

nominally achievable as recommended in the development document as it was partially based on transfer of technology. BAT proposes a reduction of 15 mg/l TSS when compared to the suggested BPT level in the October preamble (40 FR 48830). The added cost of filtration cannot be justified by the relatively minor reduction in TSS load discharges achieved.

The proposed BAT TSS limitation of 20 mg/l 30 day average and 40 mg/l daily max is based partially on mixed media filtration, and mixed media filtration can be used to obtain these levels of TSS. In addition, plants identified in the development document as the basis for BAT limitations are meeting the TSS limitations suggested for BAT without use of mixed media filtration. The estimated costs of BAT compliance and the installation of mixed media filters, the economic impact was found to be minimal.

(24) A commenter suggested that settleable solids be included in the limitations guidelines with or in place of TSS.

The limitation on TSS effectively controls the discharge of settleable solids from a point source.

(25) Commenters stated that the definition of mine drainage is so stated to include nonpoint sources.

These regulations do not purport to redefine a point source; the definition of mine drainage complements the definition of a point source as set forth in the Act.

(26) A commenter suggested that turbidity replace the limitation on TSS.

Turbidity is an indicator of suspended solids and as such can be used to determine the effectiveness of suspended solids. But the turbidity test is specific to the type of solids in the water sample. Because the type of solids may change, turbidity will not always indicate accurately the levels of solids present in the waste water.

(27) A commenter suggested that surface coal mines be excluded from effluent limitations and guidelines for the coal mining industry.

Surface coal mines are a major water pollution source. The agency may not arbitrarily exclude certain point source discharges from effluent limitations and guidelines.

(28) A commenter suggested that the Agency postpone promulgation of TSS limitations pending completion of an ongoing study on TSS removal at surface mines.

The agency is currently under a court ordered deadline to revise 40 CFR 434 as published on October 17, 1975 adding limitations for the pollutants identified in the preamble to those regulations. And the Agency

has concluded that it has sufficient information with which to draw conclusions as to TSS removal technology and the appropriate TSS limitations.

(29) Commenter contended that the inclusion of aluminum, nickel, zinc, manganese, and dissolved iron in the pollutants identified in the alkaline mine drainage category would pose a burdensome and unnecessary monitoring requirement on this segment of the industry as these pollutant parameters are not normally found in this subcategory in concentrations over the limitations suggested in the preamble.

Alkaline mine drainage was observed to have low concentrations of metal ions. Alkaline mine drainage is defined as mine drainage which before any treatment has a pH of more than 6 and with a total iron concentration of less than 10 mg/l. The pollutant parameters included in the alkaline mine drainage subcategory are revised in this regulation to include only total iron, suspended solids, and pH.

(30) A commenter suggested that the limitation of no discharge of pollutants from coal preparation plants is contrary to a Mine Enforcement Safety Administration (MESA) regulation which discourages the use of ponds as storage mechanisms and encourages the application of "operating overflows".

The requirement of no discharge of pollutants from coal preparation plants does not conflict with the MESA regulation. The provisions that treatment facilities shall be designed, constructed and operated to treat or contain, as applicable, the runoff resulting from a 10 yr-24 hour precipitation and should complement regulation on structural design requirements imposed by regulating agencies such as MESA.

(31) A commenter stated that the economic impact analysis of interim final effluent limitations and guidelines on the U.S. coal mining industry supporting the initial regulation fails to demonstrate that the model plants are representative of the industry.

For the purpose of developing effluent limitations and guidelines this industry was categorized into four subcategories: two classes of mine drainage (1. acid or ferruginous mine drainage and 2. alkaline mine drainage) process waste water from coal preparation plants; and drainage from coal storage, refuse storage, and coal preparation plant ancillary areas. For developing cost and economic impact of this regulation to the industry, for the purpose of developing models, the industry was segmented geographically with each geographic segment further segmented by the type of mine (deep

or surface) and the type of mine further segmented as to three sizes of operation based on annual tonnage. Costs of compliance of this regulation were then estimated for each of these segments and compared with the production cost per ton vs the realization per ton. This has shown to be a realistic method of calculating the economic impact.

(32) A commenter stated that the analytical procedures used by the contractor which are referred to in supplement A differ from the requirements established in 40 CFR 136 (38 FR 28758).

The contractor performed all analysis using methods referenced in 40 CFR 136. In supplement A, the reference for nickel contains a typographical error. It should refer to Standard Methods, atomic absorption, page 443.

(33) A commenter stated that the pollutant content of supply water be taken into consideration when determining permanent limitations.

Under certain circumstances the supply water pollution content may be considered. The "net-gross" pollution issue is addressed in 40 CFR Part 125.

(34) A commenter stated that because of the unique problems associated with the environmental analysis that must be conducted pursuant to the National Environmental Policy Act (NEPA), on any new coal mine permit, new source performance standards applicable to coal mines should not be proposed at this time.

New source performance standards for coal mines will be proposed on or before October 17, 1976, pursuant to the requirement of section 306 of the Act. They are not being proposed at this time because new source coal mine permits, which would have to be issued on many mines after proposal of new source performance standards, pose unique problems in connection with the environmental analyses that must be conducted on them pursuant to the National Environmental Policy Act (NEPA) and Section 511(c) of the Act. The most effective way to comply with NEPA on new source coal mine permits is to assess new coal mining activity on an areawide basis. Such studies are not sufficiently developed at this time to allow EPA to prepare areawide environmental analysis that will document the full range of impact. We anticipate that by October 17, 1976, we will have sufficient data to begin to apply NEPA effectively to new mining operations and at this same time avoid significant disruption to the permitting of new and needed operations that are environmentally sound.

[FR Doc. 76-13541 Filed 5-12-76; 8:45 am]

ENVIRONMENTAL PROTECTION
AGENCY

[40 CFR Part 434]

[FRL 536-2]

COAL MINING POINT SOURCE CATEGORY

Effluent Guidelines and Standards for
Existing Sources

Notice is hereby given that effluent limitations for existing sources, standards of performance and pretreatment standards for new sources set forth in tentative form below are proposed by the Environmental Protection Agency (EPA). On October 17, 1975 EPA promulgated a regulation adding Part 434 to Chapter 40 of the Code of Federal Regulations (40 FR 48830). That regulation with subsequent amendments established effluent limitations and guidelines for existing sources based on the best practicable control technology currently available and pretreatment standards for existing sources for the coal mining point source category. The regulation proposed below will amend 40 CFR 434—coal mining point source category by adding sections 434.13, 434.15 and 434.16 to the coal preparation plant subcategory (Subpart A), sections 434.23, 434.25 and 434.26 to the coal storage, refuse storage, and coal preparation plant ancillary area subcategory (Subpart B), sections 434.33 to the acid or ferruginous mine drainage subcategory (Subpart C), and sections 434.43 to the alkaline mine drainage subcategory (Subpart D) pursuant to sections 301, 304 (b) and (c), 306(b) and 307 (b) and (c) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, 1316(b) and 1317 (b) and (c), 86 Stat. 816 et seq.; P.L. 92-500) (the Act). Sections 434.14, 434.24, 434.34 and 434.44 were proposed on October 17, 1975 (40 FR 48830). Simultaneously with the publication of this proposed regulation EPA is promulgating amendments to the existing coal mining point source category regulation. A description and discussion of the legal authority is contained in Appendix A to this preamble.

(a) Summary and basis of proposed standards of performance and pretreatment standards for new sources and pretreatment standards for existing sources.

The general methodology and summary of conclusions are discussed in considerable detail in the preamble of the interim final regulation amendments for the coal preparation plant subcategory (Subpart A), the coal storage, refuse storage and coal preparation ancillary area subcategory (Subpart B), the acid or ferruginous mine drainage subcategory (Subpart C), and the alkaline mine drainage subcategory (Subpart D) of the coal mining point source category which are being promulgated by EPA simultaneously with publication of this proposed regulation. The information contained in the preamble to the interim final regulation amendments being promulgated simultaneously with this proposed regulation is incorporated herein by reference. The proposed regulation

set forth below proposes pretreatment standards for pollutants introduced into publicly owned treatment works. The proposal will establish for each subpart the extent of application of effluent limitations to new sources which discharge to publicly owned treatment works. This regulation is intended to be complementary to the general regulation for pretreatment standards for existing sources set forth at 40 CFR Part 128. The general regulation was proposed July 19, 1973 (38 FR 19236), and published in final form on November 8, 1973 (38 FR 30982). The regulation proposed below applies to users of publicly owned treatment works which fall within the description of the point source category to which the limitations and standards apply. However, the proposed pretreatment regulation applies to the introduction of pollutants which are directed into a publicly owned treatment works, rather than to discharges of pollutants to navigable waters.

The general pretreatment standard divides pollutants discharged by users of publicly owned treatment works into two broad categories: "compatible" and "incompatible." Compatible pollutants are generally not subject to specific numerical pretreatment standards. However, 40 CFR 128.131 (prohibited wastes) may be applicable to compatible pollutants. Additionally, local pretreatment requirements may apply (See 40 CFR 128.110). Incompatible pollutants are subject generally to pretreatment standards as provided in 40 CFR 128.133. Sections 434.16 and 434.26 proposed below, are intended to implement the intent of section 128.133, by setting forth specific numeric limitations for particular pollutants subject to pretreatment requirements.

The pollutant parameters identified for inclusion in effluent limitation guidelines and standards of performance include compatible and incompatible pollutants. Pretreatment standards for the subcategories of this point source category are based on limitations for the introduction of pollutants which will provide protection for treatment works which are not designed for substantial removal of pollutants other than the four pollutants listed in the definition of compatible pollutants. The State or municipality may impose more stringent pretreatment standards under State or local laws than specified in these regulations to enable compliance with NPDES permits issued to publicly owned treatment works. Joint treatment works or publicly owned treatment work designed specifically for treatment of acid mine drainage are not included in this pretreatment standard.

Questions were raised during the public comment period on the proposed general pretreatment standard (40 CFR Part 128) about the propriety of applying a standard based upon best practicable control technology currently available to all plants subject to pretreatment standards. In general, EPA believes the analysis supporting the effluent limitations and guidelines is adequate to make

a determination regarding the application of those standards to users of publicly owned treatment works. However, to ensure that those standards are appropriate in all cases, EPA now seeks additional comments focusing upon the application of effluent limitations guidelines to users of publicly owned treatment works.

The report entitled "Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Coal Mining Point Source Category," May 1976 details the analysis undertaken in support of the regulation being proposed herein and is available for inspection in the EPA Public Information Reference Unit, Room 2404, Waterside Mall, 401 M St., S.W., Washington, D.C. 20460, at all EPA regional offices, and at State water pollution control offices. A supplementary analysis prepared for EPA of the possible economic effects of the proposed regulation is also available for inspection at these locations. Copies of both of these documents are being sent to persons or institutions affected by the proposed regulation or who have placed themselves on a mailing list for this purpose (see EPA's Advance Notice of Public Review Procedures, 38 FR 21202, August 6, 1973). An additional limited number of copies of both reports are available. Persons wishing to obtain a copy may write the EPA Effluent Guidelines Division, Washington, D.C. 20460. Attention: Distribution Officer, WH552.

When this regulation is promulgated, revised copies of the Development Document will be available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Copies of the Economic Analysis will be available through the National Technical Information Service, Springfield, Virginia 22151.

(b) Summary of public participation. A full listing of participants and discussion of comments and responses is included in the interim final regulation for the coal mining subcategory being simultaneously promulgated by EPA and are incorporated herein by reference.

Interested persons may participate in this rule-making by submitting written comments in triplicate to the Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Attention: Distribution Officer, WH-552. Comments on all aspects of the proposed regulation are solicited. In the event comments are in the nature of criticisms as to the adequacy of data which are available, or which may be relied upon by the Agency, comments should identify and, if possible, provide any additional data which may be available and should indicate why such data are essential to the development of the regulation. In the event comments address the approach taken by the Agency in establishing a standard of performance or pretreatment standard, EPA solicits suggestions as to what alternative approach should be taken and why and how this alternative better satisfies the detailed requirements of sections 306 and 307 (b) and (c) of the Act.

A copy of all public comments will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2922 (EPA Library), Waterside Mall, 401 M St., SW., Washington, D.C. 20460. Draft contractor reports, the Development Document and economic study referred to above, and certain supplementary materials supporting the study of the industry concerned will also be maintained at this location for public review and copying. The EPA information regulation, 40 CFR Part 2, provides that a reasonable fee may be charged for copying.

All comments received on or before June 14, 1976, will be considered. Steps previously taken by the Environmental Protection Agency to facilitate public response within this time period are outlined in the advance notice concerning public review procedures published on August 6, 1973 (38 FR 21202).

Dated: May 3, 1976.

RUSSELL E. TRAIN,
Administrator.

PART 434—COAL MINING POINT SOURCE CATEGORY

Subpart A—Coal Preparation Subcategory

- Sec.
434.13 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
434.15 Standards of performance for new sources.
434.16 Pretreatment standards for new sources.

Subpart B—Coal Storage, Refuse Storage and Coal Preparation Plant Ancillary Area Subcategory

- 434.23 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
434.25 Standards of performance for new sources.
434.26 Pretreatment standards for new sources.

Subpart C—Acid or Ferruginous Mine Drainage Subcategory

- 434.33 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
434.35 [Reserved]
434.36 [Reserved]

Subpart D—Alkaline Mine Drainage Subcategory

- 434.43 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
434.45 [Reserved]
434.46 [Reserved]

AUTHORITY: Secs. 301, 304 (b) and (c), 306 (b) and (c), 307(c), Federal Water Pollution Control Act, as amended (the Act); 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c), 1317(c); 86 Stat. 816 et seq.; Pub. L. 92-500.

Part 434 is proposed to be amended as follows:

1. Subpart A is amended by adding §§ 434.13, 434.15 and 434.16 as follows:

Subpart A—Coal Preparation Plant Subcategory

§ 434.13 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

(a) Subject to the provisions of paragraphs (b) and (c) of this section, the following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable: There shall be no discharge of pollutants.

(b) Any untreated overflow which is discharged from facilities designed, constructed and operated to contain all process generated waste water and the surface runoff to the treatment facility, resulting from a 10 year 24-hour precipitation event shall not be subject to the limitations set forth in this section.

(c) Where coal preparation plant process waste water is combined for treatment or discharge with waste water from other subcategories in this point source category, the quantity of pollutants allowed to be discharged in the combined discharge shall not exceed the quantity of pollutants which would be allowed under the limitations set forth in subpart B, C, or D, as applicable.

§ 434.15 Standards of performance for new sources.

(a) Subject to the provisions of paragraph (b) of this section, the following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart: There shall be no discharge of pollutants.

(b) Any untreated overflow which is discharged from facilities designed, constructed and operated to contain all process generated waste water and the surface runoff to the treatment facility, resulting from a 10 year 24-hour precipitation event shall not be subject to the limitations set forth in this section.

§ 434.16 Pretreatment standards for new sources.

For the purpose of pretreatment standards for incompatible pollutants established under 40 CFR Part 128.133, the standards of performance set forth in 40 CFR Part 434.15 above shall not presently apply. Some of the constituents of the process waste waters from this subcategory may interfere with certain treatment works or may pass through such treatment works inadequately treated. Therefore, such process waste waters should receive consideration. The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged as provided pursuant to section 307(b) of the Act.

EFFLUENT LIMITATIONS—MAXIMUM FOR ANY 1 DAY

Effluent characteristic	Milligrams per liter
TSS.....	No limitation.
Iron, dissolved.....	50.0.

2. Subpart B is amended by adding §§ 434.23, 434.25, and 434.26 as follows:

Subpart B—Coal Storage, Refuse Storage, and Coal Preparation Plant Ancillary Area Subcategory

§ 434.23 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

(a) Subject to the provisions of paragraph (b) of this section, the following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
Milligrams per liter		
TSS.....	40.0	30.0
Iron, total.....	3.5	3.0
Manganese, total.....	4.0	2.0
pH.....	Within the range 6.0 to 9.0.	

(b) Any treated overflow which is discharged from facilities designed, constructed and operated to treat the process waste water and the runoff from the coal preparation plant ancillary area resulting from a 10 year 24-hour precipitation event shall not be subject to the limitations set forth in this section.

§ 434.25 Standards of performance for new sources.

(a) Subject to the provisions of paragraph (b) of this section the following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
Milligrams per liter		
TSS.....	70.0	35.0
Iron, total.....	3.5	3.0
Manganese, total.....	4.0	2.0
pH.....	Within the range 6.0 to 9.0.	

(b) Any untreated overflow which is discharged from facilities designed, constructed and operated to treat the process waste water and the runoff from the coal preparation plant ancillary area resulting from a 10 year 24-hour precipitation event shall not be subject to the limitations set forth in this section.

ess waste water and the runoff from the coal preparation plant ancillary area resulting from a 10 year 24-hour precipitation event shall not be subject to the limitations set forth in this section.

§ 434.26 Pretreatment standards for new sources.

For the purpose of pretreatment standards for incompatible pollutants established under 40 CFR Part 128.133, the standards of performance set forth in 40 CFR Part 434.25 above shall not presently apply. Some of the constituents of the process waste waters from this subcategory may interfere with certain treatment works or may pass through such treatment works inadequately treated. Therefore, such process waste waters should receive consideration. The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged as provided pursuant to section 307(b) of the Act.

EFFLUENT LIMITATIONS—MAXIMUM FOR ANY 1 DAY

Effluent characteristic	Milligrams per liter
TSS	No limitation.
Iron dissolved	50.0.

3. Subpart C is amended by adding §§ 434.33, 434.35, and 434.36 as follows:

Subpart C—Acid or Ferruginous Mine Drainage Subcategory

§ 434.33 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

(a) Subject to the provisions of paragraph (b) and (c) below the following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
Milligrams per liter		
TSS	40.0	20.0
Iron, total	3.5	3.0
Iron, dissolved	0.6	0.3
Manganese, total	4.0	2.0
pH	Within the range 6.0 to 9.0.	

(b) Any untreated overflow which is discharged from facilities designed, constructed and operated to treat the mine drainage and the surface runoff to the treatment facility, resulting from a 10 year 24-hour precipitation event shall not be subject to the limitations set forth in this section.

(c) Any drainage from any surface mine or section thereof which has been returned to final contour shall not be required to meet the limitation set forth in paragraph (a) above providing such drainage is not comingled with un-

treated mine drainage which is subject to the limitations in paragraph (a).

§ 434.35 [Reserved]

§ 434.36 [Reserved]

4. Subpart D is amended by adding §§ 434.43, 434.45 and 434.46 as follows:

Subpart D—Alkaline Mine Drainage Subcategory

§ 434.43 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

(a) Subject to the provisions of paragraph (b) and (c) of this section the following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
Milligrams per liter		
TSS	40.0	20.0
Iron, total	3.5	3.0
pH	Within the range 6.0 to 9.0.	

(b) Any untreated overflow which is discharged from facilities designed, constructed and operated to treat the mine drainage generated waste water and the surface runoff to the treatment facility, resulting from a 10 year 24-hour precipitation event shall not be subject to the limitations set forth in this section.

(c) Any drainage from any surface mine or section thereof which has been returned to final contour shall not be required to meet the limitation set forth in paragraph (a) above providing such drainage is not comingled with untreated mine drainage which is subject to the limitations in paragraph (a).

§ 434.45 [Reserved]

§ 434.46 [Reserved]

APPENDIX A—LEGAL AUTHORITY

(1) Existing Point sources. Section 301(b) of the Act requires the achievement by not later than July 1, 1977, of effluent limitations for point sources, other than publicly owned treatment works, which require the application of the best practicable control technology currently available as defined by the Administrator pursuant to section 304(b) of the Act. Section 301(b) also requires the achievement by not later than July 1, 1983, of effluent limitations for point sources, other than publicly owned treatment works, which require the application of best available technology economically achievable which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants, as determined in accordance with regulations issued by the Administrator pursuant to section 304(b) of the Act. Section 304(b) of the Act requires the Administrator to publish regulations providing guidelines for effluent limitations setting forth the degree of effluent reduction attainable through the application of the best

practicable control technology currently available and the degree of effluent reduction attainable through the application of the best control measures and practices achievable including treatment techniques, process and procedural innovations, operating methods and other alternatives. The regulation herein sets forth effluent limitations and guidelines, pursuant to sections 301 and 304(b) of the Act, for the coal preparation plant subcategory (Subpart A), the coal storage, refuse storage and coal preparation ancillary area subcategory (Subpart B), the acid or ferruginous mine drainage subcategory (Subpart C), and the alkaline mine drainage subcategory (Subpart D) of the coal mining point source category.

Section 304(c) of the Act requires the Administrator to issue to the States and appropriate water pollution control agencies information on the processes, procedures or operating methods which result in the elimination or reduction of the discharge of pollutants to implement standards of performance under section 306 of the Act. The report or "Development Document" referred to below provides, pursuant to section 304(c) of the Act, information on such processes, procedures or operating methods.

(2) New Sources. Section 306 of the Act requires the achievement by new sources of a Federal standard of performance providing for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction which the Administrator determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

Section 306(b) (1) (B) of the Act, requires the Administrator to propose regulations establishing Federal standards of performance for categories of new sources included in a list published pursuant to section 306(b) (1) (A) of the Act. On October 17, 1975 a notice appeared in the FEDERAL REGISTER titled "Additions to the List of Categories of Sources (40 FR 48712) adding the coal mining point source category and is in accordance with the provisions of section 306(b) (1) (A) of the Act. The regulation proposed herein sets forth the standards of performance applicable to new sources for the coal preparation plant subcategory (Subpart A) and, the coal storage, refuse storage and coal preparation ancillary area subcategory (Subpart B) of the coal mining point source category.

Section 307(c) of the Act requires the Administrator to promulgate pretreatment standards for new sources at the same time that standards of performance for new sources are promulgated pursuant to section 306. Sections 434.16 and 434.26, provide pretreatment standards for new sources within the coal preparation plant subcategory (Subpart A) and, the coal storage, refuse storage and coal preparation ancillary area subcategory (Subpart B) of the coal mining point source category. Section 307(b) of the Act requires the establishment of pretreatment standards for pollutants introduced into publicly owned treatment works and 40 CFR 128 establishes that the Agency will propose specific pretreatment standards at the time effluent limitations are established for point source discharges. Sections 434.14, 434.24, 434.34 and 434.44, were proposed on October 17, 1975 (40 FR 48839) and provided pretreatment standards for existing sources within the coal preparation plant subcategory (Subpart A), the coal storage, refuse storage and coal preparation and ancillary area subcategory (Subpart B), the acid or ferruginous mine drainage subcategory (Subpart C), and the alkaline mine drainage subcategory (Subpart D) of the coal mining point source category.

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THURSDAY, MAY 13, 1976



PART III:

DEPARTMENT OF
HOUSING AND
URBAN
DEVELOPMENT

Office of Assistant Secretary
for Consumer Affairs and
Regulatory Functions



MOBILE HOMES

Procedural and Enforcement Regulations

Title 24—Housing and Urban Development
CHAPTER XX—OFFICE OF ASSISTANT
SECRETARY FOR CONSUMER AFFAIRS
AND REGULATORY FUNCTIONS, DE-
PARTMENT OF HOUSING AND URBAN
DEVELOPMENT

[Docket No. R.-76-390]

PART 3282—MOBILE HOME PROCEDURAL
AND ENFORCEMENT REGULATIONS

Adoption of Safety Standards

Title VI of the Housing and Community Development Act of 1974, the National Mobile Home Construction and Safety Standards Act of 1974, Pub. L. 93-383, 42 U.S.C. 5401 et seq., hereafter the "Act," authorizes the Secretary of the Department of Housing and Urban Development to promulgate Federal mobile home construction and safety standards and to issue rules and regulations to ensure adequate administration and enforcement of such standards.

On January 22, 1976, at 41 FR 3406, the Department published proposed rules on Mobile Home Procedural and Enforcement Regulations. Over 120 comments were received from different organizations. Some of these comments were over 50 pages long, with comments from one organization running over 100 pages. All comments were carefully analyzed and in many instances significant changes have been made based on the comments to these final regulations.

This Preamble briefly summarizes the regulations, highlights, and addresses the significant changes made to the proposed regulations, and summarizes, describes and comments upon some of the significant suggestions received.

Parts 282 and 283 have been combined, substantially reorganized, and revised to ensure greater clarity and avoid unnecessary repetition. The regulations also have been renumbered as part 3282.

In order to enforce and administer the standards effectively, the Department is promulgating pursuant to section 625 of the Act, 42 U.S.C. 5424, these rules and regulations.

These final rules and regulations are divided into 12 subparts as discussed below:

Subpart A. General. This subpart describes the organizational structure within HUD responsible for administration of the Federal standards and these regulations, defines various terms as they are used throughout this part and generally sets forth the scope and applicability of these regulations.

The regulations have been revised to reflect the appointment of an Assistant Secretary for Consumer Affairs and Regulatory Functions (CARF), who now has the authority and responsibility for the Mobile Home Standards Program. The Office of Mobile Home Standards is now a unit subordinate to the Assistant Secretary for CARF. Prior to the establishment of the new Office of the Assistant Secretary for CARF, the Office of Mobile Home Standards was a unit subordinate to the Assistant Secretary for Housing Production and Mortgage Credit-Federal Housing Commissioner.

Section 3282.7 defines the various words and Phrases used throughout these regulations. Words and phrases were defined in §§ 3282.7 and 3283.5 of the proposed regulations.

Numerous comments were received concerning the definitions of various words and phrases used throughout the proposed rules. The Department, on the basis of these comments, has made a number of modifications to the definitions. Also, definitions have been modified to reflect changes in various subparts of these regulations. The most significant changes in the definitions are described below:

The term "add-on" has been modified to make clear that a structure which is designed and produced as an integral part of a mobile home is considered part of the mobile home rather than an "add-on". This change has been made to reflect common industry usage of the term "add-on".

The term "Administrative Submission" has been deleted. A new term "State plan application" has been added in its place. This has been done in order to avoid confusion in terminology in those portions of the regulations describing a State's responsibility under these regulations.

The term "Alteration" has been modified to make clear that, for the purpose of these regulations, the repair or replacement of a component or appliance requiring "plug-in" into an electrical receptacle is not considered an alteration where the replacement item is of the same configuration and rating as the item being replaced. Also excluded from the definition of alteration is the addition of an appliance requiring "plug-in" to an electric receptacle if the rating of appliance which is added does not exceed the rating of the receptacle to which it is connected.

The terms "Certification Report," "Primary Inspection Agency," and "Quality Assurance Manual" have also been modified to reflect the altered responsibilities and types of inspection organizations that will operate under these regulations.

The term "defect" has been modified to make clear that term applies only to failures to comply with the standards that do not result in an unreasonable risk of injury or death to occupants of affected mobile homes. A new term "serious defect" has been added. A serious defect is a failure to comply with any standard that results in an unreasonable risk of injury or death to occupants of affected mobile homes. Related definitions of "non-compliance" and "imminent safety hazard" are also included. The terms "date of manufacture," "dealer," "label," "noncompliance," "red-tag," and "standard" have been slightly changed for the sake of clarity. No substantive changes in these terms have been made. The term "Certification Label" has been added to the definition section for the same reasons.

The term "model" has been deleted because the Department believes, based on the comments received, that its use confused rather than clarified these reg-

ulations. Substantive portions of the regulations concerning submittal requirements by manufacturers have been modified so that the use of the term "model" or an equivalent term is no longer necessary. The phrase "failure to conform" has been added to the definition section. A failure to conform includes serious defects, defects and noncompliance.

The term "owner" has been added to these regulations. An owner is any person purchasing a mobile home, in good faith, from any other person after the first purchase of the mobile home for purposes other than resale.

The term "Secretary's Agent" has been added and is defined as a party operating as an independent contractor under a contract with HUD.

Additional paragraphs have been added to § 3282.8 to clarify the scope and coverage of these regulations.

A paragraph has been added at § 3282.2 (e) to make clear that these regulations apply to owners, purchasers and consumers of mobile homes in that it sets out procedures to be followed when purchasers, owners and consumers wish to complain to manufacturers, States, the Secretary and others.

A new paragraph is included at § 3282.8(f) that makes clear that these regulations do not apply to recreational vehicles. A recreational vehicle is a vehicle, regardless of its size, which was not designed to be used as a permanent dwelling, and in which the plumbing, heating, electrical and air-conditioning systems included within the structure may be operated without connection to outside utilities and which are self propelled or towed by a light duty vehicle. This paragraph at § 3282.8(f) was added in response to concerns expressed in comments and other communications that these regulations apply to recreational vehicles. Paragraphs discussing imported mobile homes and mobile homes intended solely for export have been added at § 3282.8(g). Importers of mobile homes now have responsibilities similar to domestic manufacturers. Mobile homes intended solely for export, if so tagged or labeled, are not governed by the standards of these regulations. Regulations regarding imported mobile homes may be modified in the future by new regulations jointly promulgated by the Secretary of Housing and Urban Development and the Secretary of Treasury.

One question that is not treated in the regulations is the applicability of these regulations to modular homes. The Department has received many inquiries since the close of the comment period about this issue. The Department has carefully examined the Act and its legislative history and has concluded that while it may have been the intent of the Congress to exclude modular housing from the Act, the definition of "mobile home" cannot be interpreted to exclude from the Act modular homes that also satisfy the definition of a mobile home under the Act.

Because of the confusion concerning the applicability of the Act to modular housing industry, the Secretary will pro-

pose an amendment to Part 280 that would exempt a modular home that also meets the definition of a mobile home from the standard for a period of 90 days if the modular home satisfies one of the following criteria:

(1) The modular home is built in accordance with any of the following three model codes:

a. The Uniform Building Code (UBC) published by the International Conference of Building Officials.

b. The building code published by the Building Officials and Code Administrators (BOCA).

c. The building code published by the Southern Building Code Congress (SBCS).

(2) The modular home is built in accordance with a Statewide modular housing standard.

(3) The modular home is built in accordance with an FHA Structural Engineering Bulletin and in accordance with FHA Minimum Property Standards.

The Department is hopeful that during the period prior to the effective date of the standards comments will be received in response to the amendment which will be proposed addressing the issue of coverage of modular homes, if they should be excluded from the standards, and if so, how, since they also meet the statutory definition of mobile homes.

A description of the manner in which one is to compute time under these regulations has been added in an additional section, numbered 3282.9. Suggestions were made in the comments that unusual circumstances should automatically extend the time period in which to complete various actions required by these regulations. These recommendations were not accepted. Instead, the Department believes that if unusual circumstances arise in particular cases they should be brought to the attention of the Secretary or the State Administrative Agency for appropriate response.

Section 3282.10 which governs civil and criminal penalties and injunctive actions has been added. The proposed regulations sought to cover civil and criminal penalties only in specific circumstances. The Department concluded that the previous approach was confusing. For example, there might be cases other than those covered in the proposed regulations which might result, in accordance with section 611 of the Act, 42 U.S.C. 5410, in civil and criminal penalties. Therefore, a general section making reference to section 611 of the Act has been added to these regulations.

Section 3282.11 describes preemption and reciprocity under these regulations. The section specifies that these regulations establish the exclusive system of enforcement of the Federal standards. It also makes clear that no State may have a State mobile home standard which covers the aspects of the mobile home construction and safety governed by the Federal standard unless the State standard is identical to the Federal standard. The Section also makes clear, however, that a State may maintain or may establish consumer protection programs through warranty requirements, for example, so long as such programs do

not constitute systems of enforcement of the Federal standards. Finally, the section states the situations in which States may and may not charge fees for activities relating to mobile homes. Basically, a State may not charge a fee for services provided by the State under these regulations or for any other services which constitute a system of enforcement of the Federal standards. A State may charge fees for PIA services provided and for certain services suggested by these regulations. As individual State approaches are presented, it is anticipated that the Secretary will apply, and thereby particularize, these general criteria through the Secretary's interpretive bulletin, amendment, or other appropriate processes.

Subpart B—Formal Procedures. This subpart contains the rules generally applicable to the transaction of official business with the Department under the Act.

A number of changes have been made in this subpart that are designed to remove formalities in order that interested persons may have increased opportunities to make their views heard regarding the Department's action under the Act. For example, the requirement that all communications shall be in English, unless accompanied by a translation of the comment, has been deleted. If comments are received in a language other than English, the Department will have those comments translated and will consider the comments. Another example of the Department's action to remove formalities is the elimination of the requirement that the communication be of a specified size, that there be minimum size margins on the communication, and that tables, charts or originals of other documents be attached to the communication in a certain manner.

Section 3282.54 dealing with Public Information has been modified in a number of ways. The Department has included, by reference, the HUD regulations under the Privacy Act as an additional factor that must be considered in determining whether further information may be released to the public. The Department has also established a system by which commentators may seek to have trade secrets or information whose release may put the submitter at a substantial competitive disadvantage determined as exempt from disclosure. The section has also been simplified, though the original substance remains. A new paragraph has also been added which describes how primary inspection agencies (PIAs) or state administrative agencies (SAAs) are to proceed if requests for disclosure of information are made to them. PIAs or SAAs are to forward to the Secretary any requests for information they received prior to the effective date of these regulations. Any information received after that date may be released by the PIA or SAA if no formal request for privileged treatment of the information has been made and if the PIA or SAA determines that release of the information would not be in violation of HUD regulations under the Privacy Act. If the PIA or SAA believes

that the release of information could violate the Privacy Act or, if a request for privileged treatment of information has been received, the PIA or SAA is to refer the matter to the Secretary for resolution.

Subpart C—Hearings, Presentation of Views and Investigations. This subpart sets out the procedures that apply to the formulation, issuance, amendments, and revocation of rules and regulations under the Act.

A new paragraph has been added to the section on initiation of rulemaking (§ 3282.103) which generally requires the Secretary to respond within 180 days after receipt of a petition for rulemaking. The Secretary may fail to respond within that time period only where necessary to assure full resolution of the issue involved. Imposition of a time period to respond to a petition for rulemaking was added to the regulations as a result of a number of comments received suggesting such a change.

A new section (§ 3282.104) has been added to this subpart which describes Advance Notice of Proposed Rulemaking and indicates that such advance notice shall be used whenever practicable under this subpart. Section 282.107 of the proposed regulations relating to petitions for extensions of time to comment has been deleted as unnecessary. Two changes have been made concerning petitions for reconsideration of final rules.

Paragraph 282.211(d) of the proposed regulations has been deleted because the Department has concluded that there was no legal authority for the provision. The provision required that if a timely petition for reconsideration was filed, the 60 day period in which to seek judicial review of a rule was postponed until 60 days after publication in the FEDERAL REGISTER of the Secretary's disposition of petition.

A new provision has been added that seeks to ensure that the Department has an opportunity to resolve on an administrative basis as many challenges to rules and regulations as possible. The provision (§ 3282.112(a)) requires that any party seeking to challenge any rule or regulation must file a petition for reconsideration prior to seeking any other remedy.

The section on interpretive bulletins has been substantially revised. The proposed regulations, in § 283.602, only allowed for the issuance of interpretive bulletins concerning enforcement regulations. The final regulations allow for issuance of interpretive bulletins on the enforcement as well as the construction standards regulations. Interested parties will, in general have an opportunity to comment on proposed interpretive bulletins prior to their issuance in final form.

Subpart D sets out the procedures to be followed when an opportunity to present views is provided under the Act or under these regulations.

The subpart has been significantly revised in a number of ways. Generally the purpose of these changes is to provide the parties affected by these regulations, and the public in general, increased oppor-

tunities to bring issues to the Secretary for a resolution.

Paragraph 3282.151(b)(2) has been added. This addition allows States and manufacturers to present their views when disputes arise between a State agency or manufacturer and an inspection agency concerning nonconformance of a mobile home design with the standard, the red-tagging of mobile homes, the adequacy of a quality assurance manual, or the provision of a certification label.

A statement has been added to the section governing procedures for hearings and presentations of views (§ 3282.152(a)) requiring such proceedings to be open to the public unless the Secretary determines that they should be closed and makes such a determination and the basis therefor available to the public.

The subpart has also been amended to provide the Secretary with greater flexibility in types of proceedings held under these regulations. A more informal opportunity to present views through a presentation of views proceeding has been added. The change is needed to provide the Secretary with the necessary flexibility to deal appropriately and expeditiously with the many different circumstances that may give rise to opportunities to present views under these regulations.

A new section has been added (§ 3282.153) that provides any interested persons an opportunity to participate in writing in any hearings or presentation of views and an opportunity to participate orally in such proceedings unless the presiding officer decides that such oral presentations would not be appropriate.

Section 3282.154 provides a person petitioning the Secretary for a hearing or presentation of views with an opportunity to seek interim relief from the Secretary, pending the Secretary's final decision.

A new provision appearing as § 3282.156 permits any person with an opportunity to petition the Secretary to undertake an investigation as to whether a failure to conform or an imminent safety hazard exist in any mobile home or to determine whether a PIA should be disqualified. Under this section, the Secretary must respond to the petition in 60 days if an imminent safety hazard is alleged. The Secretary must respond within 120 days in all other circumstances.

Subpart E—Manufacturer Inspection and Certification Requirements. Subpart E sets out the requirements which must be met by the manufacturer of mobile homes for sale to purchasers within the United States. This subpart has been substantially revised. It appeared in the proposed regulations as Subpart D of Part 283.

This subpart has been revised to specify in greater detail manufacturer responsibilities under the Act and under these regulations. In addition, a number of new sections have been added to this subpart.

The purpose of the subpart is to require manufacturers to participate in a

system of design approvals and inspections utilizing primary inspection agencies (PIAs), which will serve to assist them in assuring that the mobile homes that they manufacture conform to the maximum extent possible to the Federal standards. In order to provide such assurance each manufacturer shall retain the services of a design approval primary inspection agency (DAPIA) and a plant approval, primary inspection agency (PIA). The manufacturer is responsible for carrying out any corrective actions, including notification and correction, which may be required under this Chapter. Additionally, the manufacturer shall cooperate fully in any investigation by HUD, a State, or a primary inspection agency into the question of whether a noncompliance, defect, or imminent safety hazard may exist in a mobile home produced by the manufacturer.

States and private organizations may apply to and be accepted by the Secretary to act as primary inspection agencies (PIAs). As set forth in greater detail below, the PIAs will be responsible for approval and continuing surveillance of the mobile home manufacturing process. The actions of PIAs will be monitored by the Secretary or the Secretary's agent and under certain circumstances by approved States.

These regulations require that each manufacturer enter into contracts with as many Design Inspection Primary Inspection Agencies (DAPIAs) of their choice and Production Inspection Primary Inspection Agencies (PIPIAs) as may be desired to provide services for each manufacturing plant; the manufacturer shall pay such reasonable fees for these services as agreed between the manufacturer and the primary inspection agencies.

Section 3282.203 dealing with DAPIA services requires that manufacturers have their designs approved by a DAPIA and specifies the services to be provided by the DAPIA, and specifies the material the manufacturer shall submit to the DAPIA of its choice.

The information to be submitted to the DAPIA may be prepared by the manufacturer's staff or by outside consultants, including DAPIA's provided that no DAPIA shall be allowed to approve designs with which it has had prior association.

In the event a manufacturer disagrees with a finding by a DAPIA or an PIPIA, § 3282.206 provides that it may request a determination from the appropriate State Administrative Agency or, in certain instances, the Secretary. It also provides that manufacturers shall not produce mobile homes to designs which have not been approved by a DAPIA or produce homes which the relevant PIPIA believes do not conform to the Federal standards.

The requirement of § 3202.205(c) that every manufacturer of mobile homes certify "to the best of the manufacturer's knowledge and belief" has been retained in order not to mislead purchasers and owners into believing that it is impossible that their home contains a failure to

conform to the Federal standards. However, it is not intended thereby to otherwise affect the Federal statutory, regulatory, State or common law duties and responsibilities of manufacturers, distributors or dealers of mobile homes.

Section 3282.207 specifies the transition rules which may be utilized by a manufacturer for a period not to exceed 90 days from the effective date of these standards. Under this Section manufacturers who cannot contract for the services of a PIA may utilize transition certification labels under circumstances discussed in the Section. Mobile homes bearing a transition certification label shall be subject to such inspections and reasonable inspection fees as States may require, though no State may require any design approval or require a mobile home to meet a standard other than the Federal standard. A State may prohibit the entry into or sale within its borders of a mobile home certified under this subsection if the State has inspected the mobile home and found a failure to conform to the standards. If a State, through inspections under this subsection, finds that a manufacturer or a particular plant is consistently producing homes which fail to conform to the standards, the State shall so inform the Secretary, who shall take appropriate action, including seeking injunctive relief, to halt production, if necessary. A State may not prohibit entry into or sale within its borders of a mobile home unless the State has inspected that home and found a failure to conform to the standards.

The section also describes physical characteristics of transition certification labels and their placement on the mobile home.

Section 3282.210 specifies the circumstances under which the monitoring fees required by subpart J are to be paid by a manufacturer. The requirements for how and when monitoring fees are to be paid by a manufacturer were not included in the proposed regulations.

Subpart F—Dealer and Distributor Responsibilities. Subpart F sets out responsibilities of mobile home dealers and distributors under the Act and these regulations. This subpart, which was formally subpart E of Part 283 in the proposed regulations, is revised to clarify the responsibilities of dealers and distributors with respect to mobile homes manufactured after the effective date of the Federal standards. The subpart informs the distributors and dealers when they may sell mobile homes, when they are prohibited from selling mobile homes, and what they may do in order to prepare a mobile home for sale if it is not in conformance with the Federal standards. A number of comments suggesting deletion of the requirement appearing in Section 283.211 of the proposed regulations, that the dealer certify that any alteration made did not bring the mobile home out of conformance with the standard were received. The Department believed that such a dealer certification was appropriate and helped to assure that alterations did not bring the mobile home out of conformance with the stand-

ards. The requirement for such a certification has been removed, however, because after reviewing the Act, the Department has concluded that no legal authority exists for such a requirement.

Comments were received requesting clarification of the actions to be taken by dealers when failures to comply or imminent safety hazards were found by dealers.

Section 283.404 of the proposed regulations has therefore been revised and now appears as § 3282.253 to clarify a dealer's responsibilities when in possession of a defective mobile home.

Subpart G—State Administrative Agencies. This subpart sets out procedures to be followed and requirements to be met by States which wish to participate as State Administrative Agencies (SAA) under the Federal standards enforcement program. This subpart formerly appeared as subpart B, Part 283 of the proposed regulations. The subpart has been revised to clarify SAA responsibilities and to facilitate State participation under the program.

The requirements for application by a State for HUD approval as an SAA have been modified. Section 3282.302(b)(1) now requires that a State demonstrate how the State agency shall assure through an appropriate monitoring system that manufacturers who have plants located within its State fulfill manufacturer responsibilities for handling complaints.

On the basis of comments received, a new paragraph has been added which clarifies that States may withdraw from the Federal standards enforcement program by providing the Secretary with at least 90 days notice.

Section 3282.302(c) now permits a three-year period during which a State may be conditionally approved. Section 283.103(b) of the proposed regulations limited the maximum conditional approval period to two years prior to their planned withdrawal.

Section 3282.307 now specifies that if a State plan is approved by the Secretary, the full amount of the monitoring inspection fee which is distributed to States for SAA activities shall be provided. The proposed regulations required that States, in addition to undertaking mandatory activities under the state plan, undertake a number of optional programs in order to receive the full amount of the monitoring inspection fee be distributed to States for SAA activities. This change has been made in response to comments received that the system in the proposed regulations did not provide adequate compensation for SAA mandatory activities. The Department continues to urge states to undertake as many of the optional programs listed in § 3282.303 as possible in order to provide fuller consumer protection and assurances of mobile home safety.

Section 3282.309 of these regulations specifies that whenever an SAA is to hold a hearing or presentation of views, it shall follow the requirements of Subpart D, except that a state may, in lieu of pub-

lishing a notice in the FEDERAL REGISTER, provide equivalent notice. The section also specifies that any final determination by an SAA may be appealed to the Secretary.

Subpart H—Primary Inspection Agencies. This subpart sets out procedures to be followed by private organizations and States which are accepted as primary inspection agencies and the requirements which they must meet to be so approved. This was originally proposed as subpart C of Part 283, and the system as it was proposed remains basically intact, though it has been streamlined and refined pursuant to the comments received.

The largest number of comments received on proposed subpart C concerned the proposal that there be three types of primary inspection agencies, Design Approval PIAs (DAPIAs), Plant Approval PIAs (PAPIAs), and Production Inspection PIAs (IPIAs). The comments recommended that the DAPIA be dropped and that its functions be split between the DAPIA and the IPIA. That has been done. DAPIAs shall evaluate mobile home designs and quality assurance manuals, and IPIAs shall evaluate mobile home manufacturing plants and provide ongoing inspections of the manufacturing process.

These regulations reflect many comments which were concerned with approvals of quality assurance manuals. Under these regulations, once a DAPIA has approved a quality assurance manual, that manual may be followed in any manufacturing plant. While the manual must take into account design considerations which must be reflected in the quality control program, the manual need not be separately approved for each plant in which it is to be used.

These regulations also clarify the type of inspection which the IPIA is to make in its ongoing inspections of the production process. The IPIA is to inspect to assure that the quality assurance manual is being followed by inspecting each mobile home at at least one stage of production. With respect to that part of the mobile home actually inspected, the IPIA is to determine whether the mobile home is being produced to approved design. Only to the extent that the design is not specific with respect to an aspect of the standards does the IPIA inspect to determine whether the mobile home conforms to the standards.

In response to concerns that manufacturers may have difficulty in obtaining complete IPIA services by the effective date of the standards, these regulations provide that a manufacturer may in certain circumstances obtain approval of the production process from a DAPIA which may issue a certification report for the plant. These regulations also provide that where an IPIA has determined that it cannot yet issue a certification report for a particular plant, the IPIA can provide complete inspections of each mobile home produced and issue a label for each mobile home so inspected.

Many comments suggested that the label required under this subpart be a metal label which is riveted to the mo-

bile home rather than an adhesive backed foil label. These regulations adopt that suggestion.

A concern throughout the comments and particularly with respect to this subpart was that the amount of paperwork required was excessive, and particularly that the number of copies of designs which were required to be sent to various parties was excessive. The Department has attempted to reduce the paperwork as much as possible. These regulations require that the DAPIA submit a copy of the approved design to the Secretary or the Secretary's agent and to the manufacturer. The manufacturer must maintain a copy of the working part of the design in each plant in which it is followed. The certification report issued by the IPIA no longer contains a set of approved designs, and it is provided only to the manufacturer and to the Secretary or the Secretary's agent.

Finally, some comments raised the question of whether the Department will be providing adequate protection to consumers by allowing mobile homes to be produced under the surveillance of DAPIAs and IPIAs which have only been provisionally accepted and which have not been monitored by the Department. In particular, States have recommended that they be allowed to reinspect or to require inspections only by PIAs which they have approved as conditions of entry into or sale in their state. The Department has investigated this question at great length to determine whether this concern is valid. The Department has determined that it is not. The Department has had 18 months of experience in mobile home design approvals and has carried out hundreds of mobile home production inspections. The Department has required full documentation from all PIAs which will be provisionally accepted and which have been active under the Title I mobile home loan insurance program. The Department is well satisfied with the performance of these PIAs at this point, and the Department will be monitoring their performance as the program begins. The Department believes that those PIAs which are granted provisional acceptance will provide protections to consumers at least as great as that now provided by PIAs acting under similar state inspection programs. The Department has, therefore, decided that the fact that a PIA has not been granted full acceptance cannot justify a state requiring more than the Federal program requires. Any attempt to do so is precluded by the Act and the Constitution, as reflected in § 3282.11.

As of this date, sixteen State agencies and fourteen private agencies have been approved under the Title I program to certify mobile homes for FHA insured loans. Because the inspection procedures are the same, these agencies will be provisionally approved to certify mobile homes under Title VI subject to extensive monitoring by HUD and its agent.

The process of approving these agencies has been comprehensive and thorough. It has extended over a period of two years beginning with a survey of

nine States from March 1974 to August 1974. During that survey, forty-one manufacturing plants were inspected and the performance of seven state inspection agencies and four major private inspection agencies was evaluated. Title I inspection procedures were developed from that survey by adopting the better procedures of the State and private agencies and combining them into one uniform procedure for Title I.

