paragraph (b) of this Section has voluntarily selected a replacement rental dwelling unit, the local government shall provide a rental assistance payment as described in 24 CFR Part 42, unless a PHA provides a Certificate of Family Participation under the Section 8 Housing Assistance Payments Program—Existing Housing, 24 CFR Part 882. The latter can occur only when the displaced family or individual is eligible to participate in that program, the replacement rental dwelling unit meets the requirements of that program, and the landlord of the replacement rental dwelling unit is willing to participate in that program. If the tenant elects to rent a replacement dwelling that cannot be assisted under the Section 8 Existing Housing Program, he/she must be offered the rental assistance payment described at Section 42.453. (If an eligible tenant voluntarily selects a dwelling unit that meets the Section 8 requirements and the owner is willing to participate in the Existing Housing Program but the tenant refuses the Section 8 assistance, the tenant is not entitled to a rental assistance payment. Regardless of the source of any rental assistance payments provided, the local government shall provide moving expenses.

(i) *Nonresidential tenants.* The modifications in paragraphs (c) through (h) of this Section do not apply to the displacement of any business, farm, or nonprofit organization which has been displaced as a result of an action described in paragraph (a) of this Section. Such businesses, farms, or nonprofit organizations shall be provided relocation payments and other assistance in accordance with the regulations of 24 CFR Part 42 and the policies and procedures contained in HUD Handbook 1376.1, Relocation and Real Property Acquisition, September 1979.

(j) *Manner of notices.* Any notice required under this Section shall be personally served, receipt documented, or sent by certified or registered first-class mail, return receipt requested.

(k) *Responsibility for Relocation Payments and Assistance.* The local government is responsible for providing the relocation payments and assistance described in this Section from funds other than those provided under these special procedures.

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Issued at Washington, D.C. December 17, 1979.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

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Part III

Department of Housing and Urban Development

Office of Assistant Secretary for Housing—Federal Housing Commissioner

Section 8 Housing Assistance Payments Program for Substantial Rehabilitation

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 881

[Docket Number R-80-761]

Section 8 Housing Assistance Payments Program for Substantial Rehabilitation

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner (HUD).

ACTION: Interim rule.

SUMMARY: The regulation governing the Section 8 substantial rehabilitation program has been revised to accomplish three major objectives. First, the language of the regulation has been simplified and the format altered to make the regulation easier to read and use. Second, rent, cost and amenities limitations, and requirements for cost justification of rents in certain cases, have been added in order to control and reduce the costs of the program. Third, processing changes have been made to assure coordination of Section 8 and HUD mortgage insurance programs with fewer developer submissions and to reduce and level out field office workload in order to improve the efficiency and quality of processing.

In addition, relocation requirements have been revised to provide more equitable treatment to tenants temporarily and permanently displaced as a result of rehabilitation activities.

This regulation does not apply to projects developed under other Section 8 regulations, including Parts 880, 882, 883 and 885, except as provided in those Parts.

EFFECTIVE DATE: February 20, 1980.

COMMENTS DUE: Written comments and suggestions will be received on or before March 31, 1980. The Department will make such modifications as it deems appropriate in the final regulation.

ADDRESS: Comments should be filed with the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: George O. Hipps, Office of Multifamily Housing Development, Room 6128, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410; 202-755-5720. This is not a toll free number.

SUPPLEMENTARY INFORMATION: The Section 8 substantial rehabilitation program is a rental assistance program. Under this program, the government provides the difference between the approved rent for an appropriate housing unit and the amount paid by an eligible lower-income family, including the elderly and handicapped. Proposals from private owners or public housing agencies are generally submitted in response to a public advertisement. They are competitively evaluated and the best one(s) selected for further processing, development and eventual occupancy. Although the program does not provide construction or mortgage financing, an owner may use any method of financing available to him, including HUD mortgage insurance.

Amendments to the Section 8 New Construction program regulations were published for comment on June 12, 1979, in the **Federal Register** at 44 FR 33804. After considering the comments received, the Department is publishing the New Construction amendments for effect at this time. The processing procedures for the Section 8 Substantial Rehabilitation program closely parallel those for the Section 8 New Construction program and the changes made to the Substantial Rehabilitation regulations by these amendments are basically the same as those made to the New Construction regulations. In addition, this rule is to apply to the Fiscal Year 1980 Section 8 Substantial Rehabilitation program and all applications submitted early in the fiscal year are to be reviewed and approved in conformance with the regulation. Therefore, the Department has determined that the public interest would be served by making the amendments effective as soon as possible. The regulation is nevertheless subject to public comment and written comments will be received on or before the date and at the address indicated above. A discussion of the principal changes follows:

Language and Format. A primary purpose of this revision of Part 881 is to simplify the language of the regulation and generally to improve readability and ease of use. A brief summary has been added as Subpart A so that the general concepts of the program can be understood without reading the entire regulation. To improve usability, the remainder of the regulation has been divided into various segments which generally flow chronologically from proposal submission through project occupancy and management.

In order to aid in understanding the program, the revised regulation makes several changes in the basic terms used to describe the rent and assistance concepts of the program.

1. The term "total housing expense" has replaced the term "gross rent" which was confusing because the utility allowance (formerly "allowance for utilities and other services") making up part of the gross rent was not rent at all but rather an estimate of tenant-paid utilities and other services not included in the contract rent. Total housing expense is the sum of the contract rent and utility allowance, if any, for a unit.

2. The term "total family contribution" has replaced the term "gross family contribution." It consists of the "tenant rent," a new term which has been added to describe the portion of the total family contribution payable directly by the family to the owner, and any utility allowance for the unit the family is leasing.

3. The term "housing assistance payments" includes two payments—the "housing assistance payment to the owner" and in some cases an additional "housing assistance payment to the family." The housing assistance payment to the owner for a leased unit is the difference between the contract rent and the tenant rent described in number 2 above. An owner may also receive a housing assistance payment for a vacant unit. An additional housing assistance payment to the family is made only if the utility allowance described in number 1 above is greater than the total family contribution, in which case the family is paid the difference between the two in order that the allowed total family contribution is not exceeded.

With these new terms, the basic rent and assistance concepts of the program can now be expressed in several simple formulas:

(1) Total housing expense equals contract rent plus utility allowance.

(2) Total family contribution equals tenant rent plus utility allowance. (Where the utility allowance is greater than the total family contribution, the tenant rent is 0 and housing assistance payment to family equals utility allowance—total family contribution.)

(3) Housing assistance payment to owner equals contract rent—tenant rent.

(4) Housing assistance payments (to owner and to family, where applicable) equals total housing expense—total family contribution.

Several other terms have been introduced or revised for purposes of clarification or simplification. For example, the regulation now uses "contract administrator" to describe either HUD or the PHA as the party contracting with the owner for housing assistance payments.

Cost Containment

In the interest of providing housing at the lowest possible costs and rents, and thereby serving more families with available funding, the regulation includes the addition of several major cost containment features.

1. *Revised Limitation on Rents Including Cost Justification.* Although rent reasonableness has been a major determination of Section 8 project acceptability since the inception of the program, it has been implemented mainly through HUD handbooks, and an adequate explanation has never been included in the regulation. In addition to explaining rent reasonableness, the regulation includes more stringent standards in determining the reasonableness of rents.

The current rent reasonableness test allows rents in Section 8 projects to exceed rents for comparable unassisted units by up to 15 percent without cost justification of any kind (to compensate for increased security and management costs for family housing, and the additional costs for management and special amenities and design features for elderly housing, and for higher financing costs for all assisted housing), and by an additional 5 percent with cost justification. The new reasonableness test would permit Section 8 rents to exceed comparable rents by a maximum of 20 percent, but only when justified by cost estimates during processing and by cost certification at the time the project is completed. Small and partially-assisted projects for non-elderly families would be exempt from this cost justification to the extent the proposed Contract Rents do not exceed 110 percent of the comparable rent.

This change, as well as the continuation of current Fair Market Rent limitations, is contained in Section 881.204(b). The revision represents a major policy change which is expected to help avoid excessive expenditures under this program.

2. *Limitations on Replacement Costs.* To aid in controlling costs and assuring that Section 8 projects will be of "modest design," limits on project replacement costs have been included in § 881.204(d). The numerical limits are included in the regulation, and will be updated periodically by Notice published in the **Federal Register.**

The numerical limits as proposed are high enough to allow the use of all HUD mortgage insurance programs. Also, the regulation contains provisions similar to HUD mortgage insurance programs which provide for increases in the limits in high cost areas and additional increases in Alaska, Guam and Hawaii.

This limitation will require the submission of a replacement cost estimate by the developer at the preliminary proposal stage.

3. *Limitation on Amenities.* The current regulation does not expressly exclude amenities or design features considered luxurious, and some fear has been expressed that luxury level projects could result under the program. The revised regulation prohibits the inclusion of amenities or design features which would exceed the standards of modest quality housing in the area in which the project is proposed. Partially-assisted projects for non-elderly families are exempt from this limitation because of their predominantly unassisted nature. See § 881.204(e).

Limitations on Distributions. Section 881.205 of the revised regulation limits the distributions that can be made to profit-motivated owners out of surplus project funds, with different rates of return for family and elderly housing. Distribution for elderly projects is limited to 6 percent on equity and for non-elderly projects to 10 percent on equity. The higher rates of return for family projects are intended to provide additional incentive for developers to provide this "hard to get" type of housing.

The Assistant Secretary for Housing may provide for an increase in later years' distributions.

Any such adjustments will be made by Notice published in the **Federal Register.**

Return is to be calculated annually, and shortfalls in one year may be paid from excess funds accumulated in future years.

The appropriate FHA program regulations will be amended by the addition of a provision stating that distribution of project funds to mortgagors and the use of funds remaining after distribution will be governed by the Part 881 regulation in those cases where an insured project receives Section 8 assistance.

Relocation and Land Acquisition Requirements. The revised regulation makes substantial changes in relocation requirements in order to provide more equitable treatment to tenants temporarily or permanently displaced as a result of activities under this Part.

Section 881.209, Relocation and Land Acquisition Requirements, establishes the following:

1. The Uniform Relocation and Real Property Acquisition Policies Act of 1970 continues to apply to displacement resulting from the acquisition of real property by a public housing agency or other State agency.

2. For tenants temporarily or permanently relocated as a result of the project but are not subject to the Uniform Act, the owner must provide adequate notice and assistance in relocating to a suitable unit, reasonable moving and related expenses (or in some circumstances, a fixed payment for moving), temporary relocation expenses, and other related provisions.

3. If replacement housing within the tenant's ability to pay cannot otherwise be identified and government assistance that would satisfy this requirement cannot be secured, the owner may satisfy the requirements of Section 881.209 by providing the tenant with a lump sum payment equal to 48 times the amount, if any, necessary to reduce the monthly cost of a suitable replacement dwelling to 25 percent of the combined monthly gross income of all adult members of the tenant's household. This provision is applicable to tenants not subject to the Uniform Act.

4. Lower-income single persons who are displaced as a result of the project, may return to occupy assisted units in accordance with 24 CFR Part 812.

Pipeline Processing. The regulation, in Section 881.302, requires that previously submitted high quality approvable proposals "in the pipeline" which have not been funded be reviewed first when any new contract authority becomes available. This will both reduce and level out field office workload by requiring the offices to consider previously submitted, high quality proposals before soliciting the submission of new proposals which would require full reviews.

Preapproved Sites. Currently, requests for preapproved sites may be submitted at any time. Such requests may be received when no contract authority is available, or when the field office has little time to review such requests. Also, scattered submissions preclude comparison of requests. The revised regulation (Section 881.303) states that to the extent feasible such requests should be submitted early in the fiscal year. The purpose is to enable field offices to compare and approve requests prior to publication of the Notification of Fund Availability.

The revised regulation also permits local government selection of developers on a competitive basis for preapproved sites acquired with Community Development Block Grant (CDBG) funds.

Finally, in order to reduce field office processing, projects on preapproved sites not subject to competitive selection may skip the preliminary proposal stage. The first submission is comparable to a final proposal.

NOFA. Under current procedures, a field office issues various Notifications of Fund Availability (NOFAs) throughout the year requesting the submission of proposals for the various allocation areas within its jurisdiction. The process is repetitive and timeconsuming for the field office, and occasionally causes NOFAs to be deferred until so late in the fiscal year that proper processing and selection become difficult. Also, developers are frequently unaware of when NOFAs will be issued for areas in which they are interested and, therefore, are unable to plan accordingly.

Section 881.304 of the regulation requires a single publication which will provide notice that the field office will accept proposals for the various allocation areas within its jurisdiction. Specific information for each allocation area will be contained in a detailed NOFA which will be provided by the field office on request.

Proposals for projects for non-elderly families will be accepted as long as contract authority remains available and will be reviewed on a monthly cycle. Proposals for projects for the elderly will be accepted only up to a set deadline date. The reason for the differentiation between proposals for family and elderly projects is the relatively small number of proposals for family projects.

Small and Partially-Assisted Projects for Non-Elderly Families. In order to aid in deconcentration of assisted family housing, and thereby increase economic integration while at the same time lessening the impact of such housing on a neighborhood, the regulation contains exemptions from program requirements and special preferences to encourage development of small projects for non-elderly families (50 units or fewer) and partially-assisted projects for non-elderly families, i.e., projects of more than 50 units of which 20 percent or less are assisted under Section 8.

1. Small Projects. Exempt from cost justification requirement of Section 881.204(b)(2), if Contract Rents are no more than 10 percent above reasonable rents, and the limitation on distributions of Section 881.205. Option for use of a portion of contract authority made available in the NOFA for small projects only (Section 881.304(c)). Special preferences in selection for technical processing (Section 881.306(b)) and ranking (Section 881.307).

2. Partially-Assisted Projects. Exempt from cost justification requirement of Section 881.204(b)(2), if Contract Rents are no more than 10 percent above reasonable rents, limitation on replacement costs of Section 881.204(c), limitation on amenities of Section 881.204(e) and limitation on distributions of Section 881.205. Special preferences in selection for technical processing (Section 881.306(b)) and ranking (Section 881.307).

Rehabilitation Work Write-Up. Section 881.307(f) requires the performance of a rehabilitation work write-up by representatives of the owner and HUD. The purpose of this revision is to ensure essential agreement between the owner and HUD about the nature and extent of the proposed rehabilitation prior to submission of the final proposal.

Changes in Selection Procedures. The current regulation permits field offices to (1) place all acceptable proposals in technical processing and then rank all those found approvable in order to make selections or (2) identify clearly superior proposals, place only those clearly superior proposals in processing, and select those projects without further comparison to any others submitted. In some cases, field offices have processed far more proposals than could be funded, which creates costly delays to both the field office and the prospective developers. In other cases, where the clearly superior standard was used to reduce the processing burden on the field office, it was not applied in a consistent manner because it was not defined but was left to subjective judgment.

The revised regulation continues the requirement for a preliminary evaluation of all proposals. If the number found acceptable for further processing substantially exceeds the number which can be processed expeditiously, the field office is authorized to reduce the number of proposals to be placed in technical processing by use of specified comparison factors (see Section 881.306(b)) instead of the clearly superior standard. This approach assures that competition is maintained, and a pipeline of approvable proposals is identified, without causing undue delay and processing burden.

Improved Coordination of Section 8 and Mortgage Insurance Programs. The revised regulation has eliminated any request at preliminary proposal for special submissions for projects requesting mortgage insurance. At later stages of processing, all duplication of documents and reviews between the two programs has been eliminated. Section 8 documents and processing will constitute only a minor addition to the HUD mortgage insurance program requirements. (See Sections 881.306(d) and 881.308(b)).

Review of Architectural Drawings. The revised regulation requires field office review of all final architectural drawings and specifications to assure that excessive amenities are not included. (See Section 881.310.) HUD also reserves the right to review on a case-by-case basis for compliance with HUD Minimum Design Standards; this review is now and will continue to be done for all HUD mortgage-insured projects as part of mortgage insurance processing.

Site and Neighborhood Standards Unchanged. The revised regulation does not alter the current site and neighborhood standards. Revisions to these standards have been published for comment. Comments have been received and are currently under study. When new standards are published, they will replace the standards contained in this regulation. It is noted that 24 CFR, Part 200 Subpart N, Project Selection Criteria, does not apply to projects approved under Part 881.

Contract Provisions. Three major changes in the Housing Assistance Payments Contract are included in the revised regulation. First, the provision for an initial term of five years renewable at the sole option of the owner for up to the maximum total term of the Contract has been deleted. Under Section 881.502 of the revised regulation, the Contract will be executed for a single term without optional renewals. Second, where the estimated cost of the rehabilitation is less than 25 percent (25%) of the estimated value of the project after completion, the Contract will be executed for a single term, of 15 years rather than for five years renewable for an additional five years at the sole option of the owner as authorized by the previous regulation. The reason for these two changes is to assure that units developed under the Section 8 program remain available as assisted housing for the total term of the Contract. The third change, in Section 881.504, has the same purpose. It places a 10 percent limitation on the leasing of assisted units to ineligible families without the prior approval of HUD and provides for appropriate remedies, including a reduction of the number of units covered by the Contract.

A new provision is included in Section 881.501(a), similar to a provision in 24 CFR, Part 811. It permits execution of the Contract upon acceptable physical completion of the project, even though evidence of completion in other respects is not yet acceptable. In such cases, however, and until acceptable completion of all such other requirements, housing assistance payments will be limited to the amount of debt service, and rent-up and occupancy will be subject to field office conditions.

