meet the definition of "significant regulatory action."

*Comment:* The guidelines should not have been made effective upon publication but should have permitted public comment before taking effect. The guidelines are in violation of HUD's part 10 which requires the Department to follow APA procedures for rulemaking. The guidelines should be withdrawn and a new proposed rule issued, incorporating the provisions of the Housing and Community Development Act of 1992. The term 'notice'' in section 418 of NAHA refers to "notice and public comment" and not the Federal Register format. [two national associations

Response: Section 418 of the National Affordable Housing Act, Public Law 101–625, permitted the Department to establish by notice the requirements necessary to carry out the provision in a more timely manner. It is clear that the Congress intended that the Department establish the requirements and procedures for offerings to resident organizations as soon as possible. The determination as to the meaning of "notice" was made after substantial consideration.

Comment: The fact that the statute and the guidelines give resident groups the right to demand to purchase a project, but impose no requirement on the purchasing group to use the project for housing purposes, raises serious constitutional and policy questions. The U.S. Constitution prohibits the Federal Government from appropriating private property unless just compensation is provided and the taking is pursuant to a public purpose. Without a use restriction, it is questionable whether forcing a PHA to transfer its project to a resident group, and thereby suffer the loss of a competitive price, serves a valid public purpose when the end result is not increased housing opportunity. [one national association]

The guidelines should require some type of guarantee by the resident group purchasers that the units will be utilized as housing for low-income households. [one national association]

If a PHA may consider an offer that proposes a purchase of less than fair market value with demonstrated commensurate public benefit, "demonstrated commensurate public benefit" should be defined. [a HUD field office]

Response: There is nothing in the statute or the legislative history which would lead the Department to believe that Congress intended that resident organizations be restricted in the use of the property. Therefore, the Department did not impose such a restriction. The

final rule gives the PHA the authority to establish the terms of sale and to approve or disapprove of the resident organization's proposal. With this kind of authority, the PHA is not being forced to transfer its property to a resident organization.

Examples of "demonstrated commensurate public benefit" will be provided in the new handbook for demolition/disposition activities.

Comment: The Department's "federalism" certification under Executive Order 12612 incorrectly rules that PHAs are not units of local government. There are serious federalism implications because the guidelines intrude in to the day-to-day management decisions of PHA directors, who are State or local officials. The guidelines threaten the balance of power between the respective levels of government because they direct State or local officials to incur increased costs related to delay and maintenance of blighted or unsafe buildings. [one national association]

Response: The Department recognizes that overall section 18 places significant requirements on PHAs; however, the requirement that offerings be made to resident organizations is mandated by statute. The Department has determined that these requirements do not have "federalism implications" because they do not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

Comment: The guidelines cannot be applied to pending applications because HUD does not have the power to promulgate rules with retroactive effect. Congressional enactments and administrative rule will not be construed to have retroactive effect unless their language requires this result. [one national association]

Response: "Pending" does not mean "approved." Section 18 prohibits approval by the Secretary unless all of the requirements of the section are met.

**Note:** Other comments received from the HUD field office were technical corrections related to appropriate cross-references and definitions. These technical comments were reviewed and accommodated where indicated.

The regulatory provisions implementing section 412 of NAHA, as those provisions have been revised to accommodate the public comments discussed above, can be found at a new § 970.13 added by this rule.

## Applicability to the Native American Program

As a result of section 201(b)(1) of the 1937 Act, the provisions of title I of the 1937 Act apply to low-income housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority. Therefore, the demolition and disposition provisions under part 970 (as it is revised by the 1988 interim rule) extend to Indian housing authorities and have been incorporated in part 905, the regulations for the Indian Housing Program However, under section 201(b)(2) no provision of title I, or amendment to title I, that is enacted after the date of enactment of the Indian Housing Act of 1988 (June 29, 1988) shall apply to public housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority unless the provision explicitly provides for applicability. Therefore, absent such a provision, section 116 of the 1992 Act does not extend to Indian housing authorities

This issue, as well as finalizing the 1988 interim rule in part 905 and sections 412 and 512 of NAHA, as they apply to Indian housing units, will be addressed in a separate final rule.

## **Other Matters**

## Environmental Review

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 during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, D.C. 20410.

## Executive Order 12866

This rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 on Regulatory Planning and review, issued by the President on September 30, 1993. Any changes made in the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Office of the Rules Docket Clerk, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW, Washington, DC 20410.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of