32. Penalties

Q. What types of penalties or monetary damages will be assessed if covered multifamily dwellings are found not to be in compliance with the Fair Housing Act?

A. Under the Fair Housing Act, if an administrative law judge finds that a respondent has engaged in or is about to engage in a discriminatory housing practice, the administrative law judge will order appropriate relief. Such relief may include actual and compensatory damages, injunctive or other equitable relief, attorney's fees and costs, and may also include civil penalties ranging from $10,000 for the first offense to $50,000 for repeated offenses. In addition, in the case of buildings which have been completed, structural changes could be ordered, and an escrow fund might be required to finance future changes.

Further, a Federal district court judge can order similar relief plus punitive damages as well as civil penalties for up to $100,000 in an action brought by a private individual or by the U.S. Department of Justice.

[FR Doc. 94-15501 Filed 6-27-94; 8:45 am]
BILLING CODE 4210-28-P

federal register

Tuesday
June 28, 1994

Part IV

Department of Energy

Environmental Management Site Specific Advisory Board Meeting, Savannah River Site; Notice

DEPARTMENT OF ENERGY

Environmental Management Site Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Savannah River Site.

DATES: Tuesday, June 28, 1994: 8:30 a.m.–4:00 p.m.

ADDRESSES: June 28, 1994 meeting: Savannah River Site Building 703–41A, Road SR 1, Aiken, S.C. 29802

FOR FURTHER INFORMATION CONTACT: Don Beck, Public Participation Program Manager, Office of Public Accountability, EM–5, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–7633.

SUPPLEMENTARY INFORMATION: Purpose of the Committee: The EM SSAB provides input and recommendations to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda

Tuesday, June 28, 1994

8:00 a.m.
Coffee
8:30 a.m.
Agency updates (5)
Andrew Rea resolution (30)
9:10 a.m.
Environmental remediation path forward—P.K. Smith
9:45 a.m.
Break
10:00 a.m.
Solid waste program overview—Virgil Sauls
Solid waste streams—Brent Daughtery
12:00 p.m.
Lunch
1:00 p.m.
Solid waste disposal and ER case study—Clay Jones
2:00 p.m.
Break
2:15 p.m.
Education path forward—P.K. Smith
2:30 p.m.
Budget subcommittee report—Tom Greene
3:00 p.m.
Other subcommittee reports
3:30 p.m.
Public comments (5-minute rule)
4:00 p.m.
Adjourn

If needed, time will be allotted after public comments for old business, new business, items added to the agenda, and administrative details.

A final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Don Beck's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. Due to programmatic issues that had to be resolved, the **Federal Register** notice is being published less than fifteen days before the date of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Tom Heenan, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802, or by calling him at (803)-725–8074.

Issued at Washington, DC, on June 24, 1994.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–15794 Filed 6–24–94; 1:39 pm]

BILLING CODE 6450–01–P

federal register

Tuesday
June 28, 1994

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Funding Availability for Technical Assistance to Public Housing Authorities and Public Housing Police Departments; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3799; FR–3711–N–01]

Notice of Funding Availability for Technical Assistance to Public Housing Authorities and Public Housing Police Departments

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

ACTION: Notice of funding availability (NOFA).

SUMMARY: This NOFA announces funding of up to $1.5 million for qualified vendors to: (1) Develop a program to improve public housing police departments in 11 designated cities, (2) facilitate law enforcement service agreements between housing authorities and local government, and (3) provide the technical assistance to implement the program and agreements developed under (1) and (2).

DATES: Applications must be received at HUD Headquarters at the address below on or before 3 pm, Eastern Daylight Time, August 2, 1994. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by any unanticipated or delivery-related problems. Applications received after the deadline will not be considered.

ADDRESSES: An original and four copies of the application must be sent to the Drug-Free Neighborhoods Division, Office of Resident Initiatives, Public and Indian Housing, Department of Housing and Urban Development, room 4116, 451 Seventh Street SW., Washington, DC 20410.

FOR FURTHER INFORMATION, CONTACT: Malcolm (Mike) Main, Drug-Free Neighborhoods Division, Office of Resident Initiatives, Public and Indian Housing, Department of Housing and Urban Development, room 4116, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–1197. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The OMB control number, when assigned, will be published in the **Federal Register**.

Public reporting burden for the collection of information requirements contained in this NOFA are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden for all of the technical assistance NOFAs under this program is provided below. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., room 10276, Washington DC 20410–0500; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

No. of NOFAs affected	No. of respondents per NOFA	No. of responses per NOFA	Total responses	Hours per response	Total No. hrs.
Per year: 6	10	1	60	40	2,400
Total for three years: 18	10	1	180	40	7,200

I. Purpose and Substantive Description

(a) Purpose

The overall objectives of this grant are to: (1) Develop a program to improve public housing police departments in 11 designated cities, (2) facilitate law enforcement service agreements between housing authorities and local government, and (3) provide the technical assistance to implement the program and agreements developed under (1) and (2).

(b) Authority

This grant is authorized under Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et seq.*), as amended by Section 581 of the National Affordable Housing Act of 1990 (NAHA), approved November 28, 1990, Pub. L. 101–625, and Section 161 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992).

(c) Award Amounts

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1993 (approved October 28, 1993, Pub. L. 103–124), (94 App. Act) appropriated $265 million for the Drug Elimination Program of which $5 million is to be used for funding technical assistance and training. The funding available under this NOFA is a part of this $5 million.

A cost-reimbursable grant for $1.5 million for a 1-year base period, with 4 option years, will be awarded under this NOFA. The applicant must submit a five year strategy which includes the first year budget of $1.5 million. Each additional fiscal year award will be for comparable amounts based upon an evaluation of grant performance and the availability of funds.

(d) Eligibility

(1) Eligible applicants. Applicants must demonstrate executive managerial law enforcement experience in the following areas or they will not be considered for funding:

(i) Conducting law enforcement assessments in cities of a population of 500,000 or more;

(ii) Conducting law enforcement assessments of public housing police departments;

(iii) Design, development and delivery of training and technical assistance programs for law enforcement agencies;

(iv) Development and implementation of law enforcement policies, procedures and manuals, personnel management systems, fiscal tracking systems,

dispatch systems, records management, patrol strategy and crime prevention programs;

(v) Managing the accreditation process of local law enforcement agencies;

(vi) Developing technical and physical security systems in public housing or the private sector;

(vii) Design and implementation of community policing programs; and

(viii) Working with Federal and local law enforcement agencies.

(2) *Activities/tasks to be funded.* The grantees selected for funding under this NOFA shall perform the following tasks:

(i) *Task 1—Public Housing Police Department Upgrades.* The following subtasks are to be performed in 11 designated cities that have both municipal police and housing authority police departments serving public housing residents. In addition, the grantee will be required to hold a briefing, for up to three representatives from each designated city, of the tasks to be accomplished under this grant. The briefing is to be conducted in the Washington, DC area immediately after completion and approval of the management and work plan under section (j)(4) of this NOFA. The Department conducted a study to identify housing authority (HA) police departments that met the following criteria: they were moving towards national or State accreditation; their officers were State or local commissioned police officers and/or had completed police academy training; and they had operations and salaries that were funded with HUD operating subsidies or other HUD funds. Based upon this study the Department determined that the HAs listed below had their own HA police departments which met these criteria. The 11 housing authorities (HA) and cities for Task 1 are:

Baltimore HA and Community Development, Baltimore, MD
Boston HA, Boston, MA
Buffalo HA, Buffalo, NY
Chicago HA, Chicago, IL
Cuyahoga Metropolitan HA, Cleveland, OH
HA of the City of Los Angeles, Los Angeles, CA
HA of the City of Oakland, Oakland, CA
HA of the City of Pittsburgh, Pittsburgh, PA
Newark HA, Newark, NJ
Philadelphia HA, Philadelphia, PA
HA of the City of Waterbury, Waterbury, CT

The New York City Housing Authority has a housing authority police department. This department has already been accredited as of March 27, 1994 and *therefore will not be* included in this NOFA.

(A) *Task 1 Subtask 1—Law Enforcement Services Agreements.* The grantee shall facilitate law enforcement service agreements, for additional law enforcement services beyond the HA cooperation agreement, between housing authorities and local government. The grantee shall work with public housing officials and local governments in the 11 cities with public housing police departments to negotiate and implement additional law enforcement service agreements between local police and public housing officials. The anticipated agreements would relate to the provision of police services to public housing residents by municipal police and public housing police, access to emergency services, baseline services provided to public housing residents, reporting of crimes city-wide and in public housing, and other items that may be of mutual interest to the city and/or housing authority.

(B) *Task 1 Subtask 2—Policy and Procedures Manual.* The grantee shall work with public housing police departments in 11 cities to develop and implement a state of the art police policy and procedures manual. Where a manual exists, the manual should be edited to the point that relevant policies, procedures and general orders are clearly defined for public housing services.

(C) *Task 1 Subtask 3—Personnel Management System.* The grantee shall work with public housing police departments in 11 cities to develop and implement a modern police personnel management system to include recruitment, selection, initial and continuing training, evaluation, compensation, job descriptions, and promotional systems. The grantee shall also, through focus groups and/or needs assessment, identify topics for a core curriculum for continuing HA police officer training in areas specific to HAs, such as vertical patrols, investigative techniques, and sensitivity training.

(D) *Task 1 Subtask 4—Fiscal Tracking System.* The grantee shall work with public housing authorities and housing police departments in 11 cities to develop a consistent fiscal tracking system that incorporates modern financial management systems into the way the authorities and police justify and track expenditures. Fiscal planning should be incorporated into the fiscal system so that a procedure exists to reflect anticipated costs five years into the future. In addition, the grantee shall work with housing authority officials in 11 cities to identify the source of funding for police and security upgrades and establish timelines for completion of upgrades.

(E) *Task 1 Subtask 5—Emergency Dispatch System.* The grantee shall work with public housing police departments and municipal police departments in 11 cities to develop a state of the art emergency dispatch system for public housing residents that reflects the most expeditious way to provide residents in each of the 11 cities with emergency police response. This task is to include developing recommendations for assuring communications between public housing police departments and municipal police departments, 911 services, non-emergency calls, anticipated expenditures by authority for technical upgrades, and training requirements for officers and dispatchers.

(F) *Task 1 Subtask 6—Records Management.* The grantee shall work with public housing police departments in 11 cities to develop a records management system that represents state of the art practices in collecting, coding, filing, analyzing and accessing police information. This task is to include an assessment of computer hardware and software that may be appropriate for use in each city, interface between records and dispatch in the housing police, interface between municipal police departments and housing authority police departments, compliance with Uniform Crime Reporting (UCR) and/or the National Incident Based Reporting System (NIBRS) procedures, forms for collecting data, and staffing requirements for the records function.

(G) *Task 1 Subtask 7—Patrol Strategies.* The grantee shall work with public housing police departments in 11 cities to develop and implement modern police patrol strategies for public housing police departments to include patrol procedures, vertical patrols, development of staffing criteria, patrol beat development, response to calls or crimes, proactive strategies, bicycle patrols, investigation of crimes by patrol personnel, follow-up procedures with victims, stake-out strategies, and use of crime analysis.

(H) *Task 1 Subtask 8—Crime Prevention Programs.* The grantee shall work with public housing police departments in 11 cities to develop and implement crime prevention programs. This task is to include programs to counter crime and fear of crime, programs to enlist and maintain public cooperation, police officer programs,

use of residents and training of residents.

(I) *Task 1 Subtask 9—Technical and Physical Security Programs.* The grantee shall work with public housing police departments in 11 cities to develop and implement technical security programs in public housing buildings to include the use of closed circuit television cameras, monitors, sensors, fencing, locks, access control, lighting, parking and other state of the art programs. This task is to include recommendations on staffing buildings with guards and the anticipated costs by building or development.

(J) *Task 1 Subtask 10—Accreditation for Law Enforcement Agencies.* The grantee shall work with 11 public housing police departments to become accredited police departments, or to elevate their professional capacity to the point that the housing authority police department meets all the standards promulgated by the Commission on Accreditation for Law Enforcement Agencies (CALEA) relative to the work provided by the respective public housing police departments.

(K) *Task 1 Subtask 11—Community Policing Programs.* The grantee shall work with public housing police departments in 11 cities to design, develop and implement community policing programs that are tailored to public housing. This Task is to include the development and implementation of training programs for public housing police department officers, municipal police department officers, housing authority officials and residents in the 11 cities.

(ii) *Task 2—Additional Law Enforcement Service Agreements Between Housing Authorities and Local Police Departments for Police Services.* The grantee shall work with public housing departments and local governments in a minimum of 15 cities, *to be identified after the grant award,* without public housing police departments to negotiate and implement additional law enforcement service agreements, beyond the HA cooperation agreement, between local police departments and public housing officials. The anticipated agreements would relate to the provision of police services to public housing residents by municipal police, access to emergency services, baseline services provided to public housing residents, reporting of crimes city-wide and in public housing, and other items that may be of mutual interest to the city and/or housing authority. In this task, the cities would be selected through joint discussion between HUD and the vendor.