On August 5, 1974, Title I inspection procedures were issued, and all State and private agencies were invited to submit applications for acceptance as HUD approved inspection agencies. States which do not perform regular factory inspections could be approved under Title I if HUD approved private agencies performed those inspections and the state had qualified personnel to monitor the performance of the HUD approved private agencies.

The first States to be approved under Title I were those which only performed monitoring functions. Five were approved in the next three months. These approvals were based on the qualifications of the personnel that would perform the required monitoring. None were approved on first submission, but after receipt of additional information regarding the qualification of personnel these approvals were given in a relatively short time. Since they were not for factory inspections they have no bearing on provisional Title VI approvals.

Since that time, sixteen states and fourteen private agencies have been approved to perform design approval and factory inspection functions under Title I and therefore will be provisionally approved to perform those functions under Title VI. These approvals were more exhaustive than the approvals of monitoring agencies. Criteria for evaluating personnel were essentially the same as those adopted by the American Society for Testing and Materials in ASTM E541 which was published in September 1975. When ASTM E541 was published, HUD followed its provisions with the exception of the requirement for registration of professional engineers. HUD's more exacting requirement is the submission of a mobile home design and engineering calculation, which has been approved by the applicant and which HUD engineer's, who are registered professional engineers, examine in detail and resolve every deviation from HUD accepted engineering practice. This, in effect, is an engineering examination which establishes the capability of the applicant's engineers and results in a commitment by the applicant that it can and shall apply HUD accepted engineering practice in its approval of all mobile home designs. This requirement was difficult to meet, was never met in any original submission, and generally resulted in several months of resubmissions before it was met. In some instances, applicants were unable to meet it, but were able to show capability and commitment to performing the required factory inspections. Those applicants were approved to per-

form factory inspections, but were not approved to perform design evaluations.

HUD's approval of State and private inspection agencies is contingent upon continued acceptable performance of those agencies as evidenced by extensive monitoring of their performance. No amount of credentials guarantees acceptable performance. No matter what credentials an agency may possess, HUD shall revoke its approval of an agency that fails to perform adequately.

A considerable part of the monitoring will be performed by joint state teams under the administration of HUD or its agent. This will provide the States an opportunity to make a direct contribution to the evaluation of the performance of HUD approved inspection.

Subpart I—Consumer Complaint Handling and Remedial Action. This subpart establishes a system for handling consumer complaints and other information which may arise concerning problems in mobile homes for which remedies are available under the Act. Under the system, the complaint or information flows to the manufacturer or a State Administrative Agency or the Secretary for determination of the character of the problem and of any remedial action which must be taken. The subpart also sets out how the remedial action is to be taken and how the adequacy of the remedial action will be assured. This subpart replaces Subpart E of Part 282 of the proposed regulations and incorporates with significant alterations complaint handling responsibilities of SAAs which were set out in Subpart B of Part 283.

The subpart reflects significant changes from the proposed regulations primarily as a result of the comments received. The most prevalent point of the comments received concerning the complaint handling and remedial action aspect of the proposed regulations was that the proposed system was too complex and unworkable; this point was made partly because the system did not deal adequately with the relations among the various parties involved and partly because there were too many parties involved. A lengthy in-depth review of the proposed system, of the comments, and of other alternatives has resulted in the procedures now set out in Subpart I. It is our view that now the responsibilities of the parties involved are clear and the role of PIAs in this system has been reduced and simplified.

In response to many comments, the system, the core of which is set out in §§ 3282.405 through 3282.408, focuses initially on the mobile home manufacturer. Complaints or information are first sent to the manufacturer for investigation and response rather than being investigated first by SAAs or primary inspection agencies. The manufacturer has the primary responsibility for investigating mobile homes which may be affected; SAAs or the Secretary investigate only when the manufacturer fails to do so or where a manufacturer's conclusions are unacceptable. Primary inspections agencies are no longer required to investigate

mobile homes which have been released by the manufacturer unless the manufacturer has them do so under the contract between the manufacturer and the PIA.

State Administrative Agencies have significant responsibilities under this subpart despite some comments which suggested that their responsibilities be reduced. Some commentators particularly expressed that SAAs not be given the responsibility for making determinations that mobile homes contain noncompliances, defects, serious defects, or imminent safety hazards. SAAs remain responsible for assuring that consumer complaints and information which they receive are correctly handled and for making determinations of the existence of defects or noncompliances if manufacturers fail to do so. They are also responsible for assuring that required remedial actions are carried out correctly. However, in the interest of assuring expedited handling of serious problems, SAAs do not make determinations of the existence of imminent safety hazards or serious defects, but refer these matters to the Secretary. Further, to assure more uniform decision making and exception, these regulations specify which SAA (or in certain cases the Secretary) is to handle complaints and make determinations. Basically, the SAA of the state where a mobile home is located is responsible for contacting the manufacturer of the home concerning a complaint and for handling the entire matter if there are no similarly affected mobile homes in other states. If there may be similarly affected mobile homes in other states, the SAA of the state in which they were manufactured will make any required determinations and supervise remedial actions, unless they were manufactured in more than one state, in which case the Secretary will do so. The Secretary will also act wherever there is no SAA in the appropriate state.

The presence of the SAAs in this system adds significantly to its complexity, and many industry comments recommended that their presence be reduced to simplify the system and so that the industry need look to only one decision-maker, the Department. The Department has rejected these comments, including comments that the SAAs cannot be given the authority to make determinations of the existence of noncompliances or defects. Section 623 of the Act indicates that Congress intended the States to play a significant role in the enforcement of the Federal standards and in procedures for carrying out remedial actions. Furthermore, the states have much expertise in this area and can contribute significantly, and they are deeply concerned that they be able to participate in providing protection for their citizens. The Department believes that the system as developed is not too complex, that it involves the states to the greatest extent possible, and that it ultimately provides for uniformity in the system by retaining the final decision-making authority in the Secretary. The Department also be-

lieves that the involvement of the states is important because, as discussed below, it allows swift resolution of many problems which might otherwise have to flow through a longer decision making process.

Many comments were received relating to the authority or lack of authority of the Department to deal with certain types of problems in mobile homes. The industry comments argued that the Department has no authority to require notification with respect to noncompliances as now defined and that the Department has no authority to require remedial actions unless a significant number of problems arise. The Department has reviewed the authority presented and has concluded that both points are incorrect. That conclusion is reflected indirectly throughout this subpart. Other comments argued that the Department has the authority to require manufacturers to correct noncompliances and defects as well as imminent safety hazards and serious defects in mobile homes which have been sold. The Department has considered this question at length and has concluded that section 615(g) of the Act, the section which governs the point, does not authorize the Department to require corrections of noncompliances or defects. Apparently a misunderstanding of the Act resulted from the fact that State mobile home enforcement programs have contained such requirements. Further, as is reflected in section 3282.11 subpart A, under the mobile home standards enforcement system established by the Act and these regulations, no State may establish an enforcement system except through acting as an SAA, and no State may require correction of noncompliances or defects which are not required to be corrected under this program.

After a manufacturer or an SAA, as appropriate, has investigated and made a determination that an imminent safety hazard, serious defect, defect, or noncompliance exists, and after any hearings or presentations of views and appeals have been exhausted, the manufacturer carries out required remedial actions after obtaining approval from the appropriate SAA of a plan for carrying them out. Those remedial actions include formal notification to mobile home owners and others holding mobile homes and may include correction where the Act so provides. However, under these regulations, there are certain circumstances in which the manufacturer can act in lieu of the formal notification and correction requirements or correct problems in certain mobile homes without waiting to obtain formal approval of the remedial action plan.

Where an imminent safety hazard or failure to conform which is found to exist in one mobile home is found to be unique to that home, the manufacturer may repair the problem in that home and keep a record of the action. The handling of such a case permits avoidance of formal procedures which would otherwise be required. In any case, a manufacturer may not be required to meet formal notification and correction requirements if it corrects the mobile

homes in question in a manner satisfactory to the Secretary within a prescribed period of time. In both of the above cases, the adequacy of the repair is subject to review by the Secretary or an SAA. Whenever a manufacturer has received a complaint or information concerning a particular mobile home, the manufacturer may repair that mobile home as approved by the SAA of the state where the home is located regardless of whether that SAA is the one which will approve any plan for correction. Such approval protects the manufacturer; the manufacturer would not have to correct again if the plan which was finally approved contained different specifications for the repair.

These informal action procedures or similar procedures were included in the proposed regulations. Some comments objected to allowing manufacturers to avoid formal requirements. The Department has rejected these comments on the ground that the providing of manufacturers with the ability to avoid formal notifications and other formalities will give manufacturers an incentive to provide corrections and act more expeditiously than they would under more formal procedures. The Department also believes that these informal procedures are beneficial to consumers because they encourage manufacturers to act more quickly with respect to complaints about mobile homes in which problems are known to exist. The manufacturers can obtain approval of corrections without going through the entire system. Finally, these informal procedures are also intended to reflect the fact that manufacturers may act under other authority, such as warranty provisions, and any actions thereunder which are acceptable should be allowed though they do not precisely meet the formal requirements of this program. Further, the Department will monitor the effectiveness of procedures and take such steps as are necessary to insure protection of consumers.

The Department recognizes that the system established by §§ 3282.403 through 3282.407 is complex, and that it must be studied at some length to be fully understood. The Department intends to take whatever actions may be required to explain the system as questions arise. However, the Department believes that the system is necessary to incorporate the SAAs into an effective, uniform national standards enforcement program, and the Department believes that it will function smoothly and in the best interest of both the consumer and the manufacturer.

As noted, primary inspection agencies do not play as dominant an investigatory role in this system as they would have in the system which was proposed. Under this system, the PIAs have two basic responsibilities. They are responsible for reviewing and concurring in or disputing determinations by manufacturers with respect to the number and identity of mobile homes that may be affected in particular cases, and they are responsible for assuring that any required notifica-

tions are sent to those indicated by the manufacturer's and the PIA's records. This change reflects comments which expressed concern about the role which had previously been proposed for PIAs.

A new § 3282.409 has been added that did not appear in the proposed regulations. As a result of the comments, there is now a provision for reimbursement of consumers who have already corrected problems by the time it is determined that the manufacturer is responsible for providing the correction under the Act or otherwise under these regulations. The addition of this section was necessary so that those who act to protect themselves or their mobile homes are not penalized by the action. Where the correction would have been required by the Act, the reimbursement must be in an amount equal to the reasonable cost to the consumer of making the correction, and where the correction would have been carried out under any of the informal procedures of these regulations, the reimbursement shall equal the reasonable cost to the manufacturer of making such a correction.

A § 3282.415 has been included setting out remedial actions to be taken with respect to mobile homes in the hands of dealers and distributors. This section reflects minor changes from that in the proposed regulations.

Other sections specify when the Act requires a manufacturer to provide notification, what the contents of a manufacturer's plan for remedial actions must include, and the time limits within which it must be carried out. Other sections specify reports which must be made upon completion of any remedial actions, when manufacturers must replace mobile homes or repurchase them from owners, a requirement that copies of certain notices and other communications be sent to the Secretary, and how the carrying out of remedial actions shall be supervised.

Subpart J—Monitoring of Primary Inspection Agencies. This subpart contains the procedures for the monitoring of PIAs. These procedures previously appeared in subpart F of Part 283 of the proposed regulations.

In general, the monitoring of approved PIAs shall be done by joint monitoring teams. Personnel for these teams shall come from SAAs and HUD or HUD's agent. Monitoring parties make recommendations such as continued acceptance, disqualification, and requalification of PIAs.

This section has remained essentially the same except for two significant changes. The level of monitoring has been modified to a level that the Department considers appropriate. Prior to June 15, 1976, each approved DAPIA shall have one of its approved designs reviewed. After June 15, 1976, ten per cent of all plans approved by each DAPIA shall be subject to review.

A monitoring inspection fee of \$19.00 for each mobile home produced has been established. This fee is to be paid by the manufacturers for mobile homes produced in non-approved and conditionally

approved states. The proposed regulation did not specify fee amounts.

Subpart K—Departmental Oversight. This subpart provides for oversight by the Secretary over all actions carried out by all parties acting under these regulations, and specifically over the actions of State Administrative Agencies and of the Secretary's agent. This was set out in Subpart G of Part 283 of the proposed regulations. There has been no substantive change except the removal of former § 283.602 concerning enforcement bulletins. This section was removed because the matter is covered in § 3282.114 of Subpart D.

Subpart L—Reporting. This subpart describes the reports which shall be submitted by PIAs, manufacturers, and States. Reporting requirements in the proposed regulations were discussed in Subpart H of Part 283. The majority of the information is required for inclusion in the Department's Annual Report to the Congress. The Department has received many comments and suggestions and has had considerable internal discussion on the form and frequency of reports and data collection techniques. Major changes have been incorporated in this section.

Based on the many comments received, particularly from States, concerning the inability of States to adequately meet the originally proposed requirements, all reports on fires and accidents have been deleted. Many of the comments indicated that the originally proposed reporting requirements were either too extensive, would be too difficult for the states to handle, or that the data could not be readily collected in a timely and economical manner. The Department will collect the data that it needs by alternate methods.

Reporting on specific forms, as originally proposed, is no longer required. Instead, the Department is specifying only the information it needs.

The Department feels that the final reporting requirements are reasonable.

The Department has determined that these regulations do not constitute a major Federal action significantly affecting the quality of the human environment. A finding of inapplicability of environmental impact is available for inspection by the public during regular business hours in the office of the Rules Docket Clerk, Office of the Secretary, Room 10141, 451 Seventh Street, SW, Washington, D.C.

An amended Economic Impact Statement assessing the impact of the Federal Mobile Home Construction and Safety Standards and Enforcement program on the economy, the labor force, competition, and material and energy supplies was prepared and submitted to the Council on Wage and Price Stability.

This Statement is available for inspection and copying according to the rules and regulations of the Department during regular business hours at the above address.

The Department finds that parties acting under these regulations will not be

able to act in time for mobile homes to be produced under the standard as of June 15, 1976, the effective date of the standard, unless these regulations take effect on the date they are published. Therefore, these regulations take effect on May 13, 1976.

In consideration of the comments received and pursuant to the authority of the Secretary under section 625 of the National Mobile Home Construction and Safety Standards Act of 1974, 42 USC 5401, a new Chapter XX—of 24 CFR consisting of Part 3282 Mobile Home Procedural and Enforcement Regulations is hereby established as follows:

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- 3282.551 Scope and purpose.
3282.552 Manufacturers reports for joint monitoring fees.
3282.553 IPIA reports.
3282.554 SAA reports.

AUTHORITY: Sec. 625 of the National Mobile Home Construction and Safety Standards Act of 1974, Title VI of Pub. L. 93-383, 42 U.S.C. 5401, sec. 7(d) of the Department of HUD Act, 42 U.S.C. 3535 (d).

Subpart A—General

§ 3282.1 Scope and purpose.

(a) The National Mobile Home Construction and Safety Standards Act of 1974 (Title VI of Pub. L. 93-383, 38 Stat. 700, 42 U.S.C. 5401, et seq.) (hereinafter referred to as the Act), requires the Secretary of the Department of Housing and Urban Development to establish Federal mobile home construction and safety standards and to issue regulations to carry out the purpose of the Act. The standards promulgated pursuant to the Act appear at Part 280 of Chapter II of this title, and apply to all mobile homes manufactured for sale to purchasers in the United States on or after the effective date of the standards (June 15, 1976). A mobile home is manufactured on or after June 15, 1976, if it enters the first stage of production on or after that date.

(b) The Secretary is also authorized by the Act to conduct inspections and investigations necessary to enforce the standards, to determine that a mobile home fails to comply with an applicable standard or contains a defect or an imminent safety hazard, and to direct the manufacturer to furnish notification thereof, and in some cases, to remedy the defect or imminent safety hazard. The purpose of this part is to prescribe procedures for the implementation of these responsibilities of the Secretary under the Act through the use of private and State inspection organizations and cooperation with State mobile home agencies. It is the policy of the Department to involve State agencies in the enforcement of the Federal mobile home standards to the maximum extent possible consistent with the capabilities of such agencies and the public interest.

§ 3282.2 Program implementation authority.

(a) The Secretary has delegated to the Assistant Secretary for Consumer Affairs and Regulatory Functions all of the authority to exercise the responsibilities of the Secretary under the Act except the power to sue and be sued.

(b) The Secretary has further authorized the Assistant Secretary to redelegate any of the delegated authority to employees of the Department.

§ 3282.3 Establishment of office.

There is established, as a unit subordinate to the Assistant Secretary for Consumer Affairs and Regulatory Functions,

the Office of Mobile Home Standards.

§ 3282.4 Director.

The Office of Mobile Home Standards is headed by the Director, who shall be named by the Assistant Secretary for Consumer Affairs and Regulatory Functions.

§ 3282.5 Principal divisions.

The following Divisions have been established within the Office of Mobile Home Standards:

- (a) Standards Coordination and Liaison Division.
(b) Enforcement and State Liaison Division.
(c) Investigation and Data Collection Division.

§ 3282.6 Separability of provisions.

If any clause, sentence, paragraph, section or other portion of Part 3282 shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined by its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 3282.7 Definitions.

The definitions in this subpart are those common to all subparts of the regulations.

(a) "Act" means the National Mobile Home Construction and Safety Standards Act of 1974, Title VI of the Housing and Community Development Act of 1974 (42 U.S.C. 5401 et seq.).

(b) "Add-on" means any structure (except a structure designed or produced as an integral part of a mobile home) which, when attached to the basic mobile home unit, increases the area, either living or storage, of the mobile home.

(c) "Alteration" means the replacement, addition, and modification, or removal of any equipment or installation after sale by a manufacturer to a dealer or distributor but prior to sale by a dealer to a purchaser which may affect the construction, fire safety, occupancy, plumbing, heat-producing or electrical system. It includes any modification made in the mobile home which may affect the compliance of the home with the standards, but it does not include the repair or replacement of a component or appliance requiring plug-in to an electrical receptacle where the replaced item is of the same configuration and rating as the one being replaced. It also does not include the addition of an appliance requiring "plug-in" to an electrical receptacle, which appliance was not provided with the mobile home by the manufacturer, if the rating of the appliance does not exceed the rating of the receptacle to which it is connected.

(d) "Certification label" see "label".

(e) "Certification Report" means the report prepared by an IPIA (see definition z) for each mobile home manufacturing plant under § 282.203 in which

the IPIA provides a complete description of the initial comprehensive inspection of the plant, an evaluation of the quality assurance program under the approved quality assurance manual, and the identity of the DAPIA (see definition z) which approved the designs and quality assurance manual used in the plant. Where appropriate under § 3282.362(b)(5), the certification report may be made by a DAPIA.

(f) "Component" means any part, material or appliance which is built in as an integral part of the mobile home during the manufacturing process.

(g) "Cost Information" means information submitted by a manufacturer under section 607 of the Act with respect to alleged cost increases resulting from action by the Secretary, in such form as to permit the public and the Secretary to make an informed judgment on the validity of the manufacturer's statements. Such term includes both the manufacturer's cost and the cost to retail purchasers.

(h) "Date of Manufacture" means the date on which the label required by § 3282.205(c) is affixed to the mobile home.

(i) "Dealer" means any person engaged in the sale, leasing, or distribution of new mobile homes primarily to persons who in good faith purchase or lease a mobile home for purposes other than resale.

(j) "Defect" means a failure to comply with an applicable Federal mobile home safety and construction standard that renders the mobile home or any part or component thereof not fit for the ordinary use for which it was intended, but does not result in an unreasonable risk of injury or death to occupants of the affected mobile home. See related definitions of "imminent safety hazard" (definition q), "noncompliance" (definition x), and "serious defect" (definition ff).

(k) "Department" means the Department of Housing and Urban Development.

(l) "Design" means drawings, specifications, sketches and the related engineering calculations, tests and data in support of the configurations, structures and systems to be incorporated in mobile homes manufactured in a plant.

(m) "Director" means the Director of the Office of Mobile Home Standards.

(n) "Distributor" means any person engaged in the sale and distribution of mobile homes for resale.

(o) "Failure to Conform" means an imminent safety hazard related to the standards, a serious defect, defect, or noncompliance and is used as a substitute for all of those terms.

(p) "HUD" means the Department of Housing and Urban Development.

(q) "Imminent Safety Hazard" means a hazard that presents an imminent and unreasonable risk of death or severe personal injury that may or may not be related to failure to comply with an applicable Federal mobile home construction or safety standard. See related definitions of "defect" (definition j),

"noncompliance" (Definition X) and "serious defect" (Definition ff).

(r) "Joint Monitoring Team" means a monitoring inspection team composed of personnel provided by the various State Administrative Agencies, or by HUD or its contract agent, operating under a contract with HUD for the purpose of monitoring, or otherwise aiding in the enforcement of the Federal standards.

(s) "Label" or "certification label" means the approved form of certification by the manufacturer that, under § 3282.362(c) (2) (i), is permanently affixed to each transportable section of each mobile home manufactured for sale to a purchaser in the United States.

(t) "Manufacturer" means any person engaged in manufacturing or assembling mobile homes, including any person engaged in importing mobile homes for resale.

(u) "Mobile Home" means a structure, transportable in one or more sections, which when erected on site measures eight body feet or more in width and designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein.

(v) "Mobile Home Construction" means all activities relating to the assembly and manufacture of a mobile home including but not limited to those relating to durability, quality, and safety.

(w) "Mobile Home Safety" means the performance of a mobile home in such a manner that the public is protected against any unreasonable risk of the occurrence of accidents due to the design or construction of such mobile home, or any unreasonable risk of death or injury to the user or to the public if such accidents do occur.

(x) "Noncompliance" means a failure of a mobile home to comply with a Federal mobile home construction or safety standard that does not constitute a defect, serious defect, or imminent safety hazard. See related definitions or "Defect" (definition j), "imminent safety hazard" (definition q), and "serious defect" (definition ff).

(y) "Owner" means any person purchasing a mobile home from any other person after the first purchase of the mobile home, in good faith, for purposes other than resale.

(z) "Primary Inspection Agency" (PIA) means a State or private organization that has been accepted by the Secretary in accordance with the requirements of Subpart H of this Part. There are two types of PIA:

(1) Design Approval PIA (DAPIA), which evaluates and approves or disapproves mobile home designs and quality control procedures, and

(2) Production Inspection PIA (PIA), which evaluates the ability of mobile home manufacturing plants to follow approved quality control procedures and provides ongoing surveillance of the manufacturing process. Organizations may act as one or both of these types.

(aa) "Purchaser" means the first person purchasing a mobile home in good faith for purposes other than resale.

(bb) "Quality Assurance Manual" means a manual, prepared by each manufacturer for its manufacturing plants and approved by a DAPIA which contains: a statement of the manufacturer's quality assurance program, a chart of the organization showing, by position, all personnel accountable for quality assurance, a list of tests and test equipment required, a station-by-station description of the manufacturing process, a list of inspections required at each station, and a list by title of personnel in the manufacturer's organization to be held responsible for each inspection. Where necessary, the quality assurance manual used in a particular plant shall contain information specific to that plant.

(cc) "To Red Tag" means to affix a notice to a mobile home which has been found to contain an imminent safety hazard or a failure to conform with any applicable standard. A "red tag" is the notice so affixed to the mobile home.

(dd) "Secretary" means the Secretary of Housing and Urban Development.

(ee) "Secretary's Agent" means a party operating as an independent contractor under a contract with HUD.

(ff) "Serious Defect" means any failure to comply with an applicable Federal mobile home construction and safety standard that renders the mobile home or any part thereof not fit for the ordinary use for which it was intended and which results in an unreasonable risk of injury or death to occupants of the affected mobile home.

(gg) "Standards" means the Federal mobile home construction and safety standards promulgated under section 604 of the Act, 42 U.S.C. 5403, as Part 280 of these regulations.

(hh) "State" includes each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Canal Zone, and American Samoa.

(ii) "State Administrative Agency" (SAA) means an agency of a State which has been approved or conditionally approved to carry out the State plan for enforcement of the standards pursuant to section 623 of the Act, 42 U.S.C. 5422, and Subpart G of this part.

(jj) "State Plan Application" means the application of any State organization which is submitted to the Secretary for approval as a State Administrative Agency under Subpart G.

(kk) "System" means a set or arrangement of materials or components related or connected as to form an operating entity, i.e., heating, ventilating and air-conditioning systems, evaporative coolers.

(ll) "Title I" means Title I of the National Housing Act, 12 U.S.C. 1701, which authorizes HUD to insure loans made for the purchase of mobile homes that are certified as meeting HUD requirements for dwelling quality and safety.

(mm) "United States District Courts" means the Federal district courts of the

United States and the United States courts of the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Canal Zone, and American Samoa.

§ 5282.3 Applicability.

(a) States. This Part applies to States that desire to assume responsibility under the Federal mobile home construction and safety standards enforcement program. It includes requirements which must be met in order for State agencies to be approved by the Secretary under 623(c) of the Act, 42 U.S.C. 5422(c). It also includes requirements for States wishing to act as primary inspection agencies, as defined in § 3282.7, or to participate in monitoring activities under § 3282.308.

(b) Primary Inspection and Engineering Organizations. This Part applies to each private inspection and engineering organization that wishes to qualify as a primary inspection agency under Subpart H.

(c) Mobile Home Manufacturers. This Part applies to all manufacturers producing mobile homes for sale in the United States. It includes:

(1) Inspection procedures to be carried out in the manufacturing plants.

(2) Procedures by which a manufacturer obtains approval of mobile home designs.

(3) Procedures by which a manufacturer obtains approval of manufacturing quality control and assurance programs.

(4) Procedures by which a manufacturer may obtain production inspections and certification labels for its mobile homes.

(d) Mobile Home Dealers and Distributors. This Part applies to any person selling, leasing, or distributing new mobile homes for use in the United States. It includes prohibitions of the sale of new mobile homes to which labels have not been affixed pursuant to Subpart H of these regulations or that have been altered, damaged, or otherwise caused not to be in compliance with the Federal standards.

(e) Purchasers, owners and consumers. This Part applies to purchasers, owners and consumers of mobile homes in that it sets out procedures to be followed when purchasers, owners and consumers complain to manufacturers, States, the Secretary or others concerning problems in mobile homes for which remedies are provided under the Act.

(f) Recreational vehicles. Recreational vehicles do not fall within the definition of mobile homes and are not subject to these regulations. A recreational vehicle is a vehicle, regardless of size, which is not designed to be used as a permanent dwelling, and in which the plumbing, heating, air conditioning, and electrical system contained therein may be operated without connection to outside utilities and which are self propelled or towed by a light duty vehicle.

(g) Imported mobile homes. Imported mobile homes are covered by the regulations except as modified by regulations promulgated jointly by the Secretary and the Secretary of the Treasury.

(h) Export mobile homes. Mobile Homes intended solely for export are not governed by this Part or by Part 280 of this title if a label or tag stating that the mobile home is intended solely for export is placed on the mobile home or the outside of the container, if any, in which it is to be exported. However, any mobile home so tagged or labeled that is not exported but is sold to a purchaser in the United States is subject to this Part and Part 280 of this title.

(i) Add-on. An add-on added by the dealer or some other party not the manufacturer (except where the manufacturer acts as a dealer) as part of a simultaneous transaction involving the sale of a new mobile home, is not governed by the standards and is not subject to these regulations. However, the addition of the add-on must not affect the ability of the basic mobile home to comply with the standards. If the addition of an add-on causes the basic mobile home to fail to conform to the standards, sale, lease, and offer for sale or lease of the home is prohibited until the mobile home is brought into conformance with the standards. While the standards do not govern add-ons, the Secretary has the authority to promulgate standards for add-ons and may do so in the future.

(j) A structure (including an expandable room, tip-out, or tag-along unit) which is designed and produced as an integral part of a mobile home when assembled on site, is governed by the standards and these regulations regardless of the dimensions of such structure.

§ 3282.9 Computation of time.

In computing any period of time prescribed or allowed by these regulations, the day of the act or event from which the designated period of time begins to run, shall not be included in the computation. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. When the period of time prescribed or allowed is more than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be included in the computation. As used in this section "legal holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States.

§ 3282.10 Civil and criminal penalties.

Failure to comply with these regulations may subject the party in question to the civil and criminal penalties provided for in section 611 of the Act, 42 U.S.C. 5410.

§ 3282.11 Preemption and reciprocity.

(a) No State mobile home standard regarding mobile home construction and

safety which covers aspects of the mobile home governed by the Federal standards shall be established or continue in effect with respect to mobile homes subject to the Federal standards and these regulations unless it is identical to the Federal standards.

(b) No State may require, as a condition of entry into or sale in the State, that a mobile home which has been certified as in conformance with the Federal standards by the application of the label required by § 3282.362(c) (2) (i) be subjected to state inspection to determine compliance with any standard covering any aspect of the mobile home covered by the Federal standard, except that a State may inspect a home to determine compliance with the Federal standard or an identical State standard if a transition certification label has been affixed to the home under § 282.207. Nor may any State require that a State label certifying conformance to the Federal standard or an identical standard be placed on the mobile home, except that such a label may be required where a transition certification label has been affixed to the home under § 3282.207. Certain actions which States are permitted to take are set out in § 3282.303 of Subpart G of this Part.

(c) States may participate in the enforcement of the Federal standards enforcement program under these regulations either as SAAs or PIAs or both. These regulations establish the exclusive system for enforcement of the Federal standards. No State may establish or keep in effect, through a building code enforcement system or otherwise, procedures or requirements which constitute systems for enforcement of the Federal standards or of identical State standards which are outside the system established in these regulations or which go beyond this system to require remedial actions which are not required by the Act and these regulations. However, a State may establish or continue in force consumer protections, such as warranty requirements, which do not constitute systems of enforcement of the Federal standards regardless of whether the State qualifies as an SAA or PIA.

(d) Except where a State is inspecting or providing a State label for a mobile home to which a transition certification label has been applied under § 3282.207, and except where a State is providing one of the services mentioned in § 3282.303, and except where a State is acting as a PIA, no State may charge a fee for any services provided under these regulations. Further, no State may charge a fee which is designed simply to replace revenues lost when this program replaces the State program or a fee which burdens interstate commerce, or a fee which, in itself or as it is administered, constitutes a system of enforcement of the Federal standards or of an identical State standard.

Subpart B—Formal Procedures

§ 3282.51 Scope.

This subpart contains rules of procedure generally applicable to the trans-

action of official business under the National Mobile Home Construction and Safety Standards Act of 1974, including the rules governing public availability of information.

§ 3282.52 Address of communications.

Unless otherwise specified, communications shall be addressed to the Director, Office of Mobile Home Standards, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

§ 3282.53 Service of process on foreign manufacturers and importers.

(a) Designation of agent for service. Any manufacturer, before offering a mobile home for importation into the United States, shall designate an agent upon whom service of all processes, notices, orders, decisions, and requirements may be made for and on behalf of such manufacturers as provided in section 612 (e) of the Act and in this section. The agent may be an individual, a firm, or a domestic corporation. Changes in the designation of agents shall be made in accordance with the provisions of § 3282.53(b).

(b) Form and contents of designation of agent. The designation shall be in writing, dated, and signed by the manufacturer and the designated agent. The designation shall be made in legal form required to make it valid and binding on the manufacturer under the laws, corporate by-laws, or other requirements governing the making of the designation by the manufacturer at the place and time where it is made and the person or persons signing the designation shall certify that it is so made. The designation shall disclose the full legal name, principal place of business, and mailing address of both the manufacturer and the designated agent.

(c) Method of service. Service of any process, notice, order, requirements, or decision specified in section 612(e) of the Act may be made by registered or certified mail addressed to the agent with return receipt requested, or in any other manner authorized by law. If service cannot be effected on the designated agent for any reason, service may be made to the Secretary by registered or certified mail.

§ 3282.54 Public information.

(a) General. Subject to the provisions of 24 CFR Part 15 covering the production or disclosure of material or information and the provisions of 24 CFR Part 16 at 40 FR 39729 relating to the Privacy Act, and except as otherwise provided by paragraphs (b), (c), (d), and (e) of this section, the Secretary may make available to the public:

(1) Any information which may indicate the existence of an imminent safety hazard, and

(2) Any information which may indicate the failure of a mobile home to comply with applicable mobile home construction and safety standards, and

(3) Such other information as the Secretary determines is necessary to

carry out the Secretary's functions under the Act.

(b) Protected information. Data and information submitted or otherwise provided to the Secretary or an agent of the Secretary or a PIA or SAA which fall within the definitions of a trade secret or confidential commercial or financial information are exempt from disclosure under this section, only if the party submitting or providing the information so requests under paragraph (c) of this section. However, the Secretary may disclose such information to any person requesting it after deletion of the portions which are exempt, or in such combined or summary form as does not disclose the portions which are exempt from disclosure or in its entirety in accordance with section 614 of the Act, U.S.C. 5413.

(c) Obtaining exemption. Any party submitting any information to the Secretary in any form under this Part, or otherwise in relation to the program established by the Act shall, if the party desires the information to be exempt from disclosure, at the time of submittal of the information or at any time thereafter, request that the information or any part thereof be protected from disclosure. The request for nondisclosure shall include the basis for the request under the Act or other authority and complete justification supporting the claim that the material should be exempt from disclosure. The request should also include a statement of the information in such combined or summary form that alleged trade secrets or other protected information and the identity of the submitting party would not be disclosed. This request need not be made with respect to information which was submitted to the Secretary, an SAA or a PIA prior to the effective date of these regulations.

(d) Information submitted in opposition to action of the Secretary under section 607(a) of the Act, 42 U.S.C. 5406(a). Notice of the availability of any information submitted under section 607 of the Act shall be published in the FEDERAL REGISTER promptly after its receipt and after any determination by the Secretary regarding a manufacturer's request for exemption from disclosure under that section.

(e) Request for information from PIAs or SAAs. Whenever a PIA or SAA receives requests for disclosure of information, it shall disclose the information unless the party from which the information was originally obtained has submitted to the PIA or SAA a request that the information not be disclosed under paragraph (c) of this section, except that the PIA or SAA shall be governed by the provisions of 24 CFR, Part 16 (40 FR 39729) relating to the Privacy Act which may limit the disclosure of information. If a request for nondisclosure under paragraph (c) has been received with respect to information whose disclosure is requested, the PIA or SAA shall refer the matter to the Secretary within

5 days of the request for disclosure. If a PIA or SAA receives a request for disclosure of information related to this program, which information was submitted to the PIA or SAA prior to the effective date of these regulations, the PIA or SAA shall refer the request for nondisclosure and required information to the Secretary.

Subpart C—Rules and Rulemaking Procedures

§ 3282.101 Scope and purpose.

This subpart prescribes procedures that apply to the formulation, issuance, amendment and revocation of rules pursuant to the National Mobile Home Construction and Safety Standards Act of 1974. Rulemaking under the Act is also subject to the provisions of 24 CFR Part 10.

§ 3282.102 Regulatory docket.

Information and data deemed relevant by the Secretary relating to rulemaking actions, including notices of proposed rulemaking, comments received in response to notices, petitions for rulemaking and reconsideration, denials of petitions for rulemaking and reconsideration, and final rules are maintained by the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. All communications with respect to rulemaking shall be sent to the Rules Docket Clerk at the above address.

§ 3282.103 Initiation of rulemaking.

(a) The issuance, amendment or repeal of any rule may be proposed upon the initiative of the Secretary or upon the petition of any interested person showing reasonable grounds therefor.

(b) Petitions for rulemaking by interested persons.—(1) Each petition filed under this subsection:

(i) Shall set forth the text or substance of the rule or amendment proposed, or specify the rule that the petitioner seeks to have repealed, as the case may be;

(ii) Shall explain the interest of the petitioner in the action requested;

(iii) Shall contain any information and arguments available to the petitioner to support the action sought; and

(iv) Should be identified as a petition for rulemaking submitted under this subpart.

(2) The Secretary shall respond to a petition submitted under this section within 180 days of receipt thereof by granting or denying the petition or scheduling a public hearing or other appropriate proceeding, except that this time limit may be exceeded where necessary to assure full resolution of the issues involved on the basis of adequate information. Unless the Secretary otherwise specifies, no public hearing, argument or other proceedings shall be held on a petition before its disposition under this subsection. If the Secretary determines that the petition contains adequate justification, the Secretary shall initiate rulemaking action under this subpart. If the Secretary determines that the peti-

tion does not justify rulemaking, the Secretary shall deny the petition and notify the petitioner.

§ 3282.104 Advance notice of proposed rulemaking.

An Advance Notice of Proposed Rulemaking is a notice in which the Secretary indicates that consideration is being given to proposing a rule and through which the public is given an early opportunity to participate in decisions as to whether a rule change is necessary and what the content of the new rule should be. The Advance Notice is published in the FEDERAL REGISTER and it explains the possible need for rulemaking and the issues which may be involved. Where possible, it includes specific questions to which the Secretary needs answers in order to develop a proposed rule under § 3282.105. The Secretary will use the Advance Notice whenever, in the judgment of the Secretary, it is appropriate and practicable in developing rules under this subpart.

§ 3282.105 Notice of proposed rulemaking.

(a) A notice of proposed rulemaking shall be issued and interested persons invited to participate in the process of formulation of rules under applicable provisions of the Act, unless the Secretary, for good cause, finds that notice is impractical, unnecessary or contrary to the public interest, and incorporates that finding and a brief statement of the reasons therefor in the rule.

(b) Each notice of proposed rulemaking shall be published in the FEDERAL REGISTER, and shall include:

(1) A statement of the nature of the proposed rulemaking;

(2) A reference to the authority under which it is issued;

(3) A description of the subjects and issues involved or the substance and terms of the proposed rule;

(4) A statement of the time within which written comments must be submitted;

(5) A statement of the time and place of the public rulemaking proceedings, if any.

§ 3282.106 Participation by interested persons.

Any interested person may participate in the process of formulating, amending or repealing a rule by submitting comments in writing containing information, views or arguments.

§ 3282.107 Contents of written comments.

Comments should be clearly organized so that the Secretary can determine which points made in the comment relate to which aspects of the proposed rule or Advanced Notice. They should include documentation of all factual assertions. It is requested, but not required, that 10 copies be submitted. Incorporation of material by reference should be avoided. However, if such incorporation is necessary, the incorporated material should be identified with respect to document and page.

§ 3282.108 Consideration of comments received.

All timely comments shall be considered before final action is taken on a rulemaking proposal. Comments filed late may be considered as far as practicable.

§ 3282.109 Additional rulemaking proceedings.

The Secretary may initiate any further rulemaking proceedings that the Secretary finds necessary or desirable.

§ 3282.110 Effective date of standards.

Each order establishing, amending or revoking a Federal mobile home construction and safety standard shall specify the date such standard is to take effect, which shall not be sooner than 180 days or later than one year after the date such order is issued, unless the Secretary finds, for good cause shown, that an earlier or later effective date is in the public interest, and publishes the reasons for such finding.

§ 3282.111 Petitions for reconsideration of final rules.

(a) Definition. A petition for reconsideration of a final rule issued by the Secretary is a request in writing from any interested person which must be received not later than 60 days after publication of the rule in the *FEDERAL REGISTER*. The petition shall state that it is a petition for reconsideration of a final rule, and shall contain an explanation as to why compliance with the rule is not practicable, is unreasonable, or is not in the public interest. If the petitioner requests the consideration of additional facts, the petitioner shall state the reason they were not presented to be treated as petitions for rulemaking.

(b) Proceedings on petitions for reconsideration. The Secretary may grant or deny, in whole or in part, any petition for reconsideration without further proceedings. The Secretary may issue a final decision on reconsideration without further proceeding, or may provide such opportunity to submit comments or information and data as the Secretary deems appropriate.

(c) Unless the Secretary determines otherwise, the filing of a petition under this section does not stay the effectiveness of the rule in question.

(d) Any party seeking to challenge any rule or regulation issued under the Act, except orders issued under section 604 of U.S.C. 5403, if the challenge is brought before the expiration of the 60 day period set out in paragraph (a), shall file a timely petition for reconsideration under this section prior to seeking any other remedy.

§ 3282.112 Rulemaking on the basis of cost information submitted.

Whenever the Secretary proposes to establish, amend or revoke a standard on the basis of cost information submitted by a manufacturer in opposition to any action of the Secretary under section 604 of U.S.C. 5403, or any other provision of the Act, the Secretary shall publish a notice of such proposed action and the reasons therefor in the *FEDERAL REGISTER* at least 30 days in advance of making a

final determination in order to allow interested parties an opportunity to comment.

§ 3282.113 Interpretative bulletins.

When appropriate, the Secretary shall issue interpretative bulletins interpreting the standards under the authority of section 280.1(b) and (c) of this chapter or interpreting the provisions of this Part. Issuance of interpretative bulletins shall be treated as rulemaking under this subpart unless the Secretary deems such treatment not to be in the public interest and the interpretation is not required by 24 CFR Part 10 or any other applicable statutes or regulations to be treated as rulemaking. All interpretative bulletins shall be indexed and made available to the public at the Office of Mobile Home Standards and a copy of the index shall be published periodically in the *FEDERAL REGISTER*.

(2) Resolution of disputes where an SAA or manufacturer disagrees with a determination of a DAPIA under § 3282.361 that a mobile home design does or does not conform to the standards or that a quality assurance manual is or is not adequate.

Subpart D—Hearings, Presentations of Views, and Investigations

§ 3282.151 Applicability and scope.

(a) This subpart sets out procedures to be followed when an opportunity to present views provided for in the Act is requested by a party entitled to one under the Act. Those situations arise whenever the Secretary contemplates injunctive action under section 612(a) 42 USC 5410(a) of the Act, whenever the Secretary contemplates making an administrative determination of imminent safety hazard, serious defect, defect, or noncompliance under section 615(e), 42 USC 5414(e) whenever there is a question as to who should bear the responsibility for correction under section 615 (g), 42 USC 5414(g) whenever the Secretary contemplates rejecting a State plan under section 623(d), 42 USC 5422 (d), and whenever the Secretary contemplates withdrawal of approval of a State plan under section 623(f), 42 USC 5422(f). Section 3282.152 provides for two types of procedures which may be followed in these cases, one informal and nonadversary, and one more formal and adversary. It also sets out criteria to govern which type of procedure will be followed in particular cases.

(b) The procedures of § 3282.152 also apply to:

(1) Proceedings held by the Secretary whenever the suspension or disqualification of a primary inspection agency, which has been granted final approval, is recommended under section 3282.356 of these regulations, and

(2) Resolution of disputes where an SAA or manufacturer disagrees with a determination of a DAPIA under section 3282.361 that a mobile home design does or does not conform to the standards or that a quality assurance manual is or is not adequate with a decision by an IPIA to red tag or not to red tag or to provide or not to provide a certification label for a mobile home under section 3282.362 when the IPIA believes that the mobile

home does or does not conform to the standards.

(c) This subpart also sets out procedures which the Secretary may follow in holding hearings and carrying out inspections and investigations authorized by section 614(c) of the Act, 42 U.S.C. 5413(c), or otherwise. Generally, the provisions of § 3282.153 apply to these proceedings, though the procedures set out in § 3282.152 may also be followed, as may other procedures which the Secretary deems appropriate.

(d) The procedures set out in § 3282.152 shall also be followed whenever State Administrative Agencies hold hearings or presentations of views under § 3282.309.

(e) To the extent that these regulations provide for hearings or presentations of views for parties which would otherwise qualify for hearings under 24 CFR Part 24, the procedures of 24 CFR Part 24 shall not be available and shall not apply.

§ 3282.152 Procedures for hearings and for the presentation of views.

(a) Policy. All Hearings and Presentations of Views under this subpart shall be public, unless, for good cause, the Secretary determines it is in the public interest that the proceedings should be closed. If the Secretary determines that a proceeding should be closed, the Secretary shall state and make publicly available the basis for that determination.

(b) Request. Upon receipt of a request for a Hearing or Presentation of Views under this subpart, the Secretary shall either grant the relief for which the Hearing or Presentation of Views is requested or shall issue a notice under paragraph (c) of this section.

(c) Notice. When the Secretary decides to conduct a Hearing or Presentation of Views under this section, the Secretary shall provide notice as follows:

(1) Except where the need for swift resolution of the question involved prohibits it, notice of a proceeding hereunder shall be published in the *Federal Register* at least 10 days prior to the date of the proceeding. In any case, notice shall be provided to interested persons to the maximum extent practicable. Direct notice shall be sent by certified mail to the parties involved in the hearing.

(2) The notice, whether published or mailed, shall include a statement of the time, place and nature of the proceeding; reference to the authority under which the proceeding will be held; a statement of the subject matter of the proceeding, the parties and issues involved; and a statement of the manner in which interested persons shall be afforded the opportunity to participate in the hearing.

(3) The notice shall designate the official who shall be the presiding officer for the proceedings and to whom all inquiries should be directed concerning such proceedings.

(4) The notice shall state whether the proceeding shall be held in accordance with the provisions of paragraph (f)—(Presentation of Views) or paragraph (g)—(Hearings) of this section, except that when the Secretary makes the determinations provided for in sections

623(d) and 624(f) of the Act, the requirements of paragraph (g) of this section shall apply. In determining whether the requirements of paragraph (f) or (g) of this section shall apply the Secretary shall consider the following: (i) The necessity for expeditious action; (ii) the risk of injury to affected members of the public; (iii) the economic consequences of the decisions to be rendered; and (iv) such other factors as the Secretary deems appropriate.

(d) Department Representative. If the Department is to be represented by Counsel, such representation shall be by a Department hearing attorney designated by the General Counsel.

(e) Reporting and transcription. Oral proceedings shall be stenographically or mechanically reported and transcribed under the supervision of the presiding officer, unless the presiding officer and the parties otherwise agree, in which case a summary approved by the presiding officer shall be kept. The original transcript or summary shall be a part of the record and the sole official transcript, or summary. A copy of the transcript or summary shall be available to any person at a fee established by the Secretary, which fee the Secretary may waive in the public interest. Any information contained in the transcript or summary which would be exempt from required disclosure under Section 3282.54 of these regulations may be protected from disclosure if appropriate under that section upon a request for such protection under section 3282.54(c).

(f) Presentation of Views. (1) A Presentation of Views may be written or oral, and may include an opportunity for an oral presentation, whether requested or not, whenever the Secretary concludes that an oral presentation would be in the public interest, and so states in the notice. A presiding officer shall preside over all oral presentations held under this subsection. The purpose of such presentations shall be to gather information to allow fully informed decision making. Presentations of Views shall not be adversary proceedings. Oral presentations shall be conducted in an informal but orderly manner. The presiding officer shall have the duty and authority to conduct a fair proceeding, to take all necessary action to avoid delay, and to maintain order. In the absence of extraordinary circumstances, the presiding officer at an oral Presentation of Views shall not require that testimony be given under oath or affirmation, and shall not permit either cross-examination of witnesses by other witnesses or their representatives, or the presentation of rebuttal testimony by persons who have already testified. The rules of evidence prevailing in courts of law or equity shall not control the conduct of oral presentations of views.

(2) Within 10 days after a Presentation of Views, the presiding officer shall refer to the Secretary all documentary evidence submitted, the transcript, if any, a summary of the issues involved and information presented in the Pres-

entation of Views and the presiding officer's recommendations with the rationale therefor. The presiding officer shall make any appropriate statements concerning the apparent veracity of witnesses or the validity of factual assertions which may be within the competence of the presiding officer. The Secretary shall issue a Final Determination concerning the matters at issue within 30 days of receipt of the presiding officer's summary. The Final Determination shall include: (i) a statement of findings, with specific references to principal supporting items of evidence in the record and conclusions, as well as the reasons or bases therefor, upon all of the material issues of fact, law, or discretion as presented on the record, and (ii) an appropriate order. Notice of the Final Determination shall be given in writing and transmitted by certified mail, return receipt requested, to all participants in the presentation of views. The Final Determination shall be conclusive, with respect to persons whose interests were represented.