Changes have been made in Section 881.502(a) to limit the availability of a 40-year maximum Contract term to projects which:

(1) Are not financed with the aid of a loan insured, co-insured, made guaranteed or intended for purchase by the Federal Government,

(2) Are owned or financed by a loan or loan guarantee from a state or local agency,

(3) Are intended for occupancy by non-elderly families, and

(4) Are located in an area designated by HUD as requiring special financing assistance.

Special Marketing Requirements. With respect to marketing of Section 8 non-elderly family units, the revised regulation requires the owner to undertake marketing activities in advance of marketing to other prospective tenants in order to provide opportunities to non-elderly families who are least likely to apply as specified in the Affirmative Fair Housing Marketing Plan, and to non-elderly families expected to reside in the community by reason of current or planned employment, as indicated in the Housing Assistance Plan, if any.

Residency Requirements and Preferences. Section 881.603(b)(1) of the revised regulation prohibits residency requirements but allows residency preferences to the extent that they are not inconsistent with affirmative fair housing marketing objectives and the owner's HUD-approved Affirmative Fair Housing Marketing Plan.

Replacement Reserves. A replacement reserve has been added in Section 881.602. Experience with both HUD mortgage insurance programs and the state agency program indicates that reserves are an important form of insurance against default on the basis of operating shortfalls during the early years of a project and extraordinary maintenance, repair and capital costs in later years.

The replacement reserve is to be built up by annual deposits equal to .006 of the replacement cost with annual adjustment by the amount of the automatic annual adjustment factor. The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. Should the reserve achieve that level, the rate of deposits may be reduced with the approval of HUD. On the other hand, should withdrawals from the reserve and projected requirements make this necessary, higher rates of deposit may be required by HUD from time to time.

Termination of Tenancy and Modification of Leases. The provisions regarding termination of tenancy have been rewritten to bring the language and format in line with the recently published regulations for the Section 8 moderate rehabilitation program. Section 881.607 now specifies that a tenancy may be terminated by the owner only for good cause and provides detailed notice requirements. This section also contains provisions concerning modification of leases as of the end of any lease term.

Other Management changes. 1. Section 881.601(d) adds a requirement for the submission annually of audited financial and operating statements so that HUD can assure that a project is being properly managed.

2. Section 881.603(c) provides that owners will use their best efforts to achieve occupancy by families with incomes averaging at least 40 percent of the median income in the area for the purpose of promoting economically-mixed housing as stated in Section 8(a) of the U.S. Housing Act of 1937, as amended.

3. A new provision is added permitting a family to report at any time a change in income or other circumstances that would result in a decrease of its required family contribution. An owner may require a family to report increases in income between scheduled reexaminations.

4. Section 881.608 contains a requirement for a security deposit from the tenant, rather than the permissive provision included in the current regulation.

Related Section 8 Changes. 1. *Other Section 8 Regulations.* The program regulations for new construction (Part 880) and housing finance and development agencies (Part 883) are currently in the process of being revised also. Each of these regulations will reflect the major programmatic changes such as the addition of new cost containment factors. In addition, all three regulations will contain provisions which pertain to the unique aspects of the individual programs.

Neighborhood Strategy Areas and Demonstration Rehabilitation Program. Subpart C in the old regulation detailed procedures for Neighborhood Strategy Areas (NSAs). This rule redesignates Subpart C to cover "Proposed Submission to Start of Construction" and designates a new Subpart G to cover NSA procedures. Subpart G, however, is being reserved in this document and a revised regulation for the NSA program is published as a separate document in this edition of the **Federal Register.**

The former Subpart D containing procedures for the Demonstration Rehabilitation Program is deleted from this regulation. For all projects selected under the former Subpart D, a preliminary proposal has been submitted; therefore, the provisions of the subpart are no longer needed.

Applicability of the Regulation. 1. The revised Part 881 applies to all proposals for which a notification of selection was not issued before the effective date of the revision. Where a notification was issued for a proposal before the effective date, the revised Part applies if the owner notifies HUD within 60 calendar days that it wishes the revision to apply and promptly brings the proposal into conformance.

2. Subparts E and F apply to all projects for which an Agreement was not executed before the effective date of the revision. Where an Agreement was executed:

(a) The owner and HUD may agree to make the revised Subpart E applicable and to execute appropriate amendments to the Agreement and/or Contract.

(b) The owner and HUD may agree to make the revised Subpart F applicable (with or without the limitation on distribution) and to execute appropriate amendments to the Agreement and/or Contract.

(3) However, Section 881.607, Termination of Tenancy and Modification of Leases, applies to new families who begin occupancy or execute a lease on or after 30 days after the effective date of this revision. With respect to existing families under lease, this section applies when the lease is renewed on or after the 60th day following the effective date of this revision.

Inapplicability of NEPA: A Finding of Inapplicability regarding the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this Finding of Inapplicability is available for public inspection during regular business hours at the Office of the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

Accordingly, Part 881 is amended in its entirety as follows:

Accordingly, Part 881 is amended in its entirety as follows:

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

Subpart A—Summary and Applicability

Subpart A—Summary and applicability

§ 881.101 General.

(a) *Purpose.* (1) The purpose of the Section 8 program is to provide lower-income families with decent, safe and sanitary rental housing through the use of a system of housing assistance payments. This Part contains the policies and procedures applicable to the Section 8 substantial rehabilitation program. The assistance may be provided to public housing agency owners or to private owners either directly from HUD or through public housing agencies.

(2) In addition to this regulation, Section 8 substantial rehabilitation assistance may also be made available through state housing finance and development agencies (24 CFR, Part 883), or in connection with direct HUD loans for housing for the elderly or handicapped (24 CFR, Part 885). Section 8 may also provide assistance in newly constructed housing (24 CFR, Part 880) or in existing housing in acceptable condition or needing only moderate rehabilitation (24 CFR, Part 882).

(3) This Part does not apply to projects developed under other Section 8 program regulations, including Parts 880, 882, 883 and 885, except to the extent specifically stated in those Parts.

(b) *Housing Assistance.* Under the Section 8 substantial rehabilitation program, monthly payments are made directly by the contract administrator (HUD or a public housing agency) to the project owner to assist an eligible family leasing an assisted unit or for vacancies in certain cases. These payments, known as "housing assistance payments," are made pursuant to a Housing Assistance Payments Contract, which is executed upon satisfactory completion and HUD acceptance of a project and which has a maximum term of from 15 to 40 years depending on how the project is financed. This Contract is discussed in Subpart E.

(c) *Tenant rents and eligible families.* In addition to the housing assistance payment, the project owner receives a tenant rent directly from the eligible family occupying an assisted unit. The total amount received by the owner for rent is called the contract rent and is set forth in the Contract. "Eligible families," including elderly and handicapped individuals, must have incomes within the HUD specified limits (based on 80% of median income for the area), and pay between 15% and 25% of their income for rent (including utilities), adjusted in accordance with HUD regulations in 24 CFR, Part 889.

(c) *Rent, cost and amenities limitations.* In the Section 8 substantial rehabilitation program, rents, replacement costs and amenities must comply with limitations contained in Subpart B. These limitations serve to establish the modest nature of housing assisted under the program and to assure that the rents in Section 8 housing are reasonable in relation to comparable unassisted housing in the area. After occupancy, rents will be adjusted to reflect changes in the costs of owning and operating rental housing.

(e) *Financing.* The Section 8 program provides only rental assistance. It does not provide construction or permanent financing. Section 8 may be used with any type of construction or permanent financing, such as FHA mortgage insurance programs, tax-exempt financing (see 24 CFR, Parts 811 and 883) and loans from conventional lending institutions. The owner can pledge the commitment to make housing assistance payments contained in the contract to support financing.

(f) *Eligible owners.* All types of private developers and sponsors, including profit-motivated and non-profit, and public housing agency developers and sponsors, are eligible to develop and own housing assisted under this program. In all cases, the owner is responsible for the determination of eligibility and selection of tenants and for all management and maintenance functions. The provisions governing project management are contained in Subpart F.

(g) *Allocation of contract authority.* HUD commits funding for substantial rehabilitation projects under the Section 8 program and increases the funding commitment for previously approved projects pursuant to contract authority provided by Congress. The contract authority for new projects is allocated to HUD field offices on the basis of a "fair share" formula reflecting population, poverty, overcrowding, housing condition and similar indices of housing need. Each field office, in turn, suballocates its contract authority among the various allocation areas within its jurisdiction on essentially the same "fair share" basis. Not every area receives an allocation of contract authority for substantial rehabilitation. A further description of this process is contained in 24 CFR, Part 891, Subpart D.

§ 881.102 Processing.

Proposals for housing to be assisted under this Part are submitted to HUD field offices and processed differently depending on several criteria.

(a) Previously submitted "pipeline" proposals which are of high quality and were found approvable but not funded in the prior fiscal year are reviewed first when any new contract authority becomes available. If additional authority remains, HUD may consider preapproved sites, and, in certain areas, permit selection of developers by local governments. Where there are set-asides for projects to be owned by local public housing agencies or to be located in HUD-approved New Communities or for other purposes, proposals may be received, processed and approved without the need to await specified acceptance periods or to undergo formal competition. Sections 881.302 and 881.303 of Subpart C set forth these procedures.

(b) HUD receives other proposals under this Part from owners (developers) in response to public invitations, called notifications of fund availability (NOFAs), which request the submission of preliminary proposals containing a maximum number and type of units in a particular area. Interested owners obtain copies of the detailed developers' packet from the HUD field office which published the NOFA.

(c) HUD reviews all proposals received in response to a NOFA for deficiencies in documentation and content in order to determine eligibility for further processing. If there are more acceptable proposals than can be approved under available Section 8 contract authority, HUD evaluates the proposals, ranks them and selects the highest ranking proposals. Those not selected which are of high quality are placed in the pipeline for possible later funding. Proposals for projects for non-elderly families are accepted as long as contract authority remains available and are reviewed on a monthly cycle. Proposals for projects for elderly families must be submitted by the specified deadline date and are reviewed at the end of the submission period. Details of this process are contained in Subpart C, §§ 881.304 through 881.307.

(d) After HUD selects a preliminary proposal, the owner of the selected proposal submits a final proposal for the project. This proposal contains a more detailed description of the project, including cost and expense estimates where required, and more detailed plans for design, construction, financing and management. If the nature and extent of the rehabilitation are determined by HUD to require the sevices of a registered architect and the preparation of working drawings and specifications, such working drawings and specifications will be reviewed by HUD for compliance with program amenities limitations and may be reviewed by HUD, at its option, for compliance with "Minimum Design Standards for Rehabilitation for Residential Properties" contained in HUD Handbook 4940.4. After approval of the final proposal, an Agreement is executed by the owner and the contract administrator (either HUD or a public housing agency) and rehabilitation work begins. Details of this process are contained in Subpart C, §§ 881.308 through 881.311. The Agreement provides that a Contract will be executed upon proper construction, completion and acceptance by HUD of the project.

881.103 Development and management.

(a) *Development.* Development of the project is carried out in conformance with the Agreement. Increases in contract rents or utility allowances are permitted with HUD approval during the rehabilitation period only if they are necessary to cover cost increases as specified in § 881.403. The project will be accepted by HUD and a Contract executed upon completion in accordance with the Agreement. These provisions are contained in Subpart D, Sections 881.401 through 881.404.

(b) *Cost Certification.* As soon as possible after completion of a project, the owner, except in the case of exempted projects, will provide HUD with cost certifications. HUD will review the contract rents based on the owner's certified cost and reduce them where not justified by actual cost. Section 881.405 details this process.

(c) *Contract.* The owner and the contract administrator will execute the Contract on satisfactory completion of the project. The Contract provides that the owner will receive housing assistance payments for units being leased by eligible families and, under certain circumstances, payments for vacant units. The owner may not reduce the number of units in a project available for lower-income families by more than 10 percent without the prior approval of HUD. The term of the Contract varies depending on the extent of rehabilitation involved and the type of financing used by the owner. Administration of the Contract is done either by HUD or by a public housing agency under an Annual Contributions Contract with HUD to assure that the owner meets his/her obligations under the Contract. Subpart E contains provisions concerning the Contract.

(d) *Management.* The owner is responsible for all management functions, including marketing, selection of tenants, reexamination of family incomes, evictions and other terminations of tenancy and collection of rents. The owner must also provide for a replacement reserve. Contract rents will be adjusted annually in accordance with 24 CFR, Part 888. Subpart F contains management provisions.

§ 881.104 Applicability of revised regulation.

(a) The revised Part 881 applies to all proposals for which a notification of selection was not issued before the effective date of this revision. Where a notification of selection was issued for a proposal before the effective date, the revised Part will apply if the owner notifies HUD within 60 calendar days that he/she wishes the revision to apply and promptly brings the proposal into conformance.

(b) Subparts E (Housing Assistance Payments Contract) and F (Management) apply to all projects for which an Agreement was not executed before the effective date of the revision. Where an Agreement was so executed:

(1) The owner and HUD may agree to make the revised Subpart E applicable and to execute appropriate amendments to the Agreement and/or Contract.

(2) The owner and HUD may agree to make the revised Subpart F applicable (with or without the limitation on distributions) and to execute appropriate amendments to the Agreement and/or Contract.

(c) Section 881.607, Termination of Tenancy and Modification of Leases, applies to new families who begin occupancy or execute a lease on or after 30 days after the effective date of this revision. This section also applies to families not covered by the preceding sentence, including existing families under lease, with respect to all leases in which a renewal becomes effective on or after the 60th day following the effective date of this revision. A lease is considered to be renewed where both the landlord and the family fail to terminate a tenancy under a lease permitting either party to terminate.

§ 881.105 Applicability to proposals and projects under 24 CFR, Part 811.

Where proposals and projects are financed with tax-exempt obligations under 24 CFR Part 811, the provisions of Part 811 will be complied with in addition to all requirements of this Part. In the event of any conflict between this Part and Part 811, Part 811 will control.

Subpart B—Definitions, Project Eligibility and Other Requirements

§ 881.201 Definitions.

ACC. (Annual Contributions Contract) For a private-owner/PHA project, for which the Contract is administered by a PHA, the ACC is the contract between the PHA (as contract administrator) and HUD. Under the ACC, HUD commits to provide the PHA with the funds needed to make housing assistance payments to the owner and to pay the PHA for HUD-approved administrative fees, and the PHA agrees to perform the duties of a contract administrator.

Agreement. (Agreement to Enter into Housing Assistance Payments Contract) The Agreement between the owner and the contract administrator which provides that, upon satisfactory completion of the project in accordance with the HUD-approved final proposal, the administrator will enter into the Contract with the owner.

Allocation Area. A municipality, county, one or more Indian areas, or group of contiguous municipalities or counties identified by HUD or in an approved Areawide Housing Opportunity Plan for the purpose of allocating housing assistance to support economically feasible housing projects.

Assisted Unit. A dwelling unit eligible for assistance under a Contract.

Contract. (Housing Assistance Payments Contract) The Contract entered into by the owner and the contract administrator upon satisfactory completion of the project, which sets forth the rights and duties of the parties with respect to the project and the payments under the Contract.

Contract Administrator. The entity which enters into the Contract with the owner and is responsible for monitoring performance by the owner. The contract administrator is a PHA in the case of private-owner/PHA projects, and HUD is private-owner/HUD and PHA-owner/HUD projects.

Contract Rent. The total amount of rent specified in the Contract as payable by HUD and the tenant to the owner for an assisted unit.

Decent, Safe and Sanitary. Housing is decent, safe and sanitary at project completion if the dwelling units and related facilities are accepted by HUD as meeting the requirements of the Agreement. Housing continues to be decent, safe and sanitary if it is maintained in a condition substantially the same as at the time of acceptance.

Elderly Family. An elderly family as defined in 24 CFR, Part 812, including an elderly, disabled or handicapped individual.

Fair Market Rent. HUD's determinations of the rents, including utilities (except telephone), ranges and refrigerators, parking, and all maintenance, management and other essential housing services, which would be required to obtain in a particular market area privately developed and owned, newly constructed or substantially rehabilitated rental housing of modest design with suitable amenities.

Family. (Eligible Family) A family which qualifies as a lower-income family, as defined in this section. For purposes of this definition, "family" will have the meaning of "family" contained in 24 CFR, Part 812 (including single elderly, handicapped, disabled and displaced persons and the remaining member of a tenant family).

Final Proposal. The detailed description of a proposed project to be assisted under this Part, which an owner submits after selection of the preliminary proposal, except where a preliminary proposal is not required under Section 881.303(c). The final proposal becomes an exhibit to the Agreement and is the standard by which HUD judges acceptable construction of the project.

Household Type. The three household types are (1) elderly and handicapped, (2) family, and (3) large family.

Housing Assistance Payment. The payment made by the contract administrator to the owner of an assisted unit as provided in the Contract. Where the unit is leased to an eligible family, the payment is the difference between the total housing expense and the total family contribution. A housing assistance payment, known as a "vacancy payment," is made to the owner when an assisted unit is vacant. A payment is made to the family if the utility allowance is greater than the total family contribution.