(iii) *Task 3—Technical Assistance.* The grantee shall work with the designated housing authorities and local governments to provide technical assistance to each of the housing authorities to facilitate effective relationships and improve law enforcement service delivery. The grantee will provide technical assistance to housing authorities to assist in implementing the recommendations identified in the course of implementing Tasks 1 and 2.

(iv) *Task 4—Required Reports.* The grantee shall provide HUD a written report on the proposed implementation plan for each public housing police department, and the 15 HAs without police departments where the grantee is to provide technical assistance between the HA and local government, prior to implementing any activities. It is understood that the recommendations for one public housing police department may apply in another public housing police department; however, each housing police department is to have a separate report with recommendations, costs, suggested sources of funding, staffing implications, and timelines.

(e) Application submission requirements.

(1) Applicants must submit a completed application for Federal Assistance (Standard Form 424). The SF–424 is the face sheet for the application. The applicant will provide budget information on Standard Form 424A, including a program narrative, a detailed budget narrative with supporting cost analysis. The applicant will identify their legal and accounting services that will be used.

(2) Application format requirements:

(i) Applicant's cover letter.

(ii) TAB 1—Standard Form 424, Application for Federal Assistance.

(iii) TAB 2—Standard Form 424A, Budget Information with attached program narrative, a detailed budget with budget narrative with supporting cost analysis and legal and accounting services. The narrative must include the applicant's financial capability, i.e., the fiscal controls and accounting procedures which assure that Federal funds will be accounted for properly. The applicant must demonstrate that it has the management and financial capability to effectively implement a project of this size and scope. The applicant must submit a five year strategy which includes the first year budget of $1.5 million with 4 option years of comparable funding amounts.

(iv) TAB 3—Program implementation plan (Tasks 1–4). Applicants must prepare a plan that describes clearly and in detail the strategy and structure for the implementation of all tasks within this NOFA:

(A) The first year of project implementation, identifying:

(*1*) Each task that will be initiated in the first year;

(*2*) A plan to implement task 1, 3 and 4 throughout all of the below listed 11 designated housing authorities over the course of the five year strategy—Baltimore HA and Community Development, Baltimore, MD; Boston HA, Boston, MA; Chicago HA, Chicago, IL; Cuyahoga Metropolitan HA, Cleveland, OH; HA of the City of Los Angeles, Los Angeles, CA; Newark HA, Newark, NJ; HA of the City of Oakland, Oakland, CA; Philadelphia HA, Philadelphia, PA; Buffalo HA, Buffalo, NY; HA of the City of Pittsburgh, Pittsburgh, PA; and the HA of the City of Waterbury, Waterbury, CT. The plan must indicate where the tasks initiated in the first year will be carried out; and

(*3*) A plan to implement Tasks 2, 3 and 4 for a minimum of 15 cities throughout all of the cities in the first year.

(*4*) There must be a time-task plan which clearly identifies the major milestones and products, organizational responsibility, and schedule for the completion of activities and products.

(v) TAB 3A—First year timetable. A timetable for the completion of each task initiated in the first year, which may extend beyond the first year.

(vi) TAB 3B—Five year timetable. A timetable for initiation and completion of each remaining task over the five year period.

(vii) TAB 4—Applicant's corporate qualifications.

(A) Each applicant must fully describe its organizational structure, staff size, and prior experience in community policing and security issues in public housing and/or other programs designed to provide security to residents of public housing. Applicants must demonstrate that their organizational structure, staff size, and prior experience is sufficient to implement effectively a project of this size and scope. In addition, the applicant must demonstrate experience in conducting assessments of security/law enforcement in public housing; executive experience in managing and implementing accreditation of law enforcement agencies; and experience in technical physical security in both public housing and the private sector.

(B) The plan must include an annotated organizational chart depicting the roles and responsibilities of key organizational and functional components and a list of key personnel responsible for managing and

implementing the major elements of the program.

(viii) TAB 5—Qualifications of the Program Staff. Applicant must fully describe the capabilities and work experience of all key staff who will be working on this project. Applicants must include a staffing plan to fulfill the requirements of the required tasks, including staff titles and the staff's related educational background, experience, and skills; and the time each will be required to contribute to the project.

(ix) TAB 6—Representations, certifications, and other statements of the vendor.

(A) Certification Regarding Federal Employment.

(B) Certification of Procurement Integrity.

(C) Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.

(D) SF–LLL Disclosure of Lobbying Activities.

(E) Certification Regarding Debarment, Suspension, Proposed Debarment, and other Responsibility Matters.

(F) Certification Regarding Drug-Free Workplace Requirements.

(G) Prior to award execution, a successful applicant must submit a certification that it will comply with:

(*1*) Section 3 of the Housing and Community Development Act of 1968, Employment Opportunities for Lower Income Persons in Connection with Assisted Projects (12 U.S.C. 1701u), and with implementing regulations at 24 CFR part 135. Section 3 requires, that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area within the unit of local government or metropolitan area (or nonmetropolitan county) and for work in connection with the project to be awarded to eligible businesses located in or owned in substantial part by persons residing in the area;

(*2*) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1; and

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

(x) Applicants wishing to make a personal presentation before the selection panel in support of their written application may schedule a presentation by contacting Malcolm E. Main on (202) 708–1197. All presentations must be scheduled by the application due date.

(f) Selective Criteria/Factors for Award. The Department will award the grant to the applicant(s) that best meets all of the factors below. All applications will be evaluated in accordance with the following factors (their weights are indicated in parentheses). Applicants shall provide a statement within their proposals that addresses each of the factors listed below. Applications will be reviewed and rated according to the extent to which they meet the following factors, which total 100 points:

(1) *Technical Soundness and Understanding of the Application (25 Points Maximum).*

(i) *Technical Soundness of the Application (12 Points Maximum).* The technical quality, clarity, creativity, thoroughness, specificity, and feasibility of the application and methodology should be reflected as the application is assessed on the basis of:

(A) The level of detail in which the application describes how it will implement each activity required in the project Tasks 1–4;

(B) The extent to which the application provides a technically sound and cost effective means for designing and implementing changes in public housing police departments.

(ii) *Basic Understanding of Security Issues in Public Housing as Well as Programs Designed to Provide Security to Residents of Public Housing (13 Points Maximum).* The application will be assessed based on the extent to which it demonstrates a clear understanding of the security issues in public housing as well as programs designed to provide security to residents of public housing, particularly as the knowledge relates to all Tasks.

(2) *Organizational Management and Capabilities (25 Points Maximum).* Grantees must demonstrate their ability to manage, organize and complete on schedule all of the tasks and responsibilities associated with this project.

(i) *Project Director (13 Points Maximum).*

(A) The extent to which the proposed Project Director has:

(*1*) Executive experience in managing projects of a similar type and scope, including proven ability to manage the performance of complex multi-site projects within the time and resource limits;

(*2*) Executive experience in managing projects involving law enforcement in cities with populations of 500,000 or more;

(*3*) A clear understanding of the methodology and techniques necessary to perform the tasks of this grant;

(*4*) Executive experience in designing and implementing, for police departments of various sizes, law enforcement systems and community policing policies and procedures that include the following:

(*A*) Organization and management.

(*B*) Personnel management.

(*C*) Patrol operations.

(*D*) Criminal investigations.

(*E*) Dispatch, records, and property.

(*F*) Management systems.

(*G*) Crime analysis system.

(*H*) Crime prevention.

(*I*) Police department accreditation.

(*J*) Community Policing.

(ii) Project Staff (12 Points Maximum).

(A) The extent to which technical and management staff members proposed for the project have:

(*1*) Demonstrated extensive experience in police program development, research, management, curriculum design, training development, delivery and on-site technical assistance delivery which involved community policing; and

(*2*) Relevant technical skills and prior experience of proposed individuals that display ability to handle complex issues relating to public housing security and implementing revisions to organizations.

(B) The extent to which the proposed staff has:

(*1*) Implemented community policing, law enforcement policy, practices and procedures.

(*2*) Expertise on a management and administrative level—with Federal and/or local law enforcement, technical security design experience, and law enforcement training.

(3) Quality of Management and Work Plan (30 Points Maximum).

(i) Soundness and completeness of the overall plan for the allocation of resources and schedule to accomplish the tasks of work within the contract time frame, including: feasibility, clarity and completeness of work assignment plan and schedule of tasks; delineation of task responsibilities and accountability and communication among project staff and between grantee and HUD; reasonableness and completeness of procedures for supervising and coordinating task performance of project staff; and, adequacy of controls over scheduling and expenditures. (15 points maximum)

(ii) Appropriateness of the proposed level of effort to be provided by the

Project Director, key professional staff, supporting staff and principal authors of the application. (15 points maximum)

(4) Corporate and Management Expertise (20 Points Maximum).

(i) Ability of the applicant to conduct high quality work within the contract time frame and budget.

(ii) Ability of the applicant to provide stability, continuity and uniformity of both staff and management.

(iii) Successful experience in managing and implementing HUD or other federal agency contracts.

(g) Review Process. Applications submitted in response to this competitive announcement will be reviewed by a panel of HUD representatives, which will make recommendations to the Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development based upon the applicant's score. The panel will assign numerical values based on the weighted selection factors. In the case of a tie, preference will be given to the highest numerical score for the *Program Implementation Plan (TAB 3 of the application)*. The final award decision will be made by the Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development. Letters will be sent to all applicants notifying them that their proposal has been selected or the reason(s) it was not selected. HUD will then negotiate specific terms of the award with the selected applicant.

(h) Administrative requirements.

(1) Award Period. A cost-reimbursable grant for $[illegible]5 million for a 1-year base period, with 4 option years. The applicant must submit a five year strategy which includes the first year budget of $1.5 million. Each additional fiscal year award will be for comparable amounts if funds are appropriated.

(2) Grant Agreement. After the application has been approved, HUD and the applicant shall enter into a grant agreement setting forth the amount of the grant and its applicable terms, conditions, financial controls, payment mechanism/schedule, report requirements, and special conditions.

(3) Award Orientation. Within the *first week* after the effective date of the grant, the Project Director and all key personnel shall attend a meeting at HUD Headquarters in Washington, DC, for the purpose of establishing a common understanding with respect to the purposes of the grant, the scope of work necessary to achieve the purposes, the time frame, methodology, and deliverables.

(4) Management and Work Plan. The grantee shall develop a draft management and work plan that addresses all of the task requirements. This draft plan shall be submitted to HUD for review and comment by the end of the *second week* of the grant, setting forth the timing of all stages of the project outlined in the tasks below, describing the techniques, materials and experiences of staff for this project. The plan shall include a detailed allocation of grant resources and a schedule for the accomplishment of the grant work. HUD shall submit its comments and suggestions to the grantee within one week from receipt of the draft plan. A Final Management and Work Plan incorporating HUD's comments and suggestions shall be submitted by the end of the third week of the grant.

II. Other Matters

Environmental Impact. A grant under this program is categorically excluded from review under the National Environmental Policy Act of 1969 (NEPA) in accordance with 24 CFR part 50.20(p). However, prior to an award of grant funds, HUD will perform an environmental review to the extent required by HUD's environmental regulations at 24 CFR part 50, including the applicable related authorities at 24 CFR 50.4.

Federalism Impact. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government and, therefore, the provisions of this notice do not have "federalism implications" within the meaning of the Order. The notice implements a program that encourages HAs to develop a plan for addressing the problem of drug-related crime, and makes available grants to HAs to help them carry out their plans. As such, the program would help HAs combat serious drug-related crime problems in their developments, thereby strengthening their role as instrumentalities of the States. In addition, further review under the Order is unnecessary, since the notice generally tracks the statute and involves little implementing discretion.

Family Impact. The General Counsel, as the Designated Official for Executive Order 12606, *the Family*, has determined that the provisions of this grant have the potential for a positive, although indirect, impact on family formation, maintenance and general well-being within the meaning of the Order. As such, this grant is intended to improve the quality of life of public and Indian housing development residents, including families, by reducing the incidence of drug-related crime.

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

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

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

Section 103 HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR Part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are limited by Part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR Part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well.

Section 112 HUD Reform Act

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance. Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Prohibition Against Lobbying Activities

The use of funds awarded under this grant is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (The "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying.

Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

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

Dated: June 20, 1994.

Michael B. Janis,

General, Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–15556 Filed 6–27–94; 8:45 am]

BILLING CODE 4210–33–P

federal register

Tuesday
June 28, 1994

Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

NOFA for Emergency Shelter Grants Set-Aside for Indian Tribes and Alaskan Native Villages; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–3788; FR–3684–N–01]

NOFA for Emergency Shelter Grants Set-Aside for Indian Tribes and Alaskan Native Villages

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding availability.

SUMMARY: This notice announces the availability of $1,469,000 in funds for emergency shelter grants (ESG) to be allocated to Indian tribes and Alaskan Native villages by competition. As a result of the enactment of the HUD FY 1994 appropriation, $115,000,000 is available for the Emergency Shelter Grants (ESG) Program, including the formula program and this set-aside. The amount available under this NOFA includes the FY 1994 set-aside and $319,000 of unused funds from FY 1993. The proposed rule on Emergency Shelter Grants Program; Set-Aside Allocation for Indian Tribes and Alaskan Native Villages, published in the **Federal Register** on April 5, 1993, describes the method for allocating these funds. These grants will be governed by all provisions applicable to the ESG program, including the provisions in the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) that became effective upon the enactment of the law.