(g) Hearings. (1) A Hearing is an adversary proceeding and includes an opportunity for the oral presentation of evidence. All witnesses shall testify under oath or affirmation which shall be administered by the presiding officer. Participants shall have the right to present such oral or documentary evidence and to conduct such cross-examination as the presiding officer determines is required for a full and true disclosure of the facts. The presiding officer shall receive relevant and material evidence, rule upon offers of proof and exclude all irrelevant, immaterial or unduly repetitious evidence. However, the technicalities of the rules of evidence prevailing in courts of law or equity shall not control the conduct of a hearing. The presiding officer shall take all necessary action to regulate the course of the Hearing to avoid delay and to maintain order. The presiding officer may exclude the attorney or witness from further participation in the particular Hearing and may render a decision adverse to the interests of the excluded party in his absence.

(2) Decision. The presiding officer shall make and file an initial written decision on the matter in question. The decision shall be filed within 10 days after completion of the hearing. The decision shall include: (i) A statement of findings of fact, with specific references to principal supporting items of evidence in the record and conclusions, as well as the reasons or bases therefor, upon all of the material issues of law or discretion presented on the record, and (ii) an appropriate order. The presiding officer's decision shall be final and shall constitute the Final Determination of the Secretary unless reversed or modified within 30 days by the Secretary. Notice of the Final Determination shall be given in writing, and transmitted by registered or certified mail, return receipt requested, to all participants in the proceeding. The Final Determination shall be conclusive with respect to persons whose interests were represented.

§ 3282.153 Public participation in hearings or presentation of views.

(a) Any interested persons may participate in writing, in any Hearings or Presentation of Views held under the provisions of paragraphs (f) or (g) of § 3282.152. The presiding officer shall consider to the extent practicable any such written materials.

(b) Any interested person may participate in the oral portion of any Hearing or Presentation of Views held under paragraphs (f) and (g) of § 3282.152 unless the presiding officer determines that such participation should be limited or barred so as not to unduly prejudice the rights of the parties directly involved or unnecessarily delay the proceedings.

§ 3282.154 Petitions for hearings or presentations of views, and requests for extraordinary interim relief.

Any person entitled to a Hearing or Presentation of Views under subsection (f) or subsection (g) of § 3282.152 to address issues as provided for in subsection (a) of § 3282.151 may petition the Secretary to initiate such Hearing or Presentation of Views. The petition may be accompanied by a request that the Secretary provide such interim relief as may be appropriate pending the issuance of a Final Determination or Decision. No interim relief will be granted absent extraordinary cause shown. Upon receipt of a petition, the Secretary shall grant the petition and issue the notice provided for in paragraph (b) of § 3282.152 for Hearing or Presentation of Views, and grant, deny or defer decision of any request for interim relief.

§ 3282.155 Investigations.

(a) In connection with a formal investigation or inquiry involving an alleged or suspected violation or threatened violation of the Act or rules and regulations, the Secretary may permit any person to file with the Secretary a signed statement setting forth facts and circumstances known to such person and relevant to the investigation or inquiry.

(b) Subpoenas in investigations. The Secretary may issue subpoenas relating to any matter under investigation for any or all of the following reasons:

(1) Requiring testimony to be taken by interrogatories or depositions.

(2) Requiring the attendance and testimony of witnesses at a specific time and place.

(3) Requiring access to, examination of, and the right to copy documents, books, records, and papers.

(4) Requiring the production of documents, books, records, and papers at a specific time and place.

(c) Investigational hearings. For the purpose of taking the testimony of witnesses and receiving documents and other data relating to any subject under investigation, hearings may be conducted by the Secretary in the course of any investigation. These hearings shall be stenographically or mechanically reported. Testimony of witnesses shall be under oath or affirmation. Unless the

Secretary determines otherwise for good cause, these hearings shall be public.

(d) *Rights of witnesses in investigations.* (1) Any person compelled to testify or to submit data in connection with any investigation shall be entitled, on payment of lawfully prescribed costs, to purchase a copy of any data submitted by him and of his own testimony as stenographically or mechanically reported, except that in a nonpublic proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

(2) Any witness summoned under section 614(c) (1) of the Act shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(3) Any witness compelled to appear in person in an investigative hearing may be accompanied, represented, and advised by counsel as follows:

(i) Counsel for a witness may advise his client, in confidence, and upon initiative of either himself or the witness, with respect to any question asked of his client; and, if the witness refuses to answer a question, the counsel may briefly state on the record if he has advised his client not to answer the question and the legal grounds for such refusal.

(ii) Where it is claimed that the testimony or other evidence sought from a witness is outside the scope of the investigation, or it is claimed that the witness is privileged to refuse to answer a question or to produce other evidence, counsel for the witness may object on the record to the question or requirement and may briefly and precisely state the grounds therefor.

(iii) Objections interposed under the rules in this subpart will be continuing objections throughout the course of the proceedings, and repetitious or cumulative statement of an objection or of the grounds therefor, in such cases, is unnecessary.

(iv) Motions challenging the authority of the Secretary to conduct the investigation or the sufficiency or legality of the subpoena must be addressed to the Secretary in advance of the proceeding. Copies of such motions may be filed with the presiding official at the proceeding as part of the record of the investigation, and argument in support thereof may be allowed if it will not unduly delay the proceeding.

(v) Upon completion of the examination of a witness, counsel for the witness may request that the presiding official permit the witness to clarify any of his answers on the record in order that specified points of ambiguity, equivocation, or incompleteness may be corrected. The granting or denial of such request in whole or in part, shall be within the sole discretion of the presiding official. However, the reasons for any denial of a request shall be given by the presiding official and shall be included in the record of the proceedings.

(vi) The presiding officer shall take all necessary action to regulate the course of the proceeding to avoid delay and to maintain order. If necessary to maintain

order, the presiding officer may exclude the attorney or witness from further participation in the particular investigation and may render a decision adverse to the interests of the excluded party in that party's absence.

(e) In the case of contumacy of the witness or the witness's refusal to obey a subpoena or order of the Secretary, the United States district court for the jurisdiction in which an inquiry is carried on may issue an order requiring compliance therewith; and any failure to obey the court may be punished by such court as a contempt thereof.

§ 3282.156 Petitions for investigations.

(a) Any person may petition the Secretary in writing to open an investigation into whether noncompliances, defects, serious defects, or imminent safety hazards exist in mobile homes. A petition shall include the reasons that the petitioner believes warrant an investigation, and it shall state any steps which have previously been taken to remedy the situation. The petition shall include all information known to the petitioner concerning the identity of mobile homes which may be affected and where those mobile homes were manufactured. The Secretary shall respond to petitions concerning alleged imminent safety hazards and serious defects within 60 days and to petitions alleging the existence of defects or noncompliances within 120 days.

(b) Any person may petition the Secretary in writing to undertake an investigation for the purpose of determining whether a primary inspection agency should be disqualified. The petition shall set out all facts and information on which the petition is based and a detailed statement of why such information justifies disqualification. The Secretary shall consider such petitions when making determinations on final acceptance and continued acceptance. The Secretary shall respond to such petition within 120 days.

Subpart E—Manufacturer Inspection and Certification Requirements

§ 3282.201 Scope and purpose.

(a) This subpart sets out requirements which must be met by manufacturers of mobile homes for sale to purchasers in the United States with respect to certification of mobile home designs, inspection of designs, quality assurance programs, and mobile home production, and certification of mobile homes. Other than references and a general description of responsibilities, this subpart does not set out requirements with respect to remedial actions or reports which must be taken or filed under the Act and these regulations.

(b) The purpose of this subpart is to require manufacturers to participate in a system of design approvals and inspections which serve to assist them in assuring that mobile homes which they manufacture will conform to Federal standards. Such approvals and inspections provide significant protection to the public by decreasing the number of mobile

homes with possible defects in them, and provide protection to manufacturers by reducing the number of instances in which costly remedial actions must be undertaken after mobile homes are sold.

§ 3282.202 Primary inspection agency contracts.

Each manufacturer shall enter into a contract or other agreement with as many Design Inspection Primary Inspection Agencies (DAPIAs) as it wishes and with enough Production Inspection Primary Inspection Agencies (PIPIAs) to provide IPIA services for each manufacturing plant as set out in this subpart and in subpart H of this Part. In return for the services provided by the DAPIAs and PIPIAs, each manufacturer shall pay such reasonable fees as are agreed upon between the manufacturer and the primary inspection agency or, in the case of a State acting as an exclusive IPIA under § 3282.3 such fees as may be established by the State.

§ 3282.203 DAPIA services.

(a) Each manufacturer shall have each mobile home design and each quality assurance manual which it intends to follow approved by a DAPIA under § 3282.361. The manufacturer is free to choose which DAPIA will evaluate and approve its designs and quality assurance materials manufacturer may obtain design and quality assurance manual approval from a single DAPIA regardless of the number of plants in which the design and quality assurance manual will be followed. A manufacturer may also obtain approval for the same design and quality assurance manual from more than one DAPIA. The choice of which DAPIA or DAPIAs to employ is left to the manufacturer.

(b) The manufacturer shall submit to the DAPIA such information as the DAPIA may require in order to carry out design approvals. This information shall, except where the manufacturer demonstrates to the DAPIA that it is not necessary, include the following:

(1) Construction drawings and/or specifications showing structural details and layouts of frames, floors, wall; and roofs, and chassis; material specifications, framing details, door locations, etc., for each floor plan proposed to be manufactured,

(2) Structural analysis and calculations, test data and/or other accepted engineering practices used by the manufacturer to validate the design,

(3) Complete heat loss calculations for each significant variation of home design,

(4) Floor plans showing room arrangement and sizes, window sizes, emergency exits and locations, locations of smoke detectors, fixed appliance range hoods, and other standards related aspects of the mobile home that can be shown on the floor plans,

(5) Diagrams of the fuel supply system, potable water system and drain, waste and vent systems. The diagrams shall specify the types of materials used,

types of fittings and methods of installing required safety equipment.

(6) Wiring diagrams, including circuit allocation of electrical load and branch circuit calculations, a table of the branch circuit protection provided, the type of wiring used, and wiring methods.

(7) Details showing the design of air supply and return systems.

(8) Details of chassis construction, components, connections and running gear including rating capacities of tires.

(9) A list of fixed and portable appliances furnished with the mobile home, including type of appliance, rating of appliance, and applicable minimum and maximum performance ratings and/or energy requirements.

(10) Detailed manufacturer installation instructions including specifications and procedures for the erection and hook-up of the home at its permanent location, and

(11) Reports of all tests that were run to validate the conformance of the design to the standards.

(c) The manufacturer shall submit to the DAPIA such information as the DAPIA may require in order to carry out quality assurance manual approvals. At a minimum, this information shall include the quality assurance manual for which approval is sought. That manual shall include the manufacturer's quality assurance program, an organizational chart showing the accountability, by position, of the manufacturer's quality control personnel, a description of production tests and test equipment required for compliance with the standards, a station-by-station description of the manufacturing process, a list of quality control inspections required by the manufacturer at each station, and identification by title of each person who will be held accountable for each quality control inspection.

(d) Manufacturers may be required to furnish supplementary information to the DAPIA if the design information or the quality assurance manual is not complete or if any information is not in accordance with accepted engineering practice.

(e) When a manufacturer wishes to make a change in an approved design or quality assurance manual, the manufacturer shall obtain the approval of the DAPIA which approved the design or manual prior to production for sale. The procedures for obtaining such approval are set out in § 3282.361.

(f) The information to be submitted to a DAPIA under § 3282.203 (b) and (c) may be prepared by the manufacturer's staff or outside consultants, including other DAPIAs. However, a DAPIA may not perform design or quality assurance manual approvals for any manufacturer whose design or manual has been created or prepared in whole or in part by members of the DAPIA's organization or of any affiliated organization.

(g) Each manufacturer shall maintain a copy of the drawings, specifications, and sketches from each approved design received from a DAPIA under § 3282.361(b) (4) in each plant in which

mobile homes are being produced to the design. Each manufacturer shall also maintain in each manufacturing plant a copy of the approved quality assurance manual received from a DAPIA under § 3282.361(c) (3) that is being followed in the plant. These materials shall be kept current and shall be readily accessible for use by the Secretary or other parties acting under these regulations.

§ 3282.204 IPIA services.

(a) Each manufacturer shall obtain the services of an IPIA as set out in § 3282.362 for each manufacturing plant operated by the manufacturer.

(b) The manufacturer shall make available to the IPIA operating in each of its plants a copy of the drawings and specifications from the DAPIA approved design and the quality assurance manual for that plant, and the IPIA shall perform an initial factory inspection as set out in § 3282.362(b). If the IPIA issues a deviation report after the initial factory inspection, the manufacturer shall make any corrections or adjustments which are necessary to conform with the DAPIA approved designs and manuals. After the corrections required by the deviation report are completed to the satisfaction of the IPIA, the IPIA shall issue the certification report as described in § 3282.362(b) (2). In certain instances a DAPIA may provide the certification report. (See § 3282.362) The manufacturer shall maintain a current copy of each certification report in the plant to which the certification report relates.

(c) After the certification report has been signed by the IPIA, the manufacturer shall obtain labels from the IPIA and shall affix them to completed mobile homes as set out in § 3282.362(c) (2). During the initial factory certification, the IPIA may apply labels to mobile homes which it knows to be in compliance with the standards if it is performing complete inspections of all phases of production of each mobile home and the manufacturer authorizes it to apply labels.

(d) During the course of production the manufacturer shall maintain a complete set of approved drawings, specifications, and approved design changes for the use of the IPIA's inspector and always available to that inspector when in the manufacturing plant.

(e) If, during the course of production, an IPIA finds that a failure to conform to a standard exists in a mobile home in production, the manufacturer shall correct the failure to conform in any mobile homes still in the factory and held by distributors or dealers and shall carry out remedial actions under § 3282.404 and § 3282.405 with respect to any other mobile homes which may contain the same failure to conform.

§ 3282.205 Certification requirements.

(a) Every manufacturer shall make a record of the serial number of the first mobile homes in the sequence of production of the assembly line on June 15, 1976 and a duly authorized representative of the manufacturer shall certify that the

first mobile home and all subsequent mobile homes in the sequence of production manufactured on or after June 15, 1976, have been constructed in accordance with the Federal standards. The manufacturer shall furnish a copy of that certification to the IPIA for the purpose of determining which mobile homes are subject to the notification and correction requirements of subpart I of these regulations. If the manufacturer does not have the services of an IPIA and is using transition certification labels under § 3282.207, it shall keep a certified record of mobile homes produced on or after June 15, 1976, and furnish that record to the IPIA that performs the first plant approval or the Secretary if the manufacturer discontinues production at the expiration of the transition period.

(b) Every manufacturer of mobile homes shall certify on the data plate as set out in § 3280.5 of Chapter II of 24 CFR and § 3282.362(c) (3) that the mobile home is designed to comply with the Federal mobile home construction and safety standards in force at the time of manufacture in addition to providing other information required to be completed on the data plate.

(c) Every manufacturer of mobile homes shall furnish to the dealer or distributor of each such mobile home produced by such manufacturer a certification that such mobile home, to the best of the manufacturer's knowledge and belief, conforms to all applicable Federal construction and safety standards. Such certification shall be in the form of the label provided by the IPIA under § 3282.362(c) (2), except when the manufacturer provides the label under § 3282.207. Such labels shall be affixed only at the end of the last stage of production of the mobile home.

(d) The manufacturer shall apply the label only to a mobile home it knows by its inspections to be in compliance with the standards. The label described in § 3282.362(c) (2) or the self certification label described in § 3282.207 shall only be applied to mobile homes manufactured on or after June 15, 1976. Mobile homes manufactured in compliance with the Federal standards prior to June 15, 1976, shall bear the label described in § 3282.362(c) (2) or the self-certification label described in § 3282.207 of these regulations.

§ 3282.206 Disagreement with IPIA or DAPIA.

Whenever a manufacturer disagrees with a finding by a DAPIA or an IPIA acting in accord with subpart H of this Part, the manufacturer may request a hearing or presentation of views as provided in § 3282.152. The manufacturer shall not, however, produce mobile homes pursuant to designs which have not been approved by a DAPIA or produce mobile homes which the relevant IPIA believes not to conform to the standards unless and until: (a) The Secretary determines that the manufacturer is correct in believing the design of the mobile home conforms to the standards; or (b) extraordinary interim relief is granted

under § 3282.154; or (c) the DAPIA or IPIA otherwise resolves the disagreement. These prohibitions shall not apply to manufacturers acting under the transition certification program set out in § 3282.207.

§ 3282.207 Transition certification program.

(a) If a manufacturer cannot contract for the services of a DAPIA or IPIA such manufacturer shall notify the Secretary and any State with an approved SAA into which it intends to ship mobile homes that it will apply transition certification labels under this section to a specified number of mobile homes for a specified period of time until it can obtain the necessary PIA services. The use of transition certification labels shall be limited to the time required to obtain PIA services, and in no case shall it extend beyond 90 days after the effective date of the standards. The manufacturer may continue to use certification labels during this 90 day period only if it is acting diligently to obtain necessary PIA services as quickly as possible. The Secretary may monitor manufacturers' performance under this section.

(b) Mobile homes bearing a transition certificate label may be subject to such reasonable inspections and reasonable inspection fees as States may require, though no State may require any design approval or require a mobile home to meet a standard other than the Federal standard. A State may prohibit the entry into or sale in the State of a mobile home certified under this subsection if the State has inspected the mobile home and found a failure to conform to the federal standards. If a State, through inspections under this subsection, finds that a manufacturer or a particular plant is consistently producing homes which fail to conform to the standard, the State shall so inform the Secretary, who shall take appropriate action; including seeking injunctive relief to halt production, if necessary. A State may not prohibit entry into or sale in the State of a mobile home unless the State has inspected that home and found a failure to conform.

(c) A manufacturer acting under this section is not subject to the labeling provisions of § 3282.362(c) (2) of this part or § 280.7 of Part 280 of Chapter II of 24 CFR.

(d) Transition certification labels shall be handled as follows:

(1) The transition certification label shall be 1½ in. by 4 in. in size and shall either be typed on a piece of paper hermetically sealed between two pieces of plastic with a ¼ in. border of clear plastic around the paper, or printed on adhesive backed aluminum foil. The paper sealed in plastic shall be permanently attached to the mobile home by means of 4 blind rivets, drive screws, or other means that render it difficult to remove without being defaced. The adhesive backed foil shall be permanently attached to the mobile home by placing it on a surface which is suitable for the adhesive. The label number shall be a sequential 4 digit number which the manufacturer shall type sequentially on each label used.

(2) The transition certification label shall be supplied by the manufacturer and located as specified in § 3282.362(c) (2) (i) (E).

(3) Transition certification labels that are damaged, destroyed, or otherwise made illegible or removed may be replaced by the manufacturer with new transition certification labels of a different serial number. They shall not be replaced by labels of the type described in § 3282.361(c).

(4) The wording of the transition label shall be as follows: AS EVIDENCED BY THIS LABEL NO. XXX (THE MANUFACTURER'S NAME) CERTIFIES THAT, TO THE BEST OF HIS KNOWLEDGE AND BELIEF, THIS MOBILE HOME IS IN COMPLIANCE WITH THE FEDERAL MOBILE HOME CONSTRUCTION AND SAFETY STANDARDS IN EFFECT ON THE DATE OF MANUFACTURE. SEE DATA PLATE.

(e) The manufacturer shall furnish a data plate as specified in § 3282.362(c) (3), except that after "design approval by", the manufacturer shall insert the term "none".

§ 3282.208 Remedial actions—general description.

(a) *Notification.* A manufacturer may be required to provide formal notice to mobile home owners and dealers, as set out in subpart I of this Part, if the manufacturer, the Secretary, or a State Administrative Agency determines under that subpart that an imminent safety hazard, serious defect, defect, or noncompliance exists or may exist in a mobile home produced by that manufacturer.

(b) *Correction.* A manufacturer may be required to correct imminent safety hazards and serious defects which the manufacturer or the Secretary determines under subpart I exist in mobile homes produced by the manufacturer. This correction would be carried out in addition to the sending of formal notice as described in paragraph (a).

(c) *Cooperation.* The manufacturer shall be responsible for working with the DAPIA, IPIA, any SAA, the Secretary, and the Secretary's agent as necessary in the course of carrying out investigations and remedial actions under subpart I.

(d) *Avoidance of formalities.* The provisions for notification and required correction outlined in paragraphs (a) and (b) of this section and described more fully in subpart I may be waived or avoided in certain circumstances under that subpart.

§ 3282.209 Report requirements.

The manufacturer shall submit reports to the PIAs, SAAs, and the Secretary as required by Subpart L of these regulations.

§ 3282.210 Payment of monitoring fee.

(a) Each manufacturer shall pay the monitoring fee established under §§ 3282.455 and 3282.307 for each mobile home which it manufactures under the Federal standards.

(b) The monitoring fee shall be paid in the form of a check made payable to the Secretary or the Secretary's agent as follows:

(1) When the first set of labels is obtained from an IPIA under § 3282.362 (c) (2), the manufacturer shall give to the IPIA the required check in the amount of the number of labels received plus the number of mobile homes to which transition certification labels have been applied multiplied by the amount of the fee per mobile home.

(2) When the second set of labels is obtained, the manufacturer shall pay an amount equal to the number of labels received multiplied by the amount of the fee per mobile home, except that the manufacturer shall receive a credit equal to the amount paid by the manufacturer in the first payment which was greater than the amount determined by the number of mobile homes to which the labels were applied multiplied by the amount of the fee per mobile home. This credit results because the monitoring inspection fee is to be paid for each mobile home rather than for each transportable section of a mobile home.

(3) Each time a set of labels is obtained, the manufacturer shall make a payment as determined in paragraph (2) above, and if a credit is greater than the amount to be paid, the credit shall carry over until it is exhausted.

§ 3282.211 Record of purchasers.

(a) Information requirements for purchasers. (1) Every manufacturer of mobile homes shall, for each mobile home manufactured under the Federal standards, provide with the mobile home a booklet containing at least 3 detachable cards as described in paragraph (a) (2) of this section. On the front of the booklet, in bold faced type, shall be printed the following language:

"Keep this booklet with your mobile home. Title VI of the Housing and Community Development Act of 1974 provides you with protection against certain construction and safety hazards in your mobile home. To help assure your protection, the manufacturer of your mobile home needs the information which these cards, when completed and mailed, will supply. If you bought your home from a dealer, please be sure that your dealer has completed and mailed a card for you. If you acquired your home from someone who is not a dealer, you should promptly fill out and send a card to the manufacturer. It is important that you keep this booklet and give it to any person who buys the mobile home from you."

(2) The detachable cards shall contain blanks for the following information:

(i) Name and address of the dealer or other person selling the mobile home to the purchaser;

(ii) Name and complete mailing address of the mobile home purchaser;

(iii) Address where the mobile home will be located, if not the same as item (i);

(iv) Date of sale to the purchaser;

(v) Month, day and year of manufacture;

(vi) Identification number of the mobile home;

(vii) Model and/or type designation of the mobile home as provided by the manufacturer; and

(viii) A designation of the zones for which the mobile home is equipped, as set forth in § 280.305 of Chapter II of this title.

Additionally, the cards shall have the name and address of the manufacturer printed clearly on the reverse side and shall contain adequate postage or business reply privileges to ensure return to the manufacturer. The manufacturer shall have the responsibility for filling in the blanks on the cards for items (v), (vi), (vii), and (viii).

(3) The manufacturer shall maintain all cards received so that the manufacturer has a readily accessible record of the current purchaser or owner and the current address of all mobile homes manufactured by it for which a card has been received.

Subpart F—Dealer and Distributor Responsibilities

§ 3282.251 Scope and purpose.

(a) This subpart sets out the responsibilities which shall be met by distributors and dealers with respect to mobile homes manufactured after the effective date of the standards for sale to purchasers in the United States. It prohibits the sale, lease, or offer for sale or lease of mobile homes known by the distributor or dealer not to be in conformance with the standards, and it includes responsibilities for maintaining certain records and assisting in the gathering of certain information.

(b) The purpose of this subpart is to inform distributors and dealers when they may sell mobile homes, when they are prohibited from selling mobile homes, and what they may do in order to prepare a mobile home for sale if it is not in conformance with the standards.

(c) For purposes of this Part, any manufacturer or distributor who sells, leases, or offers for sale or lease a mobile home to a purchaser shall be a dealer for purposes of that transaction.

§ 3282.252 Prohibition of sale.

(a) No distributor or dealer shall make use of any means of transportation affecting interstate or foreign commerce or the mails to sell, lease, or offer for sale or lease in the United States any mobile home manufactured on or after the effective date of an applicable standard unless:

(1) There is affixed to the mobile home a label certifying that the mobile home conforms to applicable standard as required by § 3282.205(c), and

(2) The distributor or dealer, acting as a reasonable distributor or dealer, does not know that the mobile home does not conform to any applicable standards.

(b) This prohibition applies to any affected mobile homes until the completion of the entire sales transaction. A sales transaction with a purchaser is considered completed when all the goods and services that the dealer agreed to provide at the time the contract was entered into have been provided. Completion of a retail sale will be at the time the dealer completes set-up of the mobile home if the dealer has agreed to provide the set-

up, or at the time the dealer delivers the home to a transporter, if the dealer has not agreed to transport or set up the mobile home, or to the site if the dealer has not agreed to provide set-up.

(c) This prohibition of sale does not apply to mobile homes which are placed in production prior to the effective date of the standards, and it does not apply to "used" mobile homes which are being sold or offered for sale after the first purchase in good faith for purposes other than the resale.

§ 3282.253 Removal of prohibition of sale.

(a) If a distributor or dealer has a mobile home in its possession or a mobile home with respect to which the sales transaction has not been completed, and the distributor or dealer, acting as a reasonable distributor or dealer, knows as a result of notification by the manufacturer or otherwise that the mobile home contains a failure to conform or imminent safety hazard, the distributor or dealer may seek the remedies available to him under § 3282.415.

(b) When, in accordance with § 3282.415, a manufacturer corrects a failure to conform to the applicable standard or an imminent safety hazard, the distributor or dealer, acting as a reasonable distributor or dealer, may accept the remedies provided by the manufacturer as having corrected the failure to conform or imminent safety hazard. The distributor or dealer, therefore, may sell, lease, or offer for sale or lease any mobile home so corrected by the manufacturer.

(c) When a distributor or dealer is authorized by a manufacturer to correct a failure to conform to the applicable standard or an imminent safety hazard and completes the correction in accordance with the manufacturer's instructions, the distributor or dealer may sell, lease or offer for sale or lease the mobile home in question, provided that the distributor or dealer, acting as a reasonable distributor or dealer, knows that the mobile home conforms to the standards. A distributor or dealer and a manufacturer, at the manufacturer's option, may agree in advance that the distributor or dealer is authorized to make such corrections as the manufacturer believes are within the expertise of the dealer.

(d) If the corrections made under paragraphs (b) and (c) of this section do not bring the mobile home into conformance or correct the imminent safety hazard, the provisions of § 3282.415 will continue in effect prior to completion of the sales transaction.

§ 3282.254 Distributor and dealer alterations.

(a) If a distributor or dealer alters a mobile home in such a way as to create an imminent safety hazard or to create a condition which causes a failure to conform with applicable Federal standards, the mobile home affected may not be sold, leased, or offered for sale or lease.

(b) After correction by the distributor or dealer of the failure to conform or imminent safety hazard, the corrected

mobile home may be sold, leased, or offered for sale or lease.

(c) Distributors and dealers shall maintain complete records of all alterations made under paragraphs (a) and (b) of this section.

§ 3282.255 Completion of information card.

(a) Whenever a distributor or dealer sells a mobile home subject to the standards to a purchaser, the distributor or dealer shall fill out the card with information provided by the purchaser and shall send the card to the manufacturer. (See § 3282.211.)

(b) Whenever a distributor or dealer sells a mobile home to an owner which was originally manufactured under the standards, the distributor or dealer shall similarly use one of the detachable cards which was originally provided with the mobile home. If such a card is no longer available, the distributor or dealer shall obtain the information which the card would require and send it to the manufacturer of the mobile home in an appropriate format.

§ 3282.256 Distributor or dealer complaint handling.

(a) When a distributor or dealer believes that a mobile home in its possession which it has not yet sold to a purchaser contains an imminent safety hazard, serious defect, defect, or non-compliance, the distributor or dealer shall refer the matter to the manufacturer for remedial action under § 3282.415. If the distributor or dealer is not satisfied with the action taken by the manufacturer, it may refer the matter to the SAA in the state in which the mobile home is located, or to the Secretary if there is no such SAA.

(b) Where a distributor or dealer receives a consumer complaint or other information concerning a mobile home sold by the distributor or dealer, indicating the possible existence of an imminent safety hazard, serious defect, defect, or non-compliance in the mobile home, the distributor or dealer shall refer the matter to the manufacturer.

Subpart G—State Administrative Agencies

§ 3282.301 General—scope.

This subpart sets out procedures to be followed and requirements to be met by States which wish to participate as State Administrative Agencies (SAA) under the Federal standards enforcement program. Requirements relating to States which wish to participate as primary inspection agencies under the Federal standards enforcement program are set out in Subpart H of this part. Requirements which States must meet in order to receive full or conditional approval as SAAs and the responsibilities of such agencies are set out in § 3282.302. Reporting requirements for approved and conditionally approved SAAs are set out in Subpart L.

§ 3282.302 State plan.

A State wishing to qualify and act as a SAA under this subpart shall make a State Plan Application under this sec-

tion. The State Plan Application shall be made to the Director, Office of Mobile Home Standards, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, and shall include:

(a) An original and one copy of a cover sheet which shall show the following:

(1) The name and address of the State agency designated as the sole agency responsible for administering the plan throughout the state.

(2) The name of the administrator in charge of the agency.

(3) The name, title, address, and phone number of the person responsible for handling consumer complaints concerning standards related problems in mobile homes under subpart I of this part.

(4) A list of personnel who will carry out the State plan.

(5) The number of mobile home manufacturing plants presently operating in the State.

(6) The estimated total number of mobile homes manufactured in the State per year.

(7) The estimated total number of mobile homes set up in the State per year, and

(8) A certification signed by the administrator in charge of the designated State agency stating that, if it is approved by the Secretary, the State plan will be carried out in full, and that the regulations issued under the Act shall be followed.

(b) An original and one copy of appropriate materials which:

(1) Demonstrate how the designated State agency shall assure effective handling of consumer complaints and other information referred to it that relate to noncompliances, defects, serious defects, and imminent safety hazards as set out in subpart I of this Part, including the holding of hearings and presentations of views and the fulfilling of all other responsibilities of SAAs as set out in that subpart G;

(2) Provide that personnel of the designated agency shall, under State law or as agents of HUD, have the right at any reasonable time to enter and inspect all factories, warehouses, or establishments in the State in which mobile homes are manufactured.

(3) Provide for the imposition under State authority of civil and criminal penalties which are identical to those set out in section 611 of the Act, 42 USC 5410 except that civil penalties shall be payable to the State rather than to the United States.

(4) Provide for the notification and correction procedures under subpart I of this Part where the State Administrative Agency is to act under that subpart by providing for and requiring approval by the State Administrative Agency of the plan for notification and correction described in § 3282.410, including approval of the number of units that may be affected and the proposed repairs, and by providing for approval of corrective actions where appropriate under subpart I.

(5) Provide for oversight by the SAA of (i) remedial actions carried out by manufacturers for which the SAA approved the plan for notification or correction under §§ 3282.405, or 3282.407, or for which the SAA has waived formal notification under §§ 3282.405 or 3282.407, and (ii) a manufacturer's handling of consumer complaints and other information under § 3282.404 as to plants located within the State.

(6) Provide for the setting of monitoring inspection fees in accordance with guidelines established by the Secretary and provide for participation in the fee distribution system set out in § 3282.307.

(7) Contain satisfactory assurances in whatever form is appropriate under State law that the designated agency has or will have the legal authority necessary to carry out the State plan as submitted for full or conditional approval.

(8) Contain satisfactory assurances that the designated agency has or will have, in its own staff or provided by other agencies of the state or otherwise, the personnel, qualified by education or experience necessary to carry out the State plan.

(9) Include the resumes of administrative personnel in policy making positions and of all inspectors and engineers to be utilized by the designated agency in carrying out the State plan.

(10) Include a certification that none of the personnel who may be involved in carrying out the State plan in any way are subject to any conflict of interest of the type discussed in § 3282.359 or otherwise, except that members of councils, committees, or similar bodies providing advice to the designated agency are not subject to the requirement.

(11) Include an estimate of the cost to the State of carrying out all activities called for in the State plan, under this section and § 3282.303, which estimate shall be broken down by particular function and indicate the correlation between the estimate and the number of mobile homes manufactured in the State and the number of mobile homes imported into the State, and the relationship of these factors to any fees currently charged and any fees charged during the preceding two calendar years. A description of all current and past State activities with respect to mobile homes shall be included with this estimate.

(12) Give satisfactory assurances that the State shall devote adequate funds to carrying out its State plan.

(13) Indicate that State Law requires manufacturers, distributors, and dealers in the State to make reports pursuant to Section 614 of the Act 42 U.S.C. 5413 and this chapter of these regulations in the same manner and to the same extent as if the State plan were not in effect.

(14) Provide that the designated agency shall make reports to the Secretary as required by subpart L of this Part in such form and containing such information as the Secretary shall from time to time require.

(c) A State plan may be given conditional approval if all of the requirements of the previous paragraphs except (b) (2), (b) (3), (b) (6), or (b) (13) are met. When conditional approval is given, the State shall not be considered approved under section 623 of the Act, 42 U.S.C. 5422, but it will participate in all phases of the program as called for in its State plan. Conditional approval shall last a maximum of three years, by which time all requirements shall have been met for full approval, or conditional approval shall lapse.

(d) If a State wishes to discontinue participation in the Federal enforcement program as an SAA, it shall provide the Secretary with a minimum of 90 days notice.

(e) A State which wishes to act as an exclusive IPIA under § 3282.352 shall so indicate in its State plan, and shall include in the information provided under paragraph (b) (11) of this section, the fee schedule for its activities as an IPIA and the relationship between the proposed fees and the other information provided under that subsection. The State shall submit to the Secretary before June 15, 1976, a Statement of its intent to act as an exclusive IPIA. It shall also submit its State Plan Application no later than July 15, 1976. The State shall also demonstrate in its State Plan Application that it has the present capability to act as an IPIA for all plants operating in the State. Where the intent to act as an exclusive IPIA is not indicated by June 15, 1976, the State may not act as an exclusive IPIA act for three years, from that date. A state so precluded may apply for exclusive IPIA status as of June 15, 1979. Where the State does not demonstrate that it has the present capability to act as an exclusive IPIA the State shall also be so precluded, unless the Secretary determines in the public interest that the State has an acceptable plan for meeting this requirement, in which case the State may act as an exclusive IPIA only when it has the required capability. If the Secretary determines that the fees to be charged by a State acting as an IPIA are unreasonable, the Secretary shall not grant the State status as an exclusive IPIA.

§ 3282.303 State plan—suggested provisions.

The following are not required to be included in the State plan, but they are urged as necessary to provide full consumer protection and assurances of mobile home safety:

(a) Provision for monitoring of dealers' lots within the State for transit damage, seal tampering, and dealer performance generally.

(b) Provision of approvals of all alterations made to certified mobile homes by dealer in the State. Under this program, the State would assure that alterations did not result in the failure of the mobile home to comply with the standards.

(c) Provision for monitoring of the installation of mobile homes set up in the State to assure that the homes are prop-

ertly installed and, where necessary, tied down.

(d) Provision for inspection of used mobile homes and requirements under State authority that used mobile homes meet a minimal level of safety and durability at the time of sale, and,

(e) Provision for regulation of mobile home transportation over the road to the extent that such regulation is not preempted by Federal authority.

§ 3282.304 Inadequate state plan.

If the Secretary determines that a State plan submitted under this subpart is not adequate, the designated State agency shall be informed of the additions and corrections required for approval. A revised State plan shall be submitted within 30 days of receipt of such determination. If the revised State plan is inadequate or if the State fails to resubmit within the 30 day period or otherwise indicates that it does not intend to change its State plan as submitted, the Secretary shall notify the designated State agency that the State plan is not approved and that it has a right to a hearing on the disapproval in accordance with Subpart D of this Part.

§ 3282.305 State plan approval.

The Secretary's approval or conditional approval of a State plan Application shall qualify that State to perform the functions for which it has been approved.

§ 3282.306 Withdrawal of state approval.

The Secretary shall, on the basis of reports submitted by the State, and on the basis of HUD monitoring, make a continuing evaluation of the manner in which each State is carrying out its State plan and shall submit the reports of such evaluation to the appropriate committees of the Congress. Whenever the Secretary finds, after affording due notice and opportunity for a hearing in accordance with Subpart D of this Part, that in the administration of the State program there is a failure to comply substantially with any provision of the State plan or that the State plan has become inadequate, the Secretary shall notify the State of withdrawal of approval or conditional approval of the State program. The State program shall cease to be in effect at such time as the Secretary may establish.

§ 3282.307 Monitoring inspection fee establishment and distribution.

(a) Each approved State shall establish a monitoring inspection fee in an amount established by the Secretary. This monitoring inspection fee shall be an amount paid by each mobile home manufacturer in the State for each mobile home produced by the manufacturer in that State. In non-approved and conditionally-approved States, this monitoring inspection fee shall be set by the Secretary.

(b) The monitoring inspection fee shall be paid by the manufacturer to the Secretary or the Secretary's agent, who

shall distribute the fees collected from all mobile home manufacturers among the approved and conditionally-approved States based on the number of new mobile homes whose first location after leaving the manufacturing plant is on the premises of distributor, dealer, or purchaser in that State, and the extent of participation of the State in the joint team monitoring program set out in § 3282.309(a).

§ 3282.308 State participation in monitoring of primary inspection agencies.

(a) An SAA may provide personnel to participate in joint team monitoring of primary inspection agencies as set out in Subpart J. If an SAA wishes to do so, it must include in its State plan a list of what personnel would be supplied for the teams, their qualifications, and how many person-years the State would supply. All personnel will be subject to approval by the Secretary or the Secretary's agent. A person-year is 2,080 hours of work.

(b) If an SAA wishes to monitor the performance of primary inspection agencies acting within the State, it must include in its State plan a description of how extensively, how often, and by whom this will be carried out. This monitoring shall be coordinated by the Secretary, or the Secretary's agent with monitoring carried out by joint monitoring teams, and in no event shall an SAA provide monitoring where the State is also acting as a primary inspection agency.

§ 3282.309 Hearings and presentations of views held by SAAs.

(a) When an SAA is the appropriate agency to hold a hearing or presentation of views under § 3282.407 of subpart I, the SAA shall follow the procedures set out in §§ 3282.152 and 3282.153, with the SAA acting as the Secretary otherwise would under that section. Where § 3282.152 requires publication of notice in the FEDERAL REGISTER, the SAA shall, to the maximum extent possible, provide equivalent notice throughout the state by publication in a newspaper or newspapers having state-wide coverage or otherwise. The determination of whether to provide a presentation of views under § 3282.153(f) or a hearing section under § 3282.152(g) is left to the SAA.

(b) Notwithstanding the provisions of § 3282.152(f)(2) and (g)(2) relating to the conclusive effect of a final determination, any party, in a proceeding held at an SAA under this section, including specifically the owners of affected mobile homes, States in which affected mobile homes are located, consumer groups representing affected owners and manufacturers (but limited to parties with similar substantial interest) may appeal to the Secretary in writing any Final Determination by an SAA which is adverse to the interest of that party. This appeal on the record shall be made within 30 days of the date on which the Final Determination was made by the SAA.

Subpart H—Primary Inspection Agencies

§ 3282.351 General.

(a) This subpart sets out the requirements which must be met by States or private organizations which wish to qualify as primary inspection agencies under these regulations. It also sets out the various functions which will be carried out by primary inspection agencies.

(b) There are four basic functions which are performed by primary inspection agencies: (1) Approval of the manufacturer's mobile home design to assure that it is in compliance with the standard, (2) approval of the manufacturer's quality control program to assure that it is compatible with the design (3) approval of the manufacturer's plant facility and manufacturing process to assure that the manufacturer can perform its approved quality control program and can produce mobile homes in conformance with its approved design, and (4) performance of ongoing inspections of the manufacturing process in each manufacturing plant to assure that the manufacturer is continuing to perform its approved quality control program and, with respect to those aspects of mobile homes inspected, is continuing to produce mobile homes in performance with its approved designs and in conformance with the standards (see § 3282.362(c)(1)).

(c) There are two types of primary inspection agencies which perform these functions: (1) Those which approve designs and quality control programs (Design Approval Primary Inspection Agencies—DAPIAs) and (2) those which approve plants and perform ongoing inspections in the manufacturing plants (Production Inspection Primary Inspection Agencies—IPIAs).

(d) States and private organizations whose submissions under this subpart are acceptable shall be granted provisional acceptance. Final acceptance shall be conditioned upon adequate performance, which will be determined through monitoring of the actions of the primary inspection agencies. Monitoring of all primary inspection agencies shall be carried out as set out in Subpart J. HUD accepted agencies can perform DAPIA functions for any manufacturer in any State and IPIA functions in any State except those in which the State has been approved to act as the exclusive IPIA under § 3282.352.

(e) Primary inspection agencies approved under this subpart may contract with mobile home manufacturers (see § 3282.202) to provide the services set out in this subpart. Any PIA which charges fees which are excessive in relation to the services rendered shall be subject to disqualification under § 3282.356.

§ 3282.352 State exclusive IPIA functions.

(a) Any State which has an approved State Administrative Agency may, if accepted as an IPIA, act as the exclusive IPIA within the State. A State which acts as an IPIA but is not approved as an SAA may not act as the exclusive IPIA in

the State. A State which acts as an exclusive IPIA shall be staffed to provide IPIA services to all manufacturers within the state and may not charge unreasonable fees for those services.

(b) States which wish to act as exclusive IPIAs shall apply for approval to do so in their State plan applications. They shall specify the fees they will charge for IPIA services and shall submit proposed fee revisions to the Secretary prior to instituting any change in fees. If at any time the Secretary finds that those fees are not commensurate with the fees generally being charged for similar services, the Secretary will withhold or revoke approval to act as an exclusive IPIA. States acting as DAPIAs and also as exclusive IPIAs shall establish separate fees for the two functions and shall specify what additional services (such as approval of design changes and full time inspections) these fees cover. As provided in § 3282.302(b) (II), each State shall submit fee schedules for its activities and, where appropriate, the fees presently charged for DAPIA and IPIA services, and any fees charged for DAPIA and IPIA services during the preceding two calendar years.

(c) A State's status as an exclusive IPIA in the State shall commence upon approval of the State Plan Application and acceptance of the State's submission under section 3282.355, except as provided herein. Where a State was approved to provide IPIA functions under the Title I program, the State's status as an exclusive IPIA shall commence on the date the State submits to the Secretary a statement that it intends to act as an exclusive IPIA, but only if affirms that the State has the present capacity to provide IPIA services for all manufacturing plants in the State. If the State indicates its desire to act as an exclusive IPIA, though it does not have the present capacity to do so, but affirms that it will within 90 days have the capacity to provide IPIA services to all manufacturers in the State, then the State's status as an exclusive IPIA shall commence on the date the State affirms it will have such capacity. Continuation of such a State's status as an exclusive IPIA is conditioned upon submittal of the State Plan Application as required by § 3282.302(e) and upon final approval of that application. It is also conditioned upon the State adequately fulfilling its affirmation to provide IPIA services to all manufacturing plants in the State. Where a private organization accepted or provisionally accepted as an IPIA under this Subpart operating in a manufacturing plant within the State on the date the State's status as an exclusive IPIA would commence under this paragraph, the organization may provide IPIA services in that plant for 90 days after that date.

§ 3282.353 Submission format.

States and private organizations which wish to act as primary inspection agencies shall submit to the Director, Office of Mobile Home Standards, Department of Housing and Urban Development, 451 Seventh St. SW., Washing-

ton, D.C. 20410, an application which includes the following:

(a) A cover sheet which shall show the following:

(1) Name and address of the party making the application;

(2) The capacity (DAPIA, IPIA) in which the party wishes to be approved to act;

(3) A list of the key personnel who will perform the various functions required under these regulations;

(4) The number of mobile home manufacturers and manufacturing plants for which the submitting party proposes to act in each of the capacities for which it wishes to be approved to act;

(5) The estimated total number of mobile homes produced by those manufacturers and in those plants per year;

(6) The number of years the proposed primary inspection agency has been actively engaged in the enforcement of mobile home standards;

(7) A certification by the party applying that it will follow the Federal mobile home construction and safety standards set out at 24 CFR Part 280 and any interpretations of those standards which may be made by the Secretary; and

(8) Whether the submitting party is approved to act as a primary inspection agency under the Title I program, and if so, in what capacity.

(b) A detailed schedule of fees to be charged broken down by the services for which they will be charged.

(c) A detailed description of how the submitting party intends to carry out all of the functions for which it wishes to be approved under this subpart, with appropriate cross-references to sections of this subpart, including examples and complete descriptions of all reports, tests, and evaluations which the party would be required to make. Where appropriate, later sections of this subpart identify particular items which must be included in the submission. The Secretary may request further detailed information, when appropriate.

(d) A party wishing to be approved as a DAPIA shall submit a copy of a mobile home design that it has approved (or if it has not approved a design, one that it has evaluated and a deviation report showing where the design is not in conformance with the standards) and a copy of a quality assurance manual that it has approved (or if it was not approved a manual, one that it has evaluated and a deviation report showing where the manual is inadequate).

(e) A party wishing to be approved as an IPIA shall submit a copy of a certification report which it has prepared for a mobile home plant or, if it has not prepared such a report, an evaluation of a manufacturing plant which it has inspected with a description of what changes shall be made before a certification report can be issued. A party that has not previously inspected mobile homes may nevertheless be accepted on the basis of the qualifications of its personnel and its commitment to perform the required functions.

(f) A primary inspection agency which has been approved under the Title I program, shall submit a statement reaffirming all commitments made under Title I, names and resumes of new key personnel, a certification that it will enforce the standard in accordance with these regulations, and a statement of fees as required by § 3282.353(b).

§ 3282.354 Submittal of false information or refusal to submit information.

The submittal of false information or the refusal to submit information required under this subpart may be sufficient cause for the Secretary to revoke or withhold acceptance.

§ 3282.355 Submission acceptance.

(a) A party whose submission is determined by the Department to be adequate shall be granted provisional acceptance until December 15, 1976, or for a six month period from the date of such determination, whichever is later.

(b) A party that has been accepted as a primary inspection agency under the Title I program shall be granted provisional acceptance for 30 days as of the effective date of these regulations. This provisional acceptance shall be extended to December 15, 1976, when the submission required by § 3282.353(f) has been made, within 30 days of the effective date of these regulations.

(c) Final acceptance of a party to act as a primary inspection agency will be contingent upon adequate performance during the period of provisional acceptance as determined through monitoring carried out under Subpart J and upon satisfactory acceptance under § 3282.361(e) or 3282.362(e). Final acceptance shall be withheld if performance is inadequate.

(d) Continued acceptance as a primary inspection agency shall be contingent upon continued adequacy of performance as determined through monitoring carried out under Subpart J. If the Secretary determines that a primary inspection agency that has been granted final acceptance is performing inadequately, the Secretary shall suspend the acceptance, and the primary inspection agency shall be entitled to a hearing or presentation of views as set out in subpart D of this part.

§ 3282.356 Disqualification and requalification of primary inspection agencies.

(a) The Secretary, based on monitoring reports or other reliable information, may determine that a primary inspection agency which has been accepted under this subpart is not adequately carrying out one or more of its required functions. In so doing, the Secretary shall consider the impact of disqualification on manufacturers and other affected parties and shall seek to assure that the manufacturing process is not unnecessarily disrupted thereby. Whenever the Secretary disqualifies a primary inspection agency under this section, the primary inspection agency shall have a right to a hearing or presentation of views under Subpart D of this part.

(b) Interested persons may petition the Secretary to disqualify a primary inspection agency under the provisions of § 3282.156(b).

(c) A primary inspection agency which has been disqualified under paragraph (a) may resubmit an application under § 3282.353. The submission shall include a full explanation of how problems or inadequacies which resulted in disqualifications have been rectified and how the primary inspection agency shall assure that such problems shall not recur.