Housing Assistance Plan. A housing plan which is submitted by a unit of general local government and approved by HUD as being acceptable under the standards of 24 CFR, Part 570.

Housing Type. The three housing types are new construction, rehabilitation, and existing housing.

HUD. The Department of Housing and Urban Development.

Independent Public Accountant. A Certified Public Accountant or a licensed or registered public accountant, having no business relationship with the owner except for the performance of audit, systems work and tax preparation. If not certified, the Independent Public Accountant must have been licensed or registered by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970. In States that do not regulate the use of the title "public accountant," only Certified Public Accountants may be used.

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 the size of the family. HUD may establish income limits higher or lower if necessary in certain cases. For purposes of this definition, "income" shall have the meaning of "income for eligibility" contained in 24 CFR, Part 889.

New Communities. New community developments approved under Title IV of the Housing and Urban Development Act of 1968 and Title VII of the Housing and Urban Development Act of 1970.

NOFA. (Notification of Fund Availability) The notice published by HUD announcing the availability of contract authority for housing assistance and inviting the submission of proposals.

Owner. Any private person or entity (including a cooperative) or a public entity which qualifies as a PHA, having the legal right to lease or sublease substantially rehabilitated dwelling units assisted under this Part. The term owner also includes the person or entity submitting a proposal under this Part.

Partially-Assisted Project. A project for non-elderly families under this Part which includes more than 50 units of which 20 percent or fewer are assisted.

PHA. (Public Housing Agency) 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 lower-income families.

PHA-Owner/HUD Project. A project under this Part which is owned by a PHA. For this type of project, the Agreement and the Contract are entered into by the PHA, as owner, and HUD, as contract administrator.

Preliminary Proposal. The application describing a proposed project under this Part which an owner submits in response to a NOFA in order to be selected for housing assistance.

Private-Owner/HUD Project. A project under this Part which is owned by a private owner. For this type of project, the Agreement and Contract are entered into by the private owner, as owner, and HUD, as contract administrator.

Private-Owner/PHA Project. A project under this Part which is owned by a private owner. For this type of project, the Agreement and Contract are entered into by the private owner, as owner, and the PHA, as contract administrator, pursuant to an ACC between the PHA and HUD. The term also covers the situation where the ACC is with one PHA and the owner is another PHA.

Project Account. A specifically identified and segregated account for each project which is established in accordance with Section 881.503(b) out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the Contract or ACC, as applicable, each year.

Rent. In the case of an assisted unit in a cooperative project, rent means the carrying charges payable to the cooperative with respect to occupancy of the unit.

Replacement Cost. The sum of the "as is" value before rehabilitation of the property as determined by HUD and the estimated cost of rehabilitation, including carrying and finance charges.

Secretary. The Secretary of Housing and Urban Development (or designee).

Small Project. A project for non-elderly families under this Part which includes a total of 50 or fewer (assisted and unassisted) units.

Substantial Rehabilitation. (a) The improvement of a property to decent, safe and sanitary condition in accordance with the standards of this Part from a condition below those standards. Substantial rehabilitation may vary in degree from gutting and extensive reconstruction to the cure of substantial accumulation of deferred maintenance. Cosmetic improvements alone do not qualify as substantial rehabilitation under this definition.

(b) Substantial rehabilitation may also include renovation, alteration or remodeling for the conversion or adaptation of structurally sound property to the design and condition required for use under this Part or the repair or replacement of major building systems or components in danger of failure.

Tenant Rent. The portion of the contract rent payable directly to the owner by an eligible family occupying an assisted unit. Tenant rent equals the total family contribution less any utility allowance.

Total Family Contribution. The portion of an eligible family's income payable toward the family's total housing expense, as determined in accordance with 24 CFR, Part 889.

Total Housing Expense. The total monthly cost of housing an eligible family, which is the sum of the contract rent and any utility allowance for the assisted unit occupied by the family.

Utility Allowance. An estimate, made or approved by HUD, of the cost of utilities (except telephone) and other essential housing services for an assisted unit which are not included in the contract rent paid directly to the owner but which are the responsibility of the eligible family leasing the unit.

Vacancy Payment. The housing assistance payment made to the owner by the contract administrator for a vacant assisted unit if certain conditions are fulfilled as provided in the Contract. The amount of the vacancy payment varies with the length of the vacancy period and is less after the first 60 days of any vacancy.

Very Low-Income Family. An eligible family whose income does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for the size of the family.

§ 881.202 Project eligibility.

(a) For purposes of this Part, "substantial rehabilitation" refers to (1) housing for which rehabilitation work starts after execution of the Agreement, or (2) housing which is already undergoing rehabilitation when the Agreement is executed provided that:

(i) At the date of application to HUD, a substantial amount of rehabilitation work (generally at least 25 percent) remains to be completed;

(ii) At the date of application to HUD, the project cannot be completed and occupied by eligible families without assistance under this Part; and

(iii) At the time rehabilitation was initiated, all parties reasonably expected that the project would be completed and occupied without assistance under this Part.

(b) The Section 8 substantial rehabilitation program is for rental housing only; no assistance will be provided for any unit occupied by an owner. Cooperatives are considered rental housing rather than owner-occupied housing for purposes of this Part.

(c) Various types of rental housing can be assisted under this Part including: (1) single-family houses and multifamily structures; (2) housing designed for the elderly, disabled or handicapped, and (3) single-room occupant housing planned specifically as a relocation resource for eligible single persons.

(d) High-rise elevator projects for families with children are prohibited unless HUD determines that there is no practical alternative.

(e) Projects for non-elderly families are required, where practicable, to have at least 5 percent of the housing units designed and accessible to the physically handicapped.

(f) Housing assisted under other provisions of the U.S. Housing Act of 1937, such as public housing assisted with annual contributions under Sections 5 and 9 of the Act, is not eligible for assistance under this Part. Tax exemption under Section 11(b) of the Act is not considered assistance for this purpose.

(g) Conversions of substantially rehabilitated projects under the Section 23 Leased Housing Program to the Section 8 program will be permitted, where appropriate, provided that the Section 23 project qualifies as substantial rehabilitation under paragraph (a) of this section and that all parties, including HUD, agree.

(h) No proposal for housing under this Part may be approved unless the requirements of 24 CFR, Part 891, implementing Sections 213(a), (b) and (c) of the Housing and Community Development Act of 1974, as amended, concerning review and comment by units of general local government, have been satisfied. (See Section 881.306 (c)(1).)

§ 881.203 Fair market rents.

(a) Fair Market Rents are HUD's determinations of the rents, including utilities (except telephone), ranges and refrigerators, parking, and all maintenance, management and other essential housing services which would be required to obtain in a particular market area privately developed and owned, newly constructed and substantially rehabilitated rental housing of modest design with suitable amenities.

(b) Separate Fair Market Rents are established by unit size (number of bedrooms), basic structure type (detached, semi-detached/row, walk-up and elevator apartments) and occupant group (non-elderly family and elderly family, including handicapped) for individual market areas.

(c) The Fair Market Rents for (1) dwelling units designed for the elderly or handicapped are those for the appropriate size units, not to exceed 2-bedrooms for the elderly, multiplied by 1.05, rounded to the nearest whole dollar, (2) congregate housing dwelling units are the same as for non-congregate units, and (3) single room occupancy dwelling units are those for 0-bedroom units of the same type.

(d) Fair Market Rents are published in the **Federal Register** at least annually in accordance with 24 CFR, Part 888. Interim revisions for one or more market areas may be initiated by HUD at any time and may be published as market conditions dictate.

§ 881.204 Limitations on contract rents, replacement costs and amenities.

(a) *Purpose and applicability of limitations.* The purpose of the Section 8 program is to assist lower-income families in renting decent, safe and sanitary housing of modest design with suitable amenities. This section sets limitations on the contract rents, replacement costs and amenities of projects developed under this Part. These limitations are intended to permit production of suitable housing without excessive costs, design features or amenities.

(b) *Limitation on contract rents.* The contract rents for a project from proposal submission through cost certification, must be within both of the following limitations:

(1) *Fair market rent.* The contract rent plus any utility allowance for the unit must not exceed the Fair Market Rent in effect at the time of processing except that for projects where the estimated cost of rehabilitation is less than 25 percent of the estimated value of the property after rehabilitation, the contract rent plus any utility allowance may not exceed 75 percent of the Fair Market Rents. The published Fair Market Rents will reflect a trended rent in order to allow for the period of rehabilition work as stated in the publication. If the secheduled rehabilitation period for a project is less, an appropriate reduction will be made in determining the approvable contract rent. The contract rent plus utility allowance may exceed the applicable Fair Market Rent or 75 percent thereof, under special circumstances or if needed to implement a local Housing Assistance Plan or Areawide Housing Opportunity Plan:

(i) By up to 10 percent with the approval of the HUD field office manager, or

(ii) By up to 20 percent with the approval of the HUD Assistant Secretary for Housing; and

(2) *Rent reasonableness.* The contract rent must be reasonable. Contract rents will be considered reasonable only under the following conditions:

(i) When HUD determines that the rents compare reasonably to or are below the rents of unassisted units of similar age, design and location which provide comparable amenities and services; or

(ii) Rents may exceed those determined by market comparison by no more than 20 percent only in cases where warranted by cost and expense estimates provided by the owner at final proposal and cost certification at completion, as specified in Sections 881.308 and 881.405; or

(iii) For small projects and partially-assisted projects, the rents may exceed the comparable rents by up to 10 percent without the cost justification set forth in paragraph (ii).

(c) *Limitation on replacement costs:*

(1) No proposal for a project to be assisted under this Part will be selected or approved by HUD, and no Agreement may be executed for a project, with an estimated replacement cost greater than the following limits plus any additional cost not attributable to dwelling use to the extent approved by HUD. The limits applicable to the part of the project attributable to dwelling use, as determined by HUD, are as follows:

(i) The basic limits are: (A) $23,720 per dwelling unit without a bedroom; (B) $27,129 per dwelling unit with one bedroom; (C) $32,983 per dwelling unit with two bedrooms; (D) $42,217 per dwelling unit with three bedrooms; and (E) $47,032 per dwelling unit with four or more bedrooms.

(ii) Where necessary to compensate for the higher costs incident to use of elevator type structures of sound standards of construction and design, HUD may increase the limits provided in paragraph (c)(1)(i) of this section, not to exceed: (A) $24,962 per dwelling unit without a bedroom; (B) $28,614 per dwelling unit with one bedroom; (C) $34,795 per dwelling unit with two bedrooms; (D) $45,011 per dwelling unit with three bedrooms; and (E) $49,409 per dwelling unit with four or more bedrooms.

(iii) For any market area where cost levels so require, the Assistant Secretary for Housing may increase, at the request of the field office, the dollar amount limits set forth in paragraphs (c)(1)(i) and (ii) by an amount not to exceed 75 percent.

(iv) If the Assistant Secretary finds that, because of high costs, it is not feasible to develop dwellings under this part in Alaska, Guam, or Hawaii without the sacrifice of sound standards of construction, design, and livability within the limits in paragraphs (c)(1)(i) and (ii), the principal amount of the replacement cost limits may be increased by amounts as are necessary to compensate for additional costs, but not to exceed the maximum, including high cost area increases under paragraph (c)(1)(iii), if any, otherwise applicable by more than 50 percent.

(2) Except for the exemption contained in paragraph (3), the limitation on replacement costs applies to all projects in their entirety.

(3) Partially-assisted projects are exempt from the replacement cost limitation of this paragraph.

(4) The mortgage amount of a HUD-insured proposal will be determined in accordance with the limitations and requirements of the applicable mortgage insurance program.

(5) Subsequent changes to the limitations on replacement costs under paragraphs (c)(1) will be made by Notice published in the **Federal Register** and will be available on request.

(d) *Excess costs.* The limitation of paragraph (c) will not prohibit the total actual cost of a project from exceeding the limit referred to in that paragraph. However, in determining or adjusting contract rents, HUD will not take into account or give credit for any cost which exceeds the applicable replacement cost limit.

(e) *Limitation on amenities.* (1) Amenities in projects assisted under this Part will be limited to those amenities which are generally provided in unassisted housing of modest design in the market area, as determined by HUD. Generally, the amenities included in the determination of Fair Market Rents for the area may be included in a project. The use of more durable, high quality materials to control or reduce maintenance and repair and replacement costs will not be considered an excess amenity.

(2) The field office will prepare a list(s) of acceptable amenities for use within its jurisdication. Other amenities will not be permitted unless the owner provides justification for each additional amenity to HUD, and its inclusion is approved by HUD.

(3) Except for the exemption contained in paragraph (4), the limitation on amenities applies to all projects in their entirety.

(4) Partially-assisted projects are exempt from the limitation of this paragraph.

§ 881.205 Limitation on distributions

(a) Non-profit owners are not entitled to distributions of project funds.

(b) For the life of the Contract, project funds may only be distributed to profit-motivated owners at the end of each fiscal year of project operation following the effective date of the Contract after all project expenses have been paid, or funds have been set aside for payment, and all reserve requirements have been met. The first year's distribution may not be made until cost certification, where applicable, is completed. Distributions may not exceed the following maximum returns:

(1) For projects for elderly families, the first year's distribution will be

limited to 6 percent on equity. The Assistant Secretary for Housing may provide for increases in subsequent years' distributions on an annual or other basis so that the permitted return reflects a 6 percent return on the value in subsequent years, as determined by HUD, of the approved initial equity. Any such adjustment will be made by Notice in the **Federal Register.**

(2) For projects for non-elderly families, the first year's distribution will be limited to 10 percent on equity. The Assistant Secretary for Housing may provide for increases in subsequent years' distributions on an annual or other basis so that the permitted return reflects a 10 percent return on the value in subsequent years, as determined by HUD, of the approved initial equity. Any such adjustment will be made by Notice in the **Federal Register.**

(c) For the purpose of determining the allowable distribution, an owner's equity investment in a project is deemed to be 10 percent of the replacement cost of the part of the project attributable to dwelling use accepted by HUD at cost certification (see § 881.405), unless the owner justifies a higher equity contribution by cost certification documentation in accordance with HUD mortgage insurance procedures.

(d) Any short-fall in return may be made up from surplus project funds in future years.

(e) If HUD determines at any time that project funds are more than the amount needed for project operations, reserve requirements and permitted distribution, HUD may require the excess to be placed in an account to be used to reduce housing assistance payments or for other project purposes. Upon termination of the Contract, any excess funds must be remitted to HUD.

(f) Owners of small projects or partially-assisted projects are exempt from the limitation on distributions contained in paragraphs (b) through (d).

(g) In the case of HUD-insured projects, the provisions of this section will apply instead of the otherwise applicable mortgage insurance program provisions.

§ 881.206 Site and neighborhood standards.

Proposed sites for substantial rehabilitation projects must be approved by HUD as meeting the following standards:

(a) Adequate utilities (water, sewer, gas and electricity) and streets must be available to service the site.

(b) The site and neighborhood must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063, and HUD regulations issued pursuant thereto.

(c) The site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

(d) The site must be free from serious adverse environmental conditions, or there must be evidence that any such conditions will be corrected by the time the rehabilitation is completed. Compliance with Environmental Criteria and Standards in accordance with 24 CFR, Part 51 is required.

(e) The site must comply with any applicable conditions in the local Housing Assistance Plan approved by HUD.

(f) The housing must be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

(g) Travel time and cost via public transportation or private automobile, from the neighborhood to places of employment providing a range of jobs for lower-income workers, must not be excessive. (While it is important that elderly housing not be totally isolated from employment opportunities, this requirement need not be adhered to rigidly for such projects.)

(h) The project may not be located on a site that has occupants unless the relocation requirements referred to in Section 881.209 are met.

(i) The project may not be located in an area that has been identified by HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, unless the project is covered by flood insurance as required by the Flood Disaster Protection Act of 1973, and it meets any relevant HUD standards and local requirements. Compliance with HUD regulations issued pursuant to Executive Order 11988 on Flood Plain Management and to Executive Order 11990, on Protection of Wetlands is required.

§ 881.207 Property standards.

Projects must comply with:

(a) HUD Minimum Design Standards for Rehabilitation for Residential Properties (HUD Handbook 4940.4);

(b) in the case of congregate or single room occupant housing, the appropriate HUD guidelines and standards;

(c) HUD requirements pursuant to Section 209 of the Housing and Community Development Act of 1974 for projects for the elderly or handicapped;

(d) HUD requirements pertaining to noise abatement and control;

(e) HUD regulations issued pursuant to the Lead Based Paint Poisoning Prevention Act, 42 USC 4801; and

(f) applicable State and local laws, codes, ordinances and regulations.

§ 881.208 Financing.

(a) *Types of financing.* Any type of construction financing and long-term financing may be used, including: (1) conventional loans from commercial banks, savings banks, savings and loan associations, pension funds, insurance companies or other financial institutions; (2) mortgage insurance programs under the National Housing Act; and (3) financing by tax-exmpt bonds or other obligations.

(b) *HUD approval.* HUD must approve the terms and conditions of the financing to determine consistency with these regulations and to assure they do not purport to pledge or give greater rights or funds to any party than are provided under the Agreement, Contract, and/or ACC. Where the project is financed with tax-exempt obligations, the terms and conditions will be approved in accordance with the following:

(1) Issuers of tax-exempt obligations pursuant to Section 11(b) of the U.S. Housing Act of 1937 will be subject to 24 CFR, Part 811.