Within the context of moving toward a "continuum of care" system designed to combat homelessness, eligible activities include the rehabilitation or conversion of buildings for use as emergency shelters for the homeless, payment of certain operating and essential services expenses, and homeless prevention activities.

This notice contains:

(1) Information concerning eligible applicants;

(2) Information on the funding available within each HUD Office of Native American Programs area;

(3) Information on application requirements and procedures; and

(4) A description of applicable statutory changes to the ESG program.

DATES: Applications for assistance will be available beginning June 28, 1994 and must be received by the appropriate HUD Office of Native American Programs by no later than 4:00 p.m. local time (i.e., the time in the office where the application is submitted) on September 12, 1994. At the time of submission, one copy of the completed application must also be sent to HUD Headquarters at the address stated below. A determination that an application was received on time will be made solely on receipt of the original application at the Office of Native American Programs.

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

ADDRESSES: An original of the application must be sent to the HUD Office of Native American Programs serving the area in which the applicant's project is located. A list of addresses and telephone numbers for the Area Offices of Native American Programs appears as an Appendix to this NOFA. At the same time, a copy of the completed application must also be sent to the following address: Office of Special Needs Assistance Programs, Attention: Emergency Shelter Grants Program Set-Aside, U.S. Department of Housing and Urban Development, room 7262, 451 Seventh Street, SW., Washington, DC 20410–7000.

FOR FURTHER INFORMATION CONTACT: Barbara H. Richards, Acting Director, Office of Special Needs Assistance Programs, Department of Housing and Urban Development, room 7262, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone (202) 708–4300, or (202) 708–2565 (voice/TDD). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2506–0135.

I. Purpose and Substantive Description

A. Authority and Purpose

The ESG program was first established in section 101(g) of Public Law 99–500 (approved October 18, 1986, 100 Stat. 1783–242), making appropriations for FY 1987 as provided in H.R. 5313. The program was reauthorized with amendments in the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, approved July 22, 1987, sections 411–417) (as amended, "McKinney Act"). Section 832(f) of the National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990, 42 U.S.C. 11371–11378) (NAHA), provided for the explicit eligibility of Indian tribes for ESG program assistance and established a set-aside allocation for Indian tribes that is equal to 1 percent of the amounts appropriated for the ESG Program. Funding was provided for this program in the Department's appropriation acts for fiscal years 1991 (Pub. L. 101–507, approved November 5, 1990), 1992 (Pub. L. 102–139, approved October 29, 1991), and 1993 (Pub. L. 102–389, approved October 6, 1992). Regulations governing the Emergency Shelter Grants (ESG) program are found at 24 CFR 576, except where superseded by statutory amendments under NAHA and the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (1992 Act), as discussed below.

Assistance provided to Indian tribes and Alaskan Native villages under this NOFA will be used to help improve the quality of existing emergency shelters for the homeless, make available additional emergency shelters, meet the costs of operating emergency shelters and of providing essential social services to homeless individuals, and help prevent homelessness. The term "emergency shelter" is defined in 24 CFR 576.3. This ESG set-aside allocation will increase the availability and expedite receipt of program funds to Native American communities.

(1) *Definition of "Indian tribe."* Section 832(f)(1) of NAHA provides that the definition of the term "Indian tribe" has the same meaning given that term in section 102(a)(17) of the Housing and Community Development Act of 1974. An Indian tribe means any Indian tribe, band, group, or nation, including Alaska Indians, Aleuts, and Eskimos and any Alaskan Native village, of the United States, that is considered an eligible recipient under Title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or was considered an eligible recipient under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 6701) before repeal of that Act. Eligibility for assistance under the Indian Self-Determination and Education Assistance Act is determined by the Bureau of Indian Affairs.

(2) *Emergency shelter* means any facility, the primary purpose of which is to provide temporary or transitional

shelter for the homeless in general or for specific populations of the homeless.

(3) *Continuum of Care.* This program makes possible the first steps in a "continuum of care" system designed to assist homeless persons find permanent housing and regain independent living. Outreach/assessment activities, drop-in centers, and essential life-saving services may be funded through this program. Funds may also be used to prevent homelessness through short-term rental assistance, legal assistance, and other services related to individuals and families remaining in their own housing. The program facilitates the creation, improvement, and operation of emergency shelters and transitional housing as well as the provision of services such as case management, substance abuse treatment, and job training. For projects serving families, the projects and activities should serve the family together and work to strengthen the family structure.

A continuum of care system consists of three basic components:

(a) A prevention plan and outreach activities designed to bring homeless persons into a system and assess their needs;

(b) Transitional housing combined with rehabilitative services; and

(c) Placement into permanent housing.

B. Statutory Amendments

This notice addresses section 832 of the NAHA (104 Stat. 4359), which contains numerous amendments to the McKinney Act, and several amendments to the ESG program in the 1992 Act. These statutory amendments supersede applicable provisions of the program regulations found at 24 CFR 576. The Department is publishing in this notice a description of the statutory changes to assist Indian tribes in complying with program requirements, including the NAHA and 1992 Act amendments.

National Affordable Housing Act Amendments: The NAHA changes are described in the following Sections I.B (1)–(6) of this NOFA.

(1) *Extension of eligibility to Indian tribes.* Section 832(f) of NAHA expressly extends eligibility for assistance under the ESG program to Indian tribes, and has the effect of applying the same formula as used in the Community Development Block Grant (CDBG) program for determining the amount of ESG funds to be set-aside for Indian tribes. The one percent figure for the Indian tribe set-aside is dictated by sections 832(f)(3) and 913(b) of NAHA.

(2) *Administrative costs.* Section 832(b)(1) of NAHA permits recipients to use up to 5% of an ESG Program grant for administrative purposes. This amount equals 5% of the total of amounts of ESG funds requested for all other eligible activities. Administrative costs include: costs of accounting for the use of grant funds; preparing reports for submission to HUD or to the State; obtaining program audits; conducting environmental reviews; coordinating program activities; and similar costs related to administering the grant. These costs do not include the costs of carrying out other activities eligible under the ESG program.

(3) *Use of funds for essential services.* Section 832(c) of NAHA increased from 20% to 30% the percentage of a grant that may be used to provide essential services. Consistent with this amendment, the Department will apply its waiver authority in section 414(b) of the McKinney Act to the new, higher 30% limitation. As with the previous 20% cap, the 30% limit is to be measured against the aggregate amount of each emergency shelter grant to an Indian tribe. Section 832(f)(6) of NAHA makes the limitations on the provision of essential services applicable to Indian tribes.

(4) *Use of funds for prevention of homelessness.* Homelessness prevention was added as a category of eligible activities by section 423 of the Stewart B. McKinney Homeless Assistance Amendments Act (Pub. L. 100–688, approved November 7, 1988), which also treated these activities as "essential services." However, section 832(d) of NAHA withdraws homelessness prevention activities from categorization as "essential services", and imposes a separate limit of 30% of the aggregate amount of assistance to any recipient, including an Indian tribe, that may be used for efforts to prevent homelessness.

Thus, under NAHA, essential services and homelessness prevention are now each subject to a 30% cap. However, unlike the category of essential services, there is no statutory authority to permit a waiver of the cap on the amount of assistance that may be used for homelessness prevention activities. By its express terms, the statutory waiver is available only in the category of essential services.

(5) *Confidentiality of records for family violence services.* Section 832(e) of NAHA requires each recipient to certify that it will develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services with ESG Program assistance. In addition, the address or location of any ESG-assisted housing used as a family violence shelter may not be made public without the written authorization of persons responsible for the operation of the shelter. This new certification is included in the application kit, as provided in Section III of this NOFA.

(6) *Establishes habitability standards.* Section 832(g) of NAHA requires the Secretary to prescribe the minimum standards of habitability appropriate to ensure that emergency shelters assisted by this program are environments that provide appropriate privacy, safety, and sanitary and other health-related conditions for homeless persons and families. A description of the Minimum Habitability Standards and the required certification is included in the application kit, as provided in Section III of this NOFA. The Habitability Standards that have been developed under section 832(g) of NAHA to apply to emergency shelters are as follows:

(a) *Structure and materials.* The shelter shall be structurally sound so as not to pose any threat to the health and safety of the occupants and so as to protect the occupants from the environment.

(b) *Access.* The shelter shall be accessible and capable of being utilized without unauthorized use of other private properties. The building shall provide an alternate means of egress in case of fire.

(c) *Space and security.* Each occupant shall be afforded adequate space and security for the occupant's person and belongings. Each occupant shall be provided an acceptable place to sleep.

(d) *Interior air quality.* Every room or space shall be provided with natural or mechanical ventilation. The shelter shall be free of pollutants in the air at levels that threaten the health of the occupants.

(e) *Water supply.* The water supply shall be free from contamination at levels that threaten the health of the recipients.

(f) *Sanitary facilities.* Shelter occupants shall have access to sanitary facilities that are in proper operating condition, can be used in privacy, and are adequate for personal cleanliness and the disposal of human waste.

(g) *Thermal environment.* The shelter shall have adequate heating and cooling facilities in proper operating condition.

(h) *Illumination and electricity.* The shelter shall have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. Sufficient electrical sources shall be provided to permit use of essential electrical appliances while assuring safety from fire.

(i) *Food preparation and refuse disposal.* All food preparation areas

shall contain suitable space and equipment to store, prepare, and serve food in a sanitary manner.

(j) *Sanitary condition.* The shelter and its equipment shall be maintained in sanitary condition.

Housing and Community Development Act of 1992 Amendments: The 1992 Act changes are described in the following Sections I.B (7)–(9) of this NOFA.

(7) *Certification of involvement of homeless individuals and families.* The recipient must certify that, to the maximum extent practicable, it will involve homeless individuals and families, through employment, volunteer services, or otherwise, in providing services and in constructing, renovating, maintaining, and operating facilities, where assistance is provided for those activities under the program.

(8) *Termination of assistance.* The recipient may terminate assistance provided to an individual or a family only in accordance with a formal process established by the recipient that recognizes the rights of the individuals affected, which may include a hearing.

(9) *Eligibility of staff costs.* Staff costs relating to the operation of emergency shelters are specifically recognized as an eligible activity, but not more than 10 percent of the amount of any grant may be used for these costs.

C. CHAS and NEPA Requirements

(1) Indian tribes are not included in NAHA's definition of "jurisdiction", the entity charged with submitting a Comprehensive Housing Affordability Strategy (CHAS) under section 105 of NAHA. Therefore, Indian tribes are not required to submit a CHAS. Furthermore, Indian tribes will not be required to certify to consistency with the State's CHAS to receive ESG funding. The Department reiterates its position stated in adopting the CHAS Interim Rule (56 FR 4484, February 4, 1991) that, given the sovereign status of Indian tribes, a State cannot be deemed the appropriate jurisdiction to apply its housing strategy to programs administered by Indian tribes (see 56 FR 4481–82).

(2) The assumption of environmental responsibilities specified in section 104(g)(1) of the Housing and Community Development Act of 1974 was authorized for certain recipients of assistance under the McKinney Act, pursuant to section 443 of the McKinney Act. Assumption of the responsibilities for the ESG program is set forth in 24 CFR 576.52, and shall apply to Indian tribes in the same manner as described for a unit of general local government or territory. When the tribe does not have the legal capacity to assume the environmental responsibility (see 24 CFR 58.11), the appropriate HUD Office of Native American Programs (ONAP) Field Office will conduct the environmental review.

D. Allocation Amounts

This notice announces the availability of a total of $1,469,000 in funding provided by the Department's appropriations acts for fiscal year 1994 and unused funds from fiscal year 1993 for competitive grants to Indian tribes for emergency shelter grants. Indian Program Office set-aside allocations of the total amount are detailed in the following chart:

ALLOCATION OF ESG SET-ASIDE FOR INDIAN TRIBES BY HUD ONAP AREA OFFICES FOR FY 1994

Chicago	$244,817
Oklahoma City	290,207
Denver	277,939
Phoenix	392,153
Seattle	126,870
Anchorage	137,014
Total:	1,469,000

HUD reserves the right to negotiate reductions in the amounts requested by applicants based on the overall demand for the funds. HUD further reserves the right to reallocate these amounts as provided in Section I.G, Ranking and Selection, of this NOFA. Each Indian tribe must spend all of the grant amounts it was awarded within 24 months of the date of the grant award by HUD. Any emergency shelter grant amounts that are not spent within this time period may be recaptured and added to the following fiscal year's ESG set-aside for Indian tribes.

E. Eligibility and Threshold Requirements

Applications are invited from Indian tribes for assistance under the emergency shelter grants set-aside program. Private nonprofit organizations are not eligible to apply directly to HUD for a grant, but may receive funding from a grantee if the grantee determines that the nonprofit has the financial and organizational capacity to carry out the proposed activities.

The selection process for the Indian tribe set-aside program consists of a preliminary threshold review. HUD will review an application to determine whether:

(1) The application is adequate in form, time, and completeness;

(2) The applicant is eligible; and

(3) The proposed activities and persons to be served are eligible for assistance under the program.