(d) When appropriate, the Secretary shall publish in the FEDERAL REGISTER or otherwise make available to the public for comment a disqualified PIA's application for requalification, subject to the provisions of § 3282.54.

§ 3282.357 Background and experience.

All private organizations shall submit statements of the organizations' experience in the housing industry, including a list of housing products, equipment, and structures for which evaluation, testing and follow-up inspection services have been furnished. They shall also submit statements regarding the length of time these services have been provided by them. In addition, all such submissions shall include a list of other products for which the submitting party provides evaluation, inspection, and listing or labeling services and the standard applied to each product, as well as the length of time it has provided these additional services.

§ 3282.358 Personnel.

(a) Each primary inspection agency shall have qualified personnel capable of carrying out all of the functions for which the primary inspection agency is seeking to be approved or disapproved. Where a State intends to act as the exclusive IPIA in the State, it shall show that it has adequate personnel to so act in all plants in the State.

(b) Each submission shall indicate the total number of personnel employed by the submitting party, the number of personnel available for this program, and the locations of the activities of the personnel to be used in the program.

(c) Each submission shall include the names and qualifications of the administrator and the supervisor who will be directly responsible for the program, and résumés of their experience.

(d) Each submission shall contain the information set out in paragraphs (d) (1) through (d) (9) of this section.

Depending upon the functions (DAPIA, or IPIA) to be undertaken by a particular primary inspection agency, some of the categories of personnel listed may not be required. In such cases, the submission should indicate which of the categories of information are not required and explain why they are not needed. The submission should identify which personnel will carry out each of the functions the party plans to perform. The qualifications of the personnel to perform one or more of the functions will be judged in accordance with the requirements of

ASTM Standard E-541 except that the requirement for registration as a professional engineer or architect may be waived for personnel whose qualifications by experience or education equal those of a registered engineer or architect. The categories of personnel to be included in the submission are as follows:

(1) The names of engineers practicing structural engineering who will be involved in the evaluation, testing, or follow-up inspection services, and résumés of their experience.

(2) The names of engineers practicing mechanical engineering who will be involved in the evaluation, testing, or follow-up inspection services and résumés of their experience.

(3) The names of engineers practicing electrical engineering who will be involved in the evaluation, testing, or follow-up inspection services and résumés of their experience.

(4) The names of engineers practicing fire protection engineering who will be involved in the evaluation, testing, or follow-up inspection services, and résumés of their experience.

(5) The names of all other engineers assigned to this program, the capacity in which they will be employed, and résumés of their experience.

(6) The names of all full-time and part-time consulting architects and engineers, their registration, and résumés of their experience.

(7) The names of inspectors and other technicians along with résumés of experience and a description of the type of work each will perform.

(8) A general outline of the applicant agency's training program for assuring that all inspectors and other technicians are properly trained to do each specific job assigned.

(9) The names and qualifications of individuals serving on advisory panels that assist the applicant agency in making its policies conform with the public interest in the field of public health and safety.

(e) All information required by this section shall be kept current. The Secretary shall be notified of any change in personnel or management or change of ownership or State jurisdiction within 30 days of such change.

§ 3282.359 Conflict of interest.

(a) All submissions by private organizations shall include a statement that the submitting party is independent in that it does not have any actual or potential conflict of interest and is not affiliated with or influenced or controlled by any producer, supplier, or vendor of products in any manner which might affect its capacity to render reports of findings objectively and without bias.

(b) A private organization shall be judged to be free of conflicting affiliation, influence, and control if it demonstrates compliance with all of the following criteria:

(1) It has no managerial affiliation with any producer, supplier, or vendor of products for which it performs PIA services, and is not engaged in the sale

or promotion of any such product or material;

(2) The results of its work do not accrue financial benefits to the organization via stock ownership of any producer, supplier or vendor of the products involved;

(3) Its directors and other management personnel and its engineers and inspectors involved in certification activities hold no stock in and receive no stock option or other benefits, financial, or otherwise, from any producer, supplier, or vendor of the product involved, other than compensation under § 3282.202 of this part;

(4) The employment security status of its personnel is free of influence or control of any producer, supplier, or vendor, and

(5) It does not perform design or quality assurance manual approval services for any manufacturer whose design or manual has been created or prepared in whole or in part by engineers of its organization or engineers of any affiliated organization.

(c) All submissions by States shall include a statement that personnel who will be in any way involved in carrying out the State plan or PIA function are free of any conflict of interest except that with respect to members of councils, committees or similar bodies providing advice to the designated agency are not subject to this requirement.

§ 3282.360 PIA acceptance of product certification programs or listings.

In determining whether products to be included in a mobile home are acceptable under the standards set out in Part 280 of Chapter II of 24 CFR, all PIAs shall accept all product verification programs, labelings, and listings unless the PIA has reason to believe that a particular certification is not acceptable in which case, the PIA shall so inform the Secretary and provide the Secretary with full documentation and information on which it bases its belief. Pending a determination by the Secretary, the PIA shall provisionally accept the certification. The Secretary's determination shall be binding on all PIAs.

§ 3282.361 Design Approval Primary Inspection Agency (DAPIA).

(a) General. (1) The DAPIA selected by a manufacturer under section 3282.203 shall be responsible for evaluating all mobile home designs submitted to it by the manufacturer and for assuring that they conform to the standards. It shall also be responsible for evaluating all quality control programs submitted to it by the manufacturer by reviewing the quality assurance manuals in which the programs are set out to assure that the manuals reflect programs which are compatible with the designs to be followed and which commit the manufacturer to make adequate inspections and tests of every part of every mobile home produced.

(2) A design or quality assurance manual approved by a DAPIA shall be accepted by all IPIAs acting under

§ 3282.362 who deal with the design, quality assurance manual, or mobile homes built to them, and by all other parties, as, respectively, being in conformance with the Federal standards or as providing for adequate quality control to assure conformance. However, each design and quality assurance manual is subject to review and verification by the Secretary or the Secretary's agent at any time.

(b) *Designs.* (1) In evaluating designs for compliance with the standards, the DAPIA will not allow any deviations from accepted engineering practice standards for design calculations or any deviations from accepted test standards, except that the DAPIA, for good cause, may request the Secretary to accept innovations which are not yet accepted practices. Acceptances by the Secretary shall be published in the form of interpretative bulletins, where appropriate.

(2) The DAPIA shall require the manufacturer to submit floor plans and specific information for each mobile home design or variation which the DAPIA is to evaluate. It shall also require the submission of drawings, specifications, calculations, and test records of the structural, electrical and mechanical systems of each such mobile home design or variation. The manufacturer need not supply duplicate information where systems are common to several floor plans. Each DAPIA shall develop and carry out procedures for evaluating original mobile home designs by requiring manufacturers to submit necessary drawings and calculations and carry out such verifications and calculations as it deems necessary. Where compliance with the standards cannot be determined on the basis of drawings and calculations, the DAPIA shall require any necessary tests to be carried out at its own facility, at separate testing facilities or at the manufacturer's plant.

(3) *Design deviation report.* After evaluating the manufacturer's design, the DAPIA shall furnish the manufacturer with a design deviation report which specifies in detail, item by item with appropriate citations to the standards, the specific deviations in the manufacturer's design which must be rectified in order to produce mobile homes which comply with the standards. The design deviation report may acknowledge the possibility of alternative designs, tests, listings, and certifications and state the conditions under which they will be acceptable. The design deviation report shall, to the extent practicable, be complete for each design evaluated in order to avoid repeated rejections and additional costs to the manufacturer.

(4) *Design approval.* The DAPIA shall signify approval of a design by placing its stamp of approval or authorized signature on each drawing and each sheet of test results. The DAPIA shall clearly cross-reference the calculations and test results to applicable drawings. The DAPIA may require the manufacturer to do the cross-referencing if it wishes. It shall indicate on each sheet how any

deviations from the standards have been or shall be resolved. Within 5 days after approving a design, the DAPIA shall forward a copy of the design to the manufacturer and the Secretary or the Secretary's agent (prior to the effective date of the standards the latter copy shall go to the Secretary.)

The DAPIA shall maintain a complete up-to-date set of approved designs and design changes approved under paragraph (b) (5) of this section which it can duplicate and copies of which it can furnish to interested parties as needed when disputes arise.

(5) *Design change approval.* The DAPIA shall also be responsible for approving all changes which a manufacturer wishes to make in a design approved by the DAPIA. In reviewing design changes, the DAPIA shall respond as quickly as possible to avoid disruption of the manufacturing process. Within 5 days after approving a design change, the DAPIA shall forward a copy of this change to the manufacturer and the Secretary or the Secretary's agent as set out in paragraph (b) (4) of this section to be included in the design to which the change was made.

(c) *Quality Assurance Manuals.* (1) In evaluating a quality assurance manual, the DAPIA shall identify any aspects of designs to be manufactured under the manual which require special quality control procedures. The DAPIA shall determine whether the manual under which a particular design is to be manufactured reflects those special procedures, and shall also determine whether the manuals which it evaluates provide for such inspections and testing of each mobile home so that the manufacturer, by following the manual, can assure that each mobile home it manufactures will conform to the standards. The manual shall, at a minimum, include the information set out in § 3282.203 (c).

(2) *Manual Deviation Report.* After evaluating a manufacturer's quality assurance manual, the DAPIA shall furnish the manufacturer with a manual deviation report which specifies in detail any changes which a manufacturer must make in order for the quality assurance manual to be acceptable. The manual deviation report shall, to the extent practicable, be complete for each design in order to avoid repeated rejections and additional costs to the manufacturer.

(3) *Manual Approval.* The DAPIA shall signify approval of the manufacturer's quality assurance manual by placing its stamp of approval or authorized signature on the cover page of the manual. Within 5 days of approving a quality assurance manual, the DAPIA shall forward a copy of the quality assurance manual to the manufacturer and the Secretary or the Secretary's agent (prior to the effective date of the standards, the latter copy shall go to the Secretary). The DAPIA shall maintain a complete up-to-date set of approved manuals and manual changes approved under paragraph (c) (4) of this section which it can duplicate and copies of which it can furnish to interested parties as needed when disputes arise.

(4) *Manual Change Approval.* Each change the manufacturer wishes to make in its quality assurance manual shall be approved by the DAPIA. Within 5 days after approving a manual change, the DAPIA shall forward a copy of the change to the manufacturer and the Secretary or the Secretary's agent as set out in paragraph (c) (3) of this section to be included in the manual to which the change was made.

(d) *Special provision—Title I approvals.* A design that has been approved by an organization accepted by the Secretary prior to June 15, 1976, under the Title I program need not be reevaluated, but it shall be revised to bring it into conformance with the Federal standards. When the DAPIA that approved a Title I design to the ANSI standard has approved the design changes that bring the design into conformance with the Federal standards, that design shall be considered approved for purposes of these regulations. Quality assurance manuals that have been approved under the Title I program shall be considered approved for purposes of these regulations. The DAPIA that approved the Title I design and any required design changes or the quality assurance manual shall assure that copies of each are distributed as new designs, manuals, and changes will be accomplished under paragraphs (b) and (c) of this section. New copies need not be distributed to parties which already have copies.

(e) *Requirements for full acceptance—DAPIA.* (1) Before granting full acceptance to a DAPIA, the Secretary or the Secretary's agent shall review and evaluate at least one complete design and one quality assurance manual which has been approved by the DAPIA. These shall be designs and manuals approved to the Federal standards, and they shall be chosen at random from those approved by the DAPIA during the period of provisional acceptance.

(2) If the Secretary determines that a design or quality assurance manual shows an inadequate level of performance, the Secretary or the Secretary's agent shall carry out further evaluations. If the Secretary finds the level of performance to be unacceptable, the Secretary shall not grant full acceptance. If full acceptance has not been granted by the end of the provisional acceptance period, provisional acceptance shall lapse unless the Secretary determines that the failure to obtain full acceptance resulted from the fact that the Secretary or her agent has not had adequate time in which to complete an evaluation.

§ 3282.362 Production Inspection Primary Inspection Agencies (IPIAs).

(a) *General.* (1) IPIA Responsibilities. An IPIA selected by a manufacturer under section 3282.204 to act in a particular manufacturing plant shall be responsible for assuring:

(i) That the plant is capable of following the quality control procedures set out in the quality assurance manual to be followed in that plant;

(ii) That the plant continues to follow the quality assurance manual;

(iii) That any part of any mobile home that it actually inspects conforms with the design, or where the design is not specific with respect to an aspect of the standards, to the standards, and

(iv) That whenever it finds a mobile home in production which fails to conform to the design or where the design is not specific, to the standards, the failure to conform is corrected before the mobile home leaves the manufacturing plant; and

(v) That if a failure to conform to the design, or where the design is not specific, to the standards, is found in one mobile home, all other homes still in the plant which the IPIA's records or the records of the manufacturer indicate might not conform to the design or to standards are inspected and, if necessary, brought up to the standards before they leave the plant.

The IPIA is also generally responsible for reviewing and concurring in or disputing manufacturer determinations of the number of mobile homes affected under section 3284.404 and for otherwise fulfilling its responsibilities set out in subpart I. The IPIA shall also make any reports called for under subpart L.

(2) No more than one IPIA shall operate in any one manufacturing plant, except that where a manufacturer decides to change from one IPIA to another, the two may operate in the plant simultaneously for a limited period of time to the extent necessary to assure a smooth transition.

(b) *Plant approval.* (1) Each IPIA shall, with respect to each manufacturing plant for which it is responsible, evaluate the quality control procedures being followed by the manufacturer in the plant to determine whether those procedures are consistent with and fulfill the procedures set out in the DAPIA approved quality assurance manual being followed in the plant. As part of this evaluation, and prior to the issuance of any labels to the manufacturer, the IPIA shall make a complete inspection of the manufacture of at least one mobile home through all of the operations in the manufacturer's plant. The purpose of this initial factory inspection is to determine whether the manufacturer is capable of producing mobile homes in conformance with the approved design and, to the extent the design is not specific with respect to an aspect of the standards, with the standards and to determine whether the manufacturer's quality control procedures as set out in the quality assurance manual, plant equipment, and personnel, will assure that such conformance continues. This inspection should be made by one or more qualified engineers who have reviewed the approved design and by an inspector who has been carefully briefed by the engineers on the restrictive aspects of the design. The mobile home shall be inspected to the approved design for the home except that where the design is not specific with respect to any aspect of the standards, the inspection shall be to the standards as to that aspect of the mobile home. If the first mobile home

inspected fails to conform to the design or, with respect to any aspect of the standards not specifically covered by the design, to the standards, additional units shall be similarly inspected until the IPIA is satisfied that the manufacturer is conforming to the approved design, or where the design is not specific with respect to an aspect of the standards, to the standards and quality assurance manual.

(2) *Certification report.* If, on the basis of the initial comprehensive factory inspection required by paragraph (b) (1) of this section, the IPIA determines that the manufacturer is performing adequately, the IPIA shall prepare and forward to the manufacturer, to HUD, and to HUD's agent a certification report as described in this paragraph (b) (2). The issuance of the certification report is a prerequisite to the commencement of production surveillance under paragraph (c) of this section in the plant for which the report is issued. At the time the certification report is issued, the IPIA may provide the manufacturer with a two to four week supply of labels to be applied to mobile homes produced in the plant. The IPIA shall maintain a copy of each certification report which it issues.

(3) The certification report shall include:

(i) The name of the DAPIA which approved the manufacturer's design and quality assurance manual and the dates of those approvals,

(ii) The names and titles of the IPIA engineers and inspectors who performed the initial comprehensive inspection.

(iii) A full report of inspections made, serial numbers inspected, any failures to comply which were observed, corrective actions taken, and dates of inspections, and

(iv) A certification that at least one mobile home has been completely inspected in all phases of its production in the plant, that the manufacturer is performing in conformance with the approved designs and quality assurance manual and, to the extent the design is not specific with respect to any aspects of the standards, with the standards, and the IPIA is satisfied that the manufacturer can produce mobile homes in conformance with the designs, and where the designs are not specific, with the standards on a continuing basis.

(4) *Inadequate manufacturer performance.* Where an IPIA determines that the performance of a manufacturer is not yet adequate to justify the issuance of a certification report and labels to the manufacturer, the IPIA may label mobile homes itself by using such of its personnel as it deems necessary to perform complete inspections of all phases of production of each mobile home being produced and labeling only those determined after any necessary corrections to be in conformance with the design and, as appropriate, with the standards. This procedure shall continue until the IPIA determines that the manufacturer's performance is adequate to justify the issuance of a certification report.

(5) *Transition provision.* (i) Prior to the effective date of the standards, when the IPIA finds that it does not have adequate staff to perform the initial comprehensive inspection in a manufacturing plant soon enough for that manufacturer to be in production on the effective date of the standards, or after the effective date of the standards with respect to a manufacturer which is acting under the transition certification process set out in § 3282.207, the IPIA may arrange to have a DAPIA perform the initial comprehensive in-factory inspection under paragraph (b) (1) and issue the certification report under paragraph (b) (2). The IPIA shall then issue a two-to-four-week supply of labels to be used beginning on the effective date of the standards. If the DAPIA is unable to complete the initial comprehensive factory inspection and is unable to complete the initial comprehensive factory inspection and issue the certification report prior to the effective date of the standards, the DAPIA shall submit a deviation report to the IPIA listing all conditions that shall be corrected in the factory prior to the issuance of the certification report and labels. Upon receipt of the DAPIA's deviation report, the IPIA may initiate full-time inspection in the factory with such personnel as it deems necessary to provide complete inspections of mobile homes in production, and it shall apply labels to those mobile homes that it knows by its own inspections to be in conformance with the design and, as appropriate under paragraph (b) (1), with the standards. The IPIA shall continue its full-time inspection in the plant until all deviations cited by the DAPIA have been corrected and the IPIA is satisfied that the manufacturer is conforming to the approved designs and quality assurance manual and as appropriate under paragraph (b) (1), with the standards, when these conditions have been met the IPIA shall issue the certification report and a two-to-four-week supply of labels to the manufacturer to be used prior to the commencement of production surveillance under paragraph (c) of this section.

(ii) A certification report for a particular plant accepted under the Title I program shall be accepted as a certification report under paragraph (b) (2). The IPIA which originally issued the certification report or a different IPIA acting for the manufacturer under this section shall assure that copies of it are distributed as new reports would be under paragraph (b) (2), except that copies need not be distributed to parties which already have copies.

(c) *Production surveillance.* (1) After it has issued a certification report under subsection (b) of this section, the IPIA shall carry out ongoing surveillance of the manufacturing process in the plant. The IPIA shall be responsible for conducting representative inspections to assure that the manufacturer is performing its quality control program pursuant to and consistent with its approved quality assurance manual and to assure that whatever part of a mobile home is actually inspected by the IPIA is fully in

conformance with the design and, as appropriate under paragraph (a) (1) (iii) of this section, with the standards before a label is issued for or placed on that mobile home. The surveillance visits shall commence no later than that date on which the IPIA determines they must commence so that the IPIA can assure that every mobile home to be produced after the effective date of the standards to which a label provided for in paragraph (c) (2) of this section is affixed, is inspected in at least one stage of its production. The frequency of subsequent visits to the plant shall continue to be such that every mobile home is inspected at some stage in its production. In the course of each visit, the IPIA shall make a complete inspection of every phase of production and of every visible part of every mobile home which is at each stage of production. The inspection shall be made to the approved design except where the design is not specific with respect to an aspect of the standards, in which case the inspection of that aspect of the mobile home shall be made to the standards. The IPIA shall assure that no label is placed on any mobile home which it finds fails to conform with the approved design or, as appropriate, the standards in the course of these inspections and shall assure that no labels are placed on other mobile homes still in the plant which may also not conform until those homes are inspected and if necessary corrected to the design or the standards. If an IPIA finds a mobile home that fails to conform to the design, or as appropriate under paragraph (a) (1) (iii) of this section, to the standards, the IPIA may, in addition to withholding the label for the unit, proceed to red tag the home until the failure to conform is corrected. Only the IPIA is authorized to remove a red tag. When mobile homes repeatedly fail to conform to the design, or as appropriate under paragraph (a) (1) (iii), to the standards in the same assembly station or when there is evidence that the manufacturer is ignoring or not performing under its approved quality assurance manual, the IPIA shall increase the frequency of these inspections until it is satisfied that the manufacturer is performing to its approved quality assurance manual. Failure to perform to the approved manual justifies withholding labels until an adequate level of performance is attained. As part of its function of assuring quality control, the IPIA shall inspect materials in storage and test equipment used by the manufacturer at least once a month, and more frequently if unacceptable conditions are observed. With the prior approval of the Secretary, an IPIA may decrease the frequency of any inspections.

(2) Labeling. (i) Labels required. (A) The IPIA shall continuously provide the manufacturer with a two- to four-week supply (at the convenience of the IPIA and the manufacturer) of the labels described in this subsection, except that no labels shall be issued for use when the IPIA is not present if the IPIA is not satisfied that the manufacturer can and is producing mobile homes which con-

form to the design and, as appropriate, to the standards. Where necessary, the IPIA shall reclaim labels already given to the manufacturer. In no event shall the IPIA allow a label to be affixed to a mobile home if the IPIA believes that the mobile home fails to conform to the design, or, where the design is not specific with respect to an aspect of the standards, to the standards. Labels for such mobile homes shall be provided only after the failure to conform has been remedied, or after the Secretary has determined that there is no failure to conform.

(B) Except where a manufacturer acts under the transition certification program under section 3282.207, a permanent label shall be affixed to each transportable section of each mobile home for sale or lease to a purchaser in the United States in such a manner that removal will damage the label so that it cannot be reused. This label is provided by the IPIA and is separate and distinct from the data plate which the manufacturer is required to provide under § 280.5 of Chapter II of 24 CFR.

(C) The label shall read as follows:

AS EVIDENCED BY THIS LABEL NO. ABC 000 001, THE MANUFACTURER CERTIFIES THAT THIS MOBILE HOME HAS BEEN INSPECTED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND TO THE BEST OF THE MANUFACTURER'S KNOWLEDGE AND BELIEF, IS CONSTRUCTED IN CONFORMANCE WITH THE FEDERAL MOBILE HOME CONSTRUCTION AND SAFETY STANDARDS IN EFFECT ON THE DATE OF MANUFACTURE. SEE DATA PLATE.

(D) The label shall be 2 in. by 4 in. in size and shall be permanently attached to the mobile home by means of 4 blind rivets, drive screws, or other means that render it difficult to remove without defacing it. It shall be etched on .032 in. thick aluminum plate. The label number shall be etched or stamped with a 3 letter IPIA designation which the Secretary shall assign and a 6 digit number which the label supplier shall stamp sequentially on labels supplied to each IPIA.

(E) The label shall be located at the tail-light end of each transportable section of the mobile home approximately one foot up from the floor and one foot in from the road side, or as near that location on a permanent part of the exterior of the mobile home as practicable. The roadside is the right side of the mobile home when one views the mobile home from the tow bar end of the mobile home. It shall be applied to the mobile home unit in the manufacturing plant by the manufacturer or the IPIA, as appropriate.

(F) The label shall be provided to the manufacturer only by the IPIA. The IPIA shall provide the labels in sequentially numbered series. The IPIA may obtain labels from the Secretary or the Secretary's agent, or where the IPIA obtains the prior approval of the Secretary, from a label manufacturer. However, if the IPIA obtains labels directly from a label supplier, those labels must be sequentially numbered without any duplication of label numbers.

(G) Whenever the IPIA determines that a mobile home which has been labeled, but which has not yet been released by the manufacturer may not conform to the design or, as appropriate under paragraph (a) (1) (iii) of this section, to the standards, the IPIA by itself or through an agent shall red tag the mobile home. Where the IPIA determines that a mobile home which has been labeled and released by the manufacturer, but not yet sold to a purchaser (as described in § 3282.252(b) may not conform, the IPIA may, in its discretion, proceed to red tag the mobile home. Only the IPIA is authorized to remove red tags, though it may do so through agents which it deems qualified to determine that the failure to conform has been corrected. Red tags may be removed when the IPIA is satisfied, through inspections, assurances from the manufacturer, or otherwise, that the affected homes conform.

(H) Labels that are damaged, destroyed, or otherwise made illegible or removed shall be replaced by the IPIA, after determination that the mobile home is in compliance with the standards, by a new label of a different serial number. The IPIA's labeling record shall be permanently marked with the number of the replacement label and a corresponding record of the replacement label.

(i) Label control. The labels used in each plant shall be under the direct control of the IPIA acting in that plant. They shall be provided to the manufacturer only by the IPIA. The IPIA shall assure that the manufacturer does not use any other label to indicate conformance to the standards. This paragraph (c) (2) (i) does not apply to transition-certification labels used under § 3282.207.

(A) The IPIA shall be responsible for obtaining labels. Labels shall be obtained from HUD or its agent, or with the approval of the Secretary, from a label manufacturer. The labels shall meet the requirements of this section. Where the IPIA obtains labels directly from a label manufacturer, the IPIA shall be responsible for assuring that the label manufacturer does not provide labels directly to the manufacturer of mobile homes, if to the manufacturer of mobile homes. If the label manufacturer fails to supply correct labels or allows labels to be released to parties other than the IPIA, the IPIA shall cease dealing with the label manufacturer.

(B) The labels shall be shipped to and stored by the IPIA's at a location which permits ready access to manufacturing plants under its surveillance. The labels shall be stored under strict security and inventory control. They shall be released only by the IPIA to the manufacturer under these regulations.

(C) The IPIA shall be able to account for all labels which it has obtained through the date on which the mobile home leaves the manufacturing plant, and it shall be able to identify the serial number of the mobile home to which each particular label is affixed.

(D) The IPIA shall keep in its central record office a list of the serial numbers

of labels issued from the label producer to the IPIA and by the IPIA to the manufacturing plant.

(E) Failure to maintain control of labels through the date the mobile home leaves the manufacturing plant and failure to keep adequate records of which label is on which mobile home shall render the IPIA subject to disqualification under § 3282.356.

(3) Data plate. (i) The IPIA shall assure that each mobile home produced in each manufacturing plant under its surveillance is supplied with a data plate which meets the requirements of this section and of § 280.5 of Chapter II or 24 CFR. The data plate shall be furnished by the manufacturer and affixed inside the mobile home on or near the main electrical distribution panel. The data plate shall contain the following information:

(A) The name and address of the manufacturing plant in which the mobile home was manufactured.

(B) The serial number and model designation of the unit and the date the unit was manufactured.

(C) The statement "This mobile home is designed to comply with the Federal Mobile Home Construction and Safety Standards in force at the time of manufacture."

(D) A list of major factory-installed equipment including the manufacturer's name and the model designation of each appliance.

(E) Reference to the structural zone and wind zone for which the home is designed and duplicates of the maps as set forth in § 280.305(c) (4) of Chapter II of 24 CFR. This information may be combined with the heating/cooling certificate and insulation zone maps required by § 280.510 and 280.511 of Chapter II of 24 CFR.

(F) The statement "design approval by" followed by the name of the DAPIA which approved the design.

(ii) A copy of the data plate shall be furnished to the IPIA, and the IPIA shall keep a permanent record of the data plate as part of its labeling record so that the information is available during the life of the mobile home in case the data plate in the mobile home is defaced or destroyed.

(d) Permanent records. The IPIA shall maintain the following records as appropriate:

(1) Records of all labels issued, applied, removed, and replaced by label number, mobile home serial number, mobile home type, manufacturer's name, dealer destination, and copies of corresponding data plates.

(2) Records of all mobile homes which are red tagged, and the status of each home.

(3) Records of all inspections made at each manufacturing plant on each mobile home serial number, each failure to conform found, and the action taken in each case.

(4) Records of all inspections made at other locations of mobile homes identified by manufacturer and serial number, all mobile homes believed to con-

tain the same failure to conform, and the action taken in each case.

All records shall specify the precise section of the standard which is in question and contain a clear and concise explanation of the process by which the IPIA reached any conclusions. All records shall be traceable to specific mobile home serial numbers and through the manufacturer's records to dealers and purchasers.

(e) Requirements for full acceptance—IPIA. (1) Before granting full acceptance to an IPIA, the Secretary or the Secretary's agent shall review and evaluate at least one certification report which has been prepared by the IPIA during the period of provisional acceptance. The Secretary or the Secretary's agent shall also review in depth the IPIA's administrative capabilities and otherwise review the IPIA's performance of its responsibilities under these regulations.

(2) Where the Secretary determines on the basis of these reviews that an IPIA is not meeting an adequate level of performance, the Secretary or the Secretary's agent shall carry out further evaluations. If the Secretary finds the level of performance to be unacceptable, the Secretary shall not grant full acceptance. If full acceptance has not been granted by the end of the provisional acceptance period, provisional acceptance shall lapse unless the Secretary determines that the failure to obtain full acceptance resulted from the fact that the Secretary or the Secretary's agent has not had adequate time in which to complete an evaluation.

§ 3282.363 Right of entry and inspection.

Each primary inspection agency shall secure from each manufacturer and manufacturing plant under its surveillance an agreement that the Secretary, the State Administrative Agency and the primary inspection agency have the right to inspect the plant and its mobile home inspection, labeling, and delivery records, and any of its mobile homes in the hands of dealers or distributors at any reasonable time.

§ 3282.364 Inspection responsibilities and coordination.

All primary inspection agencies shall be responsible for acting as necessary under their contractual commitment with the manufacturer to determine whether alleged failures to conform to the standards may exist in mobile homes produced under their surveillance and to determine the source of the problems. The DAPIA may be required to examine the designs in question or the quality assurance manual under which the mobile homes were produced. The IPIA may be required to reexamine the quality control procedures which it has approved to determine if they conform to the quality assurance manual, and the IPIA shall have primary responsibility for inspecting actual units produced and, where necessary, for inspecting units released by the manufacturer. All primary inspection agencies acting with respect to particular manufacturer or plant shall act

in close coordination so that all necessary functions are performed effectively and efficiently.

§ 3282.365 Forwarding monitoring fee.

The IPIA shall, whenever it provides labels to a manufacturer, obtain from the manufacturer the monitoring fee to be forwarded to the Secretary or the Secretary's agent as set out in § 3282.210. If a manufacturer fails to provide the monitoring fee as required by § 3282.210 to be forwarded by the IPIA under this section, the IPIA shall immediately inform the Secretary; or the Secretary's Agent.

Subpart I—Consumer Complaint Handling and Remedial Actions

§ 3282.401 Scope.

(a) This subpart sets out procedures to be followed by parties acting under these regulations, and in particular by manufacturers, State Administrative Agencies, primary inspection agencies, and the Secretary, when they receive a consumer complaint or other information indicating the possible existence of an imminent safety hazard, serious defect, defect, or noncompliance in a mobile home which has been sold or otherwise released by a manufacturer to another party. The information as used herein includes knowledge of an imminent safety hazard or failure to conform to the standards found in the plant which may exist in any mobile home already sold or released by the manufacturer. This subpart governs how the information is to be handled, what remedial actions may be required, and how and by whom those remedial actions shall be taken.

(b) Nothing in this subpart or in these regulations shall limit the rights of the purchaser under any contract or applicable law.

§ 3282.402 Purpose.

The purpose of this subpart is to establish a system under which the protections of the Act are provided with a minimum of formality and delay in the majority of cases, but in which the rights of all parties are protected.

§ 3282.403 Consumer complaint and information referral.

(a) Consumer complaints or other information relating to possible imminent safety hazards or to possible failures to conform to the Federal standards should be sent directly to the manufacturer of the mobile home in question. It is the policy of these regulations that all consumer complaints or other information indicating the possible existence of an imminent safety hazard, serious defect, defect, or noncompliance should be referred to the manufacturer of potentially affected mobile homes as early as possible so that the manufacturer can begin to take any necessary remedial actions.

(b) When a consumer complaint or other information indicating the possible existence of a failure to conform or imminent safety hazard is received by a State Administrative Agency concerning

a mobile home not located in that state or is received by the Secretary, the SAA or the Secretary shall forward the complaint or other information to the SAA of the State in which the mobile home in question is located unless it appears from the complaint or otherwise that mobile homes containing the same possible failure to conform or imminent safety hazard are located in more than one State. If it appears that possibly affected mobile homes are located in more than one State, the complaint shall be forwarded to the SAA of the State where the homes were manufactured, unless it further appears that the mobile homes were manufactured in more than one State, in which case the complaint shall be forwarded to the Secretary. If the complaint or information concerns a mobile home located in the State, the SAA shall act under this subpart. Where there is no SAA in the state in which the allegedly affected mobile homes are located or manufactured, as appropriate, the complaint shall be sent to the Secretary, and the Secretary shall act under this subpart. In all cases, a copy of the complaint or other information shall simultaneously be sent to the manufacturer of the mobile homes that may be affected.

§ 3282.404 Manufacturer initiated response.

(a) Whenever a manufacturer receives from a source other than the Secretary or a State Administrative Agency a consumer complaint or other information which indicates the possible existence of an imminent safety hazard, serious defect, defect, or noncompliance in a mobile home which has been sold or otherwise released by the manufacturer, the manufacturer shall investigate the possible existence of the imminent safety hazard or failure to conform in the mobile home or homes to which the complaint or information relates.

(b) Within 10 days of receipt of the complaint or other information, the manufacturer by investigation of the complaint, inspection of the mobile home, or otherwise shall determine whether or not an imminent safety hazard, serious defect, defect or noncompliance exists in the mobile home.

(1) If the manufacturer determines that no imminent safety hazard, serious defect, defect, or noncompliance exists, the manufacturer shall, on or before the tenth day after receipt of the complaint or other information, mail or otherwise communicate the manufacturer's determination to any complaining or inquiring parties and keep a permanent record of the determination and the action taken.

(2) If the manufacturer determines that an imminent safety hazard, serious defect, defect, or noncompliance exists, the manufacturer shall, within 5 days of making the determination, search its records and take such other steps as may be necessary to determine whether or not the imminent safety hazard or failure to conform is unique to the complained of mobile home.

(c) The manufacturer may determine that an imminent safety hazard or failure to conform is unique to a mobile home if the cause of the imminent safety hazard or failure to conform is not likely to result in the same or a similar problem in one or more other mobile homes. Each determination that no other mobile homes are affected shall be concurred in or disputed by the IPIA in the plant in which the affected mobile home was manufactured.

(1) If the IPIA disputes the determination of uniqueness, the manufacturer shall proceed as it would under paragraph (d) of this section.

(2) If the IPIA concurs in the determination of uniqueness. (i) The manufacturer shall correct the imminent safety hazard or failure to conform within 30 days of the date on which the manufacturer determined the existence of an imminent safety hazard or failure to conform to the standards so that the mobile home is brought into conformance with the standards in effect at the time the mobile home was manufactured and any imminent safety hazard or failure to conform is removed, and,

(A) The manufacturer shall keep complete records of all determinations and corrections made under this paragraph (c) (2) (i). These records shall include the date the complaint was received, the action taken and the date the action was completed, and the appropriate statement under § 3282.413 (b);

(B) These records shall be subject to oversight by an SAA or the Secretary, and an incorrect determination or inadequate repair may subject the manufacturer to a requirement to act further under §§ 3282.405, 3282.406, or 3282.407;

(C) The manufacturer need make no further reports or actions taken hereunder; or

(ii) The manufacturer shall proceed as it would under section (d) of this section.

(d) If the manufacturer determines that the imminent safety hazard or failure to conform may not be unique to one mobile home, the manufacturer shall, within 5 days of the date on which the determination of nonuniqueness is made under paragraph (b) (2) of this section, report the existence of the imminent safety hazard or failure to conform and identity of the units which may be affected. The manufacturer, in determining what mobile homes are affected, shall check mobile homes manufactured in all other plants in which the same factors which caused the original imminent safety hazard or failure to conform may exist or have existed. The manufacturer shall attach to the report a statement from the IPIA in each such plant that it concurs in or disputes the manufacturer's determination of which homes are affected. This report shall be sent to the State Administrative Agency of the State in which the affected mobile homes are located unless they are located in more than one State, in which case the report shall be sent to the State Admin-

istrative Agency of the State where the mobile homes were manufactured, except that where the mobile homes were manufactured in more than one State, the report shall be sent to the Secretary. Where there is no State Administrative Agency in the appropriate State under the previous sentence, the report shall be sent to the Secretary. At the same time that this report is being submitted, the manufacturer shall proceed under § 3282.405.

§ 3282.405 Notification pursuant to manufacturer's determination.

(a) When a manufacturer determines that an imminent safety hazard, serious defect or defect may exist under § 3282.404 (b) (2) and does not act under § 3282.404 (c) (2) (i), the manufacturer shall prepare and submit a plan as set out in § 3282.410 to the same agency to which the report required by § 3282.404 (d) was submitted.

(1) In cases in which the manufacturer has proceeded under § 3282.404 (c) (2) (ii), this plan shall be submitted within 5 days of the determination of the possible existence of an imminent safety hazard or serious defect and within 10 days of the determination of the possible existence of a defect.

(2) In cases where the manufacturer has proceeded under § 3282.404 (d), the plan shall be submitted within 5 days of the due date of the report required by that section if the plan concerns an imminent safety hazard or serious defect or within 10 days if the plan concerns a defect.

(b) All plans for notification and correction shall meet the requirements of § 3282.410 and shall be available for public inspection.

(c) After any necessary consultation with the manufacturer, the SAA or the Secretary to which the plan was sent shall approve the plan as submitted or make whatever modifications the SAA or the Secretary deems necessary, and shall notify the manufacturer of such approval or modification. The manufacturer shall be responsible for carrying out the plan as approved or modified by the SAA or the Secretary. If the manufacturer believes that the plan as modified and approved by the SAA or the Secretary is incorrect and wishes to contest the modification, the manufacturer shall so inform the SAA or the Secretary within 5 days of the SAA or the Secretary approval of the plan as modified. The SAA or the Secretary shall, if it does not accept the manufacturer's position, act as follows:

(1) If the manufacturer contends that the mobile home contains a defect rather than an imminent safety hazard or serious defect as the SAA or the Secretary contends, the SAA or the Secretary shall refer the matter to the Secretary for determination under § 3282.407 (a).

(2) If the manufacturer contends that the number of units affected is different from that stated by the SAA or the Secretary or that the contents of the notice or the correction are different from what

the SAA or the Secretary would require, then:

(i) If the SAA or the Secretary and the manufacturer agree that a defect exists, the SAA or the Secretary shall make preliminary determination under § 3282.407 (b), and the parties shall proceed under that section, or

(ii) If the SAA or the Secretary and the manufacturer agree that an imminent safety hazard or serious defect exists, the SAA or the Secretary shall refer the matter to the Secretary for action under § 3282.407(a).

However, in any case in which the only question in dispute is whether more units are affected than the manufacturer has stated in its plan, the manufacturer shall carry out the plan with respect to those units covered by it if the plan is otherwise acceptable, and time limits applicable to this action shall run from the date of determination by the manufacturer of the possible existence of an imminent safety hazard, serious defect, or defect.

(d) The manufacturer may undertake any corrections required by this subpart prior to approval of the plan. However, actions taken under this paragraph are subject to review by the agency that approved the plan under paragraph (a) (3) of this section, and if found unacceptable, shall not fulfill the requirement of this section.

(e) The formal notification requirements which would result from any determination by the manufacturer under this section may be waived by the SAA or the Secretary that would otherwise approve the plan under paragraph (a) (3) of this section upon receipt of satisfactory assurances from the manufacturer that:

(1) The manufacturer has identified all possibly affected mobile homes which have been sold to purchasers, dealers and distributors;

(2) The manufacturer has corrected, at the manufacturer's expense, all affected mobile homes; and

(3) The repairs, in the SAA or the Secretary's judgment, are adequate to remove the imminent safety hazard or failure to conform. The manufacturer may, before acting under this paragraph (c), obtain the concurrence in the proposed corrections from the SAA or the Secretary that would otherwise approve the plan under paragraph (a) (3) of this section. All actions taken under this paragraph (b) by the manufacturer shall be completed within 30 days of the decision of the manufacturer to act under this § 3282.405 if the problem is an imminent safety hazard or serious defect or 60 days if the problem is a defect unless the SAA or the Secretary which would have approved the plan under paragraph (a) (3) of this section, agrees to a longer period of time in extraordinary circumstances.

§ 3282.406 SAA or secretarial initiated response.

(a) When a consumer complaint or other information indicating the possible

existence of an imminent safety hazard, serious defect, defect, or noncompliance is referred to the Secretary or an SAA under § 3282.403(b), the Secretary or SAA shall expeditiously contact the manufacturer of the mobile home or homes in question. The Secretary or SAA must provide the manufacturer all information which it has concerning the possible imminent safety hazard or failure to conform and shall inform the manufacturer that the manufacturer shall report to the Secretary or SAA within 10 days of the contact as specified in paragraph (b) of this section. The SAA or the Secretary may extend the time period to 20 days upon satisfactory indications by the manufacturer that it is diligently investigating the situation, except that such extension shall not be granted if it is not in the interest of the purchasers or owners.

(b) The manufacturer shall respond to the SAA or the Secretary which contacted it under paragraph (a) of this section within 10 days of the contact (unless an extension is granted). In this report the manufacturer shall indicate whether it knew of the complaint or information and

(1) If it knew of the complaint or information, or other complaints or information relating to the problem, what actions it has taken and the reasons therefor.

(2) If it did not know of the complaint or information, whether the manufacturer has classified the problem to which the complaint or information relates as an imminent safety hazard, serious defect, defect, or noncompliance, with the reasons for this classification or whether the manufacturer has determined that the problem complained of fits none of these classifications.

(c) If the manufacturer determines and responds under paragraph (b) (2) of this section that there is an imminent safety hazard, serious defect, defect, or noncompliance in the mobile homes, it shall proceed under § 3282.404(b) (2), and if the manufacturer further proceeds under § 3282.404(d), the manufacturer shall send a copy of the report required by that section to the SAA or the Secretary which forwarded the complaint or information to it under paragraph (a) of this section concerning the same imminent safety hazard or failure to conform.

(d) If the manufacturer determines and reports under paragraph (b) (2) of this section that no imminent safety hazard, serious defect, defect, or noncompliance exists in the complained of mobile home or homes, the SAA or the Secretary to which the response is made under paragraph (b) (2) shall proceed as follows:

(1) If the SAA or the Secretary on the basis of the information reported by the manufacturer and any other information the SAA or the Secretary may have, agrees with the determination of the manufacturer, the SAA or the Secretary shall so inform the manufacturer and

the complainants and shall consider the matter closed.

(2) If the SAA or the Secretary is not convinced by the information submitted by the manufacturer or otherwise believes that further investigation is necessary, the SAA or the Secretary shall investigate and, within 10 days of receipt of the manufacturer's report, shall inform the manufacturer of the results of its investigation.

(i) If the SAA or the Secretary agrees with the manufacturer's determination, it shall act as it would under paragraph (d) (1).

(ii) If the SAA or the Secretary believes that an imminent safety hazard, serious defect, defect, or noncompliance exists, it shall so inform the manufacturer, and the manufacturer may act as it would under paragraph (c) of this section. If the manufacturer does not choose to act under that paragraph, the SAA or the Secretary shall proceed under § 3282.407, including holding any requested hearing or presentation of views, making any Preliminary or Final Determination, and approving any plan for notification correction.

(e) The manufacturer may obtain from any SAA to which a copy of the response required under paragraph (b) (2) of this section is sent approval of proposed corrections for only those mobile homes located in that state to which the complaint or information forwarded by the SAA to the manufacturer related but only for these mobile homes. If the manufacturer properly effects corrections pursuant to such approval, the manufacturer need not modify the correction at a later time despite the fact that the plan which is approved under §§ 3282.405(a) (3) or 3282.407(a) (3) or (b) (3) contains different specifications for the correction. If a manufacturer provides correction under this paragraph, such correction does not constitute an admission by the manufacturer that an imminent safety hazard, serious defect, defect, or noncompliance exists, and it is not a concession by the manufacturer that the approved corrections are appropriate or necessary in any other mobile home. However, actions taken under this paragraph are subject to review by the SAA or the Secretary that approved the plan under paragraph (a) (3) of this section, and if found unacceptable, shall not fulfill the requirements of this section.

(f) An SAA or the Secretary acting under paragraph (a) of this section or under § 3282.407 may, if at any point after contacting the manufacturer it determines that the consumer complaint or other information about which it has contacted the manufacturer (i) relates to a noncompliance of such a minor or technical nature that its existence will not contribute to the deterioration of the mobile home and will not interfere with the use and enjoyment of the mobile home, or (ii) does not constitute a failure to conform or imminent safety hazard, inform the manufacturer and any complainants of this determination and cease further action under this section or § 3282.407.

§ 3282.407 Notification pursuant to administrative determination.

(a) *Imminent safety hazards and serious defects.* The Secretary shall act under this paragraph upon receipt of the opinion of an SAA that an imminent safety hazard or serious defect exists in one or more mobile homes and upon forming an opinion under section 3282.406(d)(2)(ii) that an imminent safety hazard or serious defect exists. The Secretary may also act upon the receipt of any other information indicating the possible existence of an imminent safety hazard or serious defect. Only the Secretary may make Preliminary and Final determinations that an imminent safety hazard or serious defect exists.

(1) *Preliminary procedures.* Upon receipt of any information indicating the possible existence of an imminent safety hazard or serious defect, but where such information is not adequate to support a Preliminary determination of an imminent safety hazard or serious defect under paragraph (a)(2) of this section, the Secretary shall direct the manufacturer to furnish information with respect to the imminent safety hazard or serious defect, including information about the mobile homes potentially affected, within a time prescribed by the Secretary. If the manufacturer fails to furnish information within such time or if, after a consideration of the manufacturer's response or other information the Secretary may receive or obtain, the Secretary is satisfied that an imminent safety hazard or serious defect may exist, the Secretary shall make a Preliminary determination of an imminent safety hazard or serious defect under paragraph (a)(2) of this section.

(2) *Preliminary determination.* (i) Whenever the Secretary determines that there is reason to believe that an imminent safety hazard or serious defect exists in a mobile home, the Secretary shall make a preliminary determination to that effect. The Secretary shall within 5 days notify the manufacturer of such preliminary determination and inform the manufacturer that it may request a hearing or presentation of views under subpart D to establish that there is no such imminent safety hazard or serious defect.

(ii) Notice shall be sent by certified mail and shall include:

(A) The preliminary determination made by the Secretary;

(B) The factual basis for the determination;

(C) The date on which the determination was made;

(D) The identifying criteria of the mobile homes that may be affected.

The notice shall inform the manufacturer that the preliminary determination of the Secretary shall become final unless the manufacturer responds within 5 days after receipt of such notice and requests a hearing or presentation of views to rebut the Secretary's determination. The Secretary shall further notify the manufacturer as to whether such imminent safety hazard or serious defect is one which the manufacturer may be required to correct at the manufacturer's

expense pursuant to § 3282.408. The manufacturer shall also be advised in the notice that any information upon which the Preliminary Determination has been based, such as test results and records of investigations, shall be available for inspection by the manufacturer.

(iii) Promptly upon receipt of a manufacturer's request for a hearing or presentation of views, one shall be provided pursuant to § 3282.152.

(3) *Final determination.* If the manufacturer fails to respond to the Secretary's notice of Preliminary Determination or if the Secretary decides that the views and evidence presented by the manufacturer or others are insufficient to rebut the preliminary determination, the Secretary shall make a final determination that an imminent safety hazard or serious defect exists. In the event of a final determination, the Secretary shall direct the manufacturer to furnish notification and, where applicable, to correct the defect or hazards and to submit a plan in accordance with § 3282.410. The Secretary's order shall be published in the FEDERAL REGISTER.

(b) *Defects and noncompliances.* The SAA or the Secretary identified by § 3282.404(d) may make a Preliminary Determination that a defect or noncompliance exists in one or more mobile homes sold or otherwise released by a manufacturer or proceed under this section where an appropriate preliminary determination has been made under § 3282.405(a)(3)(ii) or a tentative finding has been made under § 3282.406(d)(2)(ii), or where the SAA or the Secretary, as appropriate otherwise has information which indicates the possible existence of a defect or noncompliance.

