military and civilian:
- DoD dependents; early intervention and special education services; comments due by 8-9-04; published 6-10-04 [FR 04-12497]

EDUCATION DEPARTMENT

Elementary and secondary education:
- Disadvantaged children; academic achievement improvement; comments due by 8-9-04; published 6-24-04 [FR 04-14358]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:
- Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY

Air pollution; standards of performance for new stationary sources:
- Large municipal waste combustors; emission guidelines; comments due by 8-13-04; published 7-14-04 [FR 04-15942]

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
- Ohio; comments due by 8-9-04; published 7-8-04 [FR 04-15203]

Air quality implementation plans; approval and promulgation; various States:
- Hawaii; comments due by 8-9-04; published 7-9-04 [FR 04-15527]

Environmental statements; availability, etc.:
- Coastal nonpoint pollution control program—
  - Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Fenpyroximate; comments due by 8-9-04; published 6-10-04 [FR 04-13146]

Solid waste:
- Hazardous waste; identification and listing—
  - Exclusions; comments due by 8-9-04; published 6-25-04 [FR 04-14460]

Water pollution; effluent guidelines for point source categories:
- Meat and poultry products processing facilities; Open for comments until further notice; published 12-30-99 [FR 04-12017]

Water programs:
- Water quality standards—
  - Coastal and Great Lakes recreation waters;

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://*

www.archives.gov/federal_register/public_laws/public_laws.html.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html.* Some laws may not yet be available.

H.R. 3846/P.L. 108–278

Tribal Forest Protection Act of 2004 (July 22, 2004; 118 Stat. 868)

S. 1167/P.L. 108–279

To resolve boundary conflicts in Barry and Stone Counties in the State of Missouri. (July 22, 2004; 118 Stat. 872)

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–052–00001–9)	9.00	[4]Jan. 1, 2004
3 (2003 Compilation and Parts 100 and 101)	(869–052–00002–7)	35.00	[1] Jan. 1, 2004
4	(869–052–00003–5)	10.00	Jan. 1, 2004
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6	(869–052–00007–8)	10.50	Jan. 1, 2004
7 Parts:			
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27–52	(869–052–00009–4)	49.00	Jan. 1, 2004
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400–699	(869–052–00013–2)	42.00	Jan. 1, 2004
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900–999	(869–052–00015–9)	60.00	Jan. 1, 2004
1000–1199	(869–052–00016–7)	22.00	Jan. 1, 2004
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CFR Index and Findings Aids	(869–052–00049–3)	62.00	Jan. 1, 2004
Complete 2004 CFR set		1,342.00	2004
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Subscription (mailed as issued)		325.00	2004
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Complete set (one-time mailing)		298.00	2002

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2003, through January 1, 2004. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2003. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2003. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2003. The CFR volume issued as of July 1, 2002 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2003. The CFR volume issued as of July 1, 2001 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2003. The CFR volume issued as of October 1, 2001 should be retained.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—AUGUST 2004

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
August 2	August 17	Sept 1	Sept 16	Oct 1	Nov 1
August 3	August 18	Sept 2	Sept 17	Oct 4	Nov 1
August 4	August 19	Sept 3	Sept 20	Oct 4	Nov 2
August 5	August 20	Sept 7	Sept 20	Oct 4	Nov 3
August 6	August 23	Sept 7	Sept 20	Oct 5	Nov 4
August 9	August 24	Sept 8	Sept 23	Oct 8	Nov 8
August 10	August 25	Sept 9	Sept 24	Oct 12	Nov 8
August 11	August 26	Sept 10	Sept 27	Oct 12	Nov 9
August 12	August 27	Sept 13	Sept 27	Oct 12	Nov 10
August 13	August 30	Sept 13	Sept 27	Oct 12	Nov 12
August 16	August 31	Sept 15	Sept 30	Oct 15	Nov 15
August 17	Sept 1	Sept 16	Oct 1	Oct 18	Nov 15
August 18	Sept 2	Sept 17	Oct 4	Oct 18	Nov 16
August 19	Sept 3	Sept 20	Oct 4	Oct 18	Nov 17
August 20	Sept 7	Sept 20	Oct 4	Oct 19	Nov 18
August 23	Sept 7	Sept 22	Oct 7	Oct 22	Nov 22
August 24	Sept 8	Sept 23	Oct 8	Oct 25	Nov 22
August 25	Sept 9	Sept 24	Oct 12	Oct 25	Nov 23
August 26	Sept 10	Sept 27	Oct 12	Oct 25	Nov 24
August 27	Sept 13	Sept 27	Oct 12	Oct 26	Nov 26
August 30	Sept 14	Sept 29	Oct 14	Oct 29	Nov 29
August 31	Sept 15	Sept 30	Oct 15	Nov 1	Nov 29

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