F. Rating Criteria

Applications that fulfill each of the threshold review requirements described in Section I.E, Eligibility and Threshold Requirements, of this NOFA will be rated up to 1,000 points based on the following criteria. Successful applicants must receive points under each of the criteria.

(1) *Applicant capacity (300 points).* HUD will award up to 300 points to an applicant that demonstrates the ability to carry out activities under its proposed program within a reasonable time, and in a successful manner, after execution of the grant agreement by HUD. Reviewers' knowledge of the applicant's previous experience will weigh heavily in the scoring. Documented evidence of poor or slow performance will enter strongly into that determination. The applications that rate highest on this criterion will show substantial experience as an organization and/or staff in past endeavors that are directly related to the proposed project.

(2) *Need (200 points).* HUD will award up to 200 points to an applicant that demonstrates the existence of an unmet need for the proposed project in the area to be served. The applicants with the highest scores on this criterion will be the ones that: (a) Clearly define the unmet housing and essential services needs of the homeless population proposed to be served in the area to be served by the project; (b) demonstrate in-depth knowledge of the population to be served and its needs; and (c) set forth an outreach strategy that assures that the intended population will be served.

(3) *Service to homeless population (200 points).* HUD will award up to 200 points to an applicant that proposes to serve that part of the Indian homeless population that is most difficult to reach and serve, i.e., those persons having a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, sleeping accommodations for human beings. In urban areas, this is usually referred to as living "on the street." To the extent that Indians living on reservations live in such situations (e.g., sleeping in cars, abandoned structures, out in the open), they meet the definition of living in conditions similar to "living on the street."

HUD will focus upon proposed outreach and intake plans, and, especially, the degree to which such plans would maximize the likelihood that homeless persons would be served

by the proposed project. The outreach strategy/intake procedures to seek out and evaluate the needs of the population to be served should be clearly described in the application.

(4) *Appropriateness of essential services (300 points).* HUD will award up to 300 points to an applicant that proposes essential services that: (a) are appropriate to the needs of the population proposed to be served; (b) are used or coordinated with existing sources of supportive services and networks of support in the community; and (c) help, to the degree possible, to move residents to longer term housing situations. Applicants should describe what services are available and how they will make those services accessible to the people they serve. In addition, HUD will evaluate the means by which the people to be served will be assisted in moving to permanent housing that is appropriate and affordable. Applicants should describe what resources are available to assist the population they serve to find permanent housing.

G. Ranking and Selection

Applications from Indian tribes within the area served by the applicable HUD Office of Native American Programs will be assigned a rating score and placed in ranked order, based upon the rating criteria listed in Section I.F of this NOFA. Only those applications receiving points under each of the rating criteria, and at least 500 points in total, will be given funding consideration. In the final stage of the selection process, qualified applicants will be selected for funding in accordance with their ranked order within each area or field office, to the extent that funds are available within that area or field office.

In the event of a tie between applicants, the applicant with the highest total points for rating criterion (2), Need, in Section I.F of this NOFA, will be selected. In the event of a procedural error that, when corrected, would warrant selection of an otherwise eligible applicant under this NOFA, HUD may select that applicant when sufficient funds become available.

Depending on the availability of funds, the Department may fund qualified applications regardless of location. If an Indian program office has insufficient funds to make awards to all of its qualified applicants, the Department may reallocate funds to this office from any other Indian program office that has funds remaining after making awards to all of its qualified applications.

II. Application Process

A. Obtaining Applications

Application packages will be available beginning June 28, 1994, from the HUD Offices of Native American Programs listed in the Appendix to this NOFA.

B. Submitting Applications

Information regarding the submission of applications is included in the package.

An original application must be received at the HUD Office of Native American Programs serving the area in which the applicant's project is located by no later than 4:00 p.m. local time (i.e., the time in the office where the application is submitted) on September 12, 1994. A list of Offices of Native American Programs appears as an Appendix to this NOFA. Applications transmitted by FAX will not be accepted.

At the time of submission, one copy of the completed application must also be sent to HUD's Office of Special Needs Assistance Programs at the address listed at the beginning of this NOFA. A determination that an application was received on time will be made solely on receipt of the original application at the Office of Native American Programs.

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

III. Checklist of Application Submission Requirements

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

(1) Applicant Information, including name, address, contact person, and telephone number.

(2) Standard Form 424;

(3) Certifications of compliance with the requirements of:

(a) 24 CFR 576.21(a)(4)(ii), concerning assistance provided for homelessness prevention activities; 567.51(b)(2)(v), concerning the funding of ESG activities in commercial facilities; 576.73, concerning the continued use of buildings as emergency shelters or the population to be served; 576.75, concerning building standards; 576.77, concerning assistance to the homeless; and 576.80, concerning displacement and relocation;

(b) The Indian Civil Rights Act (25 U.S.C. 1301), and section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b));

(c) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);

(d) The Age Discrimination Act of 1975 (42 U.S.C. 6101–07);

(e) Executive Orders 11625, 12432, and 12138, promoting the use of minority business enterprises and women-owned businesses to the maximum extent consistent with the Indian Self-Determination and Education Assistance Act;

(f) The requirements of 24 CFR part 24, concerning the Drug-Free Workplace Act of 1988;

(g) Section 832(e)(2)(C) of NAHA, concerning the confidentiality of records pertaining to any individual provided family violence prevention or treatment services;

(h) Section 832(g) of NAHA, concerning minimum habitability standards prescribed by the Department;

(i) Section 104(g) of the Housing and Community Development Act of 1974 and 24 CFR part 58, concerning assumption of the HUD environmental review responsibilities;

(j) Section 576.71(b)(2)(vii), concerning compliance with tribal law in the submission of an application for an emergency shelter grant, and possession of legal authority to carry out emergency shelter grant activities;

(k) Prohibitions on the use of Federal funds for lobbying, and the completion of SF–LLL, Disclosure Form to Report Lobbying, if applicable; and

(l) 42 U.S.C. 11375(c)(7), as added by the Housing and Community Development Act of 1992, concerning the involvement through employment, volunteer services, or otherwise, to the maximum extent practicable, of homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under the ESG program, and in providing services for occupants of these facilities.

(4) Form HUD–2880, Applicant/Recipient Disclosure/Update Form, if applicable.

(5) Project Summary and Proposed Budgets.

(6) Description of the homeless population to be served.

(7) Facility Description.

(8) Narrative addressing the rating criteria.

(9) Matching funds certification as required under § 576.51(b)(2)(ii),

§ 576.71, and section 415(a) of the McKinney Act (42 U.S.C. 11375(a)).

IV. Clarification of Applicant Information

In accordance with the provisions of 24 CFR part 4, subpart B, HUD may contact an applicant to seek clarification of an item in an applicant's application, or to request additional or missing information, but the clarification or the request for additional or missing information shall not relate to items that would improve the substantive quality of the application pertinent to the funding decision.

V. Other Matters

A. Environmental Impact

A finding of no significant impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding of no significant impact is available for public inspection between 7:30 a.m. to 5:30 p.m. weekdays in the Office of the Rules Docket Clerk in the Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

B. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this Notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. The notice announces the availability of funds set aside for Indian tribes for emergency shelter activities, and invites applications from eligible applicants.

C. Impact on the Family

The General Counsel, as the Designated Official for Executive Order 12606, *the Family*, has determined that this notice, to the extent the funds provided under it are directed to families, has the potential for a beneficial impact on family formation, maintenance, and general well-being. Since any impact on families is beneficial, no further review is considered necessary.

D. Section 102, HUD Reform Act: Documentation and Public Access Requirements; Applicant/Recipient Disclosures

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

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

E. Section 103 HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) was published on May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD) (this is not a toll-free number). The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Field Office Counsel or Headquarters counsel for the program to which the question pertains.

F. Section 112 of the Reform Act

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b), added by section 112 of the Reform Act, contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read part 86, particularly the examples contained in Appendix A of that part.

Any questions about part 86 should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–3000. Telephone: (202) 708–3815 (voice/TDD). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

G. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior

and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (Byrd Amendment) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

H. The Catalog of Federal Domestic Assistance program number is 14.231.

Authority: 42 U.S.C. 11376; 42 U.S.C. 3535(d).

Dated: June 21, 1994.

Andrew M. Cuomo,

Assistant Secretary for Community Planning and Development.

APPENDIX—HUD OFFICES OF NATIVE AMERICAN PROGRAMS

All HUD numbers may be reached via Telecommunications Devices for the Deaf (TDD) by dialing the Federal Information Relay Service on 1–800–877–TDDY (1–800–877–8339) or (202) 708–9300 (not a toll-free number). Any additional TDD number that is available for an individual program office is listed after the appropriate office's address.

Chicago (includes all States east of the Mississippi River plus Iowa and Minnesota):

Mr. Leon Jacobs, Administrator, Chicago Office of Native American Programs, 77 W. Jackson Blvd., Chicago, IL 60604–3507; (312) 886–4532; TDD (312) 353–7143.

Oklahoma City (includes Oklahoma, Louisiana, Kansas, Missouri and Texas):

Mr. Hugh Johnson, Administrator, Oklahoma City Office of Native American Programs, Alfred P. Murrah Fed. Bldg., 200 NW 5th St., Oklahoma City, OK 73102–3202; (405) 231–4101; TDD (405) 231–4181.

Denver (includes Colorado, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming):

Mr. Vernon Haragara, Administrator, Denver Office of Native American Programs, First Interstate Tower North, 633 17th Street, Denver, CO 80202–3607; (303) 672–5462; TDD (303) 844–6158.

Phoenix (includes Arizona, New Mexico, California, and Nevada):

Mr. Raphael Mecham, Administrator, Native American Programs Office, Two Arizona Center, 400 N. Fifth St., Suite 1650, Arizona Center, Phoenix, AZ 85004–2361; (602) 379–4156; TDD (602) 379–4461.

Seattle (includes Washington, Idaho, and Oregon):

Mr. Jerry Leslie, Administrator, Seattle Office of Native American Programs, Seattle Federal Office Building, 909 1st Ave., Seattle, WA 98104–1000; (206) 220–5270; TDD (206) 220–5185.

Anchorage (includes Alaska):

Ms. Colleen Craig, Director, Community Planning and Development Division, Anchorage Office, Federal Building, 222 W. 8th Ave., #64, Anchorage, AK 99513–75371; (907) 271–3669; (TDD only via 1–800–877–8339).

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Federal Register

Tuesday
June 28, 1994

Part VII

Department of Transportation

Research and Special Programs Administration

49 CFR Part 195

Regulatory Review: Hazardous Liquid and Carbon Dioxide Pipeline Safety Standards; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket PS–127; Amdt. 195–52]

RIN 2137–AC27

Regulatory Review: Hazardous Liquid and Carbon Dioxide Pipeline Safety Standards

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This rulemaking amends miscellaneous hazardous liquid and carbon dioxide pipeline safety standards to provide clarity, eliminate unnecessary or overly burdensome requirements, and foster economic growth. The changes result from the regulatory review RSPA carried out in response to the President's directive of January 28, 1992, on reducing the burden of government regulation. The changes reduce costs in the liquid pipeline industry without compromising safety.

EFFECTIVE DATE: This regulation is effective July 28, 1994. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 28, 1994.

FOR FURTHER INFORMATION CONTACT: J. Willock, (202) 366–2392, regarding the subject matter of this final rulemaking, or the Dockets Unit, (202) 366–5046, regarding copies of this final rulemaking or other material that is referenced herein.

SUPPLEMENTARY INFORMATION:

Background

In a January 28, 1992, memorandum, the President wrote to Department and agency heads about the need to reduce the burden imposed by government regulation. The President was concerned that agencies were not doing enough to review and revise existing regulations to eliminate unnecessary and overly burdensome requirements. The President recognized that regulations that do not keep pace with new technologies and innovations impose needless costs and impede economic growth.

In response to the President's memorandum, DOT published a notice requesting public comment on the Department's regulatory programs (57 FR 4745; Feb. 7, 1992). Commenters were asked to identify regulations that substantially impede economic growth, may no longer be necessary, are unnecessarily burdensome, impose needless costs or red tape, or overlap or conflict with other DOT or federal regulations. The deadline for submitting comments was March 2, 1992.

RSPA received comments from six organizations about the pipeline safety regulations in part 195. Comments were from three regulated pipeline companies, a pipeline trade association, a state pipeline safety agency, and a federal agency. RSPA considered all comments in its review of the regulations, and these comments are available in the docket. Some comments will be considered in future rulemakings. Additionally, RSPA has published a separate rulemaking "Update of Standards Incorporated by Reference" (58 FR 14519; March 18, 1993) which updates the editions of the industry standards that are incorporated in part 195.

On November 27, 1992, RSPA published a Notice of Proposed Rulemaking, NPRM, (57 FR 56304) proposing 18 changes to the regulations based on the comments received from the public and asked for further comments regarding the proposed changes. RSPA received comments from 21 organizations: 15 pipeline companies, 3 pipeline trade associations, 2 environmental organizations, and 1 county government. RSPA considered all comments in preparation of the final rulemaking and the comments are available in the Docket.