(1) *Preliminary determination.* (i) Whenever the SAA or the Secretary acting under this paragraph determines that there is reason to believe that one or more mobile homes contain a defect or noncompliance and makes a preliminary determination to that effect, under this section or whenever the SAA or the Secretary acting under this section receives the preliminary determination of another SAA or the Secretary under § 3282.405(a)(3)(ii), the SAA or the Secretary shall notify the manufacturer within 10 days of such preliminary determination and inform the manufacturer that it may request a hearing or presentation of views under subpart D to establish that there is no such defect or noncompliance.

(ii) Notice shall be sent to the manufacturer by certified mail and shall include:

(A) The preliminary determination made by the SAA or the Secretary;

(B) The factual basis for the determination;

(C) The date on which the determination was made;

(D) The identifying criteria of the mobile homes known to be affected.

The notice shall inform the manufacturer that the preliminary determination of defect or noncompliance shall become final unless the manufacturer responds within 5 days after receipt of such notice and requests a hearing or presentation

of views to rebut the SAA or the Secretary's determination. The notice shall also state that any information upon which the preliminary determination of noncompliance or defect has been based, such as test results and records of investigations, shall be available for inspection by the manufacturer.

(iii) Promptly upon receipt of a manufacturer's request for a hearing or presentation of views, one shall be held pursuant to § 3282.152.

(2) *Final determination.* If the manufacturer fails to respond to the notice of preliminary determination, or, if the SAA or the Secretary decides that the views and evidence presented by the manufacturer or others are insufficient to rebut the Preliminary Determination, the agency shall make a final determination that a defect or noncompliance exists. In the event of a Final Determination, the SAA or the Secretary shall direct the manufacturer to furnish notification and to submit a plan in accordance with § 3282.410.

(3) *Appeals.* When an SAA has made a final determination that a defect or noncompliance exists, the manufacturer within 10 days after the receipt of the notice of such final determination, may request an appeal to the Secretary under § 3282.309.

(c) *Waiver.* The formal notification requirements which would result from a determination made under this section may be waived by the SAA or the Secretary handling the matter upon receipt of satisfactory assurances from the manufacturer that:

(1) The manufacturer has identified all affected mobile homes which have been sold to purchasers, dealers and distributors;

(2) The manufacturer has performed the correction, at the manufacturer's expense, on all affected mobile homes; and

(3) The repairs, in the SAA or the Secretary's judgment, are adequate to meet the problem.

The manufacturer may, before acting under this subsection (c) obtain the concurrence of the SAA or the Secretary. Any action taken under this subsection (c) shall be completed within 30 days of the date of a Final Determination of imminent safety hazard or serious defect or 60 days of the date of a final determination of defect or noncompliance, unless the SAA or Secretary agrees to a longer period of time in extraordinary circumstances.

§ 3282.408 Required manufacturer correction.

(a) A manufacturer required to furnish notification under § 3282.405 or § 3282.407 shall correct, at its expense, any imminent safety hazard or serious defect which can be related to an error in design or assembly of the mobile home by the manufacturer, including an error in design or assembly of any component or system incorporated in the mobile home by the manufacturer.

(b) Where the manufacturer questions whether correction is required under paragraph (a) of this section, the Secretary shall provide an opportunity for a

hearing or presentation of views at which interested persons may present oral and written views prior to the issuance of an order directing the manufacturer to provide correction at its expense. The procedures of § 3282.152 shall apply to any proceedings which may be conducted under this section. To the maximum extent possible, actions taken under this section shall be coordinated with actions taken under § 3282.407 so that only one hearing need be held to determine both whether a defect or imminent safety hazard exists and whether correction is required.

§ 3282.409 Reimbursement for prior correction by owner.

(a) A manufacturer, required to correct under § 3282.408, shall provide reimbursement for reasonable cost to an owner of an affected mobile home who chose to make the correction. Any dispute over the amount to be reimbursed shall be referred by the manufacturer to the SAA where the mobile home is located, or to the Secretary if there is no SAA in that State, and the decision of the SAA or the Secretary shall be administratively final.

(b) Whenever a manufacturer who agreed voluntarily to correct under § 3282.405(b) or § 3282.407(c) finds that the owner of an affected mobile home has already corrected the failure to conform or imminent safety hazard, the manufacturer shall reimburse the owner in an amount equal to the reasonable cost to the manufacturer of making the correction.

§ 3282.410 Manufacturer's plan for notification and correction.

(a) The plan required to be submitted by § 3282.405(a) and § 3282.407(a) (3) and (b) (3) shall indicate how the manufacturer will fulfill its responsibilities under this section. The plan shall include a copy of the notice which meets the requirements of § 3282.411.

(b) Time and manner of notification.

(1) If not waived notification of an imminent safety hazard shall be communicated within 5 days after receipt of the order approving the manufacturer's plan for notification and remedy, except that the notification shall be furnished within a shorter period if there is incorporated in the order a finding that such period is in the public interest.

(2) Notice of serious defects, defects or noncompliances shall be mailed or otherwise communicated within 10 days after receipt of the order approving the manufacturer's plan for notification shall be furnished within a shorter period if there is incorporated in the order a finding that such period is in the public interest.

(3) The plan shall provide for notification to be accomplished:

(i) By mail to the first purchaser (not including any dealer or distributor of such manufacturer) of each mobile home containing the imminent safety hazard, serious defect, defect, or noncompliance, and any subsequent purchaser to whom any warranty provided by the manufacturer or required by Federal, State or

local law on such mobile home has been transferred, to the extent feasible;

(ii) By mail to any other person who is a registered owner of each mobile home containing the imminent safety hazard, serious defect, defect, noncompliance and whose name has been ascertained pursuant to § 3282.211;

(iii) By mail or other more expeditious means to the dealers or distributors of such manufacturer to whom such mobile home was delivered. Where a serious defect or imminent safety hazard is involved, notification shall be sent by certified mail if it is mailed.

§ 3282.411 Contents of notice.

The notice shall include the following:

(a) An opening statement: "This notice is sent to you in accordance with the requirements of the National Mobile Home Construction and Safety Standards Act of 1974."

(b) The following statement, as appropriate: "(Manufacturer's name or the Secretary, or the appropriate SAA)" has determined that:

(1) An imminent safety hazard may exist in (identifying criteria of mobile home).

(2) A serious defect may exist in (identifying criteria of mobile home).

(3) A defect may exist in (identifying criteria of mobile home).

(4) (Identifying criteria of mobile home) may not comply with an applicable Federal Home Construction or Safety Standard."

(c) A clear description of the imminent safety hazard, serious defect, defect, or noncompliance which shall include:

(1) The location of the imminent safety hazard, serious defect, defect, or noncompliance in the mobile home;

(2) A description of any hazards, malfunctions, deterioration or other consequences which may result from the imminent safety hazard, serious defect, defect, or noncompliance;

(3) A statement of the conditions which may cause such consequences to arise; and

(4) Precautions, if any, that the owner should take to reduce the chance that the consequences will arise before the mobile home is repaired.

(d) An evaluation of the risk to mobile home occupants' safety and the durability of the mobile home reasonably related to such imminent safety hazard, serious defect, defect, or noncompliance, including:

(1) The type of injury which may occur to occupants of the mobile home;

(2) The types of injuries which have occurred, including particularly any deaths, which appear to have resulted from the imminent safety hazard, defect or noncompliance; and

(3) Whether there will be any warning that a dangerous occurrence may take place and what that warning would be, and any signs which the owner might see, hear, smell, or feel which might indicate danger or deterioration of the mobile home as a result of the imminent safety hazard, serious defect, defect, or noncompliance.

(e) A statement of the measures needed to repair the imminent safety hazard, serious defect, defect, or noncompliance, in accordance with whichever of the following is appropriate:

(1) Where the manufacturer must bring the mobile home into compliance with applicable standards and correct the imminent safety hazard, have it corrected at no cost to the owner pursuant to § 3282.408, the statement shall include:

(i) A statement that the correction will be made at the manufacturer's expense;

(ii) A general description of the work involved in the repair;

(iii) The manufacturer's estimates of the date on which the manufacturer's agents will make the repair;

(iv) The method by which the owner will be contacted further when the repair date is to be carried out;

(v) The manufacturer's estimate of the time reasonably necessary to perform the labor required to correct the imminent safety hazard or serious defect;

(vi) Any other information set out in the plan for notification which may be helpful to the owner.

(2) When the manufacturer does not bear the cost of repair, the notification shall include:

(i) A statement that the manufacturer is not required by the Act to remedy without charge;

(ii) A description, including approximate price, of all material that must be added or replaced;

(iii) A description of any modifications that must be made to existing materials;

(iv) A detailed description, including appropriate illustrations, of each step required for correction;

(v) The manufacturer's estimate of the time reasonably necessary to perform the labor required to correct the defect;

(3) Where a determination has been made that notification is required, but a final determination has not been made as to the manufacturer's responsibility to bear the cost of correction, the Secretary may, after providing an opportunity for a hearing or presentation of views under § 3282.152, direct the manufacturer to issue a notification with a statement that the issue is being considered and, that a further notification will be sent when a determination has been made under § 3282.408.

(f) A statement informing the owner that he may submit a complaint to the Secretary if the owner believes that:

(1) The notification or the remedy described therein is inadequate; or

(2) The manufacturer has failed or is unable to remedy the problem in accordance with his notification; or

(3) The manufacturer has failed or is unable to remedy within a reasonable time after the owner's first attempt to obtain remedy; or

(g) A statement that any actions taken by the manufacturer under the Act in no way limit the rights of the owner or any other person under any contract or other applicable law and that the owner may

have further rights under contract or other applicable law.

§ 3282.412 Time for implementation of plan.

The manufacturer's plan submitted under § 3283.410 shall provide for implementation of notification and correction actions as follows:

(a) Imminent safety hazards. Implementation of the plan for notification and correction shall be completed within 30 days from the date of discovery or Final Determination of an imminent safety hazard or serious defect.

(b) Defects and Noncompliances. Implementation of the manufacturer's plan for notification shall be completed within 60 days from the date of discovery or final determination of defect or noncompliance.

(c) The Secretary may grant an extension of time for implementing the plan where the manufacturer shows good cause for the delay and the Secretary determines the extension is justified as extraordinary circumstances. When the Secretary grants an extension, the Secretary shall notify the manufacturer and publish notice of such extension in the FEDERAL REGISTER. The manufacturer shall implement its plan for notification and correction as approved by the Secretary.

§ 3282.413 Completion of remedial actions and report.

(a) Where a manufacturer is required to provide notification under this subpart, the manufacturer shall maintain in its files for five years from the date the notification campaign is completed a copy of the notice sent and a complete list of the people and their addresses.

(b) Where a manufacturer is required to provide correction under § 3282.408, or where the manufacturer otherwise corrects under § 3282.404(c) (2) (i), § 3282.405(b) or § 3282.407(c), the manufacturer shall maintain in its files, for five years from the date the correction campaign is completed, one of the following, as appropriate:

(1) A statement signed by the owner to the effect that the problem appears to have been corrected and that the owner is satisfied with the correction.

(2) Where the owner refuses to sign such a statement, a certification by the manufacturer that the repair was made to the standards in effect at the time the mobile home was manufactured, that any imminent safety hazard has been eliminated, and that the owner has refused to sign the statement in the previous paragraph, or

(3) Where the owner refuses to allow the manufacturer to repair the home, a certification by the manufacturer that it has informed the owner of the problem which may exist in the mobile home, that it has informed the owner of any risk to safety or durability of the mobile home which may result from the problem, and that the manufacturer has attempted to repair the problems only to have the owner refuse the repair.

(c) If any actions taken under §§ 3282.404(c) (2) (i), 3282.405(b) or

3282.407(c) are found by the SAA of the State in which the home is located or by the Secretary not to meet the standards or otherwise not to be adequate under the approved plan, the manufacturer may be required to provide notification or correction pursuant to this subpart.

(d) If, in the course of making corrections under any of the provisions of this subpart, the manufacturer creates an imminent safety hazard or serious defect the manufacturer shall correct the imminent safety hazard or serious defect under § 3282.408.

(e) Upon completion of an approved plan and upon completion of any remedial actions under this subpart except repairs made under § 3282.404(c) (2) (i), the manufacturer shall, within 30 days of the time limits set out in § 3282.412, provide a complete report of the action taken to the agency which provided the plan under § 3282.405 or 3282.410 or which would have approved the plan had one been required and any agency which contacted the manufacturer under § 3282.406(a) concerning the problem. This report shall identify by serial numbers the homes affected. The number of homes found to have the failure to conform or imminent safety hazard, and where in the distribution chain (manufacturer, distributor, dealer, purchaser, owner) they were found.

§ 3282.414 Replacement or repurchase of mobile home from purchaser.

(a) Whenever an imminent safety hazard or serious defect which must be corrected by the manufacturer at his expense under § 3282.408 is of such severity that it cannot be repaired within 60 days in accordance with section 615(i) of the Act, the Secretary may require—

(1) That the mobile home be replaced by the manufacturer with a mobile home substantially equal in size, equipment, and quality, and either new or in the same condition the defective mobile home would have been in at the time of discovery of the imminent safety hazard or serious defect had the imminent safety hazard or serious defect not existed; or

(2) That the manufacturer take possession of the mobile home and refund the purchase price in full, less a reasonable allowance for depreciation based on actual use if the home has been in the possession of the owner for more than one year. Such depreciation shall be based upon an appraisal system approved by the Secretary, and shall not take into account damage or deterioration resulting from the imminent safety hazard or serious defect.

(b) In determining whether to order replacement or refund by the manufacturer, the Secretary shall consider:

(1) The threat of injury or death to mobile home occupants;

(2) Any costs and inconvenience to mobile home owners which will result from the lack of adequate repair within the specified period;

(3) The expense to the manufacturer;

(4) Any obligations imposed on the manufacturer under contract or other

applicable law of which the Secretary has knowledge; and

(5) Any other relevant factors which may be brought to the attention of the Secretary.

(c) In those situations where under contract or other applicable law the owner has the right of election between replacement and refund, the manufacturer shall inform the owner of such right of election and shall inform the Secretary of the election, if any, by the owner.

(d) This section applies where an attempted correction of an imminent safety hazard or serious defect relieves the safety problem but does not bring the home in conformity to the standards.

(e) Where replacement or refund by the manufacturer is ordered under this section, it shall be carried out within 30 days of the Secretary's order to replace the mobile home or refund the purchase price unless the Secretary, for good cause shown, grants an extension of time for implementation of such order and publishes notice of extension in the FEDERAL REGISTER.

§ 3282.415 Mobile homes in the hands of dealers and distributors.

(a) The manufacturer is responsible for correcting any failure to conform any imminent safety hazards which exist in mobile homes which have been sold or otherwise released to a distributor or dealer but which have not yet been sold to a purchaser. This section sets out the procedures to be followed by dealers and distributors for handling mobile homes in such cases.

(b) Whenever a dealer or distributor finds a problem in a mobile home which the manufacturer is responsible for correcting under paragraph (a) of this section, the dealer or distributor shall contact the manufacturer, provide full information concerning the problem, and request appropriate action by the manufacturer in accord with paragraph (c) of this section. Where the manufacturer agrees to correct, the manufacturer shall maintain a complete record of its actions. Where the manufacturer authorized the dealer to make the necessary corrections on a reimbursable basis, the dealer or distributor shall maintain a complete record of its actions. Agreement by the manufacturer to correct or to authorize corrections on a reimbursable basis under this subsection constitutes a determination of the Secretary for purposes of section 613(b) of the Act with respect to judicial review of the amount which the manufacturer agrees to reimburse the dealer or distributor for corrections.

(c) Upon a final determination by the Secretary or a State Administration Agency under § 3282.407, or upon a determination by a court or competent jurisdiction that a mobile home fails to conform to the standard or contains an imminent safety hazard after such mobile home is sold or otherwise resold by a manufacturer to a distributor or a dealer and prior to the sale of such mobile home by such distributor or dealer to a pur-

§ 3282.454 Monitoring inspection fee.

(a) There is hereby established a monitoring inspection fee of \$19.00 which is to be paid by manufacturers for each mobile home manufactured in non-approved and conditionally approved states as described in § 3282.210.

(b) The monitoring inspection fee to be established by approved states under § 3282.307(a) shall be in the amount of \$19.00 per mobile homes produced therein.

Subpart K—Departmental Oversight

§ 3282.501 General.

The Secretary shall oversee the performance of SAAs, the Secretary's agent, and primary inspection agencies as follows:

(a) The Secretary shall review SAA reports to ensure that States are taking appropriate actions with regard to the enforcement of the standards and with respect to the functions for which they are approved under these regulations.

(b) The Secretary shall review monitoring reports submitted by the Secretary's agent to determine that it is performing in accordance with the contract between it and the Secretary.

(c) The Secretary shall review monitoring reports to determine whether PIAs are fulfilling their responsibilities under these regulations.

(d) The Secretary shall make random visits for the purpose of overseeing the activities of SAAs and the Secretary's agent.

(e) The Secretary shall take such other actions to oversee the system established by these regulations as it deems appropriate.

(f) All records maintained by all parties acting under these regulations with respect to those actions shall be available to the Secretary, the Secretary's agent, and where appropriate, SAAs and PIAs for review at any reasonable time.

§ 3282.502 Departmental implementation.

To the extent that SAAs or any parties contracting with the Secretary do not perform functions called for under these regulations, those functions shall be carried out by the Secretary with its own personnel or through other appropriate parties.

§ 3282.503 Determinations and hearings.

The Secretary shall make all the determinations and hold such hearings as are required by these regulations, and the Secretary shall resolve all disputes arising under these regulations.

Subpart L—Manufacturer, IPIA and SAA Reports

§ 3282.551 Scope and purpose.

This subpart describes the reports which shall be submitted by manufacturers, PIAs and SAAs as part of the system of enforcement established under these regulations. Additional reports described in subpart I are required when corrective actions are taken under that subpart.

§ 3282.552 Manufacturer reports for joint monitoring fees.

For each month, the manufacturer shall submit to the IPIA in each of its manufacturing plants a report that includes the serial numbers of each mobile home manufactured at that plant during that preceding month, and the State of first location, after leaving the manufacturing plant, of such mobile homes. The State of first location for the purpose of this report is the State of the premises of the distributor, dealer or purchaser to whom the mobile home is first shipped. The report for each month shall be submitted by the tenth day of the following month.

§ 3282.553 IPIA reports.

Each IPIA shall submit by the twentieth day of each month to each SAA, or

if no SAA to the Secretary, in each state where it is engaged in the inspection of manufacturing plants, a report of the operations of each manufacturer in that State for the preceding month which includes the following information:

(a) The number of single-wide and double-wide mobile homes labeled in the preceding month;

(b) The number of inspection visits made to each manufacturing plant in the preceding month; and

(c) The number of mobile homes with a failure to conform to the standards or an imminent safety hazard during the preceding month found in the manufacturing plant.

The manufacturers report for the preceding month described in § 3282.552 shall be attached to each such IPIA report as an appendix thereto.

§ 3282.554 SAA reports.

Each SAA shall submit, prior to the last day of each month, to the Secretary a report covering the preceding month which includes:

(a) The description and status of all presentations of views, hearings and other legal actions during the preceding month; and

(b) The description of the SAA's oversight activities and findings regarding consumer complaints, notification and correction actions during the preceding month. The IPIA report for the preceding month described in § 3282.553, as well as the reports described in § 3282.413 and manufacturer reports under § 3282.404(d), which were received during the preceding month, shall be attached to each such SAA report as an appendix thereto.

Effective date: This Part 3282 is effective May 13, 1976.

CONSTANCE B. NEWMAN,
Assistant Secretary for Consumer
Affairs and Regulatory Functions.

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THURSDAY, MAY 13, 1976



PART IV:

DEPARTMENT OF
HOUSING AND
URBAN
DEVELOPMENT

Low Income Housing



SECTION 8 HOUSING
ASSISTANCE PAYMENTS
PROGRAM—
EXISTING HOUSING

Title 24—Housing and Urban Development
CHAPTER VIII—LOW INCOME HOUSING

[Docket No. R-76-381]

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

Miscellaneous Amendments

The Department gave notice on March 8, 1976, at 41 FR 9998, that it was proposing to amend 24 CFR Part 882. The purposes of the proposed changes to the Section 8 Existing Housing Program were to simplify processing and administrative procedures, increase operating flexibility, and incorporate various technical and editorial changes. The comment period closed April 5, 1976.

The Department has received more than 75 comments in response to the March 8, 1976, publication. All comments were carefully considered, and changes have been made to the proposed regulations, as set forth below, based on these comments. A discussion of the principal changes and of the more recurrent and significant comments is set forth below.

1. Sec. 882.101(b), "Conversion of Section 23 Housing Projects," has been revised in several respects.

(a) In response to a comment, Sec. 882.101(b)(1) has been clarified to state that no HUD policy or procedure shall affect prior rights of a tenant, as well as of an owner, under a lease entered into under section 23 of the U.S. Housing Act of 1937.

(b) In response to several comments, a new Sec. 882.101(b)(7) has been added to provide that a completed Section 23 New Construction or Substantial Rehabilitation Project may be converted to Section 8 under contractual arrangement for such term and on such conditions as may be agreed to by all the parties and approved by HUD. The applicable Fair Market Rents shall be those for Section 8 Existing Housing, except that for any unit which was completed no more than six years prior to the leasing thereof, the applicable rent shall be determined in accordance with Sec. 882.120(b). This change incorporates in the regulation certain material included in a HUD Notice dated May 1, 1975, which was sent to Regional Administrators, Field Office Directors and PHAs.

2. The definition of Allowance for Utilities and Other Services has been revised by deleting the second sentence (see Sec. 882.102). This is a technical clarification only.

3. The definition of "Eligible Family" in Sec. 882.102 has been modified by moving the substance of the last sentence regarding continued Family eligibility to Sec. 882.212, "Reexamination of Family Income, Composition, and Extent of Exceptional Medical or Other Unusual Expenses." This is a technical correction to move the material to a more appropriate place in the regulations. (See item 38 of this preamble.) In addition, the term "handicapped" has been clarified to specify that it includes mentally or physically handicapped.

4. The definition of "Housing Assistance Plan" has been revised to conform to the definition in the regulations to be issued pursuant to section 213 of the HUD Act.

5. In response to comments that Sec. 882.103(a) be clarified, the provision has been revised to state that a Certificate holder shall be responsible for finding a unit suitable to the holder's needs and desires in any area where the PHA determines that it is not legally barred from entering into Contracts. The comparable language in the proposed regulations was "any area wherein the PHA is authorized to execute Contracts." (See also Secs. 882.209(e)(1) and (2).)

6. Several comments suggested that Sec. 882.103(a) be revised to require the PHA to provide assistance to certain Families which are unable to locate approvable units. Accordingly, the provision has been amended to require that such assistance be provided if it is requested by the Family.

7. It was suggested that Sec. 882.103(c) be clarified. Accordingly, the provision has been revised to state that PHAs are encouraged to promote greater choice of housing opportunities by (1) seeking participation of Owners in any area in which the PHA has determined that it is not legally barred from entering into Contracts, (2) advising Families of their opportunity to lease housing in all such areas, (3) cooperating with other PHAs by issuing Certificates to Families already receiving the benefit of Section 8 housing assistance payments who wish to move from the operating area of one PHA to another, and (4) developing administrative arrangements with other PHAs to permit Certificate holders to seek housing in the broadest possible area. In any geographic area established for the purpose of allocating funds, HUD will give preference in funding to PHAs which provide Families the broadest geographical choice of units.

8. Sec. 882.104(a), "Maximum Total ACC Commitment," has been changed to provide that the maximum total annual contribution that may be contracted for shall not exceed the total for all the units of the Fair Market Rents or such higher rent as approved by HUD for a unit size or type pursuant to Sec. 882.106(a)(3), instead of the total of the Fair Market Rents plus an allowance for the fee for the regular costs of PHA administration. No amount may be added for the fee for the regular costs of PHA administration except with the approval of the Assistant Secretary for Housing Production and Mortgage Credit, where the need for the additional funds is evident from the estimates of required annual contributions on the prescribed forms submitted pursuant to Sec. 882.204(b)(2).

9. Sec. 882.106(a), "Fair Market Rent Limitation," has been revised in a number of respects. Several comments suggested that the requirement in paragraph (a) of the proposed regulations that PHA approvals of rents higher than published Fair Market Rents must be compensated for by other lower rents was inappropriate because it is unreal-

istic to expect an equal number of units to be available at compensating lower rents. Other comments objected to the provision limiting this PHA authority to not more than 20 percent of the units under their ACC. There were also objections to the requirements that the PHA specify the factors on which each higher rent approval is based, and maintain written certifications for inspection by HUD.

A problem from HUD's viewpoint in connection with authorization to PHAs to make such higher rent determinations is the need for safeguards to maintain an appropriate relationship between program costs and program objectives in terms of numbers of units to be assisted. After careful consideration of the foregoing, as well as other comments, and all relevant considerations, Sec. 882.106 has been revised to authorize a PHA to approve Gross Rents on a unit-by-unit basis which exceed the Fair Market Rents by up to 10 percent with respect to no more than 20 percent of the units under its ACC, and to exercise such authority with respect to more units only with HUD approval; however, in considering whether to grant such approval, HUD will review the appropriateness of the applicable Fair Market Rents and the relationship of estimated program costs to program objectives.

A new paragraph (a)(3) has been added which provides that HUD may approve, upon request from a PHA supported by a statement of the special circumstances, maximum Gross Rents of up to 20 percent above the Fair Market Rents for all units of a given size or type within a designated municipality, county, or similar locality. However, HUD will review the appropriate Fair Market Rents and the relationship of estimated program costs to program objectives. Moreover, in no event shall a maximum Gross Rent, as increased under paragraph (a)(3), exceed the rent determined by HUD to be the average rent currently being charged for a standard unit of similar size or type in the applicable municipality or county. This limitation will not apply to approvals of similarly higher rents under paragraph (a)(4), where the approval can only be granted by the Regional Administrator.

10. Sec. 882.106(b), "Rent Reasonableness Limitation," has been reorganized and clarified in several respects. A provision has been added to clarify that for a rent-controlled unit, comparable units are those which are rent controlled, and for a unit not subject to rent control, comparable units are those not rent controlled. In addition, PHAs are required to maintain for three years all certifications and relevant documentation for inspection by HUD.

11. Sec. 882.108, "Rent Adjustments," has been revised to delete the requirement that the Owner submit with his request for a rent adjustment a certification signed by the Owner and the Family that the unit is Decent, Safe, and Sanitary and that the Owner is otherwise in compliance with the terms of the Lease. This change is in response to comments which suggested that this requirement is an un-

necessary burden on the Owner since the PHA makes at least annual inspections and the Owner certifies by the endorsement on his monthly checks (see item 40 of this preamble) that the unit is in Decent, Safe, and Sanitary condition. Paragraph (a)(2), "Special Adjustments," has been revised to clarify that the effective date of a special adjustment need not be the anniversary date of the Contract if the Owner otherwise has the legal right to terminate the tenancy on the effective date. (See also Section 2.7 of the Contract, Appendix II, where conforming changes have been made.)

12. In response to comments, Sec. 882.109(b), "Food Preparation and Refuse Disposal," has been revised to clarify under the Acceptability Criteria that the cooking stove or range and the refrigerator may be supplied by either the Owner or the Family.

13. It was suggested that Sec. 882.109(f), "Structure and Materials," be revised to require that mobile homes be tied down. Accordingly, the provision has been clarified to require that a mobile home be securely anchored by a tie-down to appropriate ground anchors.

14. Many comments suggested that the definition of Congregate Housing in Sec. 882.109(m) be revised to permit Families to select units in community residences which contain shared facilities and which are especially appropriate for retarded persons. This provision has not been revised, pending completion of the environmental impact statement process. The Department is considering amending the regulation at that time to provide for this type of housing. See the discussion on environmental requirements following the last numbered item of this preamble.

15. Sec. 882.110(b) has been revised to provide that the Fair Market Rent for each unit of Congregate Housing shall be the same as for 0-bedroom units, except that if the unit consists of two or more private rooms, the Fair Market Rent shall be the same as for a 1-bedroom unit. In addition, in determining the reasonableness of the rents, consideration shall be given to the presence or absence of common rather than private cooking and dining facilities.

16. Secs. 882.110(c) and (d) have been clarified to include a reference to the Farmers Home Administration section 515 program. Sec. 882.110(d) has been clarified by the inclusion of a reference to State or locally subsidized units.

17. (a) In response to comments, Sec. 882.110(c) has been revised to provide that in any section 221(d)(3) (BMIR), section 202, section 236 (insured or non-insured) or Farmers Home Administration section 515 interest credit project: (1) units receiving section 23 or rent supplement assistance may continue to receive such assistance or, upon conversion of section 23 units to section 8, the occupants may receive assistance under section 8, and (2) occupants of units not receiving such assistance may receive section 8 assistance if the total number of units in the project receiving such assistance, together with units receiving

assistance under the section 23, rent supplement, or section 236 "deep subsidy" programs, or under any State or local subsidy (other than property tax exemption or abatement) assistance programs, does not exceed 40 percent of the total number of units in the project. Upon request, this limitation may be exceeded for the purpose of relieving hardship of a particular Family or Families only with the approval of the Regional Administrator. Prior to granting such authorization, the Regional Administrator will review the request to determine whether assistance under Part 886, Subpart A, "Additional Assistance Program for Projects with HUD-Insured and HUD-Held Mortgages," (41 FR 12170, March 23, 1976) is more appropriate and can be scheduled.

(b) Language has been added to Sec. 882.110(c) to clarify that, in the case of State or locally subsidized projects, the term subsidized does not include exemption or abatement of property tax for the purpose of the 40 percent limitation.

18. Many comments suggested that Section 882.115, "Rent Reduction Incentive," be deleted because it tends to restrict choice to low cost housing areas, results in a credit being paid to Families remaining in place, is not worth the administrative time involved, or has no effect where vacancy rates are low. The Department has determined not to delete the provision pending recommendations to be received from a major study now being undertaken to evaluate the program, including this important feature. The comments received will be considered in connection with these recommendations.

19. The title of Sec. 882.115 is changed from "Shopping Incentive Credit to Family for Savings of Government Assistance Payments" to "Rent Reduction Incentive." The new title is more appropriate because (a) the purpose of the section is to provide for more efficient use of available funds, and (b) the Rent Credit is equally available to a Family which negotiates a lower rent for the unit it already occupies, and, therefore, is not "shopping" for a unit in the usual sense.

20. Sec. 882.115 has also been revised to base the amount of the Rent Credit on the difference between the proposed Contract Rent plus any Allowance and the Fair Market Rent or such higher rent as approved by HUD for a unit size or type pursuant to Sec. 882.106(a)(3).

21. The prohibition against use of a Rent Credit if the Family selects a unit receiving the benefit of Federal, State or local subsidy is continued (Sec. 882.115(c)), but a new provision has been added stating that HUD may, on its own initiative or at the request of a PHA, authorize applicability of the Rent Credit to subsidized units if HUD determines that it is in the public interest to do so because of high vacancies or high turnover in the project. The PHA is required to inform Certificate holders that the approved units are not subject to the general prohibition.

22. In response to comments, Sec. 882.116(r) has been clarified to state

that the PHA is responsible for compliance with equal opportunity requirements, including efforts to provide opportunities for Families to seek housing outside areas of economic and racial concentration.

23. In response to comments, Sec. 882.116(j) has been revised to include a provision that the PHA is responsible for assuring compliance with the 40 percent limitation on the number of Section 8 assisted units and other subsidized units which may be included in a project. (See item 17 of this preamble).

24. Several comments suggested that Sec. 882.116, "Responsibilities of the PHA," be revised to require the PHA to supply the Family with a list of Owners interested in participating in the program. The regulations do not prohibit a PHA from supplying such lists. The Department has determined that this is a matter which should be left to the discretion of the PHA.

25. In response to comments, Sec. 882.120, "Recently Completed Housing," has been clarified and revised in several respects.

(a) Sec. 882.120(a) provides that HUD may invite and approve applications for use of Existing Housing units at the higher Fair Market Rents authorized by paragraph (b) of the section, where construction or rehabilitation of such units was completed no more than 6 years prior to the date of the leasing of the unit ("Recently Completed Housing") in areas which meet two characteristics. The first of the two characteristics is being revised to state: the housing needs of Lower-Income Families in the area cannot be addressed by use of Existing Housing Units "within the rent limitations authorized under Sec. 882.106" rather than "at or below the published Fair Market Rents for Existing Housing." See also paragraphs (a)(1)(ii) and (a)(2)(ii) where conforming changes have been made.

(b) In response to a comment, paragraph (a) has been revised to define "completed" as the first date the units were legally available for occupancy.

(c) The term "area covered by a single Fair Market Rent schedule for Existing Housing" in paragraphs (a)(1)(i) and (a)(2)(i) has been changed to "municipality, county, or similar area." This change is in response to comments that the vacancy rate determination should be sufficiently localized to permit the adaptation of the program for maximum feasibility on a local basis.

(d) In response to comments, paragraph (b) has been revised to state that rents up to 10 percent above the Fair Market Rents for Recently Completed Housing may be approved pursuant to Sec. 882.106; however, rents more than 10 percent above the applicable Fair Market Rent may not be approved for Recently Completed Housing.

(e) The last sentence of paragraph (d) has been deleted because the limitation is covered by Sec. 882.108(a).

26. A new Sec. 882.122 has been added to provide that these regulations as amended shall be applicable to Certifi-

cates outstanding on and Requests for Lease Approval pending on the date of publication to the maximum extent and in the manner that the PHA deems feasible.

27. Sec. 882.202 has been revised to require the field office to consider any applicable State or areawide housing allocation plan, as well as any Housing Assistance Plan and other pertinent information, in determining the number and types of units to be made available.

28. In response to comments, Sec. 882.203(a) has been revised to provide that where the field office issues an invitation for Existing Housing Program applications, it shall send information concerning the invitation, rather than a copy of the invitation, to trade journals, news media, minority organizations involved in housing and community development, and fair housing groups.

29. Sec. 882.204(a) (3) has been clarified to provide that the demonstration of consistency with the Housing Assistance Plan included as part of the PHA's application must include a demonstration of consistency with the goals in the Plan for meeting the housing needs of Lower-Income Families.

30. Sec. 882.204(a) (4) of the proposed regulations, which would have required that the PHA's application include a certification that it will take affirmative action to provide opportunities to persons expected to reside in the locality because of present or planned employment, has been deleted from this clause, and in lieu thereof has been included with other certifications which are a part of the equal opportunity housing plan (see Sec. 882.204(b) (1) (iii)).

31. Sec. 882.204(b) (1) (i) (C) has been revised by deleting from this clause the specific discussion of requirements or preference systems used by the PHA in selecting applicants and by referencing the more appropriate place in the regulations where the material is now covered (see Sec. 882.209(a), "Initial Determination of Family Eligibility").

32. Sec. 882.205(b) has been revised to provide that, within 10 days after the screening of an application, the field office shall forward a notification requesting comments, in the form prescribed by HUD, to the chief executive officer of the unit of general local government in which proposed housing assistance is to be utilized, unless the comments of the appropriate executive officer in regard to the specific application have been previously submitted.

33. Sec. 882.205(c), "Evaluation of Applications," has been revised by deleting the last sentence regarding selection of applications where there are two or more approvable applications for a particular area. This statement has been replaced with a reference to the provision in Sec. 882.103(c) which provides that "in any geographic area established for the purpose of allocating funds, HUD will give preference in funding to PHAs which provide Families the broadest geographical choice of units."

34. Sec. 882.209(a), "Initial Determination of Family Eligibility," has been reorganized and revised to include in

paragraph (a) (2) the material on PHA requirements and preference systems. Under the proposed regulation, Sec. 882.204(b) (1) (i) (C) included a provision that "no local residency requirements or priority systems relating to place of residence may be applied to applicants who are working in the community." Several comments suggested that residency requirements should be permitted without any restriction, while others suggested that they be prohibited for all applicants, not just those working in the community. The Department has determined that, in substance, the provision in the proposed regulation should be made final. A suggestion to include those who are "planning to work" in the community was deemed to be too vague for practical implementation.

The provision has, however, been clarified to provide that, while a residency requirement for those living in the jurisdiction of the PHA at the time of application is permissible, no requirement or preference may be based upon the identity or location of the housing which is occupied or proposed to be occupied by the applicant, nor upon the length of time the applicant has resided in the jurisdiction. Moreover, applicants who are working or who have been notified that they are hired to work in the jurisdiction are required to be treated as residents of the jurisdiction. (See also item 57.)

35. Sec. 882.209(a) (4) has been revised to state explicitly in the regulations what is implicit in the ACC that the PHA shall maintain a system to assure that it will comply, to the maximum extent feasible, with the unit distribution in the ACC, as well as maintain a system to assure that it will be able to honor all outstanding Certificates.

36. It was suggested that Sec. 882.209(d) regarding expiration and extension of Certificates be simplified. Accordingly, the provision has been revised to permit the Family, where the Certificate expires or is about to expire, to request an extension from the PHA. If the PHA finds, after reviewing the situation, that there is a reasonable possibility the Family may find a suitable unit, the PHA may grant one or more extensions not to exceed a total of 60 days. The provision permitting the Family to reapply even if the PHA determines not to extend the Certificate or has already extended the Certificate has been retained.

37. In response to comments requesting clarification of Sec. 882.209(e) (2) on the question of what consideration should be given by the PHA to a Family moving in from another jurisdiction, the provision has been revised to state that the PHA shall "either treat the Family as a Family to whom the PHA is already providing assistance who wishes to move to another unit or as a resident who has submitted an application for assistance." In either case, the PHA may not deny the Family a Certificate on the ground that it exceeds the admission income limits for the area to which the Family is moving.

38. A provision has been added to Sec. 882.212 that a Family may at any time

request a redetermination of its Gross Family Contribution on the basis of changes in Family Income or other relevant circumstances. Sec. 882.212 has also been revised by inserting the provision regarding continued Family eligibility from the definition of Eligible Family as discussed in item 3 of this preamble. In response to comments suggesting that the Contract terminate when a Family's income no longer qualifies it for housing assistance payments, a provision has been added to state that (a) if the Contract terminates at a time when the Family is ineligible for payments, the Contract shall not be renewed, and (b) if one year has elapsed since the date of the last payment on behalf of the Family, the Contract shall be terminated (with the consent of the Owner if the Contract does not provide for termination under such circumstances) even if the termination date under the Contract has not yet been reached. (See also section 1.2(e) (1) of the Contract, Appendix II.)

39. A new Section 1.2(e) (2) has been added to the Contract in response to comments suggesting that a provision be added to permit the termination of assistance to a Family which does not comply with its obligations under the program. The provision states that the PHA may determine, after giving reasonable notice and opportunity to respond, that the Family is ineligible for further payments because of failure to comply with its obligations under the Certificate. The PHA shall notify the Family and the Owner of any such determination. This notification shall state that payments on behalf of the Family shall terminate as of the date of the notification. However, the Owner may qualify for continued payments for a limited time pursuant to and subject to the conditions and limitations of Section 1.4 of the Contract, if he proceeds to evict the Family as quickly as possible. (See also item 42 of this preamble.)

40. Several comments suggested that the requirement that the Owner submit monthly requests to the PHA for housing assistance payments is unduly burdensome. Accordingly, Section 2.4 of the Contract has been revised to provide that the Owner shall be paid monthly the amount due under the Contract, and that the endorsement on the check evidencing such payment (1) shall be conclusive evidence that the Owner has received full payment, and (2) shall constitute certification by the Owner as to all the basic elements entitling him to the payment. The Owner will agree that, should the PHA or HUD determine that he is not entitled to the payment, the amount of the overpayment may be deducted from any other amounts due the Owner. The Owner will further agree to notify the PHA promptly of any change of circumstances which would affect the amount of the monthly payment and to return any payment sent by the PHA which does not conform to the changed circumstances. (See also Sections 1.6 and 2.9 of the Contract and 2.13(e) (2) of the ACC where conforming changes have been made.)

41. The title of Section 2.15 of the Contract (see Appendix II) has been changed from "Nonassignability" to "Assignment of the Contract or Interest Therein," and the word "conveyance" has been deleted from the body of the section. These changes are in response to comments that Owners objected to a Contract provision which seemed to prohibit them from selling the property.

42. Paragraph (g) of the required lease provisions (see Appendix VI) has been amended to provide that the lease shall terminate on the date the Housing Assistance Payments Contract ends, including any termination due to termination of eligibility of the Lessee. The Lessee is subject to eviction by the Owner if the PHA determines, after reasonable notice and opportunity to respond, that the Lessee is ineligible because of failure to comply with the Lessee's obligations under the Certificate.

43. A number of comments which reflected misunderstanding or involved interpretations of the regulations will be handled individually as required. Such comments included matters involving Sec. 882.112, "Security and Utility Deposits," and Sec. 882.204, "Submission of Application."

44. Several comments suggested that explicit provision be made for the Family to dispute certain determinations by the PHA such as the determination of a Family's Gross Family Contribution. The PHA's administrative plan must address establishment of complaint and appeal procedures (see Sec. 882.204(b)(3)(ii)). If it becomes apparent that those procedures are not adequate, HUD will consider specific regulations.

45. Several comments from New York agencies requested that the provisions of Part 886, Subpart A, "Additional Assistance Program for Projects with HUD-Insured and HUD-Held Mortgages," be made applicable to State assisted projects. This is being responded to separately in connection with Part 886 since the subject matter is covered by that Part.

46. One comment asked which Fair Market Rents apply to mobile homes. A separate schedule of Fair Market Rents is not published for mobile homes in the Existing Housing Program. The applicable rents are those for non-elevator units of the appropriate size, subject to the reasonableness determination required by Sec. 882.106.

47. A number of comments stated that the administrative fee paid under the ACC (see Sec. 882.104) was too low. The question of the amount of the fee is part of a study being undertaken on that subject and other important features of the program and will be reconsidered on the basis of recommendations made in connection with the study.

48. It was suggested that the ACC reserve account (see Sec. 882.104) be revised to include a trigger mechanism similar to the mechanism in the New Construction and Substantial Rehabilitation ACCs. The Department has determined that this is not necessary since the Existing Housing ACC is for a relatively short term and the ACC does not contem-

plate any capital cost financing involving the reserve as security.

49. Several comments suggested that Sec. 882.109, "Housing Quality Standards," be revised to require that the housing meet local codes. It was felt that since code standards vary widely, the regulations should set national standards for what is Decent, Safe, and Sanitary housing, and leave local code enforcement to local officials. However, the Department has determined to continue to permit PHAs to propose local code requirements as variations to the Acceptability Criteria.

50. Several comments asked whether a Family which qualifies for, a three bedroom unit, for example, may select a two bedroom unit. The answer is "yes" so long as the standards on "Space and Security" in Sec. 882.109(c) are met. It was determined that the Family should have the flexibility to choose a smaller unit as a trade-off for other amenities such as convenience to transportation and shopping or an outdoor play area.

51. It was suggested that Sec. 882.109 (e) be revised to delete the requirement that each sleeping room include at least one window. The Department has determined not to revise the provision since many deaths from fire occur in bedrooms and a window provides an important possible escape route.

52. One comment asked whether the Project Selection Criteria apply. The answer is no. The Housing Quality Standards set forth in Sec. 882.109 are the applicable criteria for this program. The comment also asked whether the Affirmative Fair Housing Market Regulations apply. They are not applicable because these regulations apply to owners and are inappropriate for this program where the Family selects the unit (see Sec. 882.103).

53. A suggestion was received that the income limits for admission to the program should be published in the FEDERAL REGISTER. (See Sec. 882.113.) It has been determined that this would be administratively infeasible because of the thousands of areas involved and the number of revisions made. However, income limits for a particular area are available upon request at the PHA or the HUD field office.

54. Several comments suggested that families be permitted to pay more than 25 percent of their income towards the rent on a voluntary basis (see Sec. 882.114). This maximum is a statutory requirement (see section 8(c)(3) of the U.S. Housing Act of 1937).

55. It was suggested that the requirement in Sec. 882.120, "Recently Completed Housing," that the unit be no more than six years old at leasing be dropped and that housing once identified as Recently Completed Housing be permitted to continue in that status regardless of age. This suggestion has not been adopted because the Department has determined to permit up to 75 percent of the New Construction Fair Market Rents only for the most recently completed existing housing stock which is most like newly constructed housing. Several com-

ments also suggested that the percentage of the New Construction Fair Market Rents used to determine the Fair Market Rents for Recently Completed Housing should be higher than 75 percent. No change has been made since (a) the Fair Market Rents for new construction reflect anticipated increases during the period of construction and (b) Recently Completed Housing Fair Market Rents may be exceeded by up to 10 percent with HUD approval.

56. Several comments asked what types of priorities the PHA may include in its equal opportunity housing plan (see Sec. 882.204(b)(1)(i)(C)). In line with Congressional policy under the U.S. Housing Act of 1937 of not prescribing the types of preferences or priorities which PHAs may adopt, the regulation permits them to adopt those they deem to be appropriate and legally acceptable, such as for families living in substandard housing or under substandard conditions, such as overcrowding; displaced families; or families paying more than 25 percent of their income for rent. (See, however, item 34 of this preamble.)

57. It was suggested that the PHA monitor the use by the family of the payment it receives when its Gross Family Contribution minus the Rent Credit is less than the Allowance for Utilities and Other Services (see Sec. 882.210(c)). The purpose of such a requirement would be to assure that the Family used the payment for utilities. In the interest of encouraging energy conservation, as well as avoiding the administrative costs involved, it has been determined we will not require documentation on whether the family has used the entire Allowance for utilities.

58. Several comments suggested that Sec. 882.215, "Evictions," should be revised to delete the requirement that the PHA authorize the eviction. This is a statutory requirement (see section 8(d)(1)(B) of the U.S. Housing Act of 1937).

59. Although Sec. 882.215, "Evictions," is not being amended, the program will be subject to the regulations establishing a departmentwide policy on tenant evictions which were published for comment at 41 FR 16924 (April 22, 1976).

60. A comment suggested that the ACC be amended to permit the PHA to vary the unit mix by up to 25 percent without amending the ACC. The Department has determined not to amend the ACC in this regard, but to retain the provision in Section 1.1(d) that the PHA enter into Contracts "to the maximum extent feasible" in accordance with the specified unit mix. This provision permits adequate flexibility for practical purposes and requires an amendment of the ACC for substantial changes.

61. A comment suggested that the Owner should not be required to give the PHA and the Government access to his books and records that are pertinent to compliance with the Contract as required by Section 2.9 of the Contract. HUD has determined that this is a reasonable and necessary requirement in relation to a contract under which public funds are disbursed.

62. It was suggested that Section 2.14 of the ACC, "General Depositary Agreement," be modified to permit State agencies which are required to deposit funds with the State treasury to do so. Although the form of ACC is not being amended, the Section 8 Housing Finance and Development Agencies Regulations, 24 CFR Part 883, are being revised to permit, subject to certain requirements which will be set forth in the amendment to that Regulation, the amendment of the ACC.

A Finding of Inapplicability was prepared with respect to the Existing Housing Regulations as published for effect on May 5, 1975 (40 F.R. 19612) to the effect that Section 102(2)(C) of the National Environmental Policy Act of 1969 is inapplicable. It was nevertheless determined to prepare an environmental impact statement with respect to Section 882.109, "Housing Quality Standards," as published for comment March 8, 1976. The preamble to the regulations as published for comment noted that a draft environmental impact statement had been prepared. This statement, regarding the Housing Quality Standards, has been circulated for comment and is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10141, Department of Housing and Urban Development, 451 Seventh St. SW., Washington, D.C. and in the Information Centers of the Department's Regional Offices. The comment period for the draft environmental impact statement expires May 17, 1976.

The only changes being made to the Housing Quality Standards are clarifications, which relate to the manner in which the Department interprets the currently effective requirements of Sections 882.109 (b) and (f), Food Preparation and Refuse Disposal and tie-down for mobile homes, respectively (see items 12 and 13 of this preamble). Appropriate modifications may be made in Section 882.109 following completion of the environmental impact statement process.

With respect to the amendments set forth below, a Finding of Inapplicability has been made, in accordance with HUD Handbook 1390.1. A copy of the Finding is available for public inspection in the Office of the Rules Docket Clerk during regular business hours, at the address set forth above.