(2) Issuers of tax-exempt obligations exempt from Federal taxation under any provisions of law or governmental regulation other than Part 811 (except for State Agencies qualified under Part 883) must submit all documents required by 24 CFR, Sections 811.107, 811.108, 811.109, and 811.110 to the field office for review and approval. The terms and use of these obligations and the operation of the project will comply with the requirements of Part 811. (See also 24 CFR, Section 811.117.)

(3) Issuers of tax-exempt obligations which are State Agencies qualified under Part 883 and which are not subject to Part 811 will comply with the requirements of Part 883 with regard to approval of tax-exempt financing.

(c) *Pledge of contracts.* An owner may pledge, or offer as security for any loan or obligation, an Agreement, Contract or ACC entered into pursuant to this Part: Provided, however, that such financing is in connection with a project constructed pursuant to this Part and approved by HUD. Any pledge of the Agreement, Contract, or ACC, or payments thereunder, will be limited to the amounts payable under the Contract or ACC in accordance with its terms. If the pledge or other document provides that all payments will be paid directly to the mortgagee or the trustee for bondholders, the mortgagee or trustee will make all payments or deposits required under the mortgage, trust indenture of HUD regulations and remit any excess to the owner.

(d) *Foreclosure and other transfers.* In the event of foreclosure, assignment or sale approved by HUD in lieu of foreclosure, or other assignment or sale approved by HUD:

(1) The Agreement, the Contract and the ACC, if applicable, will continue in effect, and

(2) Housing assistance payments will continue in accordance with the terms of the Contract.

§ 881.209 Relocation and Land Acquisition Requirements.

(a) *Application of the Uniform Act.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) and HUD implementing regulations at 24 CFR Part 42 (Uniform Relocation Assistance and Real Property Acquisition) apply to the acquisition of real property by a PHA or other State agency (as defined at 24 CFR 42.85) for a project assisted under this Part and to any displacement that results from such acquisition.

(b) *Displacement not subject to the Uniform Act.* With respect to any residential tenants (not owner-occupants) who will be permanently or temporarily relocated as a direct result of a project that is assisted under this Part, but who are not assisted under the Uniform Act, the following policies will apply:

(1) Such tenants are eligible for the relocation assistance and benefits described below if they are relocated following the submission to HUD of the preliminary proposal for the project (or first proposal if the proposal is submitted in accordance with Section 881.303, Special Categories) except where (i) their tenancy is terminated on the grounds set forth in Section 881.607(b)(1), or (ii) they take occupancy after HUD's preliminary approval of the proposal with notice from the owner of the pending proposal and potential displacement.

(2) Within a reasonable period of time prior to displacement, each tenant to be permanently relocated will be provided a reasonable choice of opportunities to move to a suitable replacement dwelling unit from among available units so located as to promote choice outside areas of low income and minority concentration.

(3) For purposes of this section, a suitable replacement dwelling is:

(i) Decent, safe and sanitary as defined in 24 CFR 42.47.

(ii) Available within the tenant's ability to pay (i.e., the monthly rent and average estimated cost of utilities does not exceed 25 percent of the combined monthly gross income of all adult members of the tenant's household);

(iii) In an area not subject to unreasonable adverse environmental conditions, either natural or man-made;

(iv) In a location that is not generally less desirable than the location of the displaced tenant's dwelling with respect to public utilities, commercial and public facilities, and the tenant's place of employment (or to sources of employment, if the tenant is unemployed but seeking work).

(4) Each tenant will be reimbursed by the owner for reasonable moving and related expenses at the levels described at 24 CFR 42.303 or may receive, at the discretion of the owner, a fixed payment for moving expenses in accordance with 24 CFR 42.353.

(5) A tenant may be required to relocate for a temporary period only if this is necessary to carry out the project and he/she is permitted to occupy a dwelling in the completed project. If required, the temporary relocation will not exceed 12 months in duration; a decent, safe, and sanitary dwelling in an area not subject to unreasonably adverse environmental conditions will be available to the tenant for the period of the temporary relocation; and the tenant will be reimbursed actual, reasonable out-of-pocket expenses, including moving costs to and from the temporarily occupied dwelling and any increase in monthly housing cost (rent and reasonable utility costs) incurred in connection with the temporary relocation. If the new dwelling unit is not ready for occupany within the 12-month period, the tenant will be notified of the earliest date by which it will be ready, and the tenant in that case will have the right to agree to wait until the extended date or to request that he/she be treated as permanently displaced.

(6) All tenants occupying property on which substantial rehabilitation units will be developed will be provided with advance information in writing and by personal explanation that is sufficient to enable them to understand fully the reason for their displacement and the relocation opportunities and assistance which is available to them.

(7) All tenants will be provided appropriate advisory services necessary to minimize hardships in adjusting to required permanent or temporary relocation.

(8) No lawful occupant will be required to move from his/her dwelling or to move his/her business without at least 90 days advance written notice of the earliest date by which he/she may be required to move.

(i) If the tenant is provided but refuses a reasonable choice of opportunities to move to a suitable replacement dwelling, the owner will not be obligated to make further efforts to provide replacement housing.

(ii) If replacement housing within the tenant's ability to pay cannot otherwise be identified and government assistance that would satisfy this requirement cannot be secured, the owner's obligation under this section may be satisfied by providing the tenant with a lump sum payment equal to 48 times the amount, if any, necessary to reduce the monthly housing cost (rent and utilities) of a suitable replacement dwelling to 25 percent of the combined monthly gross income of all adult members of the tenant's household.

(iii) A tenant who believes he/she has not received the proper relocation payments or opportunities to relocate to a decent, safe and sanitary dwelling to which the tenant is entitled under this Section may appeal to the HUD field office.

(iv) Owners are responsible for assuring that payments and services required by this section are provided. Costs incurred by the owner in providing these services and payments may be included in project replacement cost (see Sections 881.403(a)(6) and 881.405(a)) except that payments to tenants permanently relocated in accordance with paragraph (ii) may not be so included.

(c) *Eligibility of lower-income single persons.* Lower-income single persons, who are not elderly or handicapped but who are displaced as a result of the project, may return to occupy assisted units in accordance with 24 CFR, Part 812.

§ 881.210 Other Federal requirements.

(a) *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 Orders 11063 and 11246, and Section 3 of the Housing and Urban Development Act of 1968, and all related rules, regulations and requirements.

(b) *National Environmental Policy Act.* Participation in this program requires compliance with the National Environmental Policy Act and all related rules, regulations and requirements.

(c) *Clean Air Act and Federal Water Pollution Control Act.* Participation in this program requires compliance with the Clean Air Act and the Federal Water Pollution Control Act and all related rules, regulations and requirements.

(d) *Davis-Bacon and related acts.* Participation in this program requires that payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (49 Stat. 1011), be paid to all laborers and mechanics employed in the development of any project with nine or more assisted units and compliance with all other related rules, regulations and requirements.

(e) *Rehabilitation Act.* Participation in this program requires compliance with the Rehabilitation Act of 1973 and Executive Order 11914 and all related rules, regulations and requirements.

(f) *Other Federal statutes and regulations.* Participation in this program requires compliance with the National Historic Preservation Act (Public Law 89-665), the Archeological and Historic Preservation Act of 1974 (Public Law 93-291), and Executive Order 11593 on Protection and Enhancement of the Cultural Environment, including the procedures prescribed by the Advisory Council on Historic Preservation in 36 CFR, Part 800.

Subpart C—Proposal Submission To Start of Construction

§ 881.301 Allocation of contract authority to field offices.

(a) Funding authorization for the Section 8 program is assigned to HUD field offices annually in the form of contract authority, which is the maximum amount authorized for annual commitments under Contracts. Assignments are made pursuant to 24 CFR, Part 891, Subpart D. Each field office suballocates this authority to the areas within its jurisdiction, also in accordance with Part 891, Subpart D.

(b) In the allocation process, the field office determines the amount of contract authority and the approximate number of units of Section 8 substantial rehabilitation specifically designed for elderly families, non-elderly families and for large non-elderly families (5 or more persons) which will be made available in each allocation area.

(c) For the contract authority made available in each allocation area, the HUD field office will process proposals as provided for in Sections 881.302, 881.303, and 881.304.

§ 881.302 Procedures for resumption of processing of proposals and preapproved site requests.

(a) *Review of pipeline.* Prior to the publishing of a NOFA or the consideration of requests for preapproved sites, the pipeline of approvable proposals which are of high quality relative to the standards and requirements of this Part submitted in the same or the prior fiscal year and preapproved site requests will be reviewed to determine whether to resume processing for any or all of them. In making the decision as to whether to resume processing, the following will be considered:

(1) Whether the proposal or preapproved site request is consistent with the final or tentative allocation plan for the area in which the project is proposed to be located;

(2) Whether the proposal or preapproved site request conforms to the housing type and household type requirements of any applicable Housing Assistance Plan;

(3) Whether the proposal or preapproved site request is consistent with priorities for targeting of contract authority to localities which have previously been underfunded relative to their needs and the funding of the needs of other localities in that allocation area.

(b) *Notice to owners or local governments.* Owners of proposals or local governments with preapproved site requests which are eligible in accordance with paragraph (a) to resume processing will be sent a letter requesting them to advise HUD within a specified time, generally 5 days, as to whether or not they wish processing to be resumed on their proposals or requests and, if their decision is in the affirmative, to submit to HUD the following within a specified time, generally 10 days (for a total of 15 days):

(1) For proposals, updated proposed rents;

(2) For proposals, the replacement cost estimate required by § 881.305;

(3) Up-to-date evidence of site control; and

(4) Any information on other factors which might affect the current approvability of their proposals or requests.

Owners or local governments may submit any other information they wish, but the field office is not required to consider this additional information.

(c) *Section 213 and A-95 clearance.* Upon receipt of notification from an owner that he/she wishes processing of a proposal to be resumed, the unit of general local government and A-95 clearinghouse, where applicable, will be notified under Part 891 of the resumption of processing and asked for comments (1) if the proposal is more than 6 months old or (2) if there has been a substantive change in the local Housing Assistance Plan.

(d) *Resumption of processing.* Upon receipt of the updated information, the field office will resume processing of the proposal or request in accordance with Section 881.306(c) or 881.303(a).

(e) *Notice where processing not resumed.* Owners of proposals and local governments with preapproved site requests for which processing is not resumed because of failure to meet the requirements of paragraphs (a) and (b), or for which owners or local governments do not request resumption of processing, will be notified in writing that their proposals or requests will not be processed further. One file copy of each such notice will be retained by the field office.

§ 881.303 Special procedures for certain categories of proposals.

(a) *Preapproved sites.* (1) Units of general local government may submit written requests to the field office for preapproval of sites. To the extent feasible, such requests should be submitted early in the fiscal year. Requests for preapproval must indicate the anticipated number of units, structure type, household type, bedroom distribution and the price at which the site will be made available. Further, the local government must indicate if it wishes to select the proposal as allowed under paragraph (a)(5) of this section.

(2) If the field office determines that use of a site for which preapproval has been requested may be appropriate, it will review the request to determine compliance with site and neighborhood standards (Section 881.206) and environmental standards, and to determine the acceptability, as to both reasonableness and feasibility, of the proposed price at which the site will be made available. The request will also be reviewed for consistency with the allocation plan for the area, any applicable Housing Assistance Plan and targeting priorities described in Section 881.302(a)(3).

(3) If the site meets all of these requirements, the field office will advise the unit of general local government:

(i) That the site is approvable for Section 8 use;

(ii) Of the approximate number of units, by structure type, household type and bedroom distribution that may be assisted;

(iii) Of the contract authority required;

(iv) Whether HUD has reserved such contract authority, will do so as soon as sufficient contract authority becomes available or will retain the request in the pipeline for consideration in accordance with § 881.302; and

(v) How processing will proceed, including how selection of the proposal will be accomplished.

(4) Reservations of contract authority for preapproved sites may be made only after the amount of authority necessary for pipeline proposals has been determined.

(5) For approvable sites in Federally-assisted urban renewal areas selection of the proposal may be under applicable urban renewal procedures, subject to the field office approval. For sites acquired or to be acquired with Community Development Block Grant funds or located in non-Federally-assisted urban renewal areas, the local government may select the proposal in accordance with a competitive method approved by the field office and consistent with State law.

(6) For approvable sites outside those areas set forth in paragraph (a)(5) of this section, selection of the proposal will be accomplished by the field office by publishing a NOFA requesting proposals for that site pursuant to Section 881.304.

(b) *Other categories.* Where set-asides are made for projects to be owned by PHAs, for projects to be located in New Communities or for other purposes, proposals may be obtained by invitation or other appropriate means, as determined by the field office, or the New Communities Development Corporation where appropriate. Selection procedures may be modified, as approved by the Assistant Secretary for Housing, to meet the objectives of the set-asides. Prior to submission of proposals, prospective owners will be advised of the modified procedures.

(c) *Proposal submissions for special categories of projects.* Preliminary proposals are not required for projects submitted pursuant to paragraphs (a) or (b), except in the case of proposals under paragraph (a)(6) of this section. The first proposal submitted for such projects may be a final proposal in accordance with Section 881.308.

(d) *Special local government option.* Local governments may be authorized by the Assistant Secretary for Housing to select proposals on sites located in their jurisdictions. Procedures for local government selection of proposals under this paragraph will be published by Notice in the **Federal Register.**

§ 881.304 Publication of NOFA and receipt of proposals.

(a) After determination of the amount of contract authority necessary for pipeline proposals as provided in Section 881.302, and any commitments of contract authority for preapproved sites or other categories as provided in Section 881.303, the field office will publicize the availability of the remaining contract authority, if any, in accordance with paragraph (b) of this section.

(b) A summary notification of fund availability (NOFA) for all allocation areas within the jurisdiction of the field office will be published at least once a week for two consecutive weeks in a newspaper(s) of general circulation in the allocation areas. The summary NOFA will identify the estimated contract authority and approximate number of units by housing and household type for each allocation area. Specific information for each allocation area will be contained in a detailed NOFA which will be provided upon request. The detailed NOFA will identify the geographic area of each allocation area for which contract authority is available and include the following information for each area:

(1) The contract authority available for substantial rehabilitation and the approximate number of units for elderly, non-elderly and large non-elderly families that the contract authority is expected to support;

(2) The first and last dates for acceptance of preliminary proposals for projects for elderly families and the first date for acceptance of proposals for projects for non-elderly families;

(3) The fact that proposals for projects for non-elderly families will be accepted at any time after the initial acceptance date so long as contract authority remains available, and that all such proposals received during one 30-day period will be processed and, if necessary, ranked against each other;

(4) The fact that the NOFA will be cancelled for an allocation area when all available contract authority has been or is expected to be used or when a decision by HUD pursuant to Section 891.405 to reallocate any unused contract authority has been made;

(5) The fact that developer's packets for each allocation area and type of proposal will be available prior to the opening date for submission of proposals and that information and assistance are available from the field office.

(c) Where practical, the NOFA may indicate that in order to encourage submission of proposals for small projects, a specific portion of the contract authority available under the NOFA may be utilized only for small projects.

(d) Copies of the detailed NOFA will be provided to minority and fair housing organizations, media and the chief executive officer of each jurisdiction with a Housing Assistance Plan.

(e) Field offices may issue Conditional NOFAs subject to the sufficiency of a future allocation of contract authority. Proposals received in response to a Conditional NOFA will be processed in accordance with the provisions of Section 881.306, but notifications of selection will not be sent until contract authority becomes available and is reserved.

(f) Proposals will be accepted by the field office beginning on the published opening date for submission and may be opened for review immediately. The contents will remain confidential until sent by the field office to the A-95 clearinghouses or local government for review or, in the case of projects for elderly families, until the deadline date has passed, whichever is earlier.

§ 881.305 Contents of preliminary proposal.

Each preliminary proposal must contain:

(a) Identification of the property(ies) proposed to be rehabilitated and a map showing the location of the site(s) and the racial composition of the neighborhood(s).

(b) Evidence that the owner has site control or a description of the action likely to result in such control.

(c) A description of the property "as is" in accordance with instructions in the developer's packet.

(d) A description of the proposed rehabilitation in accordance with instructions in the developer's packet.

(e) The number of units by unit size (number of bedrooms) and the type of occupancy (elderly (including handicapped), family, large family) proposed after completion of the rehabilitation.

(f) Listing of amenities.

(g) Estimated date of completion and whether or not it will be completed in stages.

(h) Evidence that the proposed rehabilitation is permitted by current building, housing and other codes, zoning ordinances or regulations or evidence to indicate that needed action required to make the rehabilitation permissible is likely and will not delay the project.

(i) The proposed contract rent per unit, including an indication of which utilities, services and equipment are included in the rent and which are not. For those utilities and services which are not included, an estimate of the average monthly cost for each unit type for the first year of occupancy.

(j) The estimated replacement cost per unit and the estimated total replacement cost, including any cost not attributable to dwelling use.

(k) A statement describing how the proposal is consistent with any applicable Housing Assistance Plan, and/or Areawide Housing Opportunity Plan;

(l) If demolition is proposed for any structure, a description of the proposed reuse of the land including sketch plans for architectural and landscape treatment.

(m) A description of the existing utility combination, whether or not a change to a different combination is proposed and, if so, a description of the new combination. To the extent feasible, individual meters should be utilized where an existing system is replaced.