Advisory Committee

The Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC), consisting of 15 members, was established by statute to consider the feasibility, reasonableness, and practicability of proposed pipeline regulations. RSPA implemented the committee balloting process by mail. After initial balloting, the process allowed each member to review the ballots, including comments, of all other members, and to change his or her vote or initial comment if desired. Although some THLPSSC members did not vote on every proposed change, a tally of the second ballots showed that a large majority of THLPSSC members found all the proposed changes technically feasible, reasonable, and practicable. Nonetheless, in developing the final regulations, RSPA considered all final THLPSSC votes and comments, including minority positions. The following discussion explains how RSPA treated THLPSSC positions and public comments on the proposed amendments in developing the final rule.

Changes to Part 195 Safety Standards

The following discussion explains the changes to various standards in part 195:

Section 195.1 Applicability.

Offshore production. Part 195 does not apply to pipelines used in offshore production, whether on the Outer Continental Shelf or in state offshore waters. However, this exception is clearly stated in part 195 only for production on the Outer Continental Shelf (§ 195.1(b)(5)). To clarify that all offshore pipelines used in production are outside part 195, RSPA proposed to delete from § 195.1(b)(5) the phrase "on the Outer Continental Shelf".

The 10 THLPSSC members who voted on the proposed amendment to § 195.1(b)(5) all approved the amendment.

In addition, RSPA received comments from three operators and two pipeline-related associations in support of the amendment and no adverse comments. Therefore, § 195.1(b)(5) is amended as proposed in the NPRM.

We also requested comments on whether there is a gap in the regulation of production lines in state offshore waters. Only one commenter responded. This commenter opined that existing state and federal programs adequately regulate production lines in state waters. In Louisiana, the Departments of Natural Resources and Environmental Quality were said to have comprehensive regulations on facility installation, operation, integrity, and removal, and sufficient authority to address any "gap" that is identified. Since the other states with production lines in state waters have similar regulations, RSPA does not believe there is a gap in the regulation of production lines in state waters.

In-plant piping. Part 195 does not apply to pipeline transportation through onshore production, refining, or manufacturing facilities, or storage or in-plant piping systems associated with such facilities (§ 195.1(b)(6)). Because the physical distinction between a regulated pipeline serving a plant and unregulated in-plant piping is unclear, RSPA proposed to add a definition of "in-plant piping system" to § 195.2. The definition proposed was: "*In-plant piping system* means piping that is located on the grounds of a plant and used to transfer hazardous liquid or carbon dioxide between plant facilities or between plant facilities and a pipeline, not including any device and associated piping that are necessary to

control pressure in the pipeline." The NPRM explained that we would consider in-plant piping to extend to the plant boundary in the absence of a necessary pressure control device on plant grounds.

All ten THLPSSC members who voted on this proposal supported it. However, four members believed that because the NPRM primarily concerned pipeline transportation rather than production, refining, or manufacturing plants, it did not give plant owners adequate notice that the proposed definition could affect plant piping. These members wanted RSPA to publish a separate NPRM on the subject of in-plant piping.

RSPA does not agree that another NPRM is needed. The subject of in-plant piping and the associated issues were clearly discussed in the published NPRM. Also, all interested persons, including plant owners as well as pipeline operators, were given an opportunity to comment on the subject of in-plant piping.

RSPA received comments on the proposed definition from seven operators, two pipeline-related associations, and one state agency. Two operators and one association fully supported the proposal.

One operator and a pipeline-related association thought plant owners were not adequately notified of the proposed rule, and that RSPA should treat the subject in a separate NPRM. Our position on this issue is given supra in response to a similar criticism by four THLPSSC members.

Another operator was concerned that the proposed definition would cause operator-owned components, such as pipe, meters, instruments, and manifolds, that are located on plant grounds downstream from the operator's pressure control device to fall outside part 195. The operator was worried that other agencies would regulate these components as non-transportation related facilities. We are not persuaded, however, that the potential for such regulation is sufficient reason to exclude the components from the definition of in-plant piping system. The aim of the proposed definition was to distinguish unregulated piping, not to limit the jurisdiction of other government agencies.

In contrast, an operator of gathering and processing facilities was concerned that part 195 would apply to plant piping that lies between any necessary pressure control device and the connection to a pipeline. This commenter apparently did not realize that such piping is subject to part 195. RSPA has applied part 195 to such piping because it is subject to pressure which is controlled by a device operators must have to meet § 195.406(b). However, this application has had little effect on plant owners, because we hold the pipeline operator, not the plant owner, responsible for compliance.

An operator commenting on the plant device exclusion in the proposed definition advised us to change "control pressure" to "prevent overpressure." This commenter said the change would avoid making pipeline operators responsible under part 195 for nonessential pressure control devices. We agree the suggested rewording would better convey the intent of the proposal. But, in the final definition, we have changed "control pressure in the pipeline" to "control pressure in the pipeline under § 195.406(b)" to convey the intent even more precisely.

The state agency commented that if piping on plant grounds does not include a device necessary to control pipeline pressure, the jurisdiction of part 195 over the pipeline should not end at the plant boundary. Instead, the state agency recommended ending jurisdiction at a component inside the plant, such as a flange, where the pipeline can be isolated for purposes of testing. Although operators may use such components, part 195 does not require that they be on the pipeline. Also, we believe the plant boundary is a more convenient demarcation of in-plant piping than an unspecific inside-the-plant component. Thus, the state agency's comment is not incorporated in the final definition.

The state agency, an operator, and a pipeline-related association were concerned that because segments of transfer piping located off plant grounds were not included in the proposed definition, a large number of short pipelines would come under part 195. RSPA recognizes that production, refining, or manufacturing plants often install transfer piping off plant grounds. A plant may use this piping to transfer hazardous liquids between its different facilities located on the same grounds; between its different facilities located on separate grounds (usually separated by a roadway, railway, waterway, or industrial area); between its facilities and a transportation system, such as a railroad or pipeline; or between its facilities and the facilities of another plant or industrial consumer. The three commenters thought the off-grounds segments should qualify as in-plant piping if they connect facilities of the same plant. The association also wanted to include under the definition off-grounds segments that connect facilities of different plants. In addition, the operator and association argued that the off-grounds segments pose minimum risk to public safety and the environment, because the segments generally are located in industrial areas, roadways, or railways. The association further argued that a plant has the same operational control, including response capability, over the off-grounds segments as it does over piping on plant grounds.

In response to these comments, we note that § 195.1(b)(6) echoes section 201(3) of the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA), (49 U.S.C. app. 2001(3)), which excludes certain "in-plant piping systems" from regulation under the HLPSA. Since neither the HLPSA nor its legislative history explain "in-plant piping," we adopt an ordinary, reasonable understanding of the term. Therefore, we do not accept the interpretation that the term includes piping that crosses the property of others outside plant grounds. However, many plants are separated by a public thoroughfare, and plant transfer piping crosses the thoroughfare. A single public thoroughfare would include any road, from a country lane to an interstate highway, but it does not include a railroad. Because transfer piping that crosses such thoroughfares is comparable in most respects to other in-plant piping, RSPA considers the in-plant piping exception to include the thoroughfare crossings. The thoroughfare exception does not apply to inter-facility lines or delivery lines, because these lines are distinct from in-plant piping. We did not intend the proposed definition of "in-plant piping systems" to expand our present interpretation of the term. So the final definition does not incorporate any of the comments concerning piping located off plant grounds other than for thoroughfare crossings.

However, the proposed definition's first use of the term "pipeline" is changed to "pipeline or other mode of transportation." This change is needed to include, within the definition, piping on plant grounds that transfer hazardous liquid or carbon dioxide between plant facilities and modes of transportation other than pipeline.

Terminal facilities. Part 195 does not apply to the transportation of hazardous liquid or carbon dioxide by vessel, aircraft, tank truck, tank car, or other vehicle, or by terminal facilities used exclusively to transfer hazardous liquid or carbon dioxide between such modes of transportation (§ 195.1(b)(7)). RSPA proposed to amend § 195.1(b)(7) to clarify that terminal facilities located off terminal grounds are subject to part 195,

and to distinguish unregulated terminal facilities from a regulated pipeline entering or leaving the terminal. As with the proposed in-plant piping definition, any device and associated piping on terminal grounds necessary to control pressure in a regulated pipeline would not be excepted from part 195.

The THLPSSC voted to approve this proposal, but four members believed the NPRM did not give terminal owners adequate notice that the proposed amendment could affect their piping. These members wanted RSPA to publish a separate NPRM on the subject. For the reasons stated supra in response to a similar argument by these THLPSSC members concerning in-plant piping, RSPA does not agree that another NPRM is needed.

Five operators and two pipeline-related associations commented on the proposed amendment to § 195.1(b)(7). Of these commenters, two operators and one association agreed with the proposal.

A few commenters expressed the same concerns about the proposed amendment to § 195.1(b)(7) as they did about the proposed in-plant piping definition. These concerns were that the NPRM did not adequately notify plant (terminal) owners of the proposed rule, and that some operator-owned components located on plant (terminal) grounds would fall outside part 195. Our response to these concerns is the same as stated supra regarding in-plant piping.

In regard to transfer lines located outside terminal grounds at ports, an operator and a pipeline-related association pointed out that the U.S. Coast Guard regulates transfers between terminal storage and dock facilities. These commenters suggested that RSPA and Coast Guard develop a memorandum of understanding to limit Coast Guard's regulations to dock facilities.

We recognize that Coast Guard and RSPA jurisdictions overlap in port areas, but the two agencies have different responsibilities. Also, the overlap does not automatically result in regulatory conflicts, and the commenters did not mention any. Nonetheless, though we have not changed the final rule as a result of this comment, in enforcing part 195 at port areas, RSPA will act appropriately to resolve any unnecessary regulatory burdens.

Carbon dioxide injection system. Section 195.1(b)(8) provides that part 195 does not apply to "[t]ransportation of carbon dioxide downstream from a point in the vicinity of the well site at which carbon dioxide is delivered to a production facility." RSPA proposed to amend this section to clarify that the exception covers pipelines used in the injection of carbon dioxide for oil recovery operations.

The THLPSSC approved the proposed amendment (10 voted in favor and 5 did not vote), and we received no adverse comments from the public. The proposed amendment to § 195.1(b)(8) is, therefore, adopted as final.

Section 195.2 Definitions.

The proposed revision of the definition of "Secretary" is not adopted in this rulemaking. Instead, it is being handled in an omnibus rulemaking covering all regulations involving pipeline safety.

The definition of "In-plant piping system" is discussed above in § 195.1 Applicability.

Two commenters objected to the proposed definition for petroleum products because of its use of the terms "flammable", "toxic", and "corrosive" which are not defined under part 195. The commenters stated that absent specific definitions for these terms, their applicability could be unclear.

RSPA agrees with the comments about the lack of clarity in the proposed definition for petroleum products. So, the final rule for this section includes new definitions for "flammable", "toxic", and "corrosive" that come from the definitions contained in 49 CFR part 173 for Transportation and Packaging of Hazardous Materials for the terms "flammable liquid", "poisonous material", and "corrosive material", respectively. RSPA has adopted the definition of "poisonous material" for "toxic" because it considers the terms synonymous.

Sections 195.2, 195.106, 195.112, 195.212 and 195.413 (Nominal Outside Diameter of the Pipe in Inches)

RSPA proposed to standardize the dimensioning of pipe size throughout part 195 (Changes are made to §§ 195.2, 195.106(b), 195.106(c), 195.112(c), 195.212(b)(3)(ii) and 195.413(a)). All 10 THLPSSC members who voted were in favor of the proposal and no commenter objected thereto. Accordingly, the proposed amendment is adopted as final.

Section 195.3 Matter incorporated by reference.

Section 195.3 sets out the general requirements for the incorporation in the regulations of industry standards for the design, construction and operation of hazardous liquid and carbon dioxide pipelines. Paragraph 195.3(a) states that incorporation of a document by reference has the same force as if the document were copied in the regulations. Some operators have misinterpreted this section to mean that they must comply with all of the terms contained in a referenced document. Accordingly, RSPA hereby revises § 195.3(a) to clarify that an entire document is not incorporated when the document is incorporated by reference; rather, only those portions specifically referenced in the regulations are incorporated.

The rule is being revised to conform to a recent update of references in another rulemaking (Update of Standards Incorporated by Reference (58 FR 14519; March 18, 1993)). Also, references to ASME/ANSI Codes B31.8 and B31.G are being added. The 10 THLPSSC members who voted and 7 commenters favored the revision.

Section 195.5 Conversion to service subject to this part.

Section 195.5 regulates the conversion of steel pipelines to hazardous liquid or carbon dioxide service that is subject to part 195. Under § 195.5(a)(4), a converted pipeline must be hydrostatically tested to substantiate the maximum operating pressure (MOP) permitted by § 195.406.[1]

To substantiate the MOP of a converted pipeline, an operator must know the pipe design pressure (see current § 195.406(a)(1)). Consequently, if pipe design pressure is unknown, a steel pipeline may not be converted under § 195.5. Although the design pressure of components is an MOP factor under § 195.406(a)(2), pipeline components are normally designed to be as strong or stronger than attached pipe. Thus, pipe design is the critical factor in substantiating MOP under § 195.5(a)(4), and lack of knowledge of component design pressure is not a significant safety concern.