In addition, a Finding of Inapplicability of inflation impact statement requirements has been made in accordance with HUD procedures. A copy of this finding is available for public inspection in the Office of the Rules Docket Clerk during regular business hours, at the address set forth above.

Accordingly, 24 CFR Part 882 is revised to read as follows:

Subpart A—Applicability, Scope and Basic Policies

- Sec.
882.101 Applicability and scope.
882.102 Definitions.
882.103 "Finders-keepers" policy.
882.104 Annual contributions.
882.105 Housing assistance payments to owners.
882.106 Contract rents.

- Sec.
882.107 Term of ACC, lease, and housing assistance payments contract.
882.108 Rent adjustments.
882.109 Housing quality standards.
882.110 Types of housing.
882.111 Equal opportunity requirements.
882.112 Security and utility deposits.
882.113 Establishments of income limit schedules; 30 percent occupancy by very low-income families.
882.114 Establishment of amount of housing assistance payments.
882.115 Rent reduction incentive.
882.116 Responsibilities of the PHA.
882.117 Responsibilities of the owner.
882.118 Responsibility of the family.
882.119 Single ACC.
882.120 Recently completed housing.
882.121 HUD administration of programs under this part.
882.122 Applicability of this part to certificates outstanding on and requests for lease approval pending on May 13, 1976.

Subpart B—Project Development and Operation

- 882.201 Allocations of contract authority to field offices.
882.202 Determination of number and types of units to be assisted.
882.203 Invitations for existing housing program applications.
882.204 Submission of applications.
882.205 Processing of applications.
882.206 Annual contributions contract; schedule of leasing.
882.207 Public notice to lower-income families; waiting list.
882.208 Activities to encourage participation by owners and others.
882.209 Certificates of family participation.
882.210 Request for lease approval.
882.211 Maintenance, operation and inspections.
882.212 Reexamination of family income, composition, and extent of exceptional medical or other unusual expenses.
882.213 Overcrowded unit.
882.214 Adjustment of allowance for utilities and other services.
882.215 Eviction.
882.216 Inapplicability of low-rent public housing model lease and grievance procedures.
882.217 HUD review of contract compliance.
882.218 PHA reporting requirements. [Reserved].

APPENDICES

- Appendix I—Annual contributions contract.
II—Housing assistance payments contract.
III—Certificate of family participation.
IV—Request for lease approval.
V—Agency determination with respect to request for lease approval.
VI—Required lease provisions.
VII—Prohibited lease provisions.

AUTHORITY: Section 7(d), Department of HUD Act (42 U.S.C. 3535(d)); section 5(b) of the U.S. Housing Act of 1937 (42 U.S.C. 1437c(b)); section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f).

Subpart A—Applicability, Scope and Basic Policies

§ 882.101 Applicability and scope.

(a) *General.* (1) The policies and procedures contained herein are applicable to the making of Housing Assistance Payments on Behalf of Eligible Families leasing Existing Housing pursuant to the provisions of section 8 of the U.S. Housing Act of 1937 ("Act").

(2) For the purpose of this Part, "Existing Housing" means housing that is in Decent, Safe, and Sanitary condition except that it does not include housing: (i) Which is covered by an Agreement to Enter into Housing Assistance Payments Contract or by a Housing Assistance Payments Contract under 24 CFR, Part 800, 801, 880, or 881, or (ii) which is owned by the PHA administering the ACC under this Part, or (iii) which is subsidized under other provisions of the Act. Occupancy of housing which requires repairs in order to be made Decent, Safe, and Sanitary may be assisted under this Part only after such repairs have been made. (See also § 882.210(d)).

(b) *Conversion of Section 23 Housing Projects.* (1) No HUD policy or procedure shall affect prior rights of an owner or tenant under a lease entered into under section 23 of the Act.

(2) PHAs are encouraged to develop plans for the orderly conversion of their section 23 housing to the section 8 program.

(3) Conversions should be accomplished so as to preclude the eviction of families receiving assistance under the section 23 program.

(4) Housing under ACCs implementing the HUD Experimental Housing Allowance Program shall not be subject to the provisions of this paragraph (b).

(5) With respect to section 23 housing other than new construction and substantial rehabilitation:

(i) Where section 23 housing is to be converted to section 8, HUD will, to the extent of available contract authority, approve one section 8 unit for each section 23 unit converted. Where section 23 units are not converted, the following provisions of this paragraph (b) (5) shall apply.

(ii) Any increases in rents and/or operating costs for occupied units must be funded by the elimination of units authorized under the section 23 ACC but not leased; section 23 ACC amounts shall not be increased, except under special circumstances as authorized by HUD.

(iii) No leases for additional units shall be entered into. Lease renewals and extensions may be entered into only with respect to occupied units and units which are to be reoccupied within 30 days, but the terms of such lease renewals may not extend beyond June 30, 1978, except under special circumstances as authorized by HUD, and then only until June 30, 1979.

(6) Section 23 Existing Housing projects for which ACCs were approved, but not executed, by December 31, 1974, shall be converted to section 8 (even if an ACC was executed subsequent to December 31, 1974), unless the PHA notifies HUD that it would prefer to retain the project under section 23. In the latter case, a section 23 ACC shall be executed, but the other provisions of this paragraph (b) shall be applicable, except that for initial leasing the provisions of paragraph (b) (5) (iii) shall not apply.

(7) Any completed (legally available for occupancy) Section 23 new construction or substantial rehabilitation project may be converted to Section 8 under contractual arrangements for such term and on such conditions as may be agreed to by all the parties and approved by HUD. The applicable Fair Market Rents shall be those for Existing Housing under this Part, except that for any unit which was completed no more than six years prior to the leasing thereof, the applicable rent shall be determined in accordance with § 882.120(b).

§ 882.102 Definitions.

ACC Reserve Account. The account established and maintained in accordance with § 882.104.

Allowance for Utilities and Other Services ("Allowance"). An amount determined by the PHA as an allowance for the cost of utilities (except telephone) and charges for other services payable directly by the Family.

Annual Contributions Contract ("ACC"). A written agreement between HUD and a PHA to provide annual contributions to the PHA to cover housing assistance payments and other expenses pursuant to the Act. (See Appendix I.)

Certificate of Family Participation ("Certificate"). A certificate issued by the PHA declaring a Family to be eligible for participation in this program and stating the terms and conditions for such participation.

Congregate Housing. Housing in which some or all of the dwelling units do not have kitchen facilities and connected with which there is a central dining facility to provide meals for the occupants. See § 882.109(m).

Contract. See definition of Housing Assistance Payments Contract.

Contract Rent. The rent payable to the Owner under his Contract including the portion of the rent payable by the Family. In the case of a cooperative, the term "Contract Rent" means charges under the occupancy agreements between the members and the cooperative.

Decent, Safe, and Sanitary. Housing is Decent, Safe, and Sanitary if the requirements of § 882.109 are met.

Eligible Family ("Family"). A family which qualifies as a Lower-Income Family and which meets the other requirements of the Act and this Part. The term Family includes an elderly, mentally or physically handicapped, disabled, or displaced person and the remaining member of a tenant family as defined in Section 3(2) of the Act. See also § 882.212.

Existing Housing. See § 882.101(a)(2).

Fair Market Rent. The rent, including utilities (except telephone), ranges and refrigerators, and all maintenance, management, and other services, which, as determined at least annually by HUD, would be required to be paid in order to obtain privately owned, existing, Decent, Safe, and Sanitary rental housing of modest (non-luxury) nature with suitable amenities. Separate Fair Market Rents shall be established for dwelling units of varying sizes (number of bedrooms) and types (e.g. elevator, non-elevator).

Gross Family Contribution. The portion of the Gross Rent payable by an Eligible Family (i.e., the difference between the amount of the Housing Assistance Payment payable on behalf of the Family and the Gross Rent), before deduction of Rent Credit, where applicable.

Gross Rent. The Contract Rent plus any Allowance for Utilities and Other Services.

HCD Act. The Housing and Community Development Act of 1974.

Housing Assistance Payments Contract ("Contract"). A written contract between a PHA and an Owner for the purpose of providing housing assistance payments to the Owner on behalf of an Eligible Family. (See Appendix II.)

Housing Assistance Payment on Behalf of Eligible Family. The amount of housing assistance payment on behalf of an Eligible Family determined in accordance with schedules and criteria established by HUD. (See § 882.114).

Housing Assistance Plan

(1) A Housing Assistance Plan submitted by a local government participating in the Community Development Block Grant Program as part of the block grant application, in accordance with the requirements of § 570.303(c) of the Community Development Block Grant regulations (24 CFR 570), and approved by HUD;

(2) A Housing Assistance Plan meeting the requirements of § 570.303(c), submitted by a local government not participating in the Community Development Block Grant Program and approved by HUD.

HUD. The Department of Housing and Urban Development or its designee.

Income. Income from all sources of each member of the household as determined in accordance with criteria established by HUD.

Lease. A written agreement between an Owner and an Eligible Family for the leasing of an Existing Housing unit in accordance with the Contract, which agreement is in compliance with the provisions of this Part.

Lower-Income Family. A Family whose Income does not exceed 80 percent of the median Income for the area as determined by HUD with adjustments for smaller or larger Families, except that HUD may establish Income limits higher or lower than 80 percent on the basis of its findings that such variations are necessary because of the prevailing levels of construction costs, unusually high or low Incomes, or other factors.

Owner. Any person or entity, including a cooperative, having the legal right to lease or sublease Existing Housing.

Public Housing Agency ("PHA"). Any State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of housing for low-income Families.

Recently Completed Housing. See § 882.120.

Rent Credit. See § 882.115.

Secretary. The Secretary of Housing and Urban Development.

Very Low-Income Family. A Family whose income does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller or larger families.

§ 882.103 "Finders-Keepers" Policy.

(a) A holder of a Certificate of Family Participation shall be responsible for finding an Existing Housing unit suitable to the holder's needs and desires in any area where the PHA determines that it is not legally barred from entering into Contracts. A holder of a Certificate may select a dwelling unit which the holder already occupies if the unit qualifies as Existing Housing. Upon request, the PHA shall provide assistance in finding units for those Families who, because of age, handicap, or other reasons, are unable to locate approvable units and shall provide such assistance where the Family alleges that illegal discrimination is preventing it from finding a suitable unit. Any such assistance shall be in accordance with the PHA's approved equal opportunity housing plan (see § 882.204(b)(1)).

(b) Neither in the provision of assistance to any Family in finding units nor by any other action shall the PHA directly or indirectly reduce the Family's opportunity to choose among the available units in the housing market.

(c) PHAs are encouraged to promote greater choice of housing opportunities by: (1) seeking participation of owners in any area in which the PHA has determined that it is not legally barred from entering into Contracts, (2) advising Families of their opportunity to lease housing in all such areas, (3) cooperating with other PHAs by issuing Certificates to Families already receiving the benefit of Section 8 housing assistance payments who wish to move from the operating area of one PHA to another and (4) developing administrative arrangements with other PHAs in order to permit Certificate Holders to seek housing in the broadest possible area. In any geographic area established for the purpose of allocating funds, HUD will give preference in funding to PHAs which provide Families the broadest geographical choice of units.

§ 882.104 Maximum total ACC commitment and ACC reserve account.

(a) **Maximum Total ACC Commitment.** The maximum total annual contribution that may be contracted for in the ACC for Existing Housing shall not exceed the total for all the units of the Fair Market Rents or such higher rent as approved by HUD for a unit size or type pursuant to § 882.106(a)(3). The fee for the regular costs of PHA administration and the HUD-approved preliminary costs shall be payable out of this total. With the approval of the Assistant Secretary for Housing Production and Mortgage Credit, an amount for the fee for the regular costs of PHA administration may be added to this total in cases where the need for the additional funds is evident from the estimates of required annual contributions submitted on the

prescribed forms pursuant to § 882.204 (b) (2).

(b) **ACC Reserve Account.** An ACC reserve account will be established and maintained, in an amount determined by the Secretary, consistent with his responsibilities under section 8(c)(6) of the Act. This account shall be established and maintained by HUD as a specifically identified and segregated account, and payment shall be made therefrom only for the following purposes:

- (1) Housing assistance payments,
- (2) The amount of the fee for regular PHA costs of administration; and
- (3) Other costs specifically authorized or approved by the Secretary.

(c) In addition, the ACC will provide that HUD will take such additional steps authorized by section 8(c)(6) of the Act as may be necessary to assure availability of funds to cover increases in housing assistance payments on a timely basis as a result of increases in Contract Rents or decreases in Family Incomes.

§ 882.105 Housing assistance payments to owners.

(a) **General.** Housing assistance payments shall be paid to an Owner in accordance with his Contract for the dwelling unit under lease by an Eligible Family. These housing assistance payments will cover the difference between the Contract Rent and the portion of said rent payable by the Family as determined in accordance with HUD-established schedules and criteria. No section 8 assistance may be provided with respect to any unit occupied by an Owner; however, cooperatives are considered rental housing rather than owner-occupied housing for this purpose.

(b) **Vacated Units.** (1) If an Eligible Family vacates its unit in violation of the provisions of the Lease or tenancy agreement, the Owner shall receive housing assistance payments in the amount of 80 percent of the Contract Rent for a vacancy period not exceeding 60 days or the expiration or other termination of the Lease or tenancy agreement, whichever comes first; provided, however, that if the Owner collects any of the Family's share of the rent for this period in an amount which, when added to the 80 percent payments, results in more than the Contract Rent, such excess shall be payable to HUD or as HUD may direct; and provided further, that if the vacancy is the result of action by the Owner, the Owner shall not receive any payment under this paragraph if his action was in violation of the Lease or the Contract or any applicable law or if the Owner failed to comply with § 882.215.

(2) The Owner shall not be entitled to any payment under this paragraph (b) unless he: (i) Immediately upon learning of the vacancy, has notified the PHA of the vacancy or prospective vacancy, (ii) has taken and continues to take all feasible actions to fill the vacancy including, but not limited to: contacting applicants on his waiting list, if any; requesting the PHA and other appropriate sources to refer eligible applicants; and advertising the availability of the unit and (iii) has not rejected any

eligible applicant except for good cause acceptable to the PHA.

(3) The Owner shall not be entitled to housing assistance payments with respect to vacant units under this paragraph (b) to the extent he is entitled to payments from other sources (for example, payments for losses of rental income incurred for holding units vacant for relocations pursuant to Title I of the HCD Act or payments under § 882.112).

§ 882.106 Contract rents.

(a) **Fair Market Rent Limitation.**— (1) The Gross Rent for any Existing Housing unit approved pursuant to § 882.210(b) shall not exceed the Fair Market Rent applicable to such unit on the date of Lease approval, except as provided in this paragraph (a).

(2) For up to 20 percent of the units authorized by an ACC, the PHA may approve Gross Rents on a unit-by-unit basis which exceed the applicable Fair Market Rents by up to 10 percent. The PHA may, in addition, exercise such authority with respect to more than 20 percent of the units authorized by an ACC if HUD approves such extension of the PHA's authority. In considering whether to grant such approval, HUD will review the appropriateness of the applicable Fair Market Rents and the relationship of estimated program costs to program objectives.

(3) HUD may approve, upon request from a PHA, maximum Gross Rents for all units of a given size or type (elevator/non-elevator) of up to 20 percent above the applicable Fair Market Rents within a designated municipality, county or similar locality. Any such request must be supported by a statement of the special circumstances warranting such increase in maximum Gross Rents, including whether such higher rents are necessary to implement a Housing Assistance Plan. In considering whether to grant such approval, HUD will review the appropriateness of the applicable Fair Market Rents and the relationship of estimated program costs to program objectives. In no event shall a maximum Gross Rent, as approved under this paragraph, exceed the rent, including Allowances for Utilities and Other Services, determined by HUD to be the average rent currently being charged for available standard units of similar size or type in the applicable municipality or county.

(4) Upon request by the PHA, the Regional Administrator may approve Gross Rents for any unit size or type of up to 20 percent above the applicable Fair Market Rents for a designated municipality, county or similar locality. Such approval shall be based upon substantially the same criteria as under paragraph (a) (3) of this section except for the last sentence thereof.

(b) **Rent Reasonableness Limitation.** (1) The PHA shall certify for each unit for which it approves a lease that the Contract Rent for such unit is:

(i) Reasonable in relation to rents currently being charged for comparable units in the private unassisted market,

taking into account the location, size, type, quality, amenities, facilities and management and maintenance services of such unit, and

(ii) Not in excess of rents currently being charged by the Owner for comparable unassisted units.

(2) For a rent controlled unit, comparable units shall be those which are rent controlled; for a unit which is not subject to rent control, comparable units shall be those which are not rent controlled.

(3) The PHA shall maintain for three years all certifications and relevant documentation under this paragraph (b) for inspection by HUD.

§ 882.107 Term of ACC, lease, and housing assistance payments contract.

(a) **Term of ACC.** The term of the ACC shall be for five years.

(b) **Term of Lease and of Housing Assistance Payments Contract.** The Lease shall be for not less than one year nor more than three years but may contain a provision permitting termination upon 30 days advance written notice by either party. The term of the Contract shall be for the term of the Lease; Provided, that if a Family continues in occupancy after the expiration of the term on the same terms and conditions as the original Lease (or changes thereto which have been approved by the PHA and incorporated in the Contract where appropriate), the Contract shall continue in effect for the duration of such tenancy subject to the limitation in the next sentence. Any renewal of the Contract and Lease term, and any continuation of tenancy beyond the term, shall in no case extend beyond the term of the ACC pertaining to the Contract and the Lease.

§ 882.108 Rent adjustments.

(a) Contract Rents shall be adjusted as provided in paragraphs (a) (1) and (2) of this section upon request to the PHA by the Owner, provided that the unit is in Decent, Safe, and Sanitary condition and that the Owner is otherwise in compliance with the terms of the Lease. Subject to the foregoing and the provisions of Sec. 882.106, adjustments of Contract Rents shall be as follows:

(1) **Annual Adjustments.** An adjustment as of any anniversary date of the Lease not to exceed the percentage of change in the applicable published Existing Housing Fair Market Rent (with appropriate reduction in the adjustment where utilities are paid directly by the Family); provided that the Owner has the legal right to terminate the tenancy as of such anniversary date.

(2) **Special Adjustments.** A special adjustment, subject to HUD approval, to reflect increases in the actual and necessary expenses of owning and maintaining the unit which have resulted from substantial general increases in real property taxes, utility rates, or similar costs (i.e., assessments, and utilities not covered by regulated rates), but only if and to the extent that the Owner clearly demonstrates that such general increases have caused increases in the Owner's operating costs which are not adequately

compensated for by the annual adjustments provided for in paragraph (a) (1) of this section. The Owner shall submit financial statements to the PHA which clearly support the increase. Such adjustment shall be effective as of the date when the Owner has the legal right to terminate the tenancy, which need not be the anniversary date of the Contract.

(b) *Overall Limitation.* Notwithstanding any other provisions of this Part, adjustments as provided in this section shall not result in material differences between the rents charged for assisted and comparable (as defined in Sec. 882.106(b)) unassisted units, as determined by the PHA (and approved by HUD in the case of adjustments under paragraph (a) (2)).

§ 882.109 Housing quality standards.

Housing used in this program shall meet the Performance Requirements set forth in this section. In addition, the housing shall meet the Acceptability Criteria set forth in this section except for such variations as are proposed by the PHA and approved by HUD. Local climatic or geological conditions or local codes are examples which may justify such variations.

(a) *Sanitary Facilities.*—(1) *Performance Requirement.* The dwelling unit shall include its own sanitary facilities which are in proper operating condition, can be used in privacy, and are adequate for personal cleanliness and the disposal of human waste.

(2) *Acceptability Criteria.* A flush toilet in a separate, private room, a fixed basin with hot and cold running water, and a shower or tub with hot and cold running water shall be present in the dwelling unit, all in proper operating condition. These facilities shall utilize an approved public or private disposal system.

(b) *Food Preparation and Refuse Disposal.*—(1) *Performance Requirement.* The dwelling unit shall contain suitable space and equipment to store, prepare, and serve foods in a sanitary manner. There shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary.

(2) *Acceptability Criteria.* The unit shall contain the following equipment in proper operating condition: cooking stove or range and a refrigerator of appropriate size for the unit, supplied by either the Owner or the Family, and a kitchen sink with hot and cold running water. The sink shall drain into an approved public or private system. Adequate space for the storage, preparation and serving of food shall be provided. There shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary (e.g., garbage cans).

(c) *Space and Security.*—(1) *Performance Requirement.* The dwelling unit shall afford the Family adequate space and security.

(2) *Acceptability Criteria.* A living room, kitchen area, and bathroom shall

be present; and the dwelling unit shall contain at least one sleeping or living/sleeping room of appropriate size for each two persons. Exterior doors and windows accessible from outside the unit shall be lockable.

(d) *Thermal Environment.*—(1) *Performance Requirement.* The dwelling unit shall have and be capable of maintaining a thermal environment healthy for the human body.

(2) *Acceptability Criteria.* The dwelling unit shall contain safe heating and/or cooling facilities which are in proper operating condition and can provide adequate heat and/or cooling to each room in the dwelling unit appropriate for the climate to assure a healthy living environment. Unvented room heaters which burn gas, oil or kerosene are unacceptable.

(e) *Illumination and Electricity.*—(1) *Performance Requirement.* Each room 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.

(2) *Acceptability Criteria.* Living and sleeping rooms shall include at least one window. A ceiling or wall type light fixture shall be present and working in the bathroom and kitchen area. At least two electric outlets one of which may be an overhead light, shall be present and operable in the living area, kitchen area, and each bedroom area.

(f) *Structure and Materials.*—(1) *Performance Requirement.* The dwelling unit 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.

(2) *Acceptability Criteria.* Ceilings, walls and floors shall not have any serious defects such as severe bulging or leaning, large holes, loose surface materials, severe buckling or noticeable movement under walking stress, missing parts or other serious damage. The roof structure shall be firm and the roof shall be weathertight. The exterior wall structure and exterior wall surface shall not have any serious defects such as serious leaning, buckling, sagging, cracks or holes, loose siding, or other serious damage. The condition and equipment of interior and exterior stairways, halls, porches, walkways, etc., shall be such as not to present a danger of tripping or falling. Elevators shall be maintained in safe and operating condition. In the case of a mobile home, the home shall be securely anchored by a tiedown device which distributes and transfers the loads imposed by the unit to appropriate ground anchors so as to resist wind overturning and sliding.

(g) *Interior Air Quality.*—(1) *Performance Requirement.* The dwelling unit shall be free of pollutants in the air at levels which threaten the health of the occupants.

(2) *Acceptability Criteria.* The dwelling unit shall be free from dangerous levels

of air pollution from carbon monoxide, sewer gas, fuel gas, dust, and other harmful air pollutants. Air circulation shall be adequate throughout the unit. Bathroom areas shall have at least one openable window or other adequate exhaust ventilation.

(h) *Water Supply.*—(1) *Performance Requirement.* The water supply shall be free from contamination.

(2) *Acceptability Criteria.* The unit shall be served by an approved public or private sanitary water supply.

(i) *Lead Based Paint.*—(1) *Performance Requirement.* (i) The dwelling unit shall be in compliance with HUD Lead Based Paint regulations, 24 CFR, Part 35, issued pursuant to the Lead Based Paint Poisoning Prevention Act, 42 U.S.C. 4801, and the Owner shall provide a certification that the dwelling is in accordance with such HUD Regulations.

(ii) If the property was constructed prior to 1950, the Family upon occupancy shall have been furnished the notice required by HUD Lead Based Paint regulations and procedures regarding the hazards of lead based paint poisoning, the symptoms and treatment of lead poisoning and the precautions to be taken against lead poisoning.

(2) *Acceptability Criteria.* Same as Performance Requirement.

(j) *Access.*—(1) *Performance Requirement.* The dwelling unit shall be useable and capable of being maintained without unauthorized use of other private properties, and the building shall provide an alternate means of egress in case of fire.

(2) *Acceptability Criteria.* The dwelling unit shall be useable and capable of being maintained without unauthorized use of other private properties. The building shall provide an alternate means of egress in case of fire (such as fire stairs or egress through windows).

(k) *Site and Neighborhood.*—(1) *Performance Requirement.* The site and neighborhood shall be reasonably free from disturbing noises and reverberations and other hazards to the health, safety, and general welfare of the occupants.

(2) *Acceptability Criteria.* The site and neighborhood shall not be subject to serious adverse environmental conditions, natural or manmade, such as dangerous walks, steps, instability, flooding, poor drainage, septic tank back-ups, sewage hazards or mudslides; abnormal air pollution, smoke or dust; excessive noise, vibration or vehicular traffic; excessive accumulations of trash; vermin or rodent infestation; or fire hazards.

(l) *Sanitary Condition.*—(1) *Performance Requirement.* The unit and its equipment shall be in sanitary condition.

(2) *Acceptability Criteria.* The units and its equipment shall be free of vermin and rodent infestation.

(m) *Congregate Housing.* The foregoing standards shall apply except for paragraph (b) of this section, Food Preparation and Refuse Disposal. In addition the following standards shall apply:

(1) The unit shall contain a refrigerator of appropriate size.

(2) The central dining facility (and kitchen facility, if any) shall contain suitable space and equipment to store, prepare and serve food in a sanitary manner, and there shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary (e.g., garbage cans).

§ 882.110 Types of housing.

(a) Any type of Existing Housing may be utilized under this Part, including, but not limited to, existing FHA insured, section 202 direct loan, Farmers Home Administration (FmHA) insured or direct loan, or VA guaranteed properties; or properties held by the Secretary; or properties sold by the Secretary on which he has taken back a purchase money mortgage. (But see paragraph (c) of this section).

(b) Congregate housing may be utilized for eligible elderly, handicapped, disabled or displaced families or individuals. The Fair Market Rent for each unit within such a facility shall be the same as for 0-bedroom units, except that, if the unit consists of two or more private rooms, the Fair Market Rent shall be the same as for a 1-bedroom unit. In determining the reasonableness of the rents, consideration shall be given to the presence or absence of common rather than private cooking and dining facilities. The Contract Rent shall not include the cost of providing or serving food.

(c) In any section 221(d)(3) below market interest rate (BMIR), section 202, section 236 (insured or non-insured) or FmHA section 515 interest credit project: (1) units receiving assistance under the section 23 or rent supplement programs may continue to receive such assistance or, upon conversion of the section 23 units to section 8, the occupants may receive assistance under section 8, and (2) the occupants of units not receiving such assistance may receive section 8 assistance, provided that the total number of units in the project covered by Housing Assistance Payments Contracts under section 8 or receiving section 23 rental assistance, rent supplement assistance, section 236 "deep subsidy" rental assistance payments, or State or local subsidy (other than property tax exemption or abatement) does not exceed 40 percent of the total number of units in the project. Upon request, this limitation may be exceeded for the purpose of relieving hardship of a particular Family or Families only with the approval of the Regional Administrator. Prior to granting such an approval, the Regional Administrator will review the request to determine whether assistance under Part 886, Subpart A, "Additional Assistance Program for Projects with HUD-insured and HUD-held Mortgages" is more appropriate and whether such assistance can be scheduled.

(d) For any section 21(d)(3) BMIR, section 202, section 236 (insured or non-insured), or FmHA section 515 interest credit unit or any State or locally subsidized unit, the housing assistance payment shall be the amount by which the

rent payable by the Eligible Family under section 23 or section 8 is less than the subsidized rent (which subsidy shall not be reduced on account of any section 23 or section 8 assistance).

(e) In no event may any occupant receive the benefit of more than one of the following: rent supplement, section 23 housing assistance, section 8 housing assistance, or section 236 "deep subsidy" rental assistance payments.

§ 882.111 Equal opportunity requirements.

Participation in this program requires compliance with Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063 and all rules, regulations, and requirements issued pursuant thereto. The PHA shall comply with section 3 of the Housing and Urban Development Act of 1968 and all rules, regulations and requirements issued pursuant thereto.

§ 882.112 Security and utility deposits.

(a) An Owner may require a Family to pay a security deposit in an amount equal to the amount payable by the Family toward one month's Gross Rent. If a Family vacates the unit, the Owner, subject to State and local law, may utilize the deposit as reimbursement for any unpaid rent or other amount owed under the Lease. If the Family has provided a security deposit, and it is insufficient for such reimbursement, the Owner may claim reimbursement from the PHA, not to exceed an amount equal to the remainder of one month's Contract Rent. Any reimbursement under this section shall be applied first toward any unpaid rent. If a Family vacates the unit owing no rent or other amount under the Lease, or if such amount is less than the amount of the security deposit, the Owner shall refund the full amount or the unused balance, as the case may be, to the Family.

(b) In those jurisdictions where interest is payable by the Owner on security deposits, the refunded amount shall include the amount of interest payable. The Owner shall comply with all State and local laws regarding interest payments on security deposits.

(c) Families shall be expected to obtain the funds to pay security and utility deposits, if required, from their own resources and/or other private or public sources.

§ 882.113 Establishment of income limit schedules; 30 percent occupancy by very low-income families.

(a) HUD will establish schedules of income limits for determining whether families qualify as Lower-Income Families and Very Low-Income Families.

(b) Each PHA shall administer its Existing Housing program under this Part, including the issuance of a sufficient number of Certificates to Very Low-Income Families, so that at least 30 percent of the Families for whom Leases are approved by the PHA are Very Low-Income Families. However, in connection with periodic reexamination of Family In-

come, the PHA shall ascertain whether at least 30 percent of all the assisted Families are Very Low-Income Families, and where the percentage is lower than 30 percent, the PHA shall thereafter use its best efforts in connection with subsequent issuance of Certificates of Family Participation to achieve at least a 30 percent level.

§ 882.114 Establishment of amount of housing assistance payments.

The amount of Housing Assistance Payment on Behalf of Eligible Family, to be determined in accordance with schedules and criteria established by HUD, will equal the difference between (a) no less than 15 percent nor more than 25 percent of the Family's Income and (b) the Gross Rent, taking into consideration the Income of the Family, the number of minor children in the household, and the extent of medical or other unusual expenses incurred by the Family, except that, in the case of a large Very Low-Income Family or a very large Lower-Income Family or a Family with exceptional medical or other unusual expenses, the amount of the housing assistance payment shall be the difference between 15 percent of the Family's Income and the Gross Rent. The term large Family means a Family which includes six or more minors (other than the head of the Family or spouse). The term very large Family means a Family which includes eight or more minors (other than the head of the Family or spouse). The amount of the housing assistance payment shall be adjusted, where appropriate, to reflect the Rent Credit pursuant to § 882.115.

§ 882.115 Rent reduction incentive.

(a) If a Family selects a unit for which the Owner's proposed Contract Rent plus any applicable Allowance is below the applicable Fair Market Rent or such higher rent as approved by HUD for a unit size or type pursuant to § 882.106(a)(3), the Family will be given credit by a reduction (Rent Credit) in its required monthly Gross Family Contribution. The applicable Fair Market Rent or such higher rent, as approved, is that in effect at the time of Lease approval for the Family size. Thereafter the applicable rent is the rent appropriate to the Family size at the time of reexamination of Family income and composition. The purpose of this provision is to provide an incentive to Families to find the most economical Decent, Safe, and Sanitary housing suitable to their needs and approvable under this Part.

(b) The amount of the monthly Rent Credit shall be the dollar amount equal to that percentage of the Gross Family Contribution which the Rent Savings is of the Fair Market Rent or such higher rent as approved by HUD for a unit size or type pursuant to § 882.106(a)(3). The Rent Savings is the amount by which the Fair Market Rent or such higher rent, as approved, exceeds the sum of the approved Contract Rent and any applicable Allowance.

(c) The Rent Credit shall not be payable if the Family selects a unit receiving

the benefit of Federal, State, or local subsidies. However, HUD may, on its own initiative or at the request of a PHA, authorize applicability of the Rent Credit to subsidized units if HUD determines that it is in the public interest to do so because the project in which the units are located is experiencing a large number of vacancies or high turnover. The PHA shall make known to Certificate holders the fact that the approved units are not subject to the prohibition otherwise applicable with respect to subsidized units.

§ 882.116 Responsibilities of the PHA.

In administering its ACC with HUD, the PHA (subject to review or audit by HUD) shall be responsible for the following:

(a) Publication and dissemination of information concerning the availability and nature of housing assistance for Lower-Income Families;

(b) Public invitation of Owners to make dwelling units available for leasing by Eligible Families and development of working relationships and contracts with landlords and appropriate associations and groups;

(c) Receipt and review of applications for Certificates of Family Participation, verification of family income and other factors relating to eligibility and amount of assistance, and maintenance of a waiting list in accordance with this Part;

(d) Issuance of Certificates of Family Participation to Eligible Families;

(e) Notification of families determined to be ineligible;

(f) Provision to each Certificate holder of basic information on applicable housing quality standards and inspection procedures, search for and selection of housing, landlord and tenant responsibilities, and basic program rules including the operation of the Rent Credit;

(g) Determination of amounts of Gross Family Contributions and Rent Credits, if any;

(h) Determination of amounts of housing assistance payments;

(i) Explanation of program procedures to Owners including those who have been approached by Certificate holders;

(j) Review of and action on Requests for Lease Approval, including monitoring to assure that the limitations on use of Section 8 housing assistance in subsidized projects specified in § 882.110(c) are observed;

(k) Making of housing assistance payments;

(l) Provision of housing information to assisted Families and referral of such Families to appropriate social service agencies upon request;

(m) Reexaminations of Family Income, composition, and extent of exceptional medical or other unusual expenses, and redeterminations, as appropriate, of the amount of Gross Family Contribution and amount of housing assistance payment in accordance with HUD-established schedules and criteria;

(n) Redeterminations of amount of rent payable by the Family and amount of housing assistance payment in accordance with HUD-established schedules and criteria.

ance with HUD-established schedules and criteria as a result of an adjustment by the PHA of any applicable Allowance for Utilities and Other Services;

(o) Inspections prior to leasing and inspections at least annually to determine that the units are maintained in Decent, Safe, and Sanitary condition, and notifications to Owners and Families of PHA determinations;

(p) Authorization of evictions (see § 882.215);

(q) Administration and enforcement of Contracts with Owners and taking of appropriate actions in case of noncompliance or default; and

(r) Compliance by the PHA with equal opportunity requirements, including efforts to provide opportunities for recipients to seek housing outside areas of economic and racial concentration.

§ 882.117 Responsibilities of the owner.

(a) The Owner shall be responsible (subject to review or audit by the PHA or HUD) for performing all of his obligations under the Contract and Lease. The Owner's responsibilities shall include but not be limited to:

(1) Performance of all management and renting functions;

(2) Payment for utilities and services (unless paid directly by the Family);

(3) Performance of all ordinary and extraordinary maintenance;

(4) Collection of Family rents;

(5) Preparation and furnishing of information required under the Contract; and

(6) Compliance by the Owner with equal opportunity requirements.

(b) Any Owner may contract with any private or public entity to perform for a fee the services required by paragraph (a) of this section, provided that such contract shall not shift any of the Owner's responsibilities or obligations, and provided further that no such contract may be entered into with an entity which is responsible for administration of the Housing Assistance Payments Contract.

If the Owner and a PHA wish to enter into a management contract, they may do so provided that the Housing Assistance Payments Contract with respect to the housing involved is administered by another PHA or by HUD or an entity acting on behalf of HUD. If no other PHA is able and willing to administer the Contract, HUD will do so or will designate an entity to do so on its behalf, pursuant to § 882.121(b).

§ 882.118 Responsibility of the family.

A Family receiving housing assistance under this program shall be responsible for fulfilling all its obligations under the Certificate of Family Participation issued to it by the PHA and under the Lease with the Owner.

§ 882.119 Single ACC.

(a) All of the Existing Housing units administered by a PHA under the Housing Assistance Payments Program (except where the PHA's area of operation is within the jurisdiction of more than

one field office) shall be covered by and administered under a single ACC Part I.

(b) In the event that a PHA applies for additional Existing Housing units, the units, if approved, shall be incorporated into a revised Part I of the ACC which shall cover the PHA's entire Housing Assistance Payments Program for Existing Housing. The revised Part I shall be for a new term for the aggregate number of units starting with the date of execution of the revised ACC Part I. When the PHA applies for additional units, it shall specify the number of years for which the aggregate number of units is needed and shall demonstrate such need. On the basis of such showing, HUD shall determine whether the new term for the aggregate number of units shall be five years or such lesser number of years as HUD may find to be justified. The maximum annual contribution of the revised program shall be the sum of (1) an appropriate amount of annual contribution for the number of units prior to the revision, taking into account the existing ACC Reserve Account, plus (2) the amount approved for the additional units which shall be computed pursuant to § 882.104(a).

§ 882.120 Recently completed housing.

(a) HUD may invite and approve applications by PHAs for use of Existing Housing units at the higher Fair Market Rents authorized by paragraph (b) of this section, where construction or substantial rehabilitation of such units was completed (legally available for occupancy) no more than six years prior to the date of the leasing of the unit ("Recently Completed Housing") in areas which meet the following characteristics:

(1) The housing needs of Lower-Income Families in the area cannot be addressed by use of Existing Housing within the rent limitations authorized under Section 882.106 because:

(i) The rental vacancy rate for the municipality, county, or similar locality is inadequate. (A vacancy rate of six percent will be considered adequate except in localities experiencing very little growth, in which a vacancy rate lower than six percent may be deemed adequate); or

(ii) The housing needs of one or more particular household types (e.g., elderly/handicapped family, large family) cannot be addressed utilizing the supply of Existing Housing at or below the rents authorized under § 882.106 because of lack of availability of appropriate units. In such case, the Recently Completed Housing to be authorized will be limited to the needs of the specialized household types.

(2) The housing needs of Lower-Income Families can be addressed by use of Recently Completed Housing because:

(i) The rental vacancy rate for the municipality, county, or similar locality among Recently Completed Housing units is adequate as defined in paragraph (a)(1)(i) of this section; or

(ii) Units of Recently Completed Housing are available which will meet the housing needs of one or more house-

hold types which cannot be met utilizing the supply of housing within the rent limitations of the program.

(b) Rents up to 10% above the Fair Market Rents for Recently Completed Housing (75% of the Section 8 New Construction Fair Market Rents) may be approved by HUD pursuant to § 882.106. However, rents more than 10% above the applicable Fair Market Rent shall not be approved for Recently Completed Housing.

(c) Applications shall be submitted by the appropriate PHA or PHAs for an Existing Housing program utilizing Recently Completed Housing which may but need not be included as a part of an application for other housing assistance under this Part.

(d) The approval of such an application shall authorize the PHA to (1) publicize the availability of such Fair Market Rents for the specified number of units of Recently Completed Housing, (2) invite Owners of such housing to submit evidence that their units qualify as Recently Completed Housing, and (3) inform holders of Certificates of Family Participation of the locations of such Housing and of the applicable Fair Market Rents. Annual adjustments in Contract Rents for Recently Completed Housing made pursuant to § 882.108(a) (1) shall be based on the percentage of change in the applicable published Existing Housing Fair Market Rents.

(e) All provisions of this Part, not specifically modified by this section, shall be applicable to housing under this section.

§ 882.121 HUD administration of programs under this part.

(a) If, after sending the invitations required by Sec. 882.203, no application is received by HUD by the deadline date for operation of an Existing Housing program in the area, or if the only applications received are not approvable, the HUD field office shall make such further inquiry, including advice and offer of assistance, as in its judgment may result in the submission of an approvable application by a PHA.

(b) If, on the basis of such further inquiry and all other pertinent information available to the HUD field office, HUD determines that there is no PHA organized or that there is no PHA able and willing to implement the provisions of this Part for an area, HUD (or an entity acting on behalf of HUD) may, pursuant to section 8(b)(1) of the Act, enter into Contracts with Owners and perform the functions otherwise assigned to PHAs under this Part with respect to such area.

(c) (1) If one or more Owners wish to contract for the management of their housing by the PHA which is administering the ACC for that area under this Part, and the PHA is willing to do this, or if the PHA owns housing which is suitable for utilization under this Part, HUD shall ascertain whether there is another PHA able and willing to enter into an ACC and administer the program under this Part with respect to housing which is managed or owned by the first

PHA. If so, such an ACC may be entered into, and the housing covered thereby shall be excluded from the ACC with the first PHA.

(2) If on the basis of inquiry and all other pertinent information available to the HUD field office, HUD determines there is no PHA able and willing to administer an ACC with respect to housing managed or owned by the first PHA, HUD (or another entity acting on behalf of HUD), may, pursuant to section 8(b)(1) of the Act, enter into Contracts with the Owners and perform the functions otherwise assigned to PHAs under this Part with respect to such housing.

§ 882.122 Applicability of this part to certificates outstanding on and requests for lease approval pending on May 13, 1976.

The Regulations shall be applicable to Certificates outstanding on May 13, 1976, and Requests for Lease Approval pending on May 13, 1976, to the maximum extent and in the manner that the PHA deems feasible.

Subpart B—Program Development and Operation

§ 882.201 Allocations of contract authority to field offices.

HUD field offices will be allocated contract authority for the Section 8 Housing Assistance Payments Program for metropolitan areas and for non-metropolitan areas in conformance with section 213(d) of the HCD Act and regulations pursuant thereto (24 CFR 891).

§ 882.202 Determination of number and types of units to be assisted.

Each field office shall, after considering the contents of any Housing Assistance Plans and any other pertinent information which it has or which is brought to its attention, in relation to the factors set forth in section 213(d) of the HCD Act, including any applicable State or areawide housing allocation plan, determine the number and types of units to be made available for new construction, substantial rehabilitation and existing housing in the geographic areas established for the purpose of allocating funds (herein called "allocation areas").

§ 882.203 Invitations for existing housing program applications.

(a) *Sending of Invitation.* The HUD field office shall initiate implementation of its program with respect to Existing Housing by sending invitations for Existing Housing Program applications, for the area(s) for which applications are desired in accordance with a schedule established by the field office. The schedule may be modified at such time as circumstances require. The invitation shall be sent on the same day to appropriate PHAs, to the Governor, and to the chief executive officers of the appropriate counties, municipalities, or other governmental entities or public bodies which are authorized to engage in or assist in the development or operation of low-income housing. In addition, HUD shall send promptly information concerning its

issuance of invitations to trade journals, news media (including minority media), minority organizations involved in housing and community development, and fair housing groups. Additional copies of the invitation shall be available in the HUD field office.

(b) *Contents of Invitation.* The invitation shall indicate: (1) that applications may be submitted by public housing agencies (i.e., any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of low-income housing), (2) the maximum number of units, (3) the geographic area, (4) the deadline for submission of applications (which shall be at least 30 but not more than 60 calendar days after the date invitations are sent as provided in the third sentence of paragraph (a) of this section), (5) the fact that application and other forms and copies of Program regulations may be obtained from the field office, (6) the fact that if no application is received by the deadline date, HUD may determine to carry out the Existing Housing program directly, pursuant to section 8(b)(1) of the Act, and (7) such other basic information as the field office may specify.

§ 882.204 Submission of Application.

The application for an Existing Housing Project shall be submitted by a PHA to the HUD field office. Advice and assistance in the preparation of the application are available from the HUD field office.

(a) The application shall be in the form and in accordance with the instructions prescribed by HUD and shall:

(1) Indicate the types of Existing Housing (e.g., elevator, non-elevator) likely to be utilized in the proposed project and whether authorization for the use of Recently Completed Housing is desired (see Sec. 882.120).

(2) Indicate the total number of units expected to be utilized by unit size (i.e., one bedroom units, two bedroom units, etc.) and the approximate number of units for occupancy by elderly, handicapped, or disabled.

(3) Demonstrate that the project requested in paragraph (a)(2) of this section is consistent with the applicable Housing Assistance Plan, including the goals for meeting the housing needs of Lower-Income Families, or in the absence of such a Plan, that the proposed project is responsive to the condition of the housing stock in the community and the housing assistance needs of Lower-Income Families (including the elderly, handicapped, disabled, large Families and those displaced) residing in or expected to reside in the community.

(4) Demonstrate that the applicant qualifies as a Public Housing Agency and is legally qualified and authorized to participate in the section 8 Existing Housing program for the area in which the Existing Housing program is to be carried out and include in such demonstration (i) the relevant enabling legislation,

(ii) any rules and regulations adopted or to be adopted by the agency to govern its operations, and (iii) a supporting opinion from the agency counsel.

(5) Include a statement that the housing quality standards to be used in the operation of the program will be as set forth in § 882.109 or that variations in the Acceptability Criteria are proposed. In the latter case, each proposed variation shall be specified and justified.

(6) Include a proposed schedule specifying the number of units to be leased

(b) For each application, or in a combined submission covering several applications, the PHA shall submit the following items with the application(s) or after application approval but no later than with the PHA-executed ACC:

(1) An equal opportunity housing plan.

(i) The plan shall describe the PHA's policies and procedures for:

(A) Fulfilling the requirements of § 882.207(a) and § 882.208.

(B) Achieving the participation of owners of units of suitable price and quality in areas outside low income and minority concentrations and outside the local jurisdiction where possible.

(C) Selecting among eligible applicants those to receive Certificates of Family Participation, including any provisions establishing local requirements for eligibility or preferences for selection in accordance with § 882.209(a)(2).

(D) Providing assistance in finding a unit to Certificate holders who allege that illegal discrimination is preventing them from finding a suitable unit.

(ii) Relative to accomplishing the tasks set forth in paragraphs (b)(1)(i) (B) and (D) of this section, the PHA should consider the possibility of subcontracting with a community-based organization, such as a fair housing organization that has had experience in assisting families which traditionally have encountered discrimination or other difficulties in the process of finding housing in the locality.

(iii) The plan shall also include signed certification of the applicant's intention to comply with Title VI of the Civil Rights Act of 1964; Title VIII of Civil Rights Act of 1968; Executive Order 11063; and if the housing assistance may be used within an area of a Housing Assistance Plan, a certification that the applicant will take affirmative action to provide opportunities to participate in the program to persons expected to reside in the locality because of present or planned employment as indicated in the Housing Assistance Plan.

(2) Estimates of financial requirements for preliminary costs, administrative costs and housing assistance payments on the prescribed forms.

(3) An administrative plan. (i) The plan shall include: a statement of the PHA's overall approach and objectives in administering the Existing Housing program; a description of the procedures to be used in carrying out each function; and a statement of the number of employees proposed for the program, by position and functions to be performed.

(ii) The following functions should be addressed: outreach to eligible families; contact with Owners; completion of applications and determinations of family eligibility; selection of families; computation of Gross Family Contributions; briefing of Families and issuance of Certificates; use of housing quality standards and inspections; lease approval and Contract execution; payments to Owners; recertification of Incomes; provision of housing information and services to recipient Families; review and adjustment, as necessary, of Allowances for Utilities and Other Services; reinspection of units under Contracts; processing requests for rent adjustments by Owners; terminations; establishment of complaint and appeal procedures; monitoring program performance.

(4) A proposed schedule of Allowances for Utilities and Other Services with a justification of the amounts proposed.

§ 882.205 Processing of applications.

(a) *Initial Screening of Applications.* Promptly after receipt of an application, the HUD field office will check whether or not the application is complete. If an application is incomplete, the PHA will be so notified and will be given until the deadline date or, if necessary, a reasonable time thereafter within which to complete the application.

(b) *Notice to Unit of General Local Government.* Pursuant to section 213 of the HCD Act, within 10 days after screening of a complete application, the field office shall forward a notification requesting comments, in the form prescribed by HUD, to the chief executive officer (or such designee as that office may designate) of the unit of general local government in which the proposed housing assistance is to be utilized, unless the comments of the appropriate executive officer in regard to the specific application have been previously submitted. The letter shall invite a response within 30 calendar days from the date of the notification letter.

(c) *Evaluation of Applications.* HUD may begin its evaluation immediately upon receipt of the application, but no final decision of approval or disapproval of the application may be made until after the deadline for receipt of applications or the end of the opportunity for response referred to in paragraph (b) of this section, whichever is later. Each application will be evaluated by HUD on the basis of all pertinent factors under this Part, including comments, if any, received during the comment period from the unit of general local government. In selecting among approvable applications, HUD will give preference as provided in the last sentence of § 882.103 (c).