(n) A statement as to whether or not the services of a registered architect will be utilized for preparation of final working drawings and specifications.

(o) Information concerning displacement of site occupants. If any displacement will occur: the number of households affected, by size and race, and the business concerns affected, by race, and whether they own or rent; the number to be temporarily or permanently displaced; the steps, if any, to be taken to minimize displacement; a demonstration that relocation is feasible; and a statement as to how necessary relocation payments will be funded (see Section 881.209 for relocation requirements);

(p) A signed certification on the prescribed form of the owner's intention to comply with Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063, Executive Order 11246, and Section 3 of the Housing and Urban Development Act of 1968, and of the owner's intention to will undertake marketing activities as required by Section 881.601(a).

(q) The identity of the owner, developer, builder, architect (if applicable and identity is known), management agent (and other participants) and the names of officers and principal members, shareholders, investors, and other parties having a substantial interest; the previous participation of each in HUD programs on the prescribed HUD form; and a disclosure of any possible conflict of interest by any of these parties which would be a violation of the Agreement, the Contract, or the ACC, if any; and information on the qualifications and experience of the principal participants;

(r) The proposed financing method and proposed terms of financing. For proposals not requesting mortgage insurance, written evidence of review and interest by a lender which may include a state housing finance agency or financing agency under Part 811, or bond underwriter, indicating that the financing is likely to be available for the proposed project;

(s) The proposed term of the contract, and justification for the term, in accordance with § 881.502;

(t) The identity of the contract administrator entity (PHA or HUD).

(u) Whether the owner wishes to designate alternative properties for consideration by HUD, in its discretion, if the principally designated properties are not acceptable; if so, the owner should include for each alternative property, the information required in paragraphs (a), (c), (e), (i), and (o).

§ 881.306 Preliminary evaluation and technical processing.

(a) *Preliminary evaluation.* (1) After receipt of a preliminary proposal for a project for elderly families received prior to the deadline date in the NOFA, the field office will make a preliminary evaluation of the proposal in accordance with paragraph (a)(3) of this section. Proposals received after the deadline date will be returned unopened.

(2) After receipt of a preliminary proposal for a project for nonelderly families, the field office will, so long as contract authority remains available, make a preliminary evaluation of each such proposal in accordance with paragraph (a)(3) of this section.

(3) In performing the preliminary evaluation, the field office will determine whether it appears, without field review, that:

(i) the proposal contains all of the required documentation in the proper form; and

(ii) the proposal is responsive to and in compliance with the requirements of the NOFA, developer's packet, and program policies and regulations, including Fair Market Rent, replacement cost, and amenities limitations.

(4) If a proposal is found deficient in accordance with paragraph (a)(3), it may be rejected. If a deficiency is minor, or if there are not sufficient proposals to use the available contract authority, the field office may request correction of the deficiency (including designation of alternative properties designated in the proposal, if any) within a specified time period.

(5) If the proposal is not deficient, or if necessary corrections are made within the time limit established by the field office, the proposal will be considered in accordance with paragraph (b) or (c) as appropriate.

(b) *Selection for technical processing.* (1) In the event the number of proposals found eligible for technical processing exceeds the number that the field office can process expeditiously, the field office may limit the proposals placed into technical processing to those which comprise a total number of units approximately equal to two to four times the number of units which can be approved. In order to determine which proposals to place into technical processing, the field office will, in order to eliminate the excess, rank the proposals by household type (elderly and non-elderly) considering the following factors and such other factors as may have been recommended by the field office and approved by the Assistant Secretary (if the NOFA indicated that a specific portion of contract authority may be utilized for small projects, any proposals for such projects shall be ranked separately and not in competition with other nonelderly proposals):

(i) The previous experience and qualifications of the owner, developer, builder, architect, management agent and other participants in development, marketing and management (particularly of non-elderly housing);

(ii) Responsiveness to the preferences and priorities contained in any applicable Housing Assistance Plan;

(iii) The current suitability of the site for development and the availability of utilities and services;

(iv) The permissiveness of current zoning, building, housing and other codes, ordinances and regulations;

(v) The likelihood of financing and the relative speed with which a firm financing commitment can be obtained;

(vi) The relative need for and prior housing assistance to the jurisdiction in which the housing would be located; and

(vii) Where consistent with local priorities, the extent to which the project provides assisted housing opportunities in neighborhoods that are or will be experiencing displacement caused by revitalization and an influx of higher income households.

(2) Preference points in selection of proposals for technical processing will be given to small projects (where no specific amount of contract authority is made available in the NOFA) and partially-assisted projects.

(3) The owners of proposals not selected for technical processing will be notified that their proposals will not be processed further and will not be considered for selection under the provisions of § 881.302.

(4) One copy of each proposal will be retained by the field office.

(c) *Technical processing.* (1) In accordance with the procedures in 24 CFR, Part 891, a description of each proposal placed in technical processing will be sent to the unit of general local government for review and comment. In accordance with OMB Circular A-95 and 24 CFR Part 891, a copy of each proposal will also be sent to the A-95 state and areawide clearinghouses.

(2) Technical processing in the field office will include a review of the rents (see paragraph (3)), site, physical condition of the property, its suitability for rehabilitation and whether or not the work proposed is adequate and can be feasibly accomplished; overall design; experience of the owner and other participants, local government and A-95 clearinghouse comments, extent of displacement and feasibility of relocation, feasibility of the project as a whole (including financing and marketability) and compliance with all applicable standards and requirements, including a HUD review for consistency with the Housing Assistance Plan, or for determination of need in areas without a Housing Assistance Plan, pursuant to 24 CFR, Part 891. Any deficiencies found will be treated in the same manner as deficiencies found during preliminary evaluation (see paragraph (a)(4) of this section).

(3) The field office will evaluate proposed rents in accordance with § 881.204(b)(2).

(i) If the proposed rents are no more than the rents determined to be comparable, or are within 110 percent of comparable rents for small and partially-assisted proposals, the rents will be accepted.

(ii) If the proposed rents exceed the comparable rents by not more than 20 percent, they can be tentatively accepted subject to cost estimation at final proposal (see Sections 881.308(a) and 881.309(a)(2)) and cost certification after completion (see Section 881.405).

(iii) If the proposed rents exceed the comparable rents by more than 20 percent, the field office may either reject the proposal or tentatively accept rents up to 120 percent of the comparable rents subject to cost estimation at final proposal and cost certification after completion.

(4) Amenities and design features will be reviewed to assure that they do not exceed those normally provided in housing of modest design in the general area of the proposed project.

(5) HUD will conduct an environmental review of the Proposal in accordance with HUD procedures.

(d) *Proposals Requiring Mortgage Insurance.* Proposals requiring mortgage insurance need not contain more information than is required for a preliminary proposal not requiring mortgage insurance. Technical processing of such proposals will include a preliminary determination of eligibility under the applicable mortgage insurance program. If such proposals are selected, subsequent processing will be in accordance with Section 881.308(b), and applicable mortgage insurance requirements. If the proposal is ineligible for mortgage insurance, it may be rejected, or the field office may request the owner to submit documentation showing availability of an alternative method of financing.

§ 881.307 Selection of proposals and use of remaining or additional contract authority.

(a) All of the proposals found approvable in technical processing may be selected if sufficient contract authority is available. In no case will proposals be selected prior to completion of and without compliance with the allocation plan.

(b) If the available contract authority is insufficient to select all proposals found approvable in technical processing, all approvable proposals will be ranked by household type (elderly and non-elderly). If the NOFA indicated that a specific portion of the contract authority may be utilized only for small projects, any proposals for such projects shall be ranked separately and not in competition with other nonelderly proposals. The ranking factors are: rents; site (including minority concentration considerations); design; suitability and potential of property for rehabilitation and adequacy of rehabilitation proposed; previous experience of the owner and other participants in development, marketing and management (particularly of non-elderly family housing); comments from the A-95 clearinghouse and local government and responsiveness to preferences and priorities of any applicable Housing Assistance Plan and/or Areawide Housing Opportunities Plan; extent of displacement and feasibility of relocation; and feasibility of the project as a whole (including likelihood of financing and marketability). Within the ranking for non-elderly family proposals, preference points will be given to small projects (where no specific amount of contract authority is made available in the NOFA) and partially-assisted projects. Any deviation in the ranking procedures as set forth in this paragraph and the program handbook must be approved by the Assistant Secretary for Housing and included in the developer's packet.

(c) Owners who submit proposals will be notified in writing as to whether their proposals have been found not approvable, found approvable but not selected, or selected. Selection notifications will include any special conditions or requirements applicable to the proposal. Owners who are notified of the selection of their proposals must notify the field office of their acceptance of the notification within the time period specified in the notification and must submit a final proposal by the deadline stated in the notification unless an extension of the deadline is approved by the field office. Owners of proposals found not approvable will be notified of the reason for the finding. One file copy of each proposal will be retained by the field office. Proposals found approvable and determined to be of high quality but not selected will be retained by the field office for reconsideration when additional contract authority becomes available in the same or subsequent fiscal year (see § 881.302).

(d) Units of general local government and A-95 clearinghouses notified under § 881.306(c) will be notified of the field office's decision regarding the proposals within their jurisdiction.

(e) When contract authority remains available after selection of proposals for housing for elderly families, or after a decision is made to reallocate unused contract authority for housing for non-elderly families, or additional contract authority becomes available due to cancellation or recapture of contract authority for a selected proposal, or due to the assignment of additional contract authority within the same fiscal year, the field office will determine the allocation areas and types of housing for which the contract authority will be used in accordance with 24 CFR, Part 891 and proceed in accordance with §§ 881.302, 881.303, and 881.304.

(f) Prior to preparation and submission of the final proposal, a project inspection, work write-up and cost estimates must be completed by representatives of the owner and HUD. In preparing the work write-up, care must be taken to assure that the rehabilitation work will not exceed applicable codes and ordinances or the Minimum Design Standards, whichever is more strict.

§ 881.308 Contents of final proposal.

(a) *Proposals for Uninsured Projects.* Final proposals for all projects except those requesting mortgage insurance will contain:

(1) A description of the proposed rehabilitation covering each element set forth in the work write-up and as requested in the developer's packet. If alterations, renovation, or remodeling is indicated, preliminary architectural drawings and outline specifications on

the prescribed form and a listing of amenities.

(2) A statement that the documentation submitted with the preliminary proposal as required by § 881.305(a) through (c), (e), (h) through (o), and (q) through (t) has not changed or a statement of the changes. In the case of special categories of projects submitted in accordance with § 881.303(c), the original documentation required by § 881.305(a) through (u) must be submitted.

(3) Description of the terms and conditions of construction and permanent financing, including copies of the financing documents and the commitments for such financing from a lender or bond underwriter, or satisfactory evidence that commitments will be forthcoming before execution of the Agreement.

(4) For proposals for projects of five units or more, an Affirmative Fair Housing Marketing Plan.

(5) A statement of the marketing activities the owner intends to take in accordance with the requirements of § 881.601(a)(3). Such efforts might include: participation in regional or sub-regional application pools and clearinghouses; establishment of a referral system with PHAs, other public agencies and Section 8 owners/managers in the surrounding area; contact with and provision of information about the project to employers and their employees, labor unions and interested community groups.

(6) Evidence of management capability, and the proposed form of lease (see § 881.606). For projects of more than 20 units, a proposed management plan and certification in the prescribed form and a copy of any proposed contracts for management services.

(7) An indication of the estimated time for completion of the project after the Agreement is signed and, if the project is to be completed in stages, identification of the units and the scheduled completion of each stage.

(8) Cost estimates in the HUD prescribed form of the replacement cost, operating expenses, income, and debt service sufficient to enable the field office to determine the cost justified rent, where required under § 881.204(b)(2). The replacement cost may include the cost to the owner of relocation (except for payments to tenants permanently relocated pursuant to § 881.209(b)(8)(ii)). The cost estimate must indicate and reflect any anticipated benefits from land write-down, tax abatement, favorable financing terms and similar savings.

(b) *Proposals for insured projects.* (1) For projects requiring mortgage insurance, except special categories of proposals which are discussed in paragraph (b)(3), the complete final proposal will consist of the application for firm commitment, plus submissions in accordance with paragraphs (a)(2), (a)(5), (a)(6) and (a)(8).

(2) Although it is preferable for projects requiring mortgage insurance to proceed directly from preliminary proposal to the application for firm commitment/final proposal stage, an owner may elect to submit an application for feasibility or conditional commitment first. In these cases, no additional documentation other than that normally submitted for the mortgage insurance processing stage is required. Feasibility letters or conditional commitments issued for mortgage-insured projects which are infeasible without Section 8 assistance will be conditioned upon the subsequent review and approval of the application for firm commitment/final proposal.

(3) In the case of special categories of proposals submitted in accordance with § 881.303 which are requesting mortgage insurance, the first proposal may be an application for conditional or firm commitment plus the proposed form of lease, applicable information on staging, if any, and the documentation required by Section 881.305(k), (o), (p), (q) (with respect to possible conflicts of interest), (s) and (t).

§ 881.309 Review of final proposal.

(a) All final proposals will be reviewed for compliance with program policies and standards. Material deviations from the preliminary proposal will be reviewed and may cause rejection of the proposal.

(1) Preliminary architectural drawings (if required) will be reviewed for compliance with amenity standards and to assure that all items in the work write-up are included. Where such drawings are not required, HUD will review the work write-up to assure that all agreed upon items are included. In addition, HUD reserves the right to review for conformance with the HUD Minimum Design Standards, adequacy of design for tenant security and efficiency in construction and design; however, HUD has no obligation to do so and any such review or non-review will not constitute approval as to these standards.

(2) The field office will review the projected replacement cost to assure compliance with the limitations of § 881.204(c) in effect at the time. The field office will also review the proposed rents to assure that the rents are within the Fair Market Rent limitations of § 881.204(b)(1) and are cost justified, where required under § 881.204(b)(2) concerning reasonable rents. Cost justification at this stage will consist of a review by the field office of the cost and expense estimates to determine whether the estimates justify the need for rents above comparable rents based on a debt service calculation.

(3) Where the final proposal requests rents higher than were approved with the preliminary proposal, such rents may be approved only after the review required in paragraph (a)(2). In addition, the field office may approve the request for an increase only if it determines, based on documentation by the owner, that the need for increased rents is due to:

(i) Factors beyond the owner's control which could not reasonably have been foreseen;

(ii) Design changes approved by the field office which are necessary because of additional requirements imposed by governmental agencies or HUD; or

(iii) HUD-approved changes in the method or terms and conditions of financing.

(b) Each owner will be notified as to whether the final proposal has been approved, rejected, or could be approved with the submission of additional information or after correction of specified deficiencies. Notifications of approval will indicate a deadline for acceptance of the notification and, for projects not requiring mortgage insurance, a deadline for submission of working drawings and architect's certifications (if required).

§ 881.310 Owner's acceptance, submission and review of working drawings, architect's certification and requested changes.

(a) The owner should return to HUD by the date specified, a signed copy of the Notification of Selection indicating his acceptance thereof. Failure to do so may result in HUD's rescinding the selection.

(b) For projects which do not involve mortgage insurance but for which the services of a registered architect are required by HUD, the owner must submit working drawings and specifications to the field office for review after approval of the final proposal. The owner must also submit an architect's certification in the prescribed form that the drawings and specifications and proposed construction comply with the HUD Minimum Design Standards, local codes and ordinances, and zoning requirements. The working drawings and specifications will be reviewed for compliance with amenity standards. Any project may, at HUD's option, be reviewed for conformance with the HUD Minimum Design Standards, adequacy of design for tenant security and efficiency in construction and design; however, HUD has no obligation to do so and any such review or non-review will not constitute approval as to these standards.

(c) Any requests for rent increases or any material deviations from preliminary or final proposal which are submitted with the working drawings (or with the owner's acceptance if no working drawings are required) will be reviewed in the same manner as required in § 881.309(a).

(d) For projects involving mortgage insurance, working drawings are reviewed as part of the review of the application for firm commitment/final proposal.

§ 881.311 Execution of agreement (and ACC, if applicable).

(a) After receipt by HUD of a copy of the accepted Notification (for projects not requiring working drawings and specifications) or after review of the working drawings for compliance with amenity standards and acceptance of the architect's certification for projects not involving mortgage insurance, or at the time of initial endorsement in the case of projects involving mortgage insurance:

(1) In the case of private-owner/HUD and PHA-owner/HUD projects, HUD and the owner will execute the Agreement in the form prescribed by HUD; or

(2) In the case of private-owner/PHA projects, HUD and the PHA will execute the ACC in the form prescribed by HUD, and thereafter the PHA and the owner will execute the Agreement in the form prescribed by HUD, and HUD will approve it.

(b) No agreement will be executed unless HUD has approved the financing for the project, including a commitment from a lender for construction and permanent financing at rates, terms and conditions acceptable to HUD, and the final proposal is in all other respects unconditionally approved.

(c) In the case of a non-elderly family project located in a Standard Metropolitan Statistical Area (SMSA), the field office will promptly notify PHAs and Community Development Agencies in the SMSA as well as any metropolitan-wide clearinghouse, or fair housing organizations where there is no metropolitan-wide clearinghouse, of the execution of the Agreement; the size and bedroom distribution of the project; and the expected time of initial marketing and occupancy. The notification will indicate that agencies should inform the owner if they wish to be contacted by the owner for referrals.