RSPA proposed to amend § 195.5 to permit conversion using an approach found in section 845.214 and Appendix N of ASME B31.8 for gas pipelines whose design pressure is unknown. Under this proposal, operators would pressure test the pipeline under Appendix N until pipe yield occurs. Instead of design pressure, this yield test pressure would be used to compute MOP by applying certain reduction factors to 80 percent of the first pressure that produces pipe yield.

All THLPSSC members who voted on the proposed amendment to § 195.5

[1] Section 195.5(a)(4) actually uses the term "maximum allowable operating pressure," but for consistency with § 195.406, this term is changed below to MOP by removing the word "allowable."

supported it in concept. However, two members thought the wording of Appendix N should be copied directly into part 195 to avoid referencing a gas pipeline code in liquid pipeline regulations. We believe the principles of Appendix N apply equally to gas and liquid pipelines. And since the B31.8 Code is widely used, operators of hazardous liquid or carbon dioxide pipelines will not find it difficult to obtain and apply Appendix N.

RSPA received five comments on the proposed amendment to § 195.5. Two operators and a pipeline-related association agreed with the proposed amendment.

One operator suggested that if pipelines operating at less than 20 percent of specified minimum yield strength (SMYS) are subject to § 195.5, RSPA should allow operators up to 10 years to meet the testing requirements. At present, none of the standards in part 195, including § 195.5, applies to pipelines operating at less than 20 percent of SMYS (see § 195.1(b)(3)). However, this commenter may have had in mind § 206 of the Pipeline Safety Act of 1992 (Pub. L. 102–508), which provides that exceptions to regulations under the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. app. 2001 *et seq.*), such as part 195, may not be based solely on low internal stress. Because of this statutory mandate, RSPA has proposed to apply part 195 to certain low-stress hazardous liquid pipelines (Docket PS–117; 58 FR 12213; March 3, 1993). Still, that proposal would not require any existing low-stress hazardous liquid pipeline to be tested under § 195.5, because such pipelines would not be converted pipelines. Of course, if part 195 becomes applicable to low stress pipelines, any pipeline converted to low stress hazardous liquid service subject to part 195 would have to be tested under § 195.5. But, since testing is the backbone of the conversion process, RSPA does not believe § 195.5 should be amended to extend the time for testing to 10 years.

A state agency was concerned that if test pressure must be measured at the high elevation point of test segments, the test could stress the low point of the segment beyond yield. However, the Appendix N test method should not result in overstress at the low elevation, because the method does not require increases in test pressure after the first yield occurs in the test segment.

In a separate rulemaking proceeding (Docket No. PS–124; 57 FR 39572; August 31, 1992), RSPA proposed to allow the use of the Appendix N method in converting pipelines to gas service under 49 CFR 192.14. This gas pipeline conversion standard is similar to § 195.5. Comments to that notice argued that pressure testing to yield is unnecessary to qualify certain pipelines that operate at low stress (generally pipelines 12¾ inches or less in nominal outside diameter operating at pressures of 200 psig or less). RSPA believes these comments are also relevant to hazardous liquid pipelines. All other factors being equal, hazardous liquid pipelines operating at low internal stress present less risk of failure from time-dependent defects than higher stress hazardous liquid pipelines. Because of the lower risk, RSPA has modified the final rule to provide that pipelines 12¾ inches or less in nominal outside diameter to be operated at a pressure of 200 psig or less may be converted without testing to yield. The MOP of such pipelines may be determined under § 195.406 by using 200 psig as pipe design pressure.

The proposed rule has been redrafted to improve clarity, to better relate conversion to design pressure and MOP under § 195.406, and to include the changes discussed supra. In the final rule, the proposed amendment to § 195.5(a)(1) is revised and published as an amendment to § 195.406(a)(1). This latter section deals specifically with pipe design pressure and MOP. As set forth infra, revised § 195.406(a)(1) provides that when pipe design pressure is unknown for steel pipelines being converted, a reduced value of first yield hydrostatic test pressure may be used as design pressure to compute MOP. If the pipeline to be converted is 12¾ inches or less in nominal outside diameter and is not yield tested, 200 psig may be used as design pressure.

Section 195.8 Transportation of hazardous liquid or carbon dioxide in pipelines constructed with other than steel pipe.

The proposal to replace the word "he" with "the Secretary" to remove any implication of gender is not adopted in this rulemaking. Instead, this proposal will be handled in an omnibus rulemaking to make minor clarifications and error corrections covering all the pipeline safety regulations.

Section 195.50 Reporting accidents and § 195.52 Telephonic notice of certain accidents.

Sections 195.50(f) and 195.52(a)(3) require operators to prepare reports and give telephonic notice of accidents, respectively, when the estimated property damage due to an accident exceeds $5,000. RSPA discovered from its regulatory review and previous enforcement cases that a significant amount of confusion exists among pipeline operators as to which cost estimates must be included in calculating the "estimated property damage to the property of the operator or others * * *" Frequently, when reporting accidents, pipeline operators fail to include as "property damage" the fair market value of the product released or those costs associated with clean-up and recovery efforts. RSPA believes these costs should be included when reporting accidents.

Because the $5,000 reporting requirement requires the reporting of minor accidents, RSPA proposed amending §§ 195.50(f) and 195.52(a)(3) to increase the reporting threshold to $50,000, the same level as required in 49 CFR part 192 and to include as property damage the value of the product released and the costs associated with clean-up and recovery efforts. The THLPSSC voted 10 to 0 in favor of the change (5 members did not vote). Two of those favoring the proposed changes recommended that RSPA modify the final rule to limit property damage to fair market value of the lost product and initial clean-up and product recovery costs. One member said that clean-up and recovery costs should not be included in total property damage.

Three commenters disagreed with the proposed changes and recommended that the rule be withdrawn. One complaint was that the statistical base would be discontinuous because, in the future, RSPA would not receive information on accidents costing between $5,000 and $50,000. Another complaint was that the change could affect the development of environmental protection requirements. RSPA understands that a change in reporting levels will cause a slight skewing due to truncation of the data, but believes requiring operators to report accidents based solely on the $5,000 property damage criterion is unnecessary and burdensome. Significant accidents will still be reported because the other criteria (especially those that are environmentally related) requiring reports will be unchanged: (1) Explosion or fire, (2) loss of 50 barrels of liquid, (3) escape of five barrels a day of highly volatile liquids, (4) a death, (5) bodily harm, or (6) resulted in the pollution of any stream. Because these requirements remain unchanged, those operators with more frequent small releases will still be identified. As to a skewing of the data, those organizations that keep track of such statistical data should be able to make adjustments to account for such changes. Also, as explained in the NPRM, this change will make the liquid

safety reporting requirements consistent with the gas safety reporting requirements which will eliminate confusion. The rule change should have little, if any, effect on the environment because the same spill volume reporting criteria remain in effect. Only the dollar level of the reporting criterion is being changed.

Two commenters supported the rule changes as they were written. Five others favored the changes, but proposed modification of the rules to explain more fully the meaning of "estimated total damage" in order to spell out the items that must be covered. They said that "estimated total damage" is ambiguous and confusing and subject to interpretation. One commenter stated that the costs of subsurface restoration should be excluded from property damage because it is nearly impossible to estimate the subsurface restoration costs within the time allowed to report the accident.

RSPA agrees that early estimates of the costs to clean-up a liquid spill may not be exact; however, the operator should, at a later date, submit a revised report that provides more reliable cost figures for the clean-up.

RSPA is clarifying the issue by amending § 195.50(f) to read: "(f) Estimated property damage, including cost of clean-up and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding $50,000" and § 195.52(a)(3) to read: "(3) Caused estimated property damage, including cost of clean-up and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding $50,000."

Section 195.106 Internal design pressure.

Section 195.106(a) prescribes the formula for calculating the design pressure of steel pipe. In addition, § 195.106(b) regulates the pipe yield strength used in the design pressure formula. When the specified minimum yield strength (SMYS) of pipe is unknown, § 195.106(b) requires that yield strength be derived from tensile tests on random samples of pipe. Based on a comparable gas pipeline safety standard (49 CFR 192.107(b)(2)), RSPA proposed to amend § 195.106(b) to allow operators to use 24,000 psi as yield strength if pipe of unknown SMYS is not tensile tested. Editing changes to § 195.106(b) were also proposed.

The 10 THLPSSC members who voted on the proposed amendment of § 195.106(b) supported it (5 did not vote). In addition, RSPA received comments from four operators and one pipeline-related association. The association and three of the operators agreed with the proposal. One of these operators suggested further editing, part of which RSPA has included in the final rule.

One operator was concerned that the proposed rule could unjustifiably reduce the MOP of its pipelines. The operator said its pipelines are made of Grade B pipe (yield strength at least 35,000 psi) or better. However, some pipelines may contain pipe for which documentation of yield strength or tensile testing does not exist. For such pipe, without new tensile testing, yield strength would have to be assumed to be 24,000 psi. The operator suggested that RSPA allow operators to use appropriate evidence besides tensile tests to demonstrate the yield strength of pipe.

In response to this comment, we note, first, that the proposed amendment to § 195.106(b) would not affect the design pressure of existing pipelines unless they are replaced, relocated, or otherwise changed (see § 195.100). Second, § 195.106(b) currently requires operators to use as yield strength either SMYS or a value based on tensile testing. So the operator's apparent difficulty in verifying yield strength is a problem of compliance with the current rule. Third, the proposed rule would relax the burden of tensile testing only when MOP does not exceed the level that corresponds to a yield strength of 24,000 psi. When a higher MOP is desired, operators must use the tensile testing option. Finally, RSPA is not aware of any acceptable evidence of the yield strength of pipe of unknown SMYS apart from appropriate tensile testing. Thus, the amendments to § 195.106(b), as discussed above, are adopted.

Section 195.204 Inspection-general.

The THLPSSC voted 10 to 0 in favor of the proposed change to make the language gender neutral and, except for a minor correction, no objections were received from commenters. The proposed change is adopted as corrected.

Section 195.228 Welds; standards of acceptability.

One of the comments we received on proposed amendments to nondestructive testing requirements under § 195.234(e) (discussed infra) concerned the standards for acceptance of weld flaws (§ 195.228(b)). A pipeline-related association asked us to incorporate by reference the alternative acceptance standards for girth welds that are in the Appendix to American Petroleum Institute (API) Standard 1104 (17th edition). For weld acceptability, § 195.228(b) now references the standards in Section 6 of API Standard 1104.

In a notice of proposed rulemaking involving our review of the gas pipeline safety standards in 49 CFR part 192 (Docket PS–124; 57 FR 39572; August 31, 1992), RSPA proposed to allow gas operators to apply the API appendix in addition to section 6 criteria. Although that proposal was based on a petition by API to incorporate the appendix by reference in both parts 192 and 195, we overlooked the request to include such a proposal in the present rulemaking.

In the part 192 rulemaking, RSPA's gas pipeline safety advisory committee voted to support the proposed amendment. Also, all but one of the public comments were in favor of allowing use of the Appendix of API Standard 1104.

The dissenting commenter was concerned that industry inspection personnel may not be qualified to apply the appendix. However, this commenter may not have recognized that under §§ 192.243(b) and (c), operators must ensure that nondestructive testing is performed in accordance with written procedures by persons who have been properly trained and qualified. Sections 195.234(b) and (c) provide similar requirements for nondestructive testing of welds on hazardous liquid and carbon dioxide pipelines. RSPA believes these requirements are adequate to assure proper application of the appendix.

The Appendix of API Standard 1104 applies equally to girth welds in gas and liquid pipelines. This amendment is not mandatory, rather it provides pipeline operators an optional operating procedure. In view of the prior opportunity for public comment on use of the appendix for gas pipelines, the favorable response by public commenters and RSPA's advisory committee, and the fact that use of the appendix would not be mandatory, we believe that a further opportunity for public comment is unnecessary to allow use of the appendix under § 195.228(b). We feel this amendment is a logical outgrowth of the Notice and furthers our efforts to make parts 192 and 195 consistent wherever possible. This amendment will not have a substantial impact on the regulated community.

Thus, in accordance with 5 U.S.C. 553(b)(3)(B), we are amending § 195.228(b) to reference the appendix without further rulemaking notice. However, should any person be adversely affected by this decision or wish to change the final rule, that person may submit a petition for

reconsideration under RSPA's rulemaking procedures in 49 CFR 106.35.

The final rule provides that the appendix may be used only for girth welds to which the appendix applies. For example, as section A.1 of the appendix states, neither welds in pump stations nor welds used to connect fittings and valves are covered by the appendix. Also, the appendix applies only to girth welds between pipe of equal nominal wall thickness.

Section 195.234 Welds: Nondestructive testing.

Section 195.234(e) requires that "100 percent of each day's girth welds installed in * * * [certain] locations must be nondestructively tested 100 percent unless impracticable, in which case at least 90 percent must be tested." RSPA proposed to amend § 195.234(e) to clarify that "90 percent" pertains to the number of girth welds that must be tested over their entire circumference.

In addition, § 195.234(g) requires: "At pipeline tie-ins 100 percent of the girth welds must be nondestructively tested." RSPA proposed to clarify that this standard applies to tie-ins of replacement sections of pipeline.