(d) *Disapproval, Conditional Approval, or Approval of Applications.* If an application is disapproved, HUD shall notify the applicant by letter indicating in detail the reasons for disapproval. If an application can be approved only if certain changes are made, HUD shall notify the applicant by letter stating that the application can be approved if

the PHA adopts, within a reasonable time as determined by HUD, the changes required by HUD. If an application is approved, the applicant shall be sent a notification of application approval.

§ 882.206 Annual contributions contract; schedule of leasing.

(a) *Transmittal of ACC.* After the HUD field office has prepared the ACC, shown as Appendix I, the ACC shall be transmitted to the PHA for execution by the PHA. The ACC shall be returned to HUD together with the PHA's equal opportunity housing plan, estimates of its financial requirements on the prescribed forms, administrative plan and proposed schedule of Allowances for Utilities and Other Services, if these have not been previously submitted.

(b) *Execution of ACC by HUD.* After receipt of the PHA-executed ACC and HUD approval of the equal opportunity housing plan, financial estimates, the administrative plan and the schedule of Allowances for Utilities and Other Services, HUD shall execute the ACC. HUD then shall transmit a fully executed copy of the ACC together with a leasing schedule in accordance with paragraph (c) of this section.

(c) *Schedule of Leasing.* The ACC shall include a provision relating to expeditious leasing of units under the program. HUD will review the PHA-proposed schedule specifying the number of units that are expected to be leased by the end of each three-month period, and will make such changes as it may deem appropriate. In its transmittal of the ACC to the PHA, HUD will include the HUD-approved schedule. This schedule will be established so as to implement HUD policy that all units in a section 8 Existing Housing program of 100 units or more must be leased by Eligible Families within 12 months. In the case of smaller programs, a shorter time period may be established by HUD. HUD may reduce the number of units and/or the amount of the annual contributions commitment if, in the determination of HUD, the PHA fails to demonstrate a good faith effort to adhere to this schedule or fails to adhere to the schedule for other reasons which justify a reduction in the number of units or changes in unit size.

§ 882.207 Public notice to lower-income families; waiting list.

(a) *Public Notice to Lower-Income Families.* Promptly after receiving the executed ACC, and thereafter as may be necessary, the PHA shall make known to the public, through publication in a newspaper of general circulation as well as through minority media and other suitable means, the availability and nature of housing assistance for lower-income families (including assistance with respect to units already occupied by the families) and the notice shall inform such families where they may apply for Certificates of Family Participation. The PHA shall take affirmative action to provide opportunities to participate in the program to persons who, because of such factors as race, ethnicity, sex of house-

hold head, age, or source of income, are less likely to apply for Certificates of Family Participation; and, if there is a Local Housing Assistance Plan pursuant to Title I of the HCD Act, to persons expected to reside in the community because of present or planned employment, as indicated in the plan.

(1) The notice shall also state that occupants of housing assisted under the Act (including leased housing and housing occupied with assistance under the Section 23 Housing Assistance Payments Program), applicants on a waiting list for any such housing, and holders of Certificates of Family Participation for such housing must apply specifically if they wish to be considered for a Certificate of Family Participation under this Part. In addition, the notice shall state that such applicants for Certificates will not lose their place on the public housing waiting list.

(2) Such notice shall be made in accordance with the PHA's HUD-approved equal opportunity housing plan and with the HUD guidelines for fair housing requiring the use of the equal housing opportunity logotype, statement, and slogan.

(b) *Waiting List.* The PHA shall establish and maintain a waiting list for applicants for Certificates of Family Participation under this Part. If an applicant is determined by the PHA to be eligible but the PHA has determined pursuant to Sec. 882.209(a)(3) that it cannot issue any more Certificates, the PHA shall place such Family on this waiting list and notify the Family of this fact and of the approximate date that a Certificate may be issued, insofar as such date can reasonably be determined.

(c) *Suspension of Taking of Applications.* If the number of Families on the PHA's waiting list for Certificates of Family Participation is such that there is no reasonable prospect that additional applicants could be issued Certificates within the next year, the PHA may determine to suspend the taking of further applications, and in such case the PHA shall not be required to take the actions specified in paragraph (a) of this section. Any such determination by the PHA shall be publicly announced in the same manner as provided in paragraph (a) of this section and shall be effective as of the date stated in such announcement.

§ 882.208 Activities to encourage participation by owners and others.

(a) The PHA shall invite Owners, through publication in a newspaper of general circulation as well as through minority media and other suitable means, to make dwelling units available for leasing by Eligible Families, and in doing so, the PHA shall encourage the participation of Owners of units in areas other than low-income or minority concentrated areas. Such invitation shall be made in accordance with the PHA's HUD-approved equal opportunity housing plan, and with the HUD advertising guidelines for fair housing requiring the use of the equal housing opportunity

logotype, statement, and slogan. The PHA shall publicize the needs of the program in such ways as to reach a maximum number of Owners and real estate brokers.

(b) The PHA shall also (1) request the field office to furnish it with a list of Secretary-held properties available for rent, to be included in the Certificate Holder's Packet, (2) develop working relationships with local Owners and real estate broker associations, (3) establish contact with civic, charitable, or neighborhood organizations which have an interest in housing for low-income families, and public agencies concerned with obtaining housing for displaced, and (4) explain the provisions of the program, including equal opportunity requirements, to real estate, landlord, and other groups the members of which have dealings with low-income families or are interested in housing such families.

§ 882.209 Certificates of family participation.

(a) *Initial Determination of Family Eligibility.* (1) The PHA shall be responsible for determining eligibility for a Certificate of Family Participation, in accordance with schedules and criteria established by HUD. The PHA shall be responsible for verifying the sources of the family's income and other information necessary for determining eligibility and the amount of the assistance payment. If an Owner is the initial point of contact by an applicant who does not have a Certificate, he shall refer such applicant to the PHA.

(2) The PHA shall select Families for Certificates in accordance with the provisions of this Part and in accordance with the PHA's application, including any PHA rules for preferences as approved by HUD (see § 882.204(b)(1)(i)(C)). Requirements or preferences for those living in the jurisdiction of the PHA at the time of application are permissible subject to the following: No requirement or preference may be based upon the identity or location of the housing which is occupied or proposed to be occupied by the applicant for a Certificate of Family Participation, nor upon the length of time the applicant has resided in the jurisdiction; applicants who are working or who have been notified that they are hired to work in the jurisdiction shall be treated as residents of the jurisdiction. (See also § 882.209(e)(2).)

(3) Every applicant for a Certificate shall complete and sign the form of application prescribed by HUD.

(4) The PHA shall maintain a system to assure that it will be able to honor all outstanding Certificates of Family Participation within its ACC authorization and that it will comply, to the maximum extent feasible, with the unit distribution in the ACC.

(5) PHA records on applicant and certified Families shall be maintained so as to provide HUD with racial, gender, and ethnic data.

(b) *Issuance of Certificate of Family Participation, and Certificate Holder's*

Packet. If an applicant is determined by the PHA to be eligible and is selected for participation, he shall be given a Certificate of Family Participation (see Appendix III) signed by the PHA. At the same time, the Family shall be given one Certificate Holder's Packet, which shall include:

(1) Request for Lease Approval (see Appendix IV);

(2) Required Lease Provisions and Prohibited Lease Provisions (see Appendices VI and VII);

(3) Information regarding lead based paint poisoning hazards, symptoms and precautions;

(4) The PHA's forms for inspection of housing units and certification of compliance with the PHA's housing quality standards;

(5) Fair Housing U.S.A. (HUD-63-EO (6)), or the Spanish translation thereof (HUD-169-EO-(2)), as appropriate, both issued by the U.S. Department of Housing and Urban Development;

(6) A list of Secretary-held properties available for rent;

(7) Information concerning Recently Completed Housing, if any, including the locations of such housing and the applicable Fair Market Rents;

(8) Information as to the Gross Family Contribution, the Fair Market Rent appropriate for the Family size and composition, and the benefit of the Rent Credit for rents below the Fair Market Rent or such higher rent as approved by HUD for a unit size or type pursuant to § 882.106(a)(3);

(9) The PHA's schedule of Allowances for Utilities and Other Services; and

(10) Such other items as the PHA may determine should be included.

(c) *Briefing of Certificate Holders.* When a Family initially receives its Certificate of Family Participation, a full explanation of the following shall be provided to assist the Family in finding a suitable unit and to apprise the Family of its responsibilities and the responsibilities of the Owner (this may be done either in group or individual sessions; adequate opportunity shall be provided for Families to raise questions and to discuss the information provided):

(1) Family and Owner responsibilities under the Lease and Contract;

(2) How to find a suitable unit;

(3) The general locations and characteristics of the full range of neighborhoods in which the PHA is able to execute Contracts and in which units of suitable price and quality may be found.

(4) Applicable housing quality standards and procedures for Family and Owner inspections and for their individual certifications of compliance with those standards;

(5) Significant aspects of the applicable State and local laws;

(6) Significant aspects of Federal, State and local fair housing laws;

(7) Applicable Fair Market Rent, determination of Gross Family Contribution, establishment of housing assistance payments and operation of the Rent Credit; and

(8) That the family may obtain copies of the Housing Quality Standards, the

Contract and other pertinent forms or documents, on request.

(d) *Expiration and Extension of Certificate.* (1) The Certificate of Family Participation shall expire at the end of 60 days unless within that time the Family submits a Request for Lease Approval (Appendix IV).

(2) If a Certificate expires or is about to expire, a Family may submit the Certificate to the PHA with a request for an extension. The PHA shall review with the Family the efforts it has made to find a suitable dwelling unit and the problems it has encountered and shall determine what advice or assistance might be helpful. If the PHA believes that there is a reasonable possibility that the Family may, with the additional advice or assistance, if any, find a suitable unit, the PHA may grant one or more extensions not to exceed a total of 60 days. Expiration of a Certificate shall not preclude the Family from filing a new application for another certificate.

(e) *Continued Participation When Assisted Family Moves.* (1) If an assisted Family notifies the PHA that it wishes to obtain another Certificate of Family Participation for the purpose of finding another dwelling unit within the area in which the PHA has determined that it is able to enter into Contracts or that it has found another such unit to which it wishes to move, the PHA shall (unless it does not have sufficient ACC authority for continued assistance to the Family) issue another Certificate or process a Request for Lease Approval, as the case may be, unless the PHA determines that the Owner is entitled to payment pursuant to § 882.112 on account of nonpayment of rent or other amount owed under the Lease and that the Family has failed to satisfy any such liability.

(2) If an assisted Family wishes to move out of the area in which the PHA has determined that it is able to enter into Contracts and the Family qualifies under paragraph (e)(1) of this section, the Family may obtain housing assistance in the jurisdiction to which it is moving, provided that the Family obtains a Certificate of Family Participation from the appropriate PHA. The appropriate PHA shall treat the Family either as a Family to whom the PHA is already providing assistance who wishes to move to another unit or as a resident who has submitted an application for assistance. In either case the PHA shall not deny the Family a Certificate on the ground that its income is above limits for admission in that jurisdiction, and any requirements and preferences of the PHA as to admission are subject to the requirements of § 882.209(a)(2).

(f) *Families Determined by the PHA to be Ineligible.* If an applicant is determined by the PHA to be ineligible on the basis of income or family composition, or for any other reason, the PHA shall promptly notify the applicant by letter of the determination and the reasons therefor, and the letter shall state that the applicant has the right within a reasonable time (specified in the letter) to request an informal hearing. If, after conducting such an informal

hearing, the PHA determines that the applicant is ineligible, it shall so notify the applicant in writing. The procedures of this paragraph do not preclude the applicant from exercising its other rights if it believes it is being discriminated against on the basis of race, color, creed, religion, sex, or national origin. The PHA shall retain for three years a copy of the application, the notification letters, the applicant's response if any, the record of any informal hearing, and a statement of final disposition.

§ 882.210 Request for lease approval.

(a) *Information to Owners and Requests to PHA for Lease Approval.* (1) The PHA will respond to inquiries from Owners who have been approached by Certificate holders by explaining major program procedures including lease provisions, lease approval procedures, housing quality inspections, Contract provisions and payment procedures and by furnishing copies of the pertinent forms.

(2) When a Family has found a unit it wants and the Owner is willing to lease, the Family shall submit to the PHA a Request for Lease Approval signed by the Owner of the unit and the Family, together with the completed dwelling unit inspection report on the form provided by the PHA. At the same time, the Family shall submit a copy of the proposed lease, which shall contain all required provisions shown in Appendix VI and shall be complete except for execution and entry of the portion of monthly rental which the Family shall be obligated to pay to the Owner.

(b) *Amount of Contract Rent to Owner.* (1) The PHA shall determine whether the requested Contract Rent is approvable in accordance with § 882.106. If the Family is to pay directly for any of the utilities or services, the PHA shall determine the amount of the Allowance on account thereof. Inasmuch as the Fair Market Rents are established for a geographic area within which the rents for modest Decent, Safe, and Sanitary housing may vary substantially, the PHA shall make an analysis to determine the reasonable rent for the particular unit. If the requested Contract Rent plus any applicable Allowance is at or below the reasonable rent and at or below the Fair Market Rent, it may be approved.

(2) If the otherwise approvable Contract Rent to Owner plus the applicable Allowance, if any, is higher than the applicable Fair Market Rent, and if the PHA determines that such higher rent is justified, it shall take the action required by § 882.106 to have a higher rent approved.

(c) *Amount of Rent Payable by Family to Owner.* The amount of rent payable by the Family to the Owner shall be the amount of the Gross Family Contribution, or the amount of such Contribution less the amount of any Allowance for utilities and other services not to be provided by the Owner. If the Family is entitled to a Rent Credit pursuant to § 882.115, the amount of the rent otherwise payable by the Family to the Owner shall be reduced by the amount of the Credit. If the Gross Family Contribution

minus the Rent Credit is less than the Allowance for Utilities and Other Services, the PHA shall pay the difference directly to the Family.

(d) *Decent, Safe, and Sanitary Condition of Unit.*

(1) Before approving a Lease, the PHA shall inspect the unit for compliance with the PHA's housing quality standards as established in accordance with Sec. 882.109, or cause it to be so inspected on the date on which the Owner indicates that the unit will be ready for inspection, or as promptly as possible thereafter.

(2) If there are defects or deficiencies which must be corrected in order for the unit to be Decent, Safe, and Sanitary, the Owner shall be advised by the PHA of the work required to be done. Before a Contract is executed, the unit must be reinspected to ascertain that the necessary work has been performed and that the unit is Decent, Safe, and Sanitary.

(3) A report for every inspection and reinspection under this paragraph (d) shall be prepared and maintained in the files of the PHA. Each such report shall specify (i) any defects or deficiencies which must be corrected in order for the unit to be Decent, Safe, and Sanitary, and (ii) any other defects or deficiencies, a record of which shall be maintained for use in the event of a subsequent claim by the Owner that they were caused during the period of occupancy by the Family.

(e) *Oversized Unit.* No otherwise acceptable unit shall be disapproved on the ground that it is too large for the Family, provided that the rent to Owner plus any Allowance does not exceed the Fair Market Rent or such higher rent as approved by HUD for a unit size or type pursuant to § 882.106(a)(3) for the smaller size unit initially determined appropriate for the Family.

(f) *Lease Requirements.* (1) *Term of Lease.* The PHA shall determine that the term of Lease is consistent with Sec. 882.107(b).

(2) *Required Provisions.* The Lease shall contain the required provisions specified in Appendix VI.

(3) *Prohibited Provisions.* The Lease shall not contain any clause which falls within the classifications listed in Appendix VII.

(g) *Approval of Lease and Execution of Related Documents.* If the PHA determines that a unit which an Eligible Family wishes to lease is in Decent, Safe, and Sanitary condition, that the rent is approvable, and that the proposed lease complies with the requirements of this Part, the PHA shall approve the lease, and shall notify the Owner and the Family of its determination utilizing Appendix V. The Contract and Lease shall thereafter be executed by the appropriate parties. A copy of the notification shall be maintained in the PHA's files together with the original Request for Lease Approval and the inspection report(s) relating to the unit.

(h) *Disapproval of Lease.* If the PHA determines that the lease cannot be approved for any reason, including the condition of the unit, the PHA shall so notify the Owner and the Family using Appen-

dix V. A copy of this notification shall be maintained in the PHA's files together with the original Request for Lease Approval and the inspection report(s) relating to the unit.

§ 882.211 Maintenance, operation and inspections.

(a) *Maintenance and Operation.* The Owner shall provide all the services, maintenance and utilities which he agrees to provide under the Contract, subject to abatement of housing assistance payments or other applicable remedies if he fails to meet these obligations.

(b) *Periodic Inspection.* In addition to the initial inspection provided under § 882.210(d) (1), the PHA will inspect or cause to be inspected each dwelling unit leased to an Eligible Family at least annually and at such other times as may be necessary to assure that the Owner is meeting his obligations to maintain the unit in Decent, Safe, and Sanitary condition and to provide the agreed upon utilities and other services. The PHA will take into account complaints and any other information coming to its attention in scheduling inspections. All complaints by Families concerning compliance by the Owner with the PHA's housing quality standards shall be retained in the PHA's files for three years.

(c) *Units Not Decent, Safe, and Sanitary.* If the PHA notifies the Owner that he has failed to maintain a dwelling unit in Decent, Safe, and Sanitary condition and the Owner fails to take corrective action within the time prescribed in the notice, the PHA may exercise any of its rights or remedies under the Contract, including abatement of housing assistance payments (even if the Family continues in occupancy) and termination of the Contract. If the Family wishes to be rehoused in another dwelling unit with Section 8 assistance and the PHA determines to terminate the Housing Assistance Payments Contract, the PHA shall issue to the Family another Certificate of Family Participation.

§ 882.212 Reexamination of family income, composition, and extent of exceptional medical or other unusual expenses.

Reexamination of Family Income, composition, and the extent of medical or other unusual expenses incurred by the Family shall be made by the PHA at least annually (except that such reviews may be made at intervals no longer than two years in the case of elderly families), and appropriate redeterminations shall be made by the PHA of the amount of Gross Family Contribution and the amount of the housing assistance payment, all in accordance with schedules and criteria established by HUD. A Family's eligibility for housing assistance payments shall continue until the amount payable by the Family equals the Gross Rent for the dwelling unit it occupies. However, the termination of eligibility at such point shall not affect the Family's other rights under its Lease nor shall such termination preclude resumption of payments as a result of subsequent changes in income or rents or

other relevant circumstances during the term of the Contract. If the Contract terminates at a time when the Family is ineligible for payments, the Contract shall not be renewed. In addition, if one year has elapsed since the date of the last housing assistance payment, the Contract shall be terminated (with the consent of the Owner if the Contract does not provide for termination under such circumstances) even if the termination date has not yet been reached. A Family may at any time request a re-determination of its Gross Family Contribution on the basis of changes in Family Income or other relevant circumstances.

§ 882.213 Overcrowded unit.

If the PHA determines that a dwelling unit is not Decent, Safe, and Sanitary by reason of increase in Family size, the Family and the PHA shall try to find an acceptable unit as soon as possible. If an acceptable unit is found that is available for occupancy by the Family, and the Lease with the first Owner can be terminated in accordance with its terms, the Contract with the first Owner shall be terminated and housing assistance payments shall be made available to the Family for occupancy in the acceptable unit. Housing assistance payments will not be terminated unless the Family rejects without good reason the offer of a unit which the PHA judges to be acceptable.

§ 882.214 Adjustment of allowance for utilities and other services.

(a) *Annual Review.* At least annually, the PHA shall determine whether there has been a substantial change in utility rates or other charge of general applicability, and whether an adjustment is required in the Allowance of Utilities and Other Services by reason of such changes or because of errors in the original determination. If the PHA determines that an adjustment should be made, the PHA shall establish a schedule of adjustments taking into account size and type of dwelling units and other pertinent factors and shall furnish HUD with a copy of the adjusted schedule.

(b) *Adjustments in Payments Under Contracts in Effect.* The PHA shall then determine the amounts of adjustments to be made in the amount of rent to be paid by affected Families and the amount of housing assistance payments and shall notify the Owners and Families accordingly.

(c) *Effect on Fair Market Rents.* If the PHA finds that utility cost changes are causing substantial difficulties in leasing Decent, Safe and Sanitary housing within the existing Fair Market Rent limitations, the PHA shall furnish appropriate documentation to HUD with a request for consideration of the need for a change in the Fair Market Rents.

§ 882.215 Eviction.

The Owner shall not evict any Family unless the Owner complies with the requirements of local law, if any, and of this section. The Owner shall give the Family a written notice of the proposed

eviction, stating the grounds and advising the Family that it has 10 days (or such greater number, if any, that may be required by local law) within which to respond to the Owner. The Owner must obtain the PHA's authorization for an eviction; accordingly, a copy of the notice shall be furnished simultaneously to the PHA, and the notice shall also state that the Family may, within the same period, present its objections to the PHA in writing or in person. The PHA shall forthwith examine the grounds for eviction and shall authorize the eviction unless it finds the grounds to be insufficient under the Lease. The PHA shall notify the Owner and the Family of its determination within 20 days of the date of the notice to the Family, whether or not the Family has presented objections to the PHA. If the Owner has not received a response from the PHA within 20 days, he shall telephone the PHA and shall be informed by the PHA whether a notice of determination has been mailed. If the PHA informs the Owner that no notice has been mailed within the 20 day period, the PHA shall be deemed to have authorized the eviction.

§ 882.216 Inapplicability of low-rent public housing model lease and grievance procedures.

Model lease and grievance procedures established by HUD for PHA-owned low-rent public housing are not applicable to the Section 8 Housing Assistance Payments Program under this Part.

§ 882.217 HUD review of contract compliance.

HUD will review program operations at such intervals as it deems necessary to ensure that the Owner and the PHA are in full compliance with the terms and conditions of the Contract and the ACC. Equal Opportunity review may be conducted with the scheduled HUD review or at any time deemed appropriate by HUD.

§ 882.218 PHA reporting requirements. [Reserved]

APPENDIX I

U.S. Department of Housing and Urban Development, Section 8 Housing Assistance Payments Program

MASTER SECTION 8 ANNUAL CONTRIBUTIONS CONTRACT NO. _____ NEW CONSTRUCTION, SUBSTANTIAL REHABILITATION, EXISTING HOUSING

This Annual Contributions Contract (ACC) is entered into on the ____ day of _____, 19____, (the date of execution by the Government) by and between the United States of America (herein called the "Government"), pursuant to the United States Housing Act of 1937, as amended (42 U.S.C. 1437, et seq.), herein called the "Act", and the Department of Housing and Urban Development Act (42 U.S.C. 3531), and _____ (herein called the "PHA"), which is a "public housing agency" as defined in the Act. In consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

0.1 *Project or Projects.* The PHA is undertaking to provide Decent, Safe, and Sanitary housing for Families (as defined in Section 2.1) pursuant to Section 8 of the Act by means of Housing Assistance Payments

Contracts ("Contracts") with Owners (as defined in Section 2.1). Such undertaking may involve an agreement for the use of housing to be constructed ("New Construction"), an agreement for the use of existing housing to be substantially rehabilitated ("Substantial Rehabilitation"), or the use of existing housing without substantial rehabilitation ("Existing Housing"). In each instance, the numbers and sizes of dwelling units with respect to which a certain maximum Annual Contributions commitment is made shall constitute a Project hereunder and shall be identified by a stated Project number.

0.2 Part I and Part II of this Annual Contributions Contract.

(a) Certain provisions of the ACC, principally those which are specifically applicable to a designated Project, are contained in Part I. Separate forms of Part I are used for different types of Projects (i.e., New Construction, Substantial Rehabilitation, and Existing Housing). A Separate Part I, on the applicable form thereof, has been executed with respect to each Project hereunder, and each such Part I, so executed, constitutes a part of this ACC.

(b) The remaining provisions of this ACC, which are applicable to all Projects hereunder, are contained in Part II, which, although not separately executed, constitutes a part of this ACC.

0.3 Fiscal Year. Except for the first Fiscal Year of each Project, there shall be one Fiscal Year for all Projects hereunder. Such established Fiscal Year shall be the 12-month period ending _____ of each calendar year. The first Fiscal Year for each Project shall be as provided in the Part I applicable to such Project.

0.4 Schedule of Projects. Attached to this Master Section 8 ACC, as Attachment A, is a list identifying each ACC Part I and ACC Part I amendment by Project number, date, and ACC List number and date.

PHA _____
By _____
(Official title)
Date _____
United States of America, Secretary of Housing and Urban Development
By _____
(Official title)
Date _____

U.S. Department of Housing and Urban Development, Section 8 Housing Assistance Payments Program, Existing Housing

PART I OF THE ANNUAL CONTRIBUTIONS CONTRACT

Number of this ACC Part I: _____
Master Section 8 ACC Number: _____
Effective Date: _____
[Date of execution by the Government of this ACC Part I]

1.1 The Program.

(a) *Projects Within Program.* The Existing Housing Program under this ACC Part I includes the following projects:

Project number: _____
ACC list number and date of approval _____

(b) *Number of Units (By Size) in Program.* The aggregate number of units by size of unit included in these projects is as follows:

Size of unit: _____
Number of units _____

(c) *Maximum ACC Amount.* The maximum ACC amount for all Program Expenditures in respect to the aggregate number of units in these projects (the Program) is \$ _____ per year; Provided, however, that this amount shall be reduced commensurately with any reduction in the number of units or changes in unit size under any provision of this ACC (see Section 1.4(a)). The PHA shall not enter into any Contract or take any other action which will result in a claim for an Annual Contribution in respect to the Program in excess of the amount stated in this paragraph (c).

(d) *PHA Obligation.* The PHA, to the maximum extent feasible, shall enter into Housing Assistance Payments Contracts ("Contracts") in accordance with the numbers and sizes of units and subject to the maximum ACC amount specified above.

(e) *Meaning of "Project" as Used in Master ACC and Part II.* For purposes of this Part I the term "Project" wherever used in the Master Section 8 ACC and in Part II shall mean all the projects in the "Existing Housing Program."

1.2 Authorization of Actions by PHA. In order to carry out the Program, the PHA is authorized to (a) enter into Housing Assistance Payments Contracts, (b) make housing assistance payments on behalf of Families, and (c) take all other necessary actions all in accordance with the forms, conditions and requirements prescribed or approved by the Government; Provided, however, that neither the PHA nor the Government shall assume any obligation beyond that provided in Contracts in the form approved by the Government.

1.3 Term of ACC, Lease and Contract.

(a) *Term of ACC.* The term of this ACC shall be five years.

(b) *Term of Lease and Contract.* The term of each Lease shall be for not less than one year nor more than three years, but the Lease may contain a provision permitting termination upon 30 days advance written notice by either party. The term of each Contract shall be for the term of the Lease, provided that if a Family continues in occupancy after the expiration of the term on the same terms and conditions as the original Lease (or changes thereto which have been approved by the PHA and incorporated in the Contract where appropriate), the Contract shall continue in effect for the duration of such tenancy subject to the limitation in the next sentence. Any renewal of the Contract and Lease term, and any continuation of tenancy beyond the term, shall in no case extend beyond the term of this ACC.

1.4 Annual Contribution.

(a) Notwithstanding any other provisions of this ACC (other than paragraph (c) of this Section) or any provisions of any other contract between the Government and the PHA, the Government shall not be obligated to make any Annual Contribution or any other payment with respect to any Fiscal Year in excess of the amount stated in Section 1.1(c).

(b) Subject to the maximum dollar limitation in paragraph (a) of this Section, the Government shall pay for each Fiscal Year an Annual Contribution to the PHA in respect to the Program in an amount equal to the sum of the following (subject to reduction by the amount of any Program Receipts other than Annual Contributions, which Receipts shall be available for Program Expenditures):

(1) The amount of housing assistance payments payable during the Fiscal Year (see Section 1.5) by the PHA pursuant to the Contract, as authorized in Section 1.2.

(2) The allowance, in the amount approved by the Government, for preliminary costs of administration.

(3) The allowance, in the amount approved by the Government, for regular costs of administration, including costs of Government-required audits of Owners and the PHA.

(c) (1) An ACC reserve account will be established and maintained by the Government, as a specifically identified and segregated account, in an amount as determined by the Government consistent with its responsibilities under section 8(c)(6) of the Act. To the extent funds are available in said account, the Annual Contribution for any Fiscal Year may exceed the maximum amount stated in paragraph (a) of this Section by such amount, if any, as may be required for increases reflected in the estimates of required Annual Contribution applicable to such Fiscal Year as approved by the Government in accordance with Section 2.11 below.

(2) The Government will take such additional steps authorized by section 8(c)(6) of the Act as may be necessary to assure availability of funds to cover increases in housing assistance payments on a timely basis as a result of increases in Contract Rents or decreases in Family Incomes.

(d) The Government will make periodic payments on account of each Annual Contribution upon requisition therefor by the PHA in the form prescribed by the Government. Each requisition shall include certifications by the PHA that housing assistance payments have been or will be made only:

(1) In accordance with the provisions of the Contracts; and

(2) With respect to units which the PHA has inspected or caused to be inspected, pursuant to Section 2.4 of Part II of this ACC, within one year prior to the making of such housing assistance payments.

(e) Following the end of each Fiscal Year, the PHA shall promptly pay to the Government, unless other disposition is approved by the Government, the amount, if any, by which the total amount of the periodic payments during the Fiscal Year exceeds the total amount of the Annual Contribution payable for such Fiscal Year in accordance with this Section.

1.5 Fiscal Year. The Fiscal Year for the Program shall be the Fiscal Year established by Section 0.3 of this ACC; Provided, however, that the first Fiscal Year for the Project shall be the period beginning with the effective date of this ACC Part I and ending on the last day of said established Fiscal Year which is not less than 12 months after such effective date. If the first Fiscal Year exceeds 12 months, the maximum Annual Contribution in Section 1.1(c) may be adjusted by the addition of the pro rata amount applicable to the period of operation in excess of 12 months.

1.6 Periodic Adjustment of Contract Rents. Each Contract may provide for periodic adjustments in the Contract Rents chargeable by the Owner and commensurate increases in amounts of housing assistance payments in accordance with applicable Government regulations.

1.7 Equal Opportunity Housing Plan. The PHA shall comply with all provisions of its HUD-approved equal opportunity housing plan.

1.8 Expeditious Carrying Out of Program. The PHA shall proceed expeditiously with the Program. If the PHA fails to proceed expeditiously, the Government, by notice to the PHA, may reduce its obligation hereunder with respect to the Program to the number and size of dwelling units under Contracts with Owners as of the date of receipt of such notice by the PHA, with a corresponding reduction in the maximum amount of the Annual Contribution specified in Section 1.1(c).

1.9 Prior ACCs Superseded. This Part I supersedes prior Section 8 Existing Housing ACC Parts I, if any.

PHA -----
By -----
(Official title)
Date -----
United States of America, Secretary of Housing and Urban Development
By -----
(Official title)
Date -----

Section 8 Housing Assistance Payments Program, Terms and Conditions Constituting Part II of An Annual Contributions Contract Between Public Housing Agency and the United States of America

NEW CONSTRUCTION, SUBSTANTIAL REHABILITATION, EXISTING HOUSING, MASTER SECTION 8 ACC NUMBER: -----

2.1 Definitions.

(a) "Families" means lower-income Families (including "Very Low-Income Families") and includes Families consisting of a single person in the case of Elderly Families and Displaced Families and includes the remaining member of a tenant family.

(b) "Elderly Families" means Families whose heads (or their spouses), or whose sole members, are persons who are at least 62 years of age or are under a disability as defined in section 223 of the Social Security Act or in section 102(5) of the Developmental Disabilities Services and Facilities Construction Amendments of 1970, or are handicapped. The term Elderly Families includes two or more elderly, disabled, or handicapped individuals living together, or one or more such individuals living together with another person who is determined under regulations of the Secretary of Housing and Urban Development ("Secretary") to be a person essential to their care or well being.

(c) "Displaced Families" means Families displaced by governmental action, or Families whose dwellings have been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws.

(d) "Lower-Income Families" means Families whose incomes do not exceed 80 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income limits higher or lower than 80 percent of the median for the area on the basis of his findings that such variations are necessary because of prevailing levels of construction costs, unusually high or low family incomes, or other factors.

(e) "Very Low-Income Families" means Families whose incomes do not exceed 50 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families.

(f) "Income" means income from all sources of each member of the household, as determined in accordance with criteria prescribed by the Secretary.

(g) "Owner" means the person or entity, including a cooperative, with which the Agreement and Contract are entered into.

(h) "Rent" or "rental" mean, with respect to members of a cooperative, the charges under the occupancy agreements between such members and the cooperative.

(i) "Project Receipts" with respect to each Project means the Annual Contributions payable hereunder and all other receipts under this ACC, if any, accruing to the PHA from, out of, or in connection with such Project.

(j) "Project Expenditures" with respect to each Project means all costs allowable under Section 1.4(b), Part I of this ACC, with respect to such Project.

(k) "Substantial Default" means the occurrence of any of the events listed in Section 2.16.

2.2 Lower-Income Housing Use; Compliance with Act and Regulations. The PHA shall use the Annual Contribution solely for the purpose of providing Decent, Safe, and Sanitary dwellings for Families in compliance with all applicable provisions of the Act and all regulations issued pursuant thereto.

2.3 Eligibility and Amount of Housing Assistance Payments.

(a) The PHA shall comply with the income limits established by the Government, and with the requirements of the Government pursuant to section 8(c)(7) of the Act that at least 30 percent of the Families assisted in all its Projects under its Master Section 8 ACC shall be Very Low-Income Families.

(b) The PHA shall comply or assure compliance with the schedules and criteria established by the Government with respect to the amounts of housing assistance payments made on behalf of Families.

(c) The PHA shall make or cause to be made periodic reexaminations of the income, composition, and extent of exceptional medical or other unusual expenses of Families for whom housing assistance payments are being made, for the purpose of confirming or adjusting, in accordance with the applicable schedules established by the Government, the amount of rent payable by the Family and the amount of housing assistance payment.

(d) The PHA shall determine, as part of its annual inspection and at such other times as it deems appropriate, whether an adjustment is required in the Allowance for Utilities and Other Services applicable to the dwelling unit on grounds of changes of general applicability. If the PHA determines that an adjustment should be made, the PHA shall prescribe the amount of the adjustment and notify the Owner accordingly, and the PHA shall cause the Owner to make a corresponding adjustment in the amount of rent to be paid by the affected Family and the amount of housing assistance payment.

(e) Prior to the approval of eligibility of a Family by the PHA or the Owner, as the case may be, and thereafter on the date established for each reexamination of the status of such Family, the PHA or the Owner, as the case may be, shall review or cause to be reviewed a written application, signed by a responsible member of such Family, which application shall set forth all data and information necessary for a determination of the amount, if any, of housing assistance payment which can be made with respect to the Family.

2.4 Inspections.

(a) The PHA shall require, as a condition for the making of housing assistance payments, that the Owner maintain the assisted dwelling units and related facilities in Decent, Safe, and Sanitary condition.

(b) The PHA shall inspect or cause to be inspected dwelling units and related facilities prior to commencement of occupancy by Families, and thereafter at least annually, adequate to assure that Decent, Safe, and Sanitary housing accommodations are being provided and that the agreed-to services are being furnished.

2.5 Nondiscrimination in Housing.

(a) The PHA shall comply with all requirements imposed by Title VI of the Civil Rights Act of 1964, Public Law 88-352, 78 Stat. 241; the regulations of the Department of Housing

and Urban Development issued thereunder, 24 CFR, Subtitle A, Part 1, Section 1.1, et seq.; the requirements of said Department pursuant to said regulations; and Executive Order 11063 to the end that, in accordance with that Act and the regulations and requirements of said Department thereunder, and said Executive Order, no person in the United States shall, on the ground of race, color, creed, religion, or national origin, be excluded from participation in, or be denied the benefits of, the Housing Assistance Payments Program or be otherwise subjected to discrimination. The PHA shall, by contractual requirement, covenant, or other binding commitment, assure the same compliance on the part of any subgrantee, contractor, subcontractor, transferee, successor in interest, or other participant in the program or activity, such commitment to include the following clause:

"This provision is included pursuant to the regulations of the Department of Housing and Urban Development, 24 CFR, Subtitle A, Part 1, Section 1.1, et seq.; issued under Title VI of the said Civil Rights Act of 1964, and the requirements of said Department pursuant to said regulations; and the obligation of the [contractor or other] to comply therewith inures to the benefit of the United States, the said Department, and the PHA, any of which shall be entitled to invoke any remedies available by law to redress any breach thereof or to compel compliance therewith by the [contractor or other]."

(b) The PHA shall incorporate or cause to be incorporated into all Housing Assistance Payments Contracts a provision requiring compliance with all requirements imposed by Title VIII of the Civil Rights Act of 1968, and any rules and regulations issued pursuant thereto.

(c) The PHA shall not, on account of creed or sex, discriminate in the sale, leasing, rental, or other disposition of housing related facilities (including land) included in any Project or in the use or occupancy thereof, nor deny to any Family the opportunity to apply for such housing, nor deny to any eligible applicant the opportunity to lease or rent any dwelling in any such housing suitable to its needs. No person shall automatically be excluded from participation in or be denied the benefits of the Housing Assistance Payments Program because of membership in a class such as unmarried mothers, recipients of public assistance, etc.

2.6 Equal Employment Opportunity.

(a) The PHA shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, or national origin. The PHA shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, creed, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(b) (1) The PHA shall incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR, Chapter 60, which is to be performed pursuant to this contract, the following Equal Opportunity clause:

"Equal Employment Opportunity"

During the performance of this contract, the contractor agrees as follows:

(A) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion,

creed, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the PHA setting forth the provisions of this Equal Opportunity clause.

(B) The contractor will in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, or national origin.

(C) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the PHA advising the said labor union or workers' representative of the contractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(D) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(E) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Government and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(F) In the event of the contractor's non-compliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part, and the contractor may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.

(G) The contractor will include the portion of the sentence immediately preceding Paragraph (A) and the provisions of Paragraphs (A) through (G) in every subcontract purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the Government may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Government, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(2) The PHA agrees that it will assist and cooperate actively with the Government and the Secretary of Labor in obtaining the com-

pliance of contractors and subcontractors with the Equal Opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the Government and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the Government in the discharge of the Government's primary responsibility for securing compliance.

(3) The PHA further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order No. 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the Equal Opportunity clause as may be imposed upon contractors and subcontractors by the Government or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order.

2.7 Training, Employment, and Contracting Opportunities for Businesses and Lower Income Persons.

(a) The project assisted under this ACC is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the Project area and contracts for work in connection with the Project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the Project.

(b) Notwithstanding any other provision of this ACC, the PHA shall carry out the provisions of said section 3 and the regulations issued pursuant thereto by the Secretary set forth in 24 CFR, Part 135 (published in 38 FEDERAL REGISTER 29220, October 23, 1973), and all applicable rules and orders of the Secretary issued thereunder prior to the execution of this ACC. The requirements of said regulations include but are not limited to development and implementation of an affirmative action plan for utilizing business concerns located within or owned in substantial part by persons residing in the area of the Project; the making of a good faith effort, as defined by the regulations, to provide training, employment, and business opportunities required by section 3; and incorporation of the "section 3 clause" specified by Section 135.20(b) of the regulations in all contracts for work in connection with the Project. The PHA certifies and agrees that it is under no contractual or other disability which would prevent it from complying with these requirements.

(c) Compliance with the provisions of section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of the Secretary issued thereunder prior to approval by the Government of the application for this ACC shall be a condition of the Federal financial assistance provided to the Project, binding upon the PHA, its successors and assigns. Failure to fulfill these requirements shall subject the PHA, its contractors and subcontractors, its successors, and assigns to the sanction specified by this ACC and to such sanctions as are specified by 24 CFR, Section 135.135.

(d) The PHA shall incorporate or cause to be incorporated into any contract pursuant to this contract such clause or clauses as are required by the Government for compliance with its regulations issued pursuant to the Housing and Urban Development Act, as amended. The PHA shall cooperate with the Government in the conducting of compliance reviews pursuant to said Acts and Regulations.

2.8 Cooperation In Equal Opportunity Compliance Reviews. The PHA shall cooperate with the Government in the conducting of compliance reviews and complaint investigations pursuant to applicable civil rights statutes, Executive Orders, and rules and regulations pursuant thereto.

2.9 Clean Air Act and Federal Water Pollution Control Act. The PHA shall incorporate or cause to be incorporated, into any contract for construction or substantial rehabilitation, such clause or clauses as are required by the Government for compliance with the regulations issued by the Environmental Protection Agency pursuant to the Clean Air Act, as amended, the Federal Water Pollution Control Act, as amended, and Executive Order 11738. The PHA shall cooperate with the Government in the conducting of compliance reviews pursuant to said Acts and Regulations.

2.10 Labor Standards. The PHA shall incorporate or cause to be incorporated into any contract for construction or substantial rehabilitation of nine or more dwelling units, such clause or clauses as are required by the Government for compliance with its regulations issued pursuant to the Copeland Act, the Davis-Bacon Act, and the Contract Work Hours and Safety Standards Act. The PHA shall cooperate with the Government in the conducting of compliance reviews pursuant to said Acts and Regulations.

2.11 Estimates of Required Annual Contribution. The PHA shall from time to time submit to the Government estimates of required annual contribution at such times and in such form as the Government may require. All estimates and any revisions thereof submitted under this Section shall be subject to Government approval.

2.12 Insurance and Fidelity Bond Coverage. For purposes of protection against hazards arising out of or in connection with the administrative activities of the PHA in carrying out the Project, the PHA shall carry adequate (a) comprehensive general liability insurance, (b) workmen's compensation coverage (statutory or voluntary), (c) automobile liability insurance against property damage and bodily injury (owned and non-owned), and (d) fidelity bond coverage of its officers, agents, or employees handling cash or authorized to sign checks or certify vouchers.

2.13 Books of Account and Records; Reports.

(a) The PHA shall maintain complete and accurate books of account and records, as may be prescribed from time to time by the Government, in connection with the Projects, including records which permit a speedy and effective audit, and will among other things fully disclose the amount and the disposition by the PHA of the Annual Contributions and other Project Receipts, if any.

(b) The books of account and records of the PHA shall be maintained for each Project as separate and distinct from all other Projects and undertakings of the PHA, except as authorized or approved by the Government.

(c) The PHA shall furnish the Government such financial, operating, and statistical reports, records, statements, and documents at such times, in such form, and accompanied by such supporting data, all as may reasonably be required from time to time by the Government.

(d) The Government and the Comptroller General of the United States, or his duly authorized representatives, shall have full and free access to the Projects and to all the books, documents, papers, and records of the PHA that are pertinent to its operations with respect to financial assistance under the Act, including the right to audit, and to make excerpts and transcripts from such books and records.

(e) The PHA shall incorporate or cause to be incorporated in all Contracts the following clauses:

"PHA and Government access to premises and owner's records"

(1) The Owner shall furnish such information and reports pertinent to the Contract as reasonably may be required from time to time by the PHA and the Government.

(2) The Owner shall permit the PHA or the Government or any of their duly authorized representatives to have access to the premises and, for the purpose of audit and examination, to have access to any books, documents, papers and records of the Owner that are pertinent to compliance with this Contract, including the verification of information pertinent to the housing assistance payments.

(f) The PHA shall be responsible for engaging and paying the auditor for the making of audits as required by the Government, but the PHA shall be compensated under this ACC for the cost of such audits.

2.14 Depository Agreement.

(a) (1) The PHA shall maintain one or more agreements, which are herein collectively called the "General Depository Agreement," with a bank(s) selected as a depository by the PHA.

(2) The PHA may maintain one or more agreements, which are herein collectively called the "Savings Depository Agreement," with a saving and loan institution(s) or credit union(s) selected as a depository by the PHA for the investment of excess funds.

(3) All such General Depository Agreements and Savings Depository Agreements are herein collectively called the "Depository Agreement." All such banks, savings and loan institutions, and credit unions are herein collectively called the "Depository."

(4) The Depository Agreement shall be in the form prescribed by the Government for the particular type of Depository. The Depository shall be, and continue to be, a member of the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Share Insurance Fund, as the case may be.

(5) Immediately upon the execution of any Depository Agreement, the PHA shall furnish to the Government such executed or conformed copies thereof as the Government may require.

(6) No such Depository Agreement shall be terminated except after 30 days notice to the Government.

(b) The PHA shall deposit promptly with such Depository, under the terms of the Depository Agreement, all monies received pursuant to this ACC.

(c) The PHA may withdraw monies pursuant to the Depository Agreement only for (1) payments pursuant to the Housing Assistance Payments Contract, and (2) other purposes specifically approved by the Government. No withdrawals shall be made except in accordance with a voucher or vouchers then on file in the office of the PHA stating in proper detail the purpose for which such withdrawal is made.

(d) If the Government makes a determination, after notice to the PHA giving it a reasonable opportunity to take corrective action, that the PHA is in Substantial Default or if the Government determines that the PHA has made any fraudulent or willful misrepresentation of any material fact in any of the documents or data submitted to the Government pursuant to this ACC or in any document or data submitted to the Government as a basis for this ACC or as an inducement to the Government to enter into this ACC, the Government shall have the right to (1) give notice of such determination to any Depository which holds any monies pursuant to the Depository Agreement and (2) require such Depository, on the basis

of such notice, to refuse to permit any withdrawals of such monies; Provided, however, that upon the curing of such Default the Government shall promptly rescind such notice and requirement.

2.15 Pooling of Funds under Special Conditions and Revolving Fund.

(a) The PHA may deposit under the terms of the General Depository Agreement monies received or held by the PHA in connection with any other ACC or any administration contract or lease between the PHA and the Government.

(b) The PHA may also deposit under the terms of the General Depository Agreement amounts necessary for current expenditures of any other project or enterprise of the PHA, including any project or enterprise in which the Government has no financial interest; Provided, however, that such deposits shall be lump-sum transfers from the depositories of such other projects or enterprises, and shall in no event be deposits of the direct revenues or receipts of such other projects or enterprises.

(c) If the PHA operates other projects or enterprises in which the Government has no financial interest, it may, from time to time, withdraw such amounts as the Government may approve from monies on deposit under the General Depository Agreement for deposit in and disbursement from a revolving fund provided for the payment of items chargeable in part to the Projects and in part to other projects or enterprises of the PHA; Provided, however, that all deposits in such revolving fund shall be lump-sum transfers from the depositories of the related projects or enterprises and shall in no event be deposits of the direct revenues or receipts.

(d) The PHA may establish petty cash or change funds in reasonable amounts, from monies on deposit under the General Depository Agreement.

(e) In no event shall the PHA withdraw from any of the funds or accounts authorized under this Section 2.15 amounts for the Projects or for any other project or enterprise in excess of the amount then on deposit in respect thereto.

2.16 Defaults by PHA and/or Owner. (a) Rights of Owner if PHA Defaults under Agreement or Contract. (The provisions of this paragraph (a) shall not apply to any Existing Housing Project.)

(1) In the event of failure of the PHA to comply with the Agreement with the Owner, or if such Agreement is held to be void, voidable or ultra vires, or if the power or right of the PHA to enter into such Agreement is drawn into question in any legal proceeding, or if the PHA asserts or claims that such Agreement is not binding upon the PHA for any such reason, the Government may, after notice to the PHA giving it a reasonable opportunity to take corrective action, determine that the occurrence of any such event constitutes a Substantial Default hereunder. Where the Government so determines, it may assume the PHA's rights and obligations under such Agreement and carry out the obligations of the PHA under the Agreement, including the obligation to enter into the Contract.

(2) In the event of failure of the PHA to comply with the Contract with the Owner, or if such Contract is held to be void, voidable or ultra vires, or if the power or right of the PHA to enter into such Contract is drawn into question in any legal proceeding, or if the PHA asserts or claims that such Contract is not binding upon the PHA for any such reason, the Government may, after notice to the PHA giving it a reasonable opportunity to take corrective action, determine that the occurrence of any such event con-

* Use of this Section 2.15 is optional.

stitutes a Substantial Default hereunder. Where the Government so determines, it shall have the right to assume the PHA's rights and obligations under such Contract, perform the obligations and enforce the rights of the PHA, and exercise such other powers as the Government may have to cure the Default; however, whether or not the Government elects to proceed in this manner, the Government shall, if it determines that the Owner is not in default, continue for the duration of such Contract to pay Annual Contributions for the purpose of making housing assistance payments with respect to dwelling units under such Contract.