Subpart D—Rehabilitation Period and Cost Certification

§ 881.401 Timely performance of work

(a) After execution of the Agreement, the owner must proceed promptly with the rehabilitation work as provided in the Agreement and complete the project within the time stated in the Agreement. If the owner fails to start promptly, or diligently continue or complete the work, the contract administrator will have the right to rescind the Agreement or take other appropriate action.

(b) Extensions of the time may be granted for the reasons stated in the Agreement. However, contract rents will be increased only for the reasons stated in § 881.403.

§ 881.402 Inspections during the rehabilitation period.

(a) All project records will be inspected by HUD periodically to determine compliance with Davis-Bacon Act requirements.

(b) Projects which involve HUD mortgage insurance, or another type of financing which requires HUD construction inspection, will be subject to the applicable inspection requirements.

(c) A review to determine contractor compliance with equal opportunity requirements may be conducted at any time during the rehabilitation period.

§ 881.403 Increases in contract rents or utility allowances before contract execution.

(a) Increases in contract rents or utility allowances after execution of the Agreement and prior to execution of the Contract are permitted with HUD approval only:

(1) To correct substantial errors by HUD in the original processing which would otherwise result in serious inequities;

(2) To reflect substantial and necessary changes in the approved final proposal (where working drawings and specifications are not required) or in the plans and specifications which have been approved by HUD (no optional betterments may result in rent increases);

(3) To reflect additional costs for interest, taxes, hazard insurance, mortgage insurance premiums, and commitment fees, due to construction delays excusable under the Agreement;

(4) To reflect additional costs which result from new requirements imposed by local governments, HUD or other Federal agencies, which are beyond the control of the owner, which have been approved by HUD and which could not have been anticipated at the time the Agreement was executed; or

(5) To reflect increased costs which result from a change in contractors which is necessary because the original contractor became bankrupt, was terminated by the owner due to inadequate performance or abandoned the job.

(6) To reflect additional costs incurred by the owner in providing the relocation assistance and payments required by Section 881.209 (except for payments made to tenants permanently relocated pursuant to Section 881.209(b)(8)(ii)), or as a result of altering construction work schedules in order to minimize displacement, or as a result of other activities which minimize displacement or related hardships.

(b) Such increases will be:

(1) limited to the amount necessary to cover the specific cost increase associated with the applicable item cited in paragraph (a); and

(2) reviewed and approved only in accordance with the Fair Market Rent and rent reasonableness limitations of Section 881.204(b) and the replacement cost limitations of Section 881.204(c) which are in effect at the time of the review of the request.

(c) All requests for increases must be submitted promptly to the field office for review as soon as the need for the increases becomes apparent.

§ 881.404 Project completion.

(a) *Notification and evidence of completion.* (1) For projects for which working drawings and specifications are not required, the owner must notify HUD and the PHA, where the PHA is the contract administrator, when the work is completed and provide HUD with:

(i) A certificate of occupancy and/ or other official approvals necessary for occupancy, and

(ii) A certification in the prescribed form that the project has been completed and is ready for occupancy in accordance with the requirements of the Agreement.

(2) For projects for which working drawings and specifications are required the owner must notify HUD and the PHA, where the PHA is the contract administrator, when work is completed and provide HUD with:

(i) A set of as-built drawings;

(ii) A certificate of occupancy and any other official approvals necessary for occupancy;

(iii) A certification in the prescribed form that the project has been completed and is ready for occupancy in accordance with the requirements of the Agreement; and

(iv) For projects where a HUD construction inspection is not required during rehabilitation, a certification from the inspecting architect in the prescribed form which states that the work has been completed in accordance with the certified working drawings and specifications, HUD Minimum Design Standards, local codes and ordinances, and zoning requirements.

(b) *Review and inspection.* Within 10 working days of the receipt of the notification and evidence of completion, HUD will review the evidence of completion for adequacy and will inspect the project to determine whether it appears that the project has been completed in accordance with the Agreement.

(c) *Acceptance of the project.* (1) if HUD determines from review and inspection that the project (or a stage of the project) has been completed in accordance with the Agreement, the project (or stage) will be accepted.

(2) If there are any items of delayed completion which are minor items or which are incomplete because of weather conditions, and in any case which do not preclude or affect occupancy, and all other requirements of the Agreement have been met, the project (or stage) will be accepted. An escrow fund determined by HUD to be sufficient to assure completion for items of delayed completion will be required, as well as a written agreement between the contract administrator and the owner, to be included as an exhibit to the Contract, specifying the schedule for completion. If the items are not completed within the agreed time period, the contract administrator may terminate the Contract or exercise other rights under the Contract.

(3) If other deficiencies exist, HUD will determine whether and to what extent the deficiencies are correctable, and whether the contract rents should be reduced. The owner will be notified of HUD's decision. If the parties agree, HUD, the owner and the PHA, where applicable, will enter into an agreement for the correction of the deficiencies. If the deficiencies are corrected within the period of time allowed, HUD will accept the project.

(4) Otherwise, the project will not be accepted, and the owner and the PHA, where applicable, will be notified with a statement of the reasons for nonacceptance. (However, see Sections 88.501(a) for action where evidence of completion is acceptable only with respect to physical completion of the project).

(d) *Pending Davis-Bacon Act claims.* If there are pending claims under the provisions in the Agreement relating to the payment of prevailing wage rates, the owner will be required to place a sufficient amount, as required by HUD, in escrow as approved by HUD to assure such payments. The amount withheld may be disbursed with HUD approval for and on account of the owner or any subcontractor to the employees to whom it is due.

§ 881.405 Cost certification and adjustment of contract rents.

(a) *Submission by owner.* As soon as possible after acceptance of the project by HUD, the owner will certify the actual costs estimated under Section 881.308(a)(8), and submit a cost certification including the certificate of an Independent Public Accountant to HUD in the manner and form prescribed by HUD, based on the following guidelines:

(1) Projects which involve HUD mortgage insurance will be subject to the cost certification requirements of the applicable insurance program;

(2) For projects not insured by HUD, a simplified form of cost certification will be completed and submitted;

(3) There will be no cost certification submission required for projects with rents that are equal to or less than comparable rents or for partially-assisted projects or for small projects except as required by § 881.204(b)(2); and

(4) The provisions of paragraphs (a)(2) and (3) do not preclude the imposition of different cost certification requirements appropriate as part of project financing requirements (such as tax-exempt financing under 24 CFR, Part 811).

(b) *HUD review.* Cost certifications required by this regulation will be subject to review by HUD. As part of this review, the owner and/or contractor may be required to submit additional documentation.

(c) *Reduction of contract rents.* If the owner's certified costs provided in accordance with paragraph (a) of this section, as approved by HUD, are less than the cost estimate provided for in Section 881.308(a)(8), the contract rents will be reduced accordingly.

(d) *Reduction of maximum annual commitment.* If the contract rents are reduced pursuant to paragraph (c) of this section, the maximum annual Contract commitment (and the maximum ACC commitment, in the case of private-owner/PHA projects) will be reduced. If contract rents are reduced based on certification after Contract execution, any overpayment since the effective date of the Contract will be recovered from the owner by HUD.

Subpart E—Housing Assistance Payments Contract

§ 881.501 The contract.

(a) *Contract.* The Housing Assistance Payments Contract sets forth rights and duties of the owner and the contract administrator with respect to the project and the housing assistance payments. The owner and contract administrator execute the Contract in the form prescribed by HUD upon satisfactory completion of the project. If the field office finds that the evidence of completion is acceptable with respect to the physical completion of the project, including the certificate of occupancy and/or other official approvals required for occupancy, but the evidence of completion as required in Section 881.404 in other respects is not acceptable, the field office will, upon request by the owner, execute or approve the execution of the Contract. In such case, however, until the remaining evidence of completion is submitted to and found acceptable by the field office:

(1) The contract rent for the purpose of computing housing assistance payments with respect to any unit will be the monthly amount of the debt service on the permanent obligations attributable to the unit; and

(2) Rent-up and occupancy will be subject to such conditions as the field office may require.

(b) *Effective date of contract.* The effective date of the Contract may be earlier than the date of execution, but no earlier than the date HUD inspects and accepts the project, except as provided in paragraph (a).

(c) *Housing assistance payments to owners under the contract.* The housing assistance payments made under the Contract are:

(1) Payments to the owner to assist eligible families leasing assisted units, and

(2) Payments to the owner for vacant assisted units ("vacancy payments") if the conditions specified in Section 881.611 are satisfied.

The housing assistance payments are made monthly by the contract administrator upon proper requisition by the owner, except payments for vacancies of more than 60 days, which are made semi-annually by the contract administrator upon requisition by the owner.

(d) *Amount of housing assistance payments to owner.* (1) The amount of the housing assistance payment made to the owner of a unit being leased by an eligible family is the difference between the contract rent for the unit and the tenant rent payable by the family.

(2) A housing assistance payment will be made to the owner for a vacant assisted unit in an amount equal to 80 percent of the contract rent for the first 60 days of vacancy, subject to the conditions in Section 881.611. If the owner collects any tenant rent or other amount for this period which, when added to this vacancy payment, exceeds the contract rent, the excess must be repaid as HUD directs.

(3) For a vacancy that exceeds 60 days, a housing assitance payment for the vacant unit will be made, subject to the conditions in Section 881.611, in an amount equal to the principal and interest payments required to amortize that portion of the debt attributable to the vacant unit for up to 12 additional months.

(e) *Additional housing assistance payments to families.* In those cases where the total family contribution of a family leasing an assisted unit is less than the utility allowance for the unit, the difference will be paid to the family as an additional housing assistance payment. The Contract will provide that the owner will make this payment on behalf of the contract administrator. Funds for this purpose will be paid to the owner in trust solely for the purpose of making the additional payment.

§ 881.502 Term of contract.

(a) *Term.* The term of the Contract will be as follows:

(1) Where the estimated cost of the rehabilitation is less than 25 percent of the estimated value of the project after completion of the rehabilitation, the contract may be for a term of 15 years for any dwelling unit.

(2) Where the estimated cost of rehabilitation is 25 percent or more of the estimated value of the project after completion of rehabilitation, the contract may be for a term which

(i) Will cover the longest term, but not less than 15 years, of a single credit instrument covering:

(A) The cost of rehabilitation or

(B) The existing indebtedness, or

(C) The cost of rehabilitation and the refinancing of the existing indebtedness, or

(D) The cost of rehabilitation and the aquisition of the property; and

(ii) For assisted units in a project financed with the aid of a loan insured or co-insured by the Federal government or a loan made, guaranteed or intended for purchase by the Federal government, will not exceed 20 years for any dwelling unit; or

(iii) For units in a project financed other than as described in paragraph (2)(ii) will not exceed 30 years for any dwelling unit except that this limit will be 40 years if (A) the project is owned or financed by a loan or loan guarantee from a state or local agency, (B) the project is intended for occupancy by non-elderly families and (C) the project is located in an area designated by HUD as one requiring special financing assistance.

(b) *Staged projects.* If the project is completed in stages, the term of the Contract must relate separately to the units in each stage. The total Contract term for the units in all stages, beginning with the effective date of the Contract for the first stage, may not exceed the overall maximum term allowable for any one unit under this section, plus two years.

§ 881.503 Maximum annual commitment and project account.

(a) *Maximum annual commitment.* Where HUD is the contract administrator, the maximum annual amount that may be committed under the Contract is the total of the contract rents and utility allowances for all assisted units in the project. Where the PHA is the contract administrator, the maximum annual contribution that may be contracted for in the ACC is the total of the contract rents and utility allowances for all assisted units plus an administrative fee for the PHA as approved by HUD.

(b) *Project account.* (1) A project account will be established and maintained by HUD as a specifically identified and segregated account for each project. The account will be established out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the Contract or ACC each year. Payments will be made from this account for housing assistance payments (and fees for PHA adminstration, if appropriate) when needed to cover increases in contract rents or decreases in tenant rents and for other cost specifically approved by the Secretary.

(2) Whenever a HUD-approved estimate of required annual payments under the Contract or ACC for a fiscal year exceeds the maximum annual commitment and would cause the amount in the project account to be less than 40 percent of the maximum, HUD will, within a reasonable period of time, take such additional steps authorized by Section 8(c)(6) of the U.S. Housing Act of 1937, as may be necessary, to assure that payments under the Contract or ACC will be adequate to cover increases in contract rents and decreases in tenant rents.

§ 881.504 Reduction of number of units covered by contract.

(a) *Limitation on leasing to ineligible families.* Owners may not lease more than 10 percent of the assisted units in a project to ineligible families without the prior approval of HUD. Failure on the part of the owner to comply with this prohibition is a violation of the Contract and grounds for all available legal remedies, including specific performance of the Contract, suspension or debarment from HUD programs and reduction of the number of units under the Contract, as set forth in paragraph (b) of this section.

(b) *Reduction for failure to lease to eligible families.* If, at any time beginning six months after the effective date of the Contract, the owner fails for a continuous period of six months to have at least 90 percent of the assisted units leased or available for leasing by eligible families, HUD (or the PHA at the direction of HUD, as appropriate) may, on at least 30 days' notice, reduce the number of units covered by the Contract. HUD may reduce the number of units to the number of units actually leased or available for leasing plus 10 percent (rounded up). This reduction, however, will not be made if the failure to lease units to eligible families is permitted in writing by HUD under paragraph (a) of this section.

(c) *Restoration.* HUD will agree to an amendment of the ACC or the Contract, as appropriate, to provide for subsequent restoration of any reduction made pursuant to paragraph (b) if:

(1) HUD determines that the restoration is justified by demand,

(2) the owner otherwise has a record of compliance with his obligations under the Contract, and

(3) contract authority is available.

§ 881.505 Contract administration and conversions.

(a) *Contract administration.* For private-owner/PHA projects, the PHA is primarily responsible for administration of the Contract, subject to review and audit by HUD. For private-owner/HUD and PHA-owner/HUD projects, HUD is responsible for administration of the Contract. The PHA or HUD may contract with another entity for the performance of some or all of its contract administration functions.

(b) *PHA fee for contract administration.* A PHA will be entitled to a reasonable fee, determined by HUD, for administering a Contract except under certain circumstances (see 24 CFR Part 883) where a state housing finance agency is the PHA and finances the project.

(c) *Conversion of projects from one ownership/contractual arrangement to another.* Any project may be converted from one ownership/contractual arrangement to another (for example, from a private-owner/HUD to a private-owner/PHA project) if:

(1) the owner, the PHA and HUD agree,

(2) HUD determines that conversion would be in the best interest of the project, and

(3) in the case of conversion from a private-owner/HUD to a private-owner/PHA project, contract authority is available to cover the PHA fee for administering the Contract.

§ 881.506 Default by owner—private-owner/HUD and PHA owner/HUD projects.

The Contract will provide:

(a) that if HUD determines that the owner is in default under the Contract, HUD will notify the owner and the lender of the actions required to be taken to cure the default and of the remedies to be applied by HUD including specific performance under the Contract, reduction or suspension of housing assistance payments and recovery of overpayments, where appropriate; and

(b) that if the owner fails to cure the default, HUD has the right to terminate the Contract or to take other corrective action.

§ 881.507 Default by PHA and/or owner—private owner/PHA projects.

(a) *Rights of owner if PHA defaults under agreement or contract.* The ACC, the Agreement and the Contract will provide that, in the event of failure of the PHA to comply with the Agreement or Contract with the owner, the owner will have the right, if he is not in default, to demand that HUD investigate. HUD will first give the PHA a reasonable opportunity to take corrective action. If HUD determines that a substantial default exists, HUD will assume the PHA's rights and obligations under the Agreement or Contract and meet the obligations of the PHA under the Agreement or Contract including the obligations to enter into the Contract.

(b) *Rights of HUD if PHA Defaults under ACC.* The ACC will provide that, if the PHA fails to comply with any of its obligations, HUD may determine that there is substantial default and require the PHA to assign to HUD all of its rights and interests under the Contract; however, HUD will continue to pay annual contributions in accordance with the terms of the ACC and the Contract. Before determining that a PHA is in substantial default, HUD will give the PHA a reasonable opportunity to take corrective action.

(c) *Rights of PHA and HUD if Owner Defaults under Contract.* (1) The Contract will provide that it the PHA determines that the owner is in default under the Contract, the PHA will notify the owner and lender, with a copy to HUD, (i) of the actions required to be taken to cure the default, (ii) of the remedies to be applied by the PHA including specific performance under the Contract, abatement of housing assistance payments and recovery of overpayments, where appropriate, and (iii) that if he fails to cure the default, the PHA has the right to terminate the Contract or to take other corrective action, in its discretion or as directed by HUD.

(2) If the PHA is the lender, the Contract will also provide that HUD has an independent right to determine whether the owner is in default and to take corrective action and apply appropriate remedies, except that HUD will not have the right to terminate the Contract without proceeding in accordance with paragraph (b) of this section.

Subpart F—Management

§ 881.601 Responsibilities of owner.

(a) *Marketing.* (1) The owner must commence diligent marketing activities in accordance with the Agreement not later than 90 days prior to the anticipated date of availability for occupancy of the first unit of the project.