The THLPSSC supported the proposed amendments, although one member thought part 195 should define the word "impracticable." We did not adopt this recommendation because the word is used in its ordinary dictionary sense.

Three operators and two pipeline-related associations commented on the proposed amendments. Three commenters agreed with the proposal, one suggested editing changes, and one made a related proposal discussed supra under the heading, "§ 195.228(b) Welds; standards of acceptability." Although we did not adopt all the editing suggestions, these comments helped us provide clarity to the final rule.

In addition, one commenter thought the proposed amendment of § 195.234(g) was unnecessary because § 195.200 already indicates that § 195.234(g) applies to replacement sections. Moreover, the commenter thought adding the proposed phrase to § 195.234(g) would create confusion over whether §§ 195.234(a) through (f) apply to replacement sections. While these observations have theoretical merit, in practice, some operators have failed to recognize that "pipeline tie-ins" include tie-ins of replacement sections. The clarifying phrase adds emphasis where it is apparently needed to assure compliance with the full extent of the rule. Section 195.234(g) is, therefore, adopted as proposed.

Sections 195.246 Installation of pipe in a ditch and 195.248 Cover over buried pipeline.

Section 195.246(b) is inconsistent with § 195.413(b)(3) for pipe in the Gulf of Mexico and its inlets (See § 195.2 Definitions) under water less than 15 feet deep but at least 12 feet deep, because § 195.246(b) permits the pipe to be without cover or to be above the seabed if properly protected. Such pipe is a "hazard to navigation" under the definition of that term in § 195.2, and must have the minimum cover required by § 195.413(b)(3). In addition, §§ 195.248(a) and (b) are inconsistent with § 195.413(b)(3) for pipe in the Gulf of Mexico and its inlets under water less than 12 feet deep. Section 195.248(a) allows pipe to be less than 12 inches below the seabed (i.e., a hazard to navigation). In certain instances, § 195.248(b) allows pipe to be without cover or less than 12 inches below the seabed. Neither condition is allowed under § 195.413(b)(3). In light of these inconsistences, RSPA proposed in the NPRM to amend §§ 195.246(b) and 195.248(a) and (b) to correct the problem.

Ten THLPSSC members favored the proposed changes (5 members did not vote). One of the members favoring the changes said it would make more sense to retain the existing regulation which operators have adhered to for years. In similar manner, two commenters and one pipeline-related organization agreed with the proposal. One commenter and two pipeline-related organizations disagreed and suggested that references to a depth of 15 feet in the rule be eliminated. RSPA proposed changes to §§ 195.246(b), 195.248(a) and 195.248(b) so these sections would conform with Public Law 101–599 (section 1, 104 Stat. 3038 (1990)) which requires burial of pipe where the subsurface is under 15 feet of water as measured from mean low water. Therefore, §§ 195.246(b), 195.248(a) and 195.248(b) are adopted as proposed in the NPRM.

Section 195.262 Pumping equipment.

Section 195.262(d) regulates the location of pumping equipment. The rule prohibits the installation of pumping equipment on property not under the operator's control. It also prohibits installation less than 50 feet from the pump station boundary. RSPA proposed to amend § 195.262(d) to clarify that these two restraints on location apply conjunctively not alternatively.

The THLPSSC members who voted on the proposed amendment supported it in concept, but 5 members recommended further editing of the rule for clarity. Although three of the five persons who commented on the proposal supported it as proposed, the other two commenters thought further clarifying changes were needed. In view of these comments and THLPSSC views, we have modified the final rule based on identical wording suggested by five THLPSSC members and one commenter.

Section 195.304 Testing of components.

Section 195.304(b) excludes from hydrostatic testing under part 195 any component that is the only item being replaced or added to a pipeline system if the component or a prototype was tested at the factory. RSPA proposed to amend § 195.304(b) to clarify that the excluded components do not include pipe.

The THLPSSC fully supported the proposed amendment. Of the six comments from the public on the proposal, a pipeline-related association and two operators agreed with it, while three operators suggested changes.

An operator suggested that instead of amending § 195.304(b), we should revise the definition of "component" to exclude pipe. We did not adopt this suggestion because the revision would affect every rule in part 195 that uses the term "component." Editing suggested by another operator was not adopted because it concerned matters not addressed in the NPRM.

One operator felt pipe should be excluded from hydrostatic testing under § 195.304(b) to the same extent as other components. The operator said that hydrostatically testing short sections of mill tested pipe is duplicative, costly, and not needed for safety. Although the NPRM did not propose to alter the existing requirement that replacement sections of pipe of any length must be hydrostatically tested to part 195 standards before operation, we do not agree with this commenter's contention. Normal pipe mill tests are not duplicative of part 195 tests, and are not a proven safe alternative to part 195 requirements. However, for short sections of replacement pipe, part 195 test requirements could be met anywhere, including, by prior arrangement with the operator, in the pipe mill. So if an operator wishes to avoid field testing of short replacement sections of pipe, it only needs to assure that the mill tests of those sections were done in accordance with part 195 test requirements.

Section 195.406 Maximum operating pressure.

The changes to § 195.406 are discussed supra under § 195.5.

Section 195.412 Inspection of rights-of-way and crossings under navigable waters.

Section 195.412(a) requires an operator, at intervals not exceeding 3 weeks, but at least 26 times each calendar year, to inspect the surface conditions on or adjacent to each pipeline right-of-way. Because some surface condition activities that affect the safety and operation of pipelines are more visible from aerial patrols than from walking or driving the right-of-way, RSPA proposed that the section be changed to clarify that aerial patrols are an optional method of compliance. No comments were received regarding the change and the THLPSSC voted 10 to 0 in favor of the change (5 members did not vote). Accordingly, the change to § 195.412(a) is adopted as proposed.

Section (b) requires operators, at intervals not exceeding 5 years, to inspect each crossing under a navigable waterway (except offshore) to determine the condition of the crossing. The purpose of the inspection is to look for any damage, unanticipated loading, or loss of protection that could threaten the safety of the pipeline. We stated in the NPRM that bored crossings are usually so deep that there is little likelihood the pipeline could be affected by waterway-related events, such as scouring or anchor dragging. We proposed to add an exception to § 195.412(b) to cover bored crossings that are too deep to be subject to waterway-related damage.

The THLPSSC voted 10 to 0 in favor of the rule (5 members did not vote). However, a state pipeline agency suggested the existing regulation be retained. The agency stated that a pipeline operator cannot be 100 percent sure a bored crossing is so deep it cannot be affected as stated. RSPA received four additional comments, three of which expressed an opinion that the phrase "too deep to anticipate damage from waterway conditions or vessel traffic" is vague and inappropriate. The other commenter said the proposal is unduly restrictive and should be refocused from bored crossings to a more generic performance standard potentially including all crossings.

In view of the comments received, RSPA agrees with those who opined that "too deep to anticipate damage from waterway conditions or vessel traffic" is too vague. In the absence of a recognized standard on the subject, it is too speculative to judge when bored crossings are buried at a sufficient depth to be safe from damage by external forces. Therefore, it is in the interest of public safety that the current rule requiring inspection at intervals not exceeding 5 years be retained. Accordingly, the proposed change to § 195.412(b) is not adopted.

Section 195.416 External Corrosion Control.

Section 195.416(a) states that each operator shall, at intervals not exceeding 15 months, but at least once each calendar year, conduct tests on each underground facility that is under cathodic protection to determine whether protection is adequate. RSPA is clarifying the rule to reduce any misunderstanding regarding what is meant by "underground." The word "underground" in this paragraph has meant any facility that is buried or in contact with the ground. This rule clarification will not change the burden on operators because RSPA compliance inspectors have consistently required any facility in contact with the ground to be cathodically protected.

RSPA received two comments regarding the change to § 195.416(a). One commenter recommended that offshore pipelines be excluded from annual testing requirements. RSPA believes there is no acceptable substitute for regular testing to determine if corrosion protection of all lines, both onshore and offshore, is adequate. Accordingly, "in contact with the ground or submerged" is added to the rule to assure that all underwater pipelines, both onshore and offshore, are included in the definition. The other commenter suggested requiring the testing of "carrier pipes" in casings. "Carrier pipes" are normally buried and subject to the rule. The THLPSSC voted 10 to 0 in favor of the proposed change (5 members did not vote). The revision to § 195.416(a) is adopted as modified.

Section 195.416(f) requires that any pipe found to be generally corroded so that the remaining wall thickness is less than the minimum thickness required by the pipe specification tolerances must either be replaced with coated pipe that meets the requirements of part 195 or, if the area is small, must be repaired. However, the operator need not replace generally corroded pipe if the operating pressure is reduced to be commensurate with the limits on operating pressure specified in § 195.406, based on the actual remaining wall thickness.

Section 195.416(g) states that if localized corrosion pitting is found to exist to a degree where leakage might result, the pipe must be replaced or repaired, or the operating pressure must be reduced commensurate with the strength of the pipe based on the actual remaining wall thickness in the pits.

RSPA recognizes that paragraphs (f) and (g) do not provide guidance for an operator's use in determining the strength of the actual remaining wall thickness of corroded steel pipe. To provide such guidance, RSPA proposed amending § 195.416(h) to adopt the ASME Manual B31G procedure for determining the remaining strength of corroded steel pipe in existing pipelines. Application of the procedure was proposed to be in accordance with the limitations set out in the B31G Manual. The rule would provide guidance as to whether a corroded region (not penetrating the pipe wall) may be left in service; this option might require a reduction in maximum allowable operating pressure, but may be more economical than replacement or repair of the corroded pipe.

Ten THLPSSC members voted for the proposal (5 members did not vote).

Comments relative to § 195.416(h) were received from five commenters. One commenter said the proposal to change § 195.416(h) is inappropriate and should be redone to be consistent with § 192.485. Others stated that the proposal was unnecessarily restrictive because it did not allow the use of other proven industry developed methods for determining the remaining strength of corroded pipelines. The most noteworthy method mentioned was "A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe (with RSTRENG disk)" developed by Battelle under the Pipeline Research Committee of the American Gas Association (AGA). (Project PR 3–805, December 1989, AGA catalog No. L51609). Project PR 3–805 was undertaken to devise a modified criterion that, while still assuring pipeline integrity, would eliminate as much as possible the excessive specifications embodied in the ASME B31G manual. The AGA modified criterion, using a complex analysis approach, can be carried out by means of a PC-based program called RSTRENG. The modified criterion can also be applied via tables or curves or a long-hand equation if a simplified analysis is preferred.

The addition of the modified criterion to the rule does not compromise safety because it merely accepts an established pipeline industry guideline, and does not impose new requirements on the operators. Accordingly, RSPA is amending § 195.416(h) to include the AGA/Battelle—A Modified Criterion for

Evaluating the Remaining Strength of Corroded Pipe (with the computer disk RSTRENG).

Rulemaking Analyses

Impact Assessment

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to review by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034).

A Regulatory Evaluation has been prepared and is available in the docket. RSPA estimates the proposed changes to existing rules would result in an estimated savings of $1,534,000 per year for the hazardous liquid pipeline industry at no cost to the industry, and with no adverse effect on safety. As discussed above, these savings would come largely from the use of new technology, greater flexibility in constructing and operating pipelines, and the elimination of unnecessary requirements.

Federalism Assessment

RSPA has analyzed the proposed rules under the criteria of Executive Order 12612 (52 FR 41685; October 30, 1987). The regulations have no substantial effects on the states, on the current federal-state relationship, or on the current distribution of power and responsibilities among the various levels of government. Thus, preparation of a federalism assessment is not warranted.

Regulatory Flexibility Act

RSPA criteria for small companies or entities are those with less than $1,000,000 in revenues and are independently owned and operated. Few of the companies subject to this rulemaking meet these criteria. Accordingly, based on the facts available concerning the impact of this proposal, I certify under Section 605 of the Regulatory Flexibility Act that this proposal would not have a significant economic impact on a substantial number of small entities. This rule applies to intrastate and interstate pipeline facilities used in the transportation of hazardous liquids or carbon dioxide.

Paperwork Reduction Act

The documentation for the information collection requirements for part 195 was submitted to the Office of Management and Budget (OMB) during the original rulemaking processes. Currently, regulations in part 195 are covered by OMB Control Numbers 2137–0047 (approved through May 31, 1994), 2137–0578 (approved through October 31, 1994) and 2137–0583 (approved through May 31, 1994). There are no new information collection requirements in this final rule.

List of Subjects in 49 CFR Part 195

Ammonia, Carbon dioxide, Incorporation by reference, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA is amending 49 CFR part 195 as follows:

PART 195—[AMENDED]

1. The authority citation for part 195 continues to read as follows:

Authority: 49 app. U.S.C. 2002 and 2015; and 49 CFR 1.53.

2. In § 195.1, the introductory text of paragraph (b) is republished, paragraph (b)(5) is revised, in paragraph (b)(6) a hyphen is added between the words "in" and "plant", and paragraphs (b)(7) and (b)(8) are revised to read as follows:

§ 195.1 Applicability.