(3) All rights and obligations of the PHA assumed by the Government pursuant to this Section 2.16(a) will be returned as constituted at the time of such return (i) when the Government is satisfied that all defaults have been cured and that the Project will thereafter be administered in accordance with all applicable requirements, or (ii) when the Housing Assistance Payments Contract is at an end, whichever occurs sooner.

(4) The provisions of this Section 2.16(a) are made with, and for the benefit of, the Owner, the PHA (where it is the lender and then only in its capacity as lender), or the Owner's other assignees, if any, who will have been specifically approved by the Government prior to such assignment. If such parties are not in default, they may, in order to enforce the performance of these provisions, (i) demand that the Government, after notice to the PHA giving it a reasonable opportunity to take corrective action, make a determination whether a Substantial Default exists under paragraph (a) (1) or (a) (2) of this Section, (ii) if the Government determines that a Substantial Default exists, demand that the Government take action as authorized in paragraph (a) (1) or (a) (2), and (iii) proceed against the Government by suit at law or in equity.

(5) The provisions of paragraphs (a) (1), (3) and (4) of this Section shall be included in the Agreement and the provisions of paragraphs (a) (2), (3) and (4) of this Section shall be included in the Contract.

(b) Rights of Government if PHA Defaults Under ACC, Agreement, or Contract.

(1) If the PHA defaults in the observance or performance of the provisions of Section 2.4; fails to comply with its obligations under any duly issued Certificate of Family Participation in accordance with its terms; fails to comply with the requirements of Sections 2.5, 2.6, 2.7, or 2.8; defaults in the performance or observance of any other term, covenant, or condition of this ACC or of any term, covenant, or condition of any Contract or Agreement; fails, in the event of any default by the Owner, to enforce its rights under the Agreement or Contract by way of action to achieve compliance to the satisfaction of the Government or to terminate the Agreement or Contract in whole or in part, as directed by the Government; or fails to comply with the applicable provisions of the Act and the regulations issued pursuant thereto; the Government may, after notice to the PHA giving it a reasonable opportunity to take corrective action, determine that the occurrence of any such event constitutes a Substantial Default hereunder as to the Project. Upon the occurrence of a Substantial Default with respect to any Project, the PHA shall, if the Government so requires, assign to the Government all of its rights and interests under the Agreement or Contract, including any funds, and the Government shall continue to pay Annual Contributions with respect to dwelling units covered by Housing Assistance Payments Contracts in accordance with the terms of this ACC and of such Contracts until reassigned to the PHA.

(2) All rights and obligations of the PHA assumed by the Government pursuant to this Section 2.16(b) will be returned as constituted at the time of such return (1) when the Government is satisfied that all defaults have been cured and that the Project will thereafter be administered in accordance with all applicable requirements, or (ii) when the Housing Assistance Payments Contract is at an end, whichever occurs sooner.

(c) *Rights of PHA and Government if Owner Defaults under Contract.* (New Construction and Substantial Rehabilitation Projects.) For New Construction and Substantial Rehabilitation projects, the Contract shall contain the following provisions:

"a. A default by the Owner under this Contract shall result if:

"(1) The Owner has violated or failed to comply with any provision of, or obligation under, this Contract or of any Lease; or

"(2) The Owner has asserted or demonstrated an intention not to perform some or all of his obligations under this Contract or under any Lease.

"b. Upon a determination by the PHA that a default has occurred the PHA shall notify the Owner, with a copy to the Government, of (1) the nature of the default, (2) the actions required to be taken and the remedies to be applied on account of the default (including actions by the Owner to cure the default, and, where appropriate, abatement of housing assistance payments in whole or in part and recovery of overpayments), and (3) the time within which the Owner shall respond with a showing that he has taken all the actions required of him. If the Owner fails to respond or take action to the satisfaction of the PHA and the Government, the PHA shall have the right to terminate this Contract in whole or in part or to take other corrective action to achieve compliance, in its discretion or as directed by the Government.

"c. (The provisions of this paragraph c shall apply only if the PHA is the lender.) Notwithstanding any other provisions of this Contract, in the event the Government determines that the Owner is in default of his obligations under the Contract, the Government shall have the right, after notice to the Owner and the PHA giving them a reasonable opportunity to take corrective action, to abate or terminate housing assistance payments and recover overpayments in accordance with the terms of the Contract. In the event the Government takes any action under this Section, the Owner and the PHA hereby expressly agree to recognize the rights of the Government to the same extent as if the action were taken by the PHA. The Government shall not have the right to terminate the Contract except by proceeding in accordance with Section 2.16(b) of the ACC and paragraph b of this Section."

(d) *Rights of PHA if Owner Defaults under Contract (Existing Housing Projects).* For Existing Housing projects, the Contract shall contain the following provisions:

"a. A default by the Owner under this Contract shall result if:

"(1) The Owner has violated or failed to comply with any provision of, or obligation under, this Contract or of any Lease; or

"(2) The Owner has asserted or demonstrated an intention not to perform some or all of his obligations under this Contract or under any Lease.

"b. Upon a determination by the PHA that a default has occurred, the PHA shall notify the Owner, with a copy to the Government, of (1) the nature of the default, (2) the actions required to be taken and the remedies to be applied on account of the default (including actions by the Owner to cure the default, and, where appropriate, abatement of housing assistance payments in whole or

in part and recovery of overpayments), and (3) the time within which the Owner shall respond with a showing that he has taken all the actions required of him. If the Owner fails to respond or take action to the satisfaction of the PHA and the Government, the PHA shall have the right to terminate this Contract in whole or in part or to take other corrective action to achieve compliance, in its discretion or as directed by the Government."

2.17 *Remedies Not Exclusive and Non-Waiver of Remedies.* The availability of any remedy provided for in this ACC or in the Contract shall not preclude the exercise of any other remedy under this ACC or the Contract or under any provisions of law, nor shall any action taken in the exercise of any remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

2.18 *Interest of Members, Officers, or Employees of PHA, Members of Local Governing Body, or Other Public Officials.*

(a) Neither the PHA nor any of its contractors or their subcontractors shall enter into any contract, subcontract, or arrangement, in connection with any Project, in which any member, officer, or employee of the PHA, or any member of the governing body of the locality in which the Project is situated, or any member of the governing body of the locality in which the PHA was activated, or any other public official of such locality or localities who exercises any responsibilities or functions with respect to the Project, during his tenure or for one year thereafter, has any interest, direct or indirect. If any such present or former member, officer, or employee of the PHA, or any such governing body member or such other public official of such locality or localities involuntarily acquires or had acquired prior to the beginning of his tenure any such interest, and if such interest is immediately disclosed to the PHA and such disclosure is entered upon the minutes of the PHA, the PHA, with the prior approval of the Government, may waive the prohibition contained in this subsection; Provided, however, that any such present member, officer, or employee of the PHA shall not participate in any action by the PHA relating to such contract, subcontract, or arrangement.

(b) The PHA shall insert in all contracts entered into in connection with any Project or any property included or planned to be included in any Project, and shall require its contractors to insert in each of its subcontracts, the following provisions:

"No member, officer, or employee of the PHA, no member of the governing body of the locality (city and county) in which the project is situated, no member of the governing body of the locality in which the PHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this contract or any proceeds or benefits arising therefrom."

(c) The provisions of the foregoing subsections (a) and (b) of this Section 2.18 shall not be applicable to the Depositary Agreement, or utility service the rates for which are fixed or controlled by a governmental agency.

2.19 *Interest of Member of or Delegate to Congress.* No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this ACC or to any benefits which may arise therefrom.

APPENDIX II

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM; EXISTING HOUSING

Part I of the Housing Assistance Payments Contract

Master Section 8 ACC Number: _____

Existing Housing ACC Part I Number and Date: _____

This Housing Assistance Payments Contract ("Contract") is entered into between the Owner, _____, and the PHA, _____, which is a public housing agency as defined in the United States Housing Act of 1937 ("Act"). The PHA is entering into this Contract pursuant to an Annual Contributions Contract ("ACC") with the United States of America ("Government") (see Section 2.3 of this Contract).

The purpose of this Contract is to enable the Lower-Income Family identified in Section 1.1 to lease a Decent, Safe, and Sanitary dwelling unit pursuant to the Section 8 Housing Assistance Payments Program.

The Owner and the PHA agree as follows:

1.1 *Contract unit, family, and lease.*

(a) *Contract Unit and Family.* The following described dwelling unit ("Contract Unit") is leased by the Owner under a lease approved by the PHA ("Lease") to the following Lower-Income Family ("Family"):

(Address of unit, including apt No. if any)

Contract Unit: _____

(Name of person(s) signing lease)

Family: _____

(b) *Lease.* The Lease shall at all times contain the Required Lease Provisions set forth in Appendix VI of the Existing Housing Regulations, 24 CFR, Part 882, but shall not contain the Prohibited Lease Provisions set forth in Appendix VII of the Regulations. A copy of the Required Lease Provisions and of the Prohibited Lease Provisions shall be made available by the PHA to the Owner at the Owner's request in advance of execution of this Contract.

1.2 *Contract rent, family portion of rent, assistance payments.*

(a) *Amount of Contract Rent.* The total rent payable to the Owner for the Contract Unit ("Contract Rent") is \$_____ per month.

(b) *Family Portion of Rent.* The amount payable by the Family toward the Contract Rent is \$_____ per month.

(c) *PHA Assistance Payment.* The PHA shall pay on behalf of the Family a housing assistance payment of \$_____ per month. This amount is equal to the difference between the Contract Rent and the Family portion of the Contract Rent. Neither the PHA nor the Government has assumed any obligation whatsoever for the Family portion of the Contract Rent, or for the satisfaction of any claim by the Owner against the Family, except in accordance with Section 1.5 of this Contract. The financial obligation of the PHA is limited to making housing assistance payments on behalf of the Family in accordance with this Contract.

(d) *Adjustments.* The Family portion of the Contract Rent and the amount of the housing assistance payment are subject to change by reason of changes in (1) Family income or composition, (2) the extent of exceptional medical or other unusual expenses, or (3) the Allowance for Utilities and Other Services, all as determined by the PHA, effective as of the date stated in a notification by the PHA of such change to the Family and the Owner.

(e) *Termination of Payments Due to Family Ineligibility.*

(1) The Family's eligibility for housing assistance payments continues until the amount payable by the Family equals the total Contract Rent plus any applicable Allowance. However, the termination of eligibility at such point shall not affect the Family's other rights under its Lease nor shall such termination preclude resumption of payments as a result of subsequent changes in income or rent or other relevant circumstances during the term of this Contract. However, (i) if this Contract terminates at a time when the Family is ineligible for housing assistance payments, the Contract shall not be renewed and (ii) if one year has elapsed since the date of the last housing assistance payment on behalf of the Family, this Contract shall be terminated even though the termination date under Section 1.3 has not yet been reached.

(2) The PHA may determine, after having given the Family reasonable notice (with a copy to the Owner) and opportunity to respond, that the Family is ineligible for further housing assistance payments because of failure to comply with the Family's obligations under the Certificate of Family Participation. The PHA shall notify the Family and the Owner of such determination. This notification shall state that housing assistance payments on behalf of the Family shall terminate as of the date of the notification and that this Contract shall also terminate as of that date. However, if the Owner proceeds to evict the Family as quickly as possible, this Contract shall continue in effect solely for the purpose of enabling the Owner to receive further housing assistance payments for the period of the tenant's occupancy pending eviction until commencement of occupancy by another tenant, not to exceed a period of 60 days, in accordance with and subject to the conditions and limitations of Sections 1.4 (a), (b), and (c) not inconsistent with such purpose.

1.3 Term of contract.

The term of this Contract shall be _____ years [the term of the Lease] beginning on _____, 19____; Provided, however, that if the Family continues in occupancy, after the expiration of the term, on the same terms and conditions as the original Lease, the Contract shall continue in effect for the duration of such tenancy, but the total duration of the Contract shall in no case extend beyond the term of the ACC.

1.4 Payment for vacated units.

Housing assistance payments shall be made by the PHA to the Owner, under the terms and conditions of this Contract, only for the period during which the Contract Unit is leased or occupied by the Family during the term of the Contract (see Section 1.3), except as follows:

(a) If the Family vacates its unit in violation of the provisions of the Lease or tenancy agreement, the Owner shall receive housing assistance payments in the amount of 80 percent of the Contract Rent for a vacancy period not exceeding 60 days or the expiration or other termination of the Lease or tenancy agreement, whichever comes first; Provided, however, that if the Owner collects any of the Family's share of the rent for this period in an amount which, when added to the 80 percent payments, results in more than the Contract Rent, such excess shall be payable to the Government or as the Government may direct; and provided further that if the vacancy is the result of action by the Owner, the Owner shall not receive any payment under this Section 1.4 if the action was in violation of the Lease or the Contract or any applicable law. (See Section 2.6.)

(b) The Owner shall not be entitled to any payment under this Section 1.4 unless

he (1) immediately upon learning of the vacancy, has notified the PHA of the vacancy or prospective vacancy, (2) has taken and continues to take all feasible actions to fill the vacancy including, but not limited to, contacting applicants on his waiting list, if any, requesting the PHA and other appropriate sources to refer eligible applicants, and advertising the availability of the unit, and (3) has not rejected any eligible applicant except for good cause acceptable to the PHA.

(c) The Owner shall not be entitled to housing assistance payments with respect to vacant units under this Section 1.4 to the extent he is entitled to payments from other sources (for example, payments for losses of rental income incurred for holding units vacant for relocatees pursuant to Title I of the Housing and Community Development Act of 1974 or payments under Section 1.5).

1.5 Security deposits. [This section is applicable only if the Owner has required the Family to pay a security deposit.]

(a) The Family has paid the Owner a security deposit in an amount equal to the amount payable by the Family toward one month's Gross Rent. If the Family vacates the unit, the Owner, subject to State and local law, may utilize the deposit as reimbursement for any unpaid rent or other amount owed under the Lease. If the amount of the security deposit is insufficient for such reimbursement, the Owner may claim reimbursement from the PHA, not to exceed an amount equal to the remainder of one month's Contract Rent. Any reimbursement under this Section shall be applied first toward any unpaid rent. If the Family vacates the unit owing no rent or other amount under the Lease, or if such amount is less than the amount of the security deposit, the Owner shall refund the full amount or the unused balance, as the case may be, to the Family.

(b) In those jurisdictions where interest is payable by the Owner on security deposits, the refunded amount shall include the amount of interest payable. The Owner shall comply with all State and local laws regarding interest payments on security deposits.

1.6 Other conditions for housing assistance payments. The rights of the Owner to receive housing assistance payments under this Contract shall be subject to his compliance with all the provisions of this Contract, including Part II which contains provisions on matters including, but not limited to, the requirements for obtaining payments, the provision of required services, and maintenance of the Contract Unit in Decent, Safe, and Sanitary condition.

1.7 Entire agreement. This Contract, including Part II hereof, contains the entire agreement between the parties hereto, and neither party is bound by any representations or agreements of any kind except as contained herein. No changes in this Contract shall be made except in writing signed by both the Owner and the PHA.

1.8 Owner's warranty of legal capacity. The Owner warrants that he has the legal right to execute this Contract and to lease the dwelling unit covered by this Contract.

PHA _____

By _____

(Official title)

Date _____

OWNER _____

By _____

(Official title)

Date _____

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM; EXISTING HOUSING

Part II of the Housing Assistance Payments Contract

Master Section 8 ACC Number: _____

Existing Housing ACC Part I Number and

Date: _____

2.1 Nondiscrimination in housing.

(a) Neither the Owner nor the PHA shall, in the selection or approval of Families, in the provision of services, or in any other manner, discriminate against any person on the ground of race, color, creed, religion, sex, or national origin. No person shall be automatically excluded from participation in, or be denied the benefits of, the Housing Assistance Payments Program because of membership in a class such as unmarried mothers, recipients of public assistance, etc.

(b) The Owner shall comply with all requirements imposed by Title VIII of the Civil Rights Act of 1968, and any rules and regulations pursuant thereto.

(c) The Owner shall comply with all requirements imposed by Title VI of the Civil Rights Act of 1964, Public Law 88-352, 78 Stat. 241; the regulations of the Department of Housing and Urban Development issued thereunder, 24 CFR, Subtitle A, Part I, Section 1.1, et seq.; the requirements of said Department pursuant to said regulations; and Executive Order 11063 to the end that, in accordance with that Act, the regulations and requirements of said Department thereunder, and said Executive Order, no person in the United States shall, on the ground of race, color, creed, religion, or national origin, be excluded from participation in, or be denied the benefits of, the Housing Assistance Payments Program, or be otherwise subjected to discrimination. This provision is included pursuant to the regulations of the Department of Housing and Urban Development, 24 CFR, Subtitle A, Part I, Section 1.1, et seq., issued under Title VI of the said Civil Rights Act of 1964, and the requirements of said Department pursuant to said regulations; and the obligation of the Owner to comply therewith inures to the benefit of the Government, the said Department, and the PHA, any of which shall be entitled to invoke any remedies available by law to redress any breach thereof or to compel compliance therewith by the Owner.

2.2 Cooperation in equal opportunity compliance reviews. The PHA and the Owner shall cooperate with the Government in the conducting of compliance reviews and complaint investigations pursuant to all applicable civil rights statutes, Executive Orders, and rules and regulations pursuant thereto.

2.3 Annual contributions contract.

(a) The PHA has entered into an Annual Contributions Contract, identified in the introductory paragraph of this Contract, under which the Government will provide financial assistance to the PHA pursuant to section 8 of the Act, for the purpose of making housing assistance payments with respect to the PHA's Existing Housing Program. A copy of this ACC shall be provided by the PHA to the Owner upon request.

(b) The PHA hereby pledges such annual contributions as are payable under the ACC for housing assistance payments to the making of such payments pursuant to this and other Housing Assistance Payments Contracts entered into as a part of the PHA's Existing Housing Program.

2.4 Monthly payment to owner.

(a) The Owner shall be paid monthly the amount due under this Contract. The Owner agrees that the endorsement on the

check (1) shall be conclusive evidence that the Owner has received full payment, and (2) shall constitute certification by the Owner that (i) the Contract unit for which the payment is made is in Decent, Safe, and Sanitary condition and is leased to an Eligible Family, (ii) the amount of the payment is the correct amount due him under this Contract, and (iii) the payment meets all other requirements under this Contract.

(b) The Owner agrees further:

(1) Should the PHA or the Government determine that the Owner is not entitled to the payment, or any part thereof, the PHA or the Government, in addition to other remedies, may deduct the amount of the overpayment from any other amounts due the Owner.

(2) That he will notify the PHA promptly of any change of circumstances which would affect the amount of the monthly payment and that he will return any payment which does not conform to the changed circumstances. Failure by the Owner to comply with the requirements of this paragraph (b) (2) may be considered by the PHA or the Government as grounds for termination of this Contract.

2.5 Maintenance, operation and inspection.

(a) *Maintenance and Operation.* The Owner agrees (1) to maintain and operate the Contract Unit and related facilities so as to provide Decent, Safe, and Sanitary housing, and (2) to provide all the services, maintenance and utilities set forth in the Lease. If the PHA determines that the Owner is not meeting one or more of these obligations, the PHA shall have the right, in addition to its other rights and remedies under this Contract, to abate housing assistance payments in whole or in part.

(b) *Inspection.*

(1) Prior to occupancy of the unit by the Family, the Owner and the Family shall inspect the unit and shall furnish a report and certification of the condition of the unit, on the form prescribed by the PHA. By executing this Contract, the Owner certifies that to the best of his knowledge and belief and in accordance with the criteria provided in the PHA-prescribed form, the unit is in Decent, Safe, and Sanitary condition on the date of execution.

(2) The PHA shall inspect or cause to be inspected the Contract Unit and related facilities at least annually and at such other times (including prior to initial occupancy of the unit) as may be necessary to assure that the Owner is meeting his obligation to maintain the unit in Decent, Safe, and Sanitary condition and to provide the agreed upon utilities and other services. The PHA shall take into account complaints by occupants and any other information coming to its attention in scheduling inspections, and shall notify the Owner and the Family of its determinations.

(c) *Units Not Decent, Safe, and Sanitary.* If the PHA notifies the Owner that he has failed to maintain the dwelling unit in Decent, Safe, and Sanitary condition and the Owner fails to take corrective action within the time prescribed in the notice, the PHA may exercise any of its rights or remedies under the Contract, including abatement of housing assistance payments (even if the Family continues in occupancy) and termination of the Contract. If the Family wishes to be rehoused in another dwelling unit with section 8 assistance and the PHA determines to terminate the Contract, the PHA shall issue to the Family another Certificate of Family Participation.

(d) *Notification of Abatement.* Any abatement of housing assistance payments shall be effective as provided in written notification

to the Owner. The PHA shall promptly notify the Family of any such abatement.

(e) *Overcrowded Unit.* If the PHA determines that a Contract Unit is not Decent, Safe, and Sanitary by reason of increase in Family size, the Family and the PHA shall try to find an acceptable unit as soon as possible. If an acceptable unit is found that is available for occupancy by the Family, and the Lease with the first Owner can be terminated in accordance with its terms, the Contract with the first Owner shall be terminated and housing assistance payments shall be made available to the Family for occupancy in the acceptable unit. Housing assistance payments will not be terminated unless the Family rejects without good reason the offer of a unit which the PHA judges to be acceptable.

2.6 *Eviction.* The Owner shall not evict the Family unless the Owner complies with the requirements of local law, if any, and of this Section. The Owner shall give the Family a written notice of the proposed eviction, stating the grounds and advising the Family that it has 10 days (or such greater number, if any, that may be required by local law) within which to respond to the Owner. The Owner must obtain the PHA's authorization for an eviction; accordingly, a copy of the notice shall be furnished simultaneously to the PHA, and the notice shall also state that the Family may, within the same time period, present its objections to the PHA in writing or in person. The PHA shall forthwith examine the grounds for eviction and shall authorize the eviction unless it finds the grounds to be insufficient under the Lease. The PHA shall notify the Owner and the Family of its determination within 20 days of the date of notice to the Family, whether or not the Family has presented objections to the PHA. If the Owner has not received a response from the PHA within 20 days, he shall telephone the PHA and shall be informed by the PHA whether a notice of determination has been mailed. If the PHA informs the Owner that no notice has been mailed within the 20 day period, the PHA shall be deemed to have authorized the eviction.

2.7 *Rent adjustments.* (a) Contract Rents shall be adjusted as provided in paragraphs (a) (1) and (2) of this Section upon request to the PHA by the Owner, provided that the unit is in Decent, Safe, and Sanitary condition and that the Owner is otherwise in compliance with the terms of the Lease. Subject to the foregoing, adjustments of Contract Rents shall be as follows:

(1) An adjustment as of any anniversary date of the Lease not to exceed the percentage of change in the applicable published Existing Housing Fair Market Rent (with appropriate reduction in the adjustment where utilities are paid directly by the Family), provided that the Owner has the legal right to terminate the tenancy as of such anniversary date.

(2) A special adjustment, subject to Government approval, to reflect increases in the actual and necessary expenses of owning and maintaining the unit which have resulted from substantial general increases in real property taxes, utility rates, or similar costs (i.e., assessments, and utilities not covered by regulated rates), but only if and to the extent that the Owner clearly demonstrates that such general increases have caused increases in the Owner's operating costs which are not adequately compensated for by the annual adjustments provided for in paragraph (a) (1). The Owner shall submit financial statements which clearly support the increase. Such adjustment shall be effective as of the date when the Owner has the legal right to terminate the tenancy,

which need not be the anniversary date of this Contract.

(b) Notwithstanding any other provisions of this Contract, adjustments as provided in paragraph (a) shall not result in material differences between the rents charged for assisted and comparable unassisted units, as determined by the PHA (and approved by the Government in case of adjustments under paragraph (a) (2)), nor shall any adjusted rent be in excess of the amount that could be approved by the PHA as an initial Contract Rent as of the date of the rent adjustment.

2.8 *Rent redetermination after adjustment in allowance for utilities and other services.* In the event that the Owner is notified of a PHA determination making an adjustment in the Allowance for Utilities and Other Services applicable to the Contract Unit, the Owner shall promptly make a corresponding adjustment in the amount of rent to be paid by the Family and the amount of housing assistance payment.

2.9 *PHA and Government assess to premises and owner's records.*

(a) The Owner shall furnish such information and reports pertinent to the Contract as reasonably may be required from time to time by the PHA or the Government.

(b) The Owner shall permit the PHA or the Government or any of their duly authorized representatives to have access to the premises and, for the purpose of audit and examination, to have access to any books, documents, papers and records of the Owner that are pertinent to compliance with this Contract, including the verification of information pertinent to the housing assistance payments.

2.10 *Rights of PHA if owner defaults.*

(a) A Default by the Owner under this Contract shall result if:

(1) The Owner has violated or failed to comply with any provision of, or obligation under, this Contract or of any Lease; or

(2) The Owner has asserted or demonstrated an intention not to perform some or all of his obligations under this Contract or under any Lease.

(b) Upon a determination by the PHA that a default has occurred, the PHA shall notify the Owner, with a copy to the Government, of (1) the nature of the default, (2) the actions required to be taken and the remedies to be applied on account of the default (including actions by the Owner to cure the default, and, where appropriate, abatement of housing assistance payments in whole or in part and recovery of overpayments), and (3) the time within which the Owner shall respond with a showing that he has taken all the actions required of him. If the Owner fails to respond or take action to the satisfaction of the PHA and the Government, the PHA shall have the right to terminate this Contract in whole or in part or to take other corrective action to achieve compliance, in its discretion or as directed by the Government.

2.11 *Remedies not exclusive and non-waiver of remedies.* The availability of any remedy under this Contract or the ACC shall not preclude the exercise of any other remedy under this Contract or under any provisions of law, nor shall any action taken in the exercise of any remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

2.12 *Disputes.*

(a) Except as otherwise provided herein, any dispute concerning a question of fact arising under this Contract which is not disposed of by agreement of the PHA and

Owner may be submitted by either party to the Department of Housing and Urban Development field office director who shall make a decision and shall mail or otherwise furnish a written copy thereof to the Owner and the PHA.

(b) The decision of the field office director shall be final and conclusive unless, within 30 days from the date of receipt of such copy, either party mails or otherwise furnishes to the field office director a written appeal addressed to the Secretary of Housing and Urban Development. The decision of the Secretary or duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this Section, the appellant shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, both parties shall proceed diligently with the performance of the Contract and in accordance with the decision of the field office director.

(c) This Section does not preclude consideration of questions of law in connection with decisions rendered under paragraphs (a) and (b) of this Section. Provided, however, that nothing herein shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

2.13 *Interest of members, officers, or employees of PHA, members of local governing body, or other public officials.* No member, officer, or employee of the PHA, no member of the governing body of the locality (city and county) in which the Project is situated, no member of the governing body of the locality in which the PHA was activated, and no other official of such locality or localities who exercises any functions or responsibilities with respect to the Project, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this Contract or in any proceeds or benefits arising therefrom.

2.14 *Interest of member of or delegate to Congress.* No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this Contract or to any benefits which may arise therefrom.

2.15 *Assignment of the contract or interest therein.*

(a) The Owner agrees that he has not made and will not make any sale, assignment, or transfer in any other form, of this Contract, or any of his interest therein, except with the prior consent of the PHA.

(b) The Owner agrees to notify the PHA promptly of any proposed action covered by paragraph (a) of this Section. The Owner further agrees to request written consent of the PHA in regard thereto.

(c) (1) A transfer by the Owner, in whole or in part, or a transfer by a party having a substantial interest in said Owner, or transfers by more than one party of interests aggregating a substantial interest in said Owner, or any other similarly significant change in the ownership of interests in the Owner, or in the relative distribution thereof, or with respect to the parties in control of the Owner or the degree thereof, by any other method or means (e.g., increased capitalization, merger with another corporation or other entity, corporate or other amendments, issuance of new or additional ownership interests or classification of ownership interests or otherwise) shall be deemed an assignment or transfer for purposes of this Section 2.15. An assignment by the Owner to a limited partnership, in which no limited partner

has a 25 percent or more interest and of which the Owner is the sole general partner, shall not be considered an assignment or transfer.

(2) The term "substantial interest" means the interest of any general partner, any limited partner having a 25 percent or more interest in the organization, any corporate officer or director, and any stockholder having a 10 percent or more interest in the organization.

(3) The Owner, and the party signing this Contract on behalf of said Owner, represent that they have the authority of all of the parties having ownership interests in the Owner to agree to this provision on their behalf and to bind them with respect thereto.

APPENDIX III

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

Certificate of family participation

1. *Certification.* The undersigned Public Housing Agency ("Agency") hereby certifies that the Family headed by _____ is authorized to participate in the Section 8 Housing Assistance Payments Program of this Agency. Under this program, the Agency makes housing assistance payments on behalf of participating Families toward their rents to Owners of Decent, Safe, and Sanitary dwelling units selected by the Families.

2. *Dwelling Unit.* If the Family finds a dwelling unit meeting its space requirements and otherwise suitable to its needs, which is in Decent, Safe, and Sanitary condition, the Family should submit to the Agency the Request for Lease Approval, together with the required inspection reports and a proposed lease. Prior to approval of the proposed lease, the Agency will inspect the dwelling unit or cause it to be inspected.

3. *Lease Rent.* The monthly rental provided in the Lease must be determined by the Agency to be reasonable; and generally this rent, plus the Allowance approved by the Agency for any utilities and services payable directly by the Family, may not exceed the Fair Market Rent for a ____ bedroom dwelling unit, which is \$____ for elevator buildings and \$____ for non-elevator buildings.

4. *Family Portion of Rent.*

(a) *Gross Family Contribution.* Under the rules and regulations of the Housing Assistance Payments Program, the Family will be obligated to pay \$____ toward the monthly lease rental (Gross Family Contribution); however, this amount will be reduced (1) by any Allowance for utilities and services to be paid directly by the Family, and (2) by any Rent Credit as described in paragraph (b) below. Any such reduction will be reflected in the amount payable by the Family as specified in the Lease.

(b) *Rent Reduction Incentive.* (1) As an incentive to the Family to find the most economical housing suitable to its needs, and subject to the other provisions of this paragraph (b), if the Family selects a dwelling unit for which the proposed monthly lease rental plus any applicable Allowance is below the applicable Fair Market Rent, the Family will be given a Rent Credit by a reduction in its Gross Family Contribution. The amount of this credit will be that percentage of the Gross Family Contribution which the Rent Saving is of the Fair Market Rent. The Rent Saving is the amount by which the Fair Market Rent exceeds the monthly lease rental (plus any applicable Allowance) approved by the Agency.

(2) No Rent Credit under this paragraph (b) will be allowed if the dwelling unit is one which receives the benefit of Federal,

State, or local subsidy, unless a specific exception has been approved by HUD.

(3) If the dwelling unit selected by the Family is of a size or type for which HUD had previously approved a maximum rent higher than the Fair Market Rent, this higher maximum rent will be used instead of the Fair Market Rent for purposes of determining the amount of the Rent Credit under the provisions of paragraph (b)(1).

(c) *Changes in Family Income and Other Factors.* The amount of the Family's required Gross Family Contribution is subject to change by reason of changes in Family income, composition, and extent of exceptional medical or other unusual expenses and changes in the Allowance for Utilities and Other Services and the Contract Rent.

5. *Agency Portion of Rent.* Pursuant to a Housing Assistance Payments Contract with an Owner, the Agency will pay to the Owner on behalf of the Family an amount equal to the difference between the Family portion of the rent to the Owner and the monthly lease rental.

6. *Agency Approval of Lease.*

(a) After receipt of a Request for Lease Approval, the Agency will notify the Owner and the Family whether or not the proposed lease is approvable. This notification will be given within ____ working days from the date of availability for inspection as stated in the Request for Lease Approval.

(b) The Agency, upon issuing this Certificate of Family Participation, anticipates that if a lease meeting the requirements of this program is submitted for approval, the Agency will have funds available for a Housing Assistance Payments Contract with the Owner; however, the Agency is under no obligation to the Family, to any Owner or to any other person to approve any submitted lease, nor does the Agency incur any liability by reason of issuing this Certificate.

7. *Conditions.* The Family agrees to perform all its obligations under the Housing Assistance Payments Program, including the obligations to (a) provide such Family income information and records as may be required in the administration of the program, (b) permit inspection of its dwelling unit at reasonable times after reasonable advance notice, and (c) give at least 30 days notice to the Agency of the Family's intention to vacate the unit.

8. *Equal Housing Opportunity.* If the Family has reason to believe that, in its search for suitable housing, it has been discriminated against on the basis of race, color, creed, religion, sex, or national origin, it may file a complaint with the HUD Regional Office. Fair Housing Complaint Forms (Form HUD-903) are available from this Agency.

9. *Expiration Date.* A Request for Lease Approval may be submitted to this Agency no later than ____ (60 days from the date of this Certificate). If a Request is not submitted by such date, this Certificate shall expire unless extended by the Agency in writing.

(Name of Public Housing Agency)

By _____
(Signature and title)

(Date)

(Telephone)

(Name of family representative)

(Signature of family representative)

(Date)

(Telephone)

APPENDIX IV

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

Request for lease approval

1. Request. The undersigned Owner and Family hereby request the _____ to (Name of Public Housing Agency) approve the attached lease for the dwelling unit located at _____ for a term of (Street address and apartment number, if any) _____ months, beginning _____, 19____

The unit, consisting of _____ bedrooms, is to be leased at \$_____ per month. This rent includes maintenance and other services as provided in the lease and the following utilities and appliances:

Type of house (check applicable box):

- ☐ Detached
☐ Row House
☐ Duplex or Twin
☐ Garden Apartment
☐ High-Rise Apartment
☐ Mobile Home

Utilities and Appliances (insert O if furnished by owner or T if furnished by Tenant)

Item	Coal	Oil	Natural gas	Electric	L.P. gas	Other
Heat						XX
Cooking fuel						XX
Air-conditioning	XX	XX	XX		XX	XX
Lighting/refrigeration	XX	XX	XX	XX	XX	XX
Water	XX	XX	XX	XX	XX	
Sewer	XX	XX	XX	XX	XX	
Trash collection	XX	XX	XX	XX	XX	
Range	XX	XX	XX	XX	XX	
Refrigerator	XX	XX	XX	XX	XX	
Hot water						XX

2. Certifications.

The owner, by executing this Request, certifies that:

(a) The most recent rent charged for the above dwelling unit was \$_____ per month. The reasons for the difference, if any, between this amount and the proposed rent are:

(b) This unit is made available, managed, and operated regardless of race, color, creed, religion, sex, or national origin.

(c) He has inspected the dwelling unit, as evidenced by the attached inspection report, and his certification as to the condition of the unit is true to the best of his knowledge and belief.

The family, by executing this Request, certifies that it has inspected the dwelling unit, as evidenced by the attached inspection report, and that its certification as to the condition of the unit is true to the best of its knowledge and belief.

3. Dates of Availability for Inspection and Occupancy.

a. The dwelling unit will be available for inspection by the Agency on _____, 19____.

b. The dwelling unit will be available for occupancy by the Family on _____, 19____.

4. Agency Determination. The Owner and the Family understand that the Agency will notify them as to whether or not the proposed lease is approvable, within the time period specified in paragraph 6 of the Certificate of Family Participation.

(Name of owner or other entity authorized to lease)

By _____ (Signature)

(Date)

(Business address)

(Telephone)

(Name of family representative)

(Signature of family representative)

(Date)

(Present address of family)

(Telephone)

APPENDIX V

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

Agency determination with respect to request for lease approval

(To be Sent to the Owner and Family)

(Check applicable box)

☐ 1. Approval. The Agency hereby approves the proposed lease between _____ (Family) and _____ (Owner) for the dwelling unit located at _____ (Street Address and Apartment Number, if any)

The Agency hereby certifies that the Contract Rent is reasonable.

(a) Enclosed is the proposed lease, which has been completed by the Agency with respect to the portion of the monthly lease rental which the Family shall be obligated to pay to the Owner. The Lease shall be executed by the Family and the Owner and a copy returned to the Agency.

(b) Also enclosed are two copies of a Housing Assistance Payments Contract completed by the Agency except for execution. The Owner shall sign both copies of the Contract and return them to the Agency. The Agency will execute the Contract by the first day of occupancy specified in the Lease and will immediately return an executed copy to the Owner.

☐ 2. Disapproval. The proposed lease and/or the dwelling unit are/is disapproved for the following reasons:

☐ 3. Resubmission. If the conditions in Item 2 above are remedied, and a Request for Lease Approval is resubmitted by the Owner and the Family to the Agency by _____ (date), the lease will be approved by the Agency if it determines that the conditions have been remedied to its satisfaction. (The Certificate of Family Participation issued to the Family shall not expire before said date.)

(Name of public housing agency)

By: _____ (Signature and title)

(Date) (Telephone)

APPENDIX VI

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, EXISTING HOUSING

Required lease provisions

The Lease between the Owner (Lessor) and the Family (Lessee) shall contain the following provisions:

ADDENDUM TO LEASE

The following additional Lease provisions are incorporated in full in the Lease between _____ (Lessor) and _____ (Lessee) for the following dwelling unit: _____. In case of any conflict between these and any other provisions of the Lease, these provisions shall prevail.

a. The total rent shall be \$ _____ per month.

b. Of the total rent, \$ _____ shall be payable by the Public Housing Agency (PHA) as housing assistance payments on behalf of the Lessee and \$ _____ shall be payable by the Lessee. These amounts shall be subject to change by reason of changes in the Lessee's family income, family composition, or extent of exceptional medical or other unusual expenses, in accordance with HUD-established schedules and criteria; or by reason of adjustment by the PHA of any applicable Allowance for Utilities and Other Services. Any such change shall be effective as of the date stated in a notification to the Lessee.

c. The Lessor shall provide the following utilities: [Specify].

d. The Lessor shall provide maintenance and services as follows:

(1) The Lessor shall maintain the dwelling unit and all equipment provided therewith, as well as common areas, facilities and equipment provided for the use and benefit of the Lessee, in compliance with the Housing Quality Standards on the basis of which this Lease was approved by the Public Housing Agency, and the Lessor shall respond in a reasonable time to calls by the Lessee for services consistent with said obligation. Where applicable (as in case of multi-unit buildings), such maintenance with respect to common areas, facilities and equipment shall include cleaning; maintenance of lighting and equipment; maintenance of grounds, lawns and shrubs; and removal of snow and ice. Where security equipment and services are to be provided by Lessor they are as follows: [Specify, or state "None"].

(2) Extermination services shall be provided by Lessor as conditions may require. If such service is to be provided on a scheduled basis, the schedule is as follows: [Specify, or state "No schedule"].

(3) Repainting shall be provided by Lessor as conditions may require. If such service is to be provided on a scheduled basis, the schedule is as follows: [Specify, or state "No schedule"].

e. The Lessor shall not evict the Lessee unless the Lessor complies with the requirements of local law, if any, and of this provision. The Lessor shall give the Lessee a written notice of the proposed eviction, stating the grounds and advising the Lessee that he has 10 days (or such greater number, if any, that may be required by local law) within which to respond to the Lessor. Because the Lessor must obtain the PHA's authorization for an eviction, a copy of the notice shall be furnished simultaneously to the PHA, and the notice shall also state that the Lessee may, within the same time period, present his objections to the PHA in writing or in person. The PHA shall forthwith examine the grounds for eviction and shall authorize the eviction unless it finds the grounds to be insufficient under the lease. The PHA shall notify the Lessor and the Lessee of its

determination within 20 days of the date of the notice to the Lessee, whether or not the Lessee has presented objections to the PHA. If the Lessor has not received a response from the PHA within 20 days, he shall telephone the PHA and shall be informed by the PHA whether a notice of determination has been mailed. If the PHA informs the Lessor that no notice has been mailed within the 20 day period, the PHA shall be deemed to have authorized the eviction.

f. The Lessor shall not discriminate against the Lessee in the provision of services, or in any other manner, on the grounds of race, color, creed, religion, sex, or national origin.

(g) (1) This Lease shall not become effective unless the PHA has executed a Housing Assistance Payments Contract with the Lessor by the first day of occupancy specified in the Lease.

(2) This Lease shall terminate upon the date of any termination of the Housing Assistance Payments Contract, including any termination due to termination of eligibility of the Lessee. In the event that the PHA determines, after having given the Lessee reasonable notice (with a copy to the Lessor) and opportunity to respond, that the Lessee is ineligible for further housing assistance payments because of failure to comply with the Lessee's obligations under the Certificate of Family Participation, the PHA shall notify the Lessor and the Lessee of such determination. Such determination shall be grounds for termination of this Lease by the Lessor.

Lessor _____
By _____
Date _____
Lessee _____
Date _____

APPENDIX VII

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, EXISTING HOUSING

Prohibited lease provisions

Lease clauses which fall within the classifications listed below shall not be included in any Lease in this program.

1. *Confession of Judgment.* Prior consent by tenant to any lawsuit the landlord may bring against him in connection with the Lease and to a judgment in favor of the landlord.

2. *Distrain for Rent or Other Charges.* Authorization to the landlord to take property of the tenant and hold it as a pledge until the tenant performs any obligation which the landlord has determined the tenant has failed to perform.

3. *Exculpatory Clause.* Agreement by tenant not to hold the landlord or landlord's agents liable for any acts or omissions whether intentional or negligent on the part of the landlord or the landlord's authorized representative or agents.

4. *Waiver of Legal Notice by Tenant Prior to Actions for Eviction or Money Judgments.* Agreement by tenant that the landlord may institute suit without any notice to the tenant that the suit has been filed.

5. *Waiver of Legal Proceedings.* Authorization to the landlord to evict the tenant or hold or sell the tenant's possessions whenever the landlord determines that a breach or default has occurred, without notice to the tenant or any determination by a court of the rights and liabilities of the parties.

6. *Waiver of Jury Trial.* Authorization to the landlord's lawyer to appear in court for the tenant and to waive the tenant's right to a trial by jury.

7. *Waiver of Right to Appeal Judicial Error in Legal Proceedings.* Authorization to the landlord's lawyer to waive the tenant's right to appeal on the ground of judicial error in any suit or the tenant's right to file a suit in equity to prevent the execution of a judgment.

8. *Tenant Chargeable with Cost of Legal Actions Regardless of Outcome.* Agreement by the tenant to pay attorney's fees or other legal costs whenever the landlord decides to take action against the tenant even though the court finds in favor of the tenant. (Omission of this clause does not mean that the tenant as a party to a lawsuit may not be obligated to pay attorney's fees or other costs if he loses the suit.)

NOTE.—It is hereby certified that the economic and inflationary impacts of this regulation have been carefully evaluated in accordance with OMB Circular A-107.

Effective Date: These regulations are effective May 13, 1976.

CARLA A. HILLS,
Secretary of Housing and
Urban Development.

[FR Doc. 76-13676 Filed 5-12-76; 8:45 am]

federal register

THURSDAY, MAY 13, 1976



PART V:

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

■

NEW ANIMAL DRUGS

Furazone (NF-180)

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Parts 510, 556 and 558]

[Docket No. 76N-0173; NADA No. 9-073 etc.]

FURAZOLIDONE (NF-180)

Withdrawal of Proposal and Advanced Notice of Proposed Rule Making

Elsewhere in this issue of the *FEDERAL REGISTER*, the Director of the Bureau of Veterinary Medicine of the Food and Drug Administration (FDA) is issuing a notice of opportunity for hearing on a proposal to withdraw approval of approved new animal drug applications (NADA's) Nos. 9-073, 9-393, 11-016, 11-405, 11-698, 11-810 (formerly FDC-D-281), and NADA Nos. 12-061, 13-805, and 32-319 for the use of furazolidone (NF-180) in food-producing animals on the grounds that the drug has been shown by appropriate tests to induce cancer when ingested by animals and there is no adequate, reliable and practicable method of analysis available for assuring that no residue of the drug will be found in any edible portion of such animals, as required by section 512(d)(1)(H) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(d)(1)(H)).

Consistent with this action, the Director is hereby withdrawing the proposal on furazolidone published in the *FEDERAL REGISTER* of August 4, 1971 (36 FR 14335), and is proposing to revoke §§ 510.515 (a) (4) and (5), (b) (15) and (17) (ii), (c) (8), (9) and (10); 556.290; 558.15(g) (1) and (2); and 558.262. Comments by June 14, 1976.

The Director has reviewed the potential environmental impact of the proposal and has concluded that the proposed action would not significantly affect the quality of the human environment. An environmental impact analysis report and environmental impact assessment are on file in the office of the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20852.

The Director has carefully considered the inflation impact of this proposed action. A major inflation impact has been found, as defined in Executive Order 11821, OMB Circular A-107, and the

Guidelines issued by the Department of Health, Education, and Welfare. Copies of the inflation impact statement are on file with the Hearing Clerk, Food and Drug Administration. The major conclusions found in the inflation impact statement are:

(1) There are no satisfactory alternatives to the agency's proposed action which are consistent with the legal constraints imposed by the Federal Food, Drug, and Cosmetic Act, as amended.

(2) Poultry production, i.e., broilers, turkeys, and eggs (as affected through diseased or poorer quality replacement birds), is estimated to decrease anywhere from 2 to 20 percent, and swine production is estimated to decrease from 0 to 5 percent following a furazolidone ban. The lower estimate are more likely for the first year following the ban, but in subsequent years the higher estimates are expected to apply because the resistance of poultry and swine to antibiotics and sulfa drugs will probably become a more acute problem with respect to the prevention and treatment of poultry and swine diseases.

(3) The ranges of decrease in poultry and swine production and their resultant impact on retail prices will lead to an annual increase in cost to consumers of between just less than \$1.50 per capita to just more than \$12 per capita for consumption of poultry and swine products if producers do not adjust by feeding more poultry and swine in order to offset losses from morbidity, mortality, and condemnation. The per-capita cost annual increases are equivalent to an aggregate ranging from \$291 million to \$2.635 billion.

(4) Again depending on the resistance of poultry and swine to antibiotics and sulfa drugs, if poultry and swine producers expanded operations to overcome 100 percent of the production losses from morbidity, mortality, and condemnation, then the feed plus nonfeed costs for this expansion would range from \$164 million to \$1.8 billion annually. Assuming these entire costs are passed on to consumers, this amounts to between about \$.80 per capita and almost \$9 per capita annually.

(5) A ban on furazolidone may cause a decrease in the supply of poultry amounting to 20 percent and swine amounting to 5 percent within the next 2

years if resistance to drugs other than furazolidone is substantial for poultry and swine, and producers do not feed more swine and poultry in order to offset losses from morbidity, mortality, and condemnation.

(6) A ban on furazolidone may cause major inflation impacts, as defined by the OMB/HEW criteria, in the area of competition for the poultry and swine industries.

(7) A ban on furazolidone would not cause major inflation impacts, as defined by the OMB/HEW criteria, in the area of employment.

(8) A ban on furazolidone would not cause major inflation impacts, as defined by the OMB/HEW criteria, in the areas of national productivity or use of energy.

(9) The benefits from implementing the proposed action will be the elimination of any risk of any cancer associated with the consumption, via the edible tissues or products from food-producing animals, of residues attributable to furazolidone.

Therefore, pursuant to the Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343-361 (21 U.S.C. 360b)) and under authority delegated to the Commissioner (21 CFR 2.120), and subdelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 2.120(m)), the Director proposes to revoke the following regulations in whole or in part insofar as they apply to furazolidone (NF-180): §§ 510.515 (a) (4) and (5), (b) (15) and (17) (ii), (c) (8), (9) and (10); 556.290; 558.15(g) (1) and (2); and 558.262.

Interested persons may, on or before June 14, 1976, submit to the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20852, written comments (preferably in quintuplicate and identified with the Hearing Clerk docket number found in brackets in the heading of this document) regarding this proposal. Received comments may be seen in the above office during working hours, Monday through Friday.

Dated: May 10, 1976.

C. D. VAN HOUWELING,
Director, Bureau of
Veterinary Medicine.

[FR Doc. 76-13998 Filed 5-10-76; 2:04 pm]