(2) Marketing must be done in accordance with the HUD-approved Affirmative Fair Housing Marketing Plan and all Fair Housing and Equal Opportunity requirements. The purpose of the Plan and requirements is to assure that eligible families of similar income in the same housing market area have an equal opportunity to apply and be selected for a unit in projects assisted under this Part Regardless of their race, color, creed, religion, sex or national origin.

(3) With respect to non-elderly family units, the owner must undertake marketing activities in advance of marketing to other prospective tenants in order to provide opportunities to reside in the project to non-elderly families who are least likely to apply, as determined in the Affirmative Fair Housing Marketing Plan, and to non-elderly families expected to reside in the community by reason of current or planned employment, as indicated in the Housing Assistance Plan, if any.

(4) At the time of Contract execution, the owner must submit a list of leased and unleased units, with justification for the unleased units, in order to qualify for vacancy payments for the unleased units. (See §§ 881.501(c) and (d) and § 881.611.)

(b) *Management and maintenance.* The owner is responsible for all management functions (including selection of tenants, reexamination of family incomes, evictions and other terminations of tenancy, and collection of rents) and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions must be performed in compliance with applicable Equal Opportunity requirements.

(c) *Contracting for services.* With HUD approval, the owner may contract with a private or public entity (except the contract administrator) for performance of the services or duties required in paragraphs (a) and (b). However, such an arrangement does not relieve the owner of responsibility for these services and duties.

(d) *Submission of financial and operating statements.* After execution of the contract, the owner must submit to the contract administrator:

(1) Within 60 days after the end of each fiscal year of the project, financial statements for the project audited by an Independent Public Accountant in the form required by HUD, and

(2) Other statements as to project operation, financial conditions and occupancy as HUD may require pertinent to administration of the Contract and monitoring of project operations.

(e) *Use of Project Funds.*

(1) Project funds must be used for the benefit of the project, to make required deposits to the replacement reserve in accordance with Section 881.602 and to provide distributions to the owner as provided in Section 881.205. Any remaining project funds must be deposited with the mortgagee or other HUD-approved depository in an interest-bearing residual receipts account. Withdrawals from this account will be made only for project purposes and with the approval of HUD.

(2) Partially-assisted projects are exempt from the provisions of this section.

(3) In the case of HUD-insured projects, the provisions of this paragraph will apply instead of the otherwise applicable mortgage insurance provisions.

§ 881.602 Replacement reserve.

(a) A replacement reserve must be established and maintained in an interest-bearing account to aid in funding extraordinary maintenance and repair and replacement of capital items.

(1) An amount equivalent to .006 of the cost of total structures, including main buildings, accessory buildings, garages and other buildings, or any higher rate as required by HUD from time to time, will be deposited in the replacement reserve annually. This amount will be adjusted each year by the amount of the automatic annual adjustment factor.

(2) The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. Should the reserve achieve that level, the rate of deposit to the reserve may be reduced with the approval of HUD.

(3) All earnings including interest on the reserve must be added to the reserve.

(4) Funds will be held by the mortgagee or trustee for bondholders, and may be drawn from the reserve and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.

(b) Partially-assisted projects are exempt from the provisions of this section.

(c) In the case of HUD-insured projects, the provisions of this section will apply instead of the otherwise applicable mortgage insurance provisions, except in the case of partially-assisted insured projects which are subject to the applicable mortgage insurance provisions.

§ 881.603 Selection and admission of assisted tenants.

(a) *Application.* The owner must accept applications for admission to the project in the form prescribed by HUD. Both the owner (or designee) and the applicant must complete and sign the application. On request, the owner must furnish copies of all applications to HUD and the PHA, if applicable.

(b) *Determination of Eligibility and Selection of Tenants.* The owner is responsible for determining whether the applicant is eligible, in accordance with 24 CFR, Parts 812 and 889, and for the selection of families:

(1) Local residency requirements are prohibited. Local residency preferences may be applied in selecting tenants only to the extent that they are not inconsistent with affirmative fair housing marketing objectives and the owner's HUD-approved Affirmative Fair Housing Marketing Plan. With respect to any residency preference, persons expected to reside in the commmunity as a result of current or planned employment will be treated as residents. This does not prohibit an owner from giving preference to tenants occupying the property when the first proposal for the project was submitted to HUD.

(2) If the owner determines that the family is eligible and is otherwise acceptable and units are available, the owner will assign the family a unit of the appropriate size in accordance with HUD standards. If no suitable unit is available, the owner will place the family on a waiting list for the project and notify the family of when a suitable unit may become available. If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the owner may advise the applicant that no additional applications are being accepted for that reason.

(3) If the owner determines that an applicant is ineligible on the basis of income or family composition, or that the owner is not selecting the applicant for other reasons, the owner will promptly notify the applicant in writing of the determination, the reasons for the determination, and that the applicant has the right to meet the owner or managing agent in accordance with HUD requirements. Where the owner is a PHA, the applicant may request an informal hearing. If the PHA determines that the applicant is not eligible, the PHA will notify the applicant and inform the applicant that he has the right to request a review by HUD of the PHA's determination. The applicant may also exercise other rights if he believes he is being discriminated against on the basis of race, color, creed, religion, sex, or national origin.

(4) Records on applicants and approved eligible families, which provide racial, ethnic, gender and place of previous residency data required by HUD, must be maintained and retained for three years.

(c) *Income mix.* In the initial renting of assisted units, the owner must lease at least 30 percent of the assisted units to very low-income families except that if this requirement cannot be met because of families already residing in the property to be rehabilitated, HUD may permit the leasing of less than 30 percent of the units to very low-income persons provided this deficiency is compensated for by the leasing of more than 30 percent in other projects in the allocation area. After initial renting, the owner must use his best efforts to maintain at least 30 percent occupany by very low-income families. In addition, at all times, the owner will use his best efforts to achieve leasing to families with a range of incomes so that the average of incomes of all families in occupancy is at or above 40 percent of the median income in the area.

(d) *Reexamination of family income and composition.* (1) The owner is responsible for reexamining the income and composition of all families at least once each year (except that reviews may be made at intervals no longer than two years in the case of elderly families) and, upon verification of the information provided by the family, making appropriate adjustments in the total family contribution in accordance with the provisions of 24 CFR, Part 889. The owner will adjust tenant rent and the housing assistance payment in accordance with any change in total family contribution. The owner may schedule reexaminations at intervals of less than one year when it is not possible to make a reasonable estimate of the family's income for a full year.

(2) If the family reports a change in income or other circumstances that would result in a decrease of total family contribution between regularly scheduled reexaminations, the owner, upon receipt of verification of the decrease in income, must promptly make appropriate adjustments in the total family contribution. The owner may require families to report increases in income between scheduled reexaminations.

(3) A family's eligibility for housing assistance payments continues until its total family contribution equals the total housing expense for the unit it occupies. The termination of eligibility at this point will not affect the family's other rights under the lease nor will such termination preclude resumption of payments as a result of subsequent changes in income or other circumstances during the term of the contract.

§ 881.604 Tenant rent.

The tenant rent is paid directly to the owner by the eligible family to whom an assisted unit is leased in partial payment of the contract rent. It is equal to the family's total family contribution minus any utility allowance for the unit. If the family's total family contribution is less than the utility allowance for the unit which it occupies, the tenant rent payable by the family to the owner is zero.

§ 881.605 Overcrowded and underoccupied units.

If the contract administrator determines that because of change in family size an assisted unit is smaller than appropriate for the eligibile family to which it is leased, or that the unit is larger than appropriate, housing assistance payments with respect to the unit will not be reduced or terminated until the eligible family has been relocated to an appropriate alternative unit. If possible, the owner will, as promptly as possible, offer the family an appropriate unit. The owner may receive vacancy payments for the vacated unit if he complies with the requirements of Section 881.611.

§ 881.606 Lease requirements.

(a) *Term of lease.* The term of the lease will be for not less than one year. The lease may, or in the case of a lease for a term of more than one year must, contain a provision permitting termination on 30 days advance written notice by the family.

(b) *Form.* The form of lease must contain all required provisions, and none of the prohibited provisions specified in the developer's packet, and must conform to the form of lease included in the approved final proposal.

§ 881.607 Termination of tenancy and modification of lease.

(a) *Applicability.* The provisions of this section apply to all decisions by an owner to terminate the tenancy of a family residing in a unit under Contract during or at the end of the family's lease term.

(b) *Entitlement of families to occupancy.*—(1) *Grounds.* The owner may not terminate any tenancy except upon the following grounds: (i) Material noncompliance with the lease; (ii) Material failure to carry out obligations under any State landlord and tenant act; or (iii) Other good cause, which may include the refusal of a family to accept an approved modified lease form (see paragraph (d) of this section). No termination by an owner will be valid to the extent it is based upon a lease or a provisions of State law permitting termination of a tenancy solely because of expiration of an initial or subsequent renewal term. All terminations must also be in accordance with the provisions of any State and local landlord tenant law and paragraph (c) of this section.

(2) *Notice of good cause.* The conduct of a tenant cannot be deemed "other good cause" under paragraph (b)(1)(iii) of this section unless the owner has given the family prior notice that the grounds constitute a basis for termination of tenancy. The notice must be served on the family in the same manner as that provided for termination notices under paragraph (c) and State and local law.

(3) *Material noncompliance.* The term material noncompliance with the lease includes (i) one or more substantial violations of the lease or (ii) repeated minor violations of the lease which disrupt the livability of the building, adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related facilities, interfere with the management of the building or have an adverse financial effect on the building. Nonpayment of rent or any other financial obligation due under the lease (including any portion thereof) beyond any grace period permitted under State law will constitute a material noncompliance with the lease. The payment of rent or any other financial obligation due under the lease after the due date but with the grace period permitted under State law will constitute a minor violation.

(c) *Termination notice.* (1) The owner must give the family a written notice of any proposed termination of tenancy, stating the grounds and that the tenancy is terminated on a specified date and advising the family that it has an opportunity to respond to the owner.

(2) When a termination notice is issued for other good cause (paragraph (b)(1)(iii) of this section), the notice will be effective, and it will so state, at the end of a term and in accordance with the termination provisions of the lease, but in no case earlier than 30 days after receipt by the family of the notice. Where the termination notice is based on material noncompliance with the lease or material failure to carry out obligations under a State landlord and tenant act pursuant to paragraph (b)(1) (i) or (ii) of this section, the time of service must be in accord with the lease and State law.

(3) In any judicial action instituted to evict the family, the owner máy not rely on any grounds which are different from the reasons set forth in the notice.

(d) *Modification of lease form.* The owner may, with the prior approval of HUD, modify the terms and conditions of the lease form effective at the end of the initial term or a successive term, by serving an appropriate notice on the family, together with the offer of a revised lease or an addendum revising the existing lease. This notice and offer must be received by the family at least 30 days prior to the last date on which the family has the right to terminate the tenancy without being bound by the modified terms and conditions by executing the offered revised lease or addendum, or may reject the modified terms and conditions by giving the owner written notice in accordance with the lease that the family intends to terminate the tenancy. Any increase in rent must in all cases be governed by Section 881.609 and other applicable HUD regulations.

§ 881.608 Security deposits.

(a) At the time of the initial execution of the lease, the owner will require each family to pay a security deposit in an amount equal to one month's total family contribution or $50, whichever is greater. The family is expected to pay the security deposit from its own resources and/or other public sources. The owner may collect the security deposit on an installment basis.

(b) The owner must place the security deposits in a segregated, interest-bearing account. The balance of this account must at all times be equal to the total amount collected from the families then in occupancy, plus any accrued interest. The owner must comply with any applicable State and local laws concerning interest payments on security deposits.

(c) In order to be considered for the return of the security deposit, a family which vacates its unit will provide the owner with its forwarding address or arrange to pick up the refund.

(d) The owner, subject to State and local law and the requirements of this paragraph, may use the security deposit, plus any accrued interest, as reimbursement for any unpaid family contribution or other amount which the family owes under the lease. Within 30 days (or shorter time if required by State or local law) after receiving notification of the family's forwarding address, the owner must:

(1) Refund to a family owing no rent or other amount under the lease the full amount of the security deposit, plus accrued interest;

(2) Provide to a family owing rent or other amount under the lease a list itemizing any unpaid rent, damages to the unit, and estimated costs for repair, along with a statement of the family's rights under State and local law. If the amount which the owner claims is owed by the family is less than the amount of the security deposit plus accrued interest, the owner must refund the unused balance to the family. If the owner fails to provide the list, the family will be entitled to the refund of the full amount of the security deposit plus accrued interest.

(e) In the event a disagreement arises concerning reimbursement of the security deposit, the family will have the right to present objections to the owner in an informal meeting. The owner must keep a record of any disagreements and meetings in a tenant file for inspection by the contract administrator. The procedures of this paragraph do not preclude the family from exercising its rights under State and local law.

(f) If the security deposit, including any accrued interest, is insufficient to reimburse the owner for any unpaid tenant rent or other amount which the family owes under the lease, and the owner has provided the family with the list required by paragraph (d)(2), the owner may claim reimbursement from HUD or the PHA, as appropriate, for an amount not to exceed the lesser of:

(1) The amount owed the owner, or

(2) One month's contract rent, minus the amount of the security deposit plus accrued interest.

Any reimbursement under this section will be applied first toward any unpaid tenant rent due under the lease. No reimbursement may be claimed for unpaid rent for the period after termination of the tenancy.

§ 881.609 Adjustment of contract rents.

(a) *Automatic annual adjustment of contract rents.* Upon request from the owner to the contract administrator, contract rents will be adjusted on the anniversary date of the Contract in accordance with 24 CFR, Part 888.

(b) *Special additional adjustments.* For all projects, special additional adjustments will be granted, to the extent determined necessary by HUD, to reflect increases in the actual and necessary expenses of owning and maintaining the assisted units which have resulted from substantial general increases in real property taxes, assessments, utility rates, and utilities not covered by regulated rates, and which are not adequately compensated for by annual adjustments under paragraph (a). The owner must submit to the contract administrator required supporting data, financial statements and certifications.

(c) *Overall limitation.* Any adjustments of contract rents for a unit after Contract execution or cost certification, where applicable, must not result in material differences between the rents charged for assisted units and comparable unassisted units except to the extent that the differences existed with respect to the contract rents set at Contract execution or cost certification, where applicable.

§ 881.610 Adjustment of utility allowances.

The owner must recommend to the contract administrator, in connection with annual and special adjustments of contract rents, and at other times if appropriate, whether and to what extent the utility allowance for any assisted unit should be adjusted. Whenever a utility allowance for a unit is adjusted, the owner will promptly notify the families occupying assisted units and make a corresponding adjustment of the tenant rent and the amount of the housing assistance payment for the unit.

§ 881.611 Conditions for receipt of vacancy payments.

(a) *General.* Vacancy payments under the Contract will not be made unless the conditions for receipt of these housing assistance payments set forth in this section are fulfilled.

(b) *Vacancies During Rent-up.* For each assisted unit that is not leased as of the effective date of the Contract, the owner is entitled to vacancy payments in the amount of 80 percent of the contract rent for the first 60 days of vacancy if the owner:

(1) Conducted marketing in accordance with § 881.601(a) and otherwise complied with § 881.601;

(2) Has taken and continues to take all feasible actions to fill the vacancy; and

(3) Has not rejected any eligible applicant except for good cause acceptable to the contract administrator.

(c) *Vacancies after rent-up.* If an eligible family vacates a unit, the owner is entitled to vacancy payments in the amount of 80 percent of the contract rent for the first 60 days of vacancy if the owner:

(1) Certifies that he did not cause the vacancy by violating the lease, the Contract or any applicable law;

(2) Notified the contract administrator of the vacancy or prospective vacancy and the reasons for the vacancy immediately upon learning of the vacancy or prospective vacancy;

(3) Has fulfilled and continues to fulfill the requirements specified in Section 881.601(a) (2) and (3) and Section 881.611(b) (2) and (3); and

(4) For any vacancy resulting from the owner's eviction of an eligible family, certifies that he has complied with Section 881.607.

(d) *Vacancies for longer than 60 days.* If an assisted unit continues to be vacant after the 60-day period specified in paragraph (b) or (c), the owner may apply to receive additional vacancy payments in an amount equal to the principal and interest payments required to amortize that portion of the debt service attributable to the vacant unit for up to 12 additional months for the unit if:

(1) The unit was in decent, safe and sanitary condition during the vacancy period for which payments are claimed;

(2) The owner has fulfilled and continues to fulfill the requirements specified in paragraphs (b) or (c), as appropriate; and

(3) The owner has demonstrated to the satisfaction of HUD that:

(i) For the period of vacancy, the project is not providing the owner with revenues at least equal to project expenses (exclusive of depreciation), and the amount of payments requested is not more than the portion of the deficiency attributable to the vacant unit, and

(ii) The project can achieve financial soundness within a reasonable time.

(e) *Prohibition of double compensation for vacancies.* The owner is not entitled to vacancy payments for vacant units to the extent he can collect for the vacancy from other sources (such as security deposits, payments under Section 881.608(f), and governmental payments under other programs).

§ 881.612 Reviews during management period.

(a) After the effective date of the Contract, the contract administrator will inspect the project and review its operation at least annually to determine whether the owner is in compliance with the Contract and the assisted units are in decent, safe and sanitary condition.

(b) In addition, for private-owner/PHA projects, HUD:

(1) Will review the PHA's administration of the Contract at least annually to determine whether the PHA is in compliance with the ACC, and

(2) May independently inspect project operations and units at any time.