* * * * *

(b) This part does not apply to—

* * * * *

(5) Transportation of hazardous liquid or carbon dioxide in offshore pipelines which are located upstream from the outlet flange of each facility where hydrocarbons or carbon dioxide are produced or where produced hydrocarbons or carbon dioxide are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream;

* * * * *

(7) Transportation of hazardous liquid or carbon dioxide—

(i) By vessel, aircraft, tank truck, tank car, or other non-pipeline mode of transportation; or

(ii) Through facilities located on the grounds of a materials transportation terminal that are used exclusively to transfer hazardous liquid or carbon dioxide between non-pipeline modes of transportation or between a non-pipeline mode and a pipeline, not including any device and associated piping that are necessary to control pressure in the pipeline under § 195.406(b); and

(8) Transportation of carbon dioxide downstream from the following point, as applicable:

(i) The inlet of a compressor used in the injection of carbon dioxide for oil recovery operations, or the point where recycled carbon dioxide enters the injection system, whichever is farther upstream; or

(ii) The connection of the first branch pipeline in the production field that transports carbon dioxide to injection wells or to headers or manifolds from which pipelines branch to injection wells.

* * * * *

3. In § 195.2, the introductory text is republished, definitions for Corrosive product, Flammable product, In-plant piping system, Petroleum, Petroleum product, and Toxic product are added in alphabetical order to read as follows:

§ 195.2 Definitions.

As used in this part—

* * * * *

Corrosive product means "corrosive material" as defined by § 173.136 Class 8–Definitions of this chapter.

* * * * *

Flammable product means "flammable liquid" as defined by § 173.120 Class 3–Definitions of this chapter.

* * * * *

In-plant piping system means piping that is located on the grounds of a plant and used to transfer hazardous liquid or carbon dioxide between plant facilities or between plant facilities and a pipeline or other mode of transportation, not including any device and associated piping that are necessary to control pressure in the pipeline under § 195.406(b).

* * * * *

Petroleum means crude oil, condensate, natural gasoline, natural gas liquids, and liquefied petroleum gas.

Petroleum product means flammable, toxic, or corrosive products obtained from distilling and processing of crude oil, unfinished oils, natural gas liquids, blend stocks and other miscellaneous hydrocarbon compounds.

* * * * *

Toxic product means "poisonous material" as defined by § 173.132 Class 6, Division 6.1–Definitions of this chapter.

§§ 195.2, 195.112, 195.212, 195.413 [Amended]

4. In the list below, for each section indicated in the left column, the phrase indicated in the middle column is removed and the phrase indicated in the right column is added:

Section	Remove	Add
195.2, *Gathering line*	8 inches or less in nominal diameter	219.1 mm (8⅝ in) or less nominal outside diameter.
195.112(c)	An outside diameter of 4 inches or more	A nominal outside diameter of 114.3 mm (4½ in) or more.
195.212(b)(3)(ii)	The pipe is 12 inches or less in outside diameter.	The pipe is 323.8 mm (12¾ in) or less nominal outside diameter.
195.413(a)	Except for gathering lines of 4-inch nominal diameter or smaller.	Except for gathering lines of 114.3 mm (4½ in) nominal outside diameter or smaller.

5. In § 195.3, paragraph (a) is revised to read as follows:

§ 195.3 Matter incorporated by reference.

(a) Any document or portion thereof incorporated by reference in this part is included in this part as though it were printed in full. When only a portion of a document is referenced, then this part incorporates only that referenced portion of the document and the remainder is not incorporated. Applicable editions are listed in paragraph (c) of this section in parentheses following the title of the referenced material. Earlier editions listed in previous editions of this section may be used for components manufactured, designed, or installed in accordance with those earlier editions at the time they were listed. The user must refer to the appropriate previous edition of 49 CFR for a listing of the earlier editions.

* * * * *

6. In § 195.3, paragraphs (b)(1) through (b)(5) are redesignated as paragraphs (b)(2) through (b)(6) and paragraph (b)(1) is added to read as follows:

§ 195.3 Matter incorporated by reference.

* * * * *

(b) * * *

(1) American Gas Association (AGA), 1515 Wilson Boulevard, Arlington, VA 22209.

* * * * *

7. In § 195.3, paragraphs (c)(2)(iii) and (c)(2)(iv) are redesignated as paragraphs (c)(2)(v) and (c)(2)(vi) and paragraphs (c)(2)(iii) and (c)(2)(iv) are added to read as follows:

§ 195.3 Matter incorporated by reference.

* * * * *

(c) * * *

(2) * * *

(iii) ASME/ANSI B31.8 "Gas Transmission and Distribution Piping Systems" (1989 with ASME/ANSI B31.8a–1990, B31.8b–1990, B31.8c–1992 Addenda and Special Errata issued July 6, 1990 and Special Errata (Second) issued February 28, 1991).

(iv) ASME/ANSI B31G, "Manual for Determining the Remaining Strength of Corroded Pipelines" (1991).

* * * * *

8. In § 195.3, paragraphs (c)(1) through (c)(4) are redesignated as paragraphs (c)(2) through (c)(5) and paragraph (c)(1) is added to read as follows:

§ 195.3 Matter incorporated by reference.

* * * * *

(c) * * *

(1) American Gas Association (AGA): AGA Pipeline Research Committee, Project PR–3–805, "A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe" (December 1989). The RSTRENG program may be used for calculating remaining strength.

* * * * *

9. Section 195.5 is amended by revising paragraphs (a)(1) and (a)(4) to read as follows:

§ 195.5 Conversion to service subject to this part.

(a) * * *

(1) The design, construction, operation, and maintenance history of the pipeline must be reviewed and, where sufficient historical records are not available, appropriate tests must be performed to determine if the pipeline is in satisfactory condition for safe operation. If one or more of the variables necessary to verify the design pressure under § 195.106 or to perform the testing under paragraph (a)(4) of this section is unknown, the design pressure may be verified and the maximum operating pressure determined by—

(i) Testing the pipeline in accordance with ASME B31.8, Appendix N, to produce a stress equal to the yield strength; and

(ii) Applying, to not more than 80 percent of the first pressure that produces a yielding, the design factor F in § 195.106(a) and the appropriate factors in § 195.106(e).

* * * * *

(4) The pipeline must be tested in accordance with subpart E of this part to substantiate the maximum operating pressure permitted by § 195.406.

* * * * *

10. Section 195.50(f) is revised to read as follows:

§ 195.50 Reporting accidents.

* * * * *

(f) Estimated property damage, including cost of clean-up and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding $50,000.

11. Section 195.52(a)(3) is revised to read as follows:

§ 195.52 Telephonic notice of certain accidents.

(a) * * *

(3) Caused estimated property damage, including cost of cleanup and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding $50,000;

* * * * *

12. Section 195.106(b) is revised to read as follows:

§ 195.106 Internal design pressure.

* * * * *

(b) The yield strength to be used in determining the internal design pressure under paragraph (a) of this section is the specified minimum yield strength. If the specified minimum yield strength is not known, the yield strength to be used in the design formula is one of the following:

(1)(i) The yield strength determined by performing all of the tensile tests of API Specification 5L on randomly selected specimens with the following number of tests:

Pipe size	No. of tests
Less than 168.3 mm (6⅝ in) nominal outside diameter.	One test for each 200 lengths.
168.3 through 323.8 mm (6⅝ through 12¾ in) nominal outside diameter.	One test for each 100 lengths.
Larger than 323.8 mm (12¾ in) nominal outside diameter.	One test for each 50 lengths.

(ii) If the average yield-tensile ratio exceeds 0.85, the yield strength shall be taken as 165,474 kPa (24,000 psi). If the average yield-tensile ratio is 0.85 or less,

the yield strength of the pipe is taken as the lower of the following:

(A) Eighty percent of the average yield strength determined by the tensile tests.

(B) The lowest yield strength determined by the tensile tests.

(2) If the pipe is not tensile tested as provided in paragraph (b) of this section, the yield strength shall be taken as 165,474 kPa (24,000 psi).

* * * * *

13. In § 195.106(c), the last sentence is revised to read as follows:

§ 195.106 Internal design pressure.

* * * * *

(c) * * * However, the nominal wall thickness may not be more than 1.14 times the smallest measurement taken on pipe that is less than 508 mm (20 in) nominal outside diameter, nor more than 1.11 times the smallest measurement taken on pipe that is 508 mm (20 in) or more in nominal outside diameter.

* * * * *

14. In § 195.204, the last sentence is revised to read as follows:

§ 195.204 Inspection—general.

* * * No person may be used to perform inspections unless that person has been trained and is qualified in the phase of construction to be inspected.

15. Section 195.228(b) is revised to read as follows:

§ 195.228 Welds and welding inspection: Standards of acceptability.

* * * * *

(b) The acceptability of a weld is determined according to the standards in section 6 of API Standard 1104. However, if a girth weld is unacceptable under those standards for a reason other than a crack, and if the Appendix to API Standard 1104 applies to the weld, the acceptability of the weld may be determined under that appendix.

16. Section 195.234 is amended by revising the introductory text of paragraph (e) and by revising paragraph (g) to read as follows:

§ 195.234 Welds: Nondestructive testing.

* * * * *

(e) All girth welds installed each day in the following locations must be nondestructively tested over their entire circumference, except that when nondestructive testing is impracticable for a girth weld, it need not be tested if the number of girth welds for which testing is impracticable does not exceed 10 percent of the girth welds installed that day:

* * * * *

(g) At pipeline tie-ins, including tie-ins of replacement sections, 100 percent of the girth welds must be nondestructively tested.

17. Section 195.246 is amended by revising paragraph (b) to read as follows:

§ 195.246 Installation of pipe in a ditch.

* * * * *

(b) Except for pipe in the Gulf of Mexico and its inlets, all offshore pipe in water at least 3.7 m 12-ft-deep but not more than 61 m (200 ft) deep, as measured from the mean low tide, must be installed so that the top of the pipe is below the natural bottom unless the pipe is supported by stanchions, held in place by anchors or heavy concrete coating, or protected by an equivalent means.

18. Section 195.248 is amended by revising in the first column of the table in paragraph (a) the language "Other offshore areas under water less than 12-ft-deep as measured from the mean low tide" to read "Gulf of Mexico and its inlets and other offshore areas under water less than 12-ft-deep as measured from the mean low tide" and by revising the introductory text of paragraph (b) to read as follows:

§ 195.248 Cover over buried pipeline.

* * * * *

(b) Except for the Gulf of Mexico and its inlets, less cover than the minimum required by paragraph (a) of this section and § 195.210 may be used if—

* * * * *

19. Section 195.262(d) is revised to read as follows:

§ 195.262 Pumping equipment.

* * * * *

(d) Except for offshore pipelines, pumping equipment must be installed on property that is under the control of the operator and at least 15.2 m (50 ft) from the boundary of the pump station.

* * * * *

20. The introductory text of § 195.304(b) is revised to read as follows:

§ 195.304 Testing of components.

* * * * *

(b) A component, other than pipe, that is the only item being replaced or added to the pipeline system need not be hydrostatically tested under paragraph (a) of this section if the manufacturer certifies that either—

* * * * *

21. Section 195.406 is amended by republishing the introductory text of paragraph (a) and revising paragraph (a)(1) to read as follows:

§ 195.406 Maximum operating pressure.

(a) Except for surge pressures and other variations from normal operations, no operator may operate a pipeline at a pressure that exceeds any of the following:

(1) The internal design pressure of the pipe determined in accordance with § 195.106. However, for steel pipe in pipelines being converted under § 195.5, if one or more factors of the design formula (§ 195.106) are unknown, one of the following pressures is to be used as design pressure:

(i) Eighty percent of the first test pressure that produces yield under section N5.0 of Appendix N of ASME B31.8, reduced by the appropriate factors in §§ 195.106 (a) and (e); or

(ii) If the pipe is 323.8 mm (12¾ in) or less outside diameter and is not tested to yield under this paragraph, 1379 kPa (200 psig).

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22. Section 195.412(a) is revised to read as follows:

§ 195.412 Inspection of rights-of-way and crossings under navigable waters.

(a) Each operator shall, at intervals not exceeding 3 weeks, but at least 26 times each calendar year, inspect the surface conditions on or adjacent to each pipeline right-of-way. Methods of inspection include walking, driving, flying or other appropriate means of traversing the right-of-way.

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23. Section 195.416 is amended by revising paragraph (a), redesignating paragraph (h) as paragraph (i) and adding a new paragraph (h) to read as follows:

§ 195.416 External corrosion control.

(a) Each operator shall, at intervals not exceeding 15 months, but at least once each calendar year, conduct tests on each buried, in contact with the ground, or submerged pipeline facility in its pipeline system that is under cathodic protection to determine whether the protection is adequate.

* * * * *

(h) The strength of the pipe, based on actual remaining wall thickness, for paragraphs (f) and (g) of this section may be determined by the procedure in ASME B31G manual for Determining the Remaining Strength of Corroded Pipelines or by the procedure developed by AGA/Battelle—A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe (with RSTRENG disk). Application of the procedure in the ASME B31G manual or the AGA/Battelle Modified Criterion is applicable to corroded regions (not penetrating the pipe wall) in existing steel pipelines in accordance with limitations set out in the respective procedures.

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Acting Administrator, Research and Special Programs Administration.

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