(c) Equal Opportunity reviews may be conducted by HUD at any time.

Subpart G—Special Procedures for Neighborhood Strategy Areas

§§ 881.701–881.709 [Reserved]

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Issued at Washington, D.C., October 5, 1979.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 80-2868 Filed 1-30-80; 8:45 am]

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federal register

Thursday
January 31, 1980

Part IV

Department of the Interior

Office of the Secretary

Improving Government Regulations; Semiannual Agenda of Rules Scheduled for Review or Development

DEPARTMENT OF THE INTERIOR

Office of the Secretary

18 CFR Ch. IV
25 CFR Ch. 1
30 CFR Chs. II, VI, and VII
36 CFR Chs. 1 and XII
41 CFR Chs. 14H and 14R
43 CFR Subtitle A, Chs. I-II
50 CFR Chs. 1 and IV.

Improving Government Regulations; Semiannual Agenda of Rules Scheduled for Review or Development

AGENCY: Department of the Interior.

ACTION: Semiannual Agenda of Rules Scheduled for Review or Development.

SUMMARY: This notice provides the semiannual agenda of rules scheduled for review or development between January and June 1980, and the status of rules previously scheduled. A semiannual agenda is required by Executive Order 12044 and 43 CFR 14.8. We have listed rules which are significant and not significant. The determinations of significance and decisions on preparation of regulatory analyses may, in some cases, be subject to change as the rules are developed.

ADDRESSES: Unless otherwise indicated, all Knowledgeable Officials are located at the Department of the Interior, 1800 C Street NW, Washington, D.C. 20240, Area Code 202.

FOR FURTHER INFORMATION CONTACT: All comments and inquiries with regard to these rules should be directed to the appropriate Knowledgeable Official.

Dated: January 25, 1980.

Cecil D. Andrus,

Secretary.

Agenda of Rules Scheduled for Review of Development: January–June 1980; Office of Hearings and Appeals, 4015 Wilson Blvd., Arlington, VA 22203 (Area Code 703)

CFR citation	Subject	Purpose of review/development	Significant	Regulatory analysis	Expected date(s) of publication (if known)	Knowledgeable official
Office of Hearings and Appeals, 4015 Wilson Blvd., Arlington, VA 22203 (Area Code 703)						
43 CFR Part 4, Subpart A	General; Office of Hearings and Appeals.	Revision of regulations to update, reduce and simplify language.	No	No		Sara Russell, 557-9200.
43 CFR Part 4, Subpart D	Special rules Applicable to Proceedings in Indian Probate, Including Hearings and Appeals; Tribal Purchase of Interests Under Special Statutes, Including Hearings and Appeals; and Administrative Appeals in Indian Affairs Generally.	New regulation to revise § 4.354 to conform notice of appeal time limitations in appeals to Interior Board of Indian Appeals to the same time limits set by Bureau of Indian Affairs regulation in 25 CFR 2.19.	No	No		Franklin Arness, 557-1400.
		New regulation to provide rules governing intervention in appeals proceedings pending before Interior Board of Indian Appeals.	No	No		
43 CFR Part 4, Subpart H	Special Procedural Rules Applicable to Proceedings Conducted Pursuant to Enforcement of Executive Order 11246, as Amended by Executive Order 11375, and Rules, Regulations and Orders Issued Thereunder.	Deletion of these rules to comply with Executive Order 12086, which transfers all functions under Executive Order 11246, as amended by Executive Order 11375, to the Department of Labor.	No	No		Sara Russell, 557-9200.
43 CFR Part 4, Subpart K	Special Procedural Rules Applicable to Contest Proceedings To Disenroll Alaska Natives.	These rules will be removed from the CFR since the deadline of October 1, 1978, for disenrollment contest reviews has already passed. (Reference Bureau of Indian Affairs regulations in 25 CFR 43h.15(h)).	No	No		Sara Russell, 557-9200.
Office of Small and Disadvantaged Business Utilization						
43 CFR Part 35	Involvement of Minority and Female-Owned Business Enterprises in Outer Continental Shelf Leasing and Permit Activities.	To establish a program for the active participation of business enterprises owned and controlled by minorities and women in all activities related to the leasing of the Outer Continental Shelf. (Section 604 of the OCS Lands Act Amendments, 43 U.S.C. 1863).	No	No	Proposed Rule February 1980.	Kenneth T. Kelly, 343-8493.
U.S. Fish and Wildlife Service						
50 CFR Part 13	General Permit Procedures	To revise permit fee schedule and appeal procedures.	No	No	Proposed Rule March 1980.	Richard Parsons, 703-235-1937.
50 CFR Part 14	Importation, Exploration and Transportation of Wildlife.	To revise rules which provide controls for movement of wildlife. This was originally published as a proposed rule on March 27, 1978.	No	No	Final Rule February 1980.	Clark Bavin, 343-9242.
50 CFR Part 17	Endangered and Threatened Wildlife and Plants.	To revise import/export procedures, permit requirements and enforcement of some special rules.	No	No	Proposed Rule February 1980.	Richard Parsons, 703-235-1937.
		To revise self-defense rules to conform to the Endangered Special Act Amendments of 1978.	No	No		Clark Bavin, 343-9242.
50 CFR Part 18	Marine Mammals	To revise permit application information requirements, issuance criteria, and reporting requirements.	No	No	Proposed Rule February 1980.	Richard Parsons, 703-235-1937.

CFR citation	Subject	Purpose of review/development	Significant	Regulatory analysis	Expected date(s) of publication (if known)	Knowledgeable official
U.S. Fish and Wildlife Service						
50 CFR Part 20, Subpart M	Migratory Bird Hunting	To revoke those rules pertaining to the establishment of certain wildlife development areas. A proposed rule was published on July 11, 1979.	No	No	Final Rule February 1980.	Clark Bavin, 343-9242.
50 CFR Part 20, Subpart C	Migratory Bird Hunting	To revise rules to allow paraplegics to take game from stationary motor vehicles (§ 20.21). A proposed rule was published on February 15, 1979.	No	No	Final Rule February 1980.	Clark Bavin, 343-9242.
50 CFR Part 21	Migratory Bird Permits	To except certain species from permit requirements and issuance criteria.	No	No		Clark Bavin, 343-9242.
		To revise permit application requirements and issuance criteria.	No	No	Proposed Rule March 1980.	Richard Parsons, 703-235-1937.
50 CFR Part 23	Endangered Species Convention	To incorporate recommendations of the parties to the Convention.	No	No	Proposed Rule February 1980.	Richard Parsons, 703-235-1937.
50 CFR Part 107	Mining and Mining Claims in Alaska National Wildlife Monuments.	To establish management regulations governing mining in Yukon Flats and Becharof National Wildlife Monuments. This was published as a proposed rule on January 11, 1980.	No	No		Byron Swift, 343-2172. Keith Schreiner, 1011 E. Tudor Rd., Anchorage, AK 99507, 907-276-3800.
Heritage Conservation and Recreation Service, 440 G Street NW., Washington, D.C. 20243 (Area Code 202)						
36 CFR Part 1212	National Natural Landmarks Program.	To publish as a final rule to formalize the Secretary's procedures and criteria for designating National Natural Landmarks. An interim rule was published on November 20, 1979.	No	No		Wayne Strum, 343-4243. Jim Orr, 343-4243.
36 CFR Part 1227	Federal Recreation Fees	To publish proposed amendment which would allow the Department of Interior land-managing agencies to establish recreation fees, primarily emphasizing that such fees be comparable with other Federal and non-Federal public agencies providing similar services and facilities.	No	No	Proposed Rule Jan. 21, 1980. Final Rule June 1980.	Jim Cook, 343-7665.
43 CFR Part 3	Preservation of American Antiquities, Definition of "Object".	To publish final rule for the definition of antiquity as used in the Antiquities Act of 1906 (Pub. L. 59-209). A proposed rule was published in the FEDERAL REGISTER on April 10, 1978.	No	No	February 1980	Roy W. Reaves, III, 343-7105.
36 CFR Part 1215	Archeological Resources Protection Act of 1979.	To publish rules to implement the new Archeological Resources Protection Act (Pub. L. 96-95). The determination of significance and the decision on preparation of a regulatory analysis have not been made at this time.			March 1980	Roy W. Reaves, III, 343-7105.
National Park Service						
36 CFR Part 6	Foreign Currency	The Service is developing a comprehensive policy concerning the acceptance of foreign currency which will be implemented in the form of regulations.	No	No		Harry Delashmutt, 343-4874.
36 CFR Part 7	Special Regulations of the National Park Service.	Proposed rules which address particular problems in individual parks will be published. The number and frequency of these regulations cannot be determined at this time.	No	No		Michael Finley, 343-5607.
36 CFR Part 7	Protection of Whales	The Service is developing regulations necessary to protect the whales within Glacier Bay National Monument, Alaska (§ 7.23).	No	No		Michael Finley, 343-5607.

CFR citation	Subject	Purpose of review/development	Significant	Regulatory analysis	Expected date(s) of publication (if known)	Knowledgeable official
		National Park Service—Continued				
36 CFR Part 14	Rights-of-way and Easement Regulations.	Current regulations governing rights-of-way and easements found in 43 CFR Part 2800 are being revoked by the Bureau of Land Management. The Service has determined that it is necessary to develop a set of regulations specifically tailored to the needs of the Service.	No	No		Al Verti, 343-4874.
		Office of Surface Mining Reclamation and Enforcement				
30 CFR Part 211	State—Federal Cooperative Agreements.	Implement State-Federal Cooperative Agreement Initial Regulatory Program on Federal Lands in Colorado and New Mexico.	No	No	Proposed Rule January 1980.	Don Maurer, 343-5335.
30 CFR Part 700	General	Clarify the definition of "Surface Coal Mining Operations".	No	No	Proposed Rule January 1980.	Carl Pavetto, 343-5365.
30 CFR Part 701	Permanant Regulatory Program	To remove the discretion of the Regulatory Authority to grant an exemption for pre-existing, non-conforming structures.	No	No		David Maneval, 343-4264.
30 CFR Part 715	General Performance	To clarify the requirements pertaining to "Multiple Seam Mining".	No	No		David Maneval, 343-4264.
30 CFR Part 715	General Performance	To provide consistency in the guidelines on Finger Ridges pertaining to §§ 715.11, 716.2, 826.16 and 816.102-105.	No	No		David Maneval, 343-4264.
30 CFR Part 715	General Performance	To clarify the requirements pertaining to "Spoil on Lower Bench".	No	No		David Maneval, 343-4264.
30 CFR Part 715	General Performance	Suspend portions of existing sedimentation pond regulations. Propose revised effluent standards, rainfall exemptions and design requirements. Coordinate with corresponding Environmental Protection Agency (EPA) rulemaking. The determination of significance and Regulatory Analysis has not yet been determined.			Notice of Intent to Propose Rulemaking was published: Dec. 31, 1979. Proposed Rule March 1980..	David Maneval, 343-4264.
30 CFR Part 716	Special Performance Standards	Provide for interim program variances to return land mined in steep slope areas to the approximate original contour. Standards found in 30 CFR 716.2.	No	No	Proposed Rule Oct. 24, 1979. Final Rule February 1980.	Richard Robinson, 343-8061.
30 CFR Part 716	Special Performance Standards	To amend Anthracite coal interim regulations to include underground mining. Relates to section 30 CFR 716.5.	No	No	Proposed Rule April 1980.	David Maneval, 343-4264.
30 CFR Part 741	Permits	Establish permit fee schedule for Federal Lands.	No	No		Mel Schilling, 343-5335.
30 CFR Part 741	Permits	Establish schedule for Director's action on Federal Lands permit application.	No	No		Mel Schilling, 343-5335.
30 CFR Part 742	Bonds and Liability Insurance of Federal Lands.	Establish form of performance bond on Federal Lands.	No	No		Mel Schilling, 343-5335.
30 CFR Part 745	State—Federal Cooperative Agreements.	Implement State-Federal Cooperative Agreements for Permanant Regulatory Program of Federal lands.	No	No		Don Maurer, 343-5335.
30 CFR Part 761	Definition of Public Road	To Achieve consistency with the Secretary of The Interior's definition.	No	No	Proposed Rule February 1980.	Carl Close, 343-4225.
30 CFR Part 761	Valid Existing Rights	To allow state case law to be used for interpretation of documents relied upon to establish valid existing rights as found in CFR 761.5(c).	No	No	Proposed Rule February 1980.	Carl Close, 343-4225.
30 CFR Part 761	Areas Where Mining is Prohibited or Limited.	Elimination of "eligible" properties and private properties from those to be inlcuded as related to 30 CFR 761.11(c) and 30 CFR 761.12 (f).	No	No	Proposed Rule March 1980.	Bernadine Thompson, 343-5361.
30 CFR Part 761	Waivers	Clarify interpretation of waiver requirements as related to 30 CFR 716.12(e).	No	No	Proposed Rule February 1980.	Carl Close, 343-4225.
30 CFR Part 770	Coordination of NPDES Permit Requirements with SMCRA Regulations.	To coordinate Surface Mining permits with requirements of NPDES permitting procedures.	No	No	Proposed Rule April 1980.	David Maneval, 343-4264.

CFR citation	Subject	Purpose of review/development	Significant	Regulatory analysis	Expected date(s) of publication (if known)	Knowledgeable official
Office of Surface Mining Reclamation and Enforcement—Continued						
30 CFR Parts 779, 783	Prime Farmland Investigation	To clarify the criteria as related to 30 CFR 779.27 and 30 CFR 783.27.	No	No	Proposed Rule April 1980.	Leroy DeMoulin, 343-2184.
30 CFR Part 783	Geology Description	Narrow application of requirement pertaining to 30 CFR 783.14.	No	No	Proposed Rule April 1980.	Chuan Y. Chen, 343-5244.
30 CFR Parts 783, 784, 817	Land Use Information	To allow operator to apply through the permit revision or renewal procedures of 30 CFR 78.12-15 for approval of alternative post-mining land use if original permit demonstrates land will be returned to pre-mining land use capability (As required by 30 CFR 817.133(a)).	No	No	Proposed Rule April 1980.	Charles Meyers, 343-2184.
30 CFR Part 785	Prime Farmlands	To change grandfather exemption from otherwise applicable prime farmland requirements (30 CFR 785.17(a)) and to reconsider and repropose regulations so guideline is established for compaction of replaced soil horizons on prime farmlands (30 CFR 785.17(b)(3)).	No	No	Proposed Rule April 1980.	Edward Johnson, 343-5261.
30 CFR Part 786	Definition of Irreparable Damage	To redefine original definition as related to 30 CFR 786.5.	No	No	Proposed Rule February 1980.	Carl Pavetto, 343-5365.
30 CFR Parts 816, 817	Water Quality Guidelines	Provide guidance to inspectors on water sampling procedures pertaining to 30 CFR 816.42 and 30 CFR 817.42.	No	No	March 1980	David Short, OSM Region II, 530 Gay Street, Suite 500, Knoxville, TN 37902, 615-637-8060.
30 CFR Parts 816, 817	Subdrainage System for Coal Processing Waste Banks.	To provide exemption from underdrain requirement if the operator can demonstrate alternative will ensure structural integrity of the waste bank and protect water quality.	No	No	Proposed Rule April 1980.	Ray Aufmuth, 343-4022.
30 CFR Parts 816, 817	Treatment of Toxic Materials	To achieve consistency through rules (30 CFR 816.103 and 30 CFR 817.103) to provide for treatment as an alternative to covering toxic wastes.	No	No	Proposed Rule February 1980.	David Maneval, 343-4264.
30 CFR Part 817	Monitoring Ground Water	To eliminate the requirement of monitoring recharge capacity for underground mining.	No	No	Proposed Rule April 1980.	Don Willen, 343-9105.
30 CFR Part 817	Revegetation Standards for Success.	To provide that certain performance standards may be used as alternatives to measure revegetation success for permit areas of 40 acres or less in locations with annual precipitation of more than 26 inches.	No	No	Proposed Rule April 1980.	Arlo Dalrymple, 343-8032.
30 CFR Part 700	Two Acre Exemption	Clarify The Two Acre Definition	No	No	Proposed Rule February 1980. Final Rule April 1980.	Carl Pavetto, 343-5365.
30 CFR Parts 900-999	State Program	Implement Section 504(a) of SMCRA (For States that do not submit or obtain approval)* Issue paper under consideration for codification of Federal Programs.	No	No	March 1980–July 1980.	Bernadine Thompson, 343-5361.
30 CFR Part 816	Sedimentation Ponds	To clarify and further define the requirements of 30 CFR 816.46 and 30 CFR 817.46.	No	No	Final Rule March 1980.	Bill Thomas, OSM Region II, 530 Gay Street, Suite 500, Knoxville, TN 37902, 615-637-8060.
Office of Water and Power Resources Service						
30 CFR Part 429	Sale of Replacement Farms	This Part has been scheduled for review. The determination of significance and decision on preparation of a regulatory analysis will be made if it is determined that revision is necessary.				T. G. Cooper, 343-5204.
Bureau of Land Management						
43 CFR Parts 4 and 1840	Procedure for handling review of wilderness inventory decisions.	Revise appeal procedure to include new procedures for specialized wilderness decisions.	No	No		Robert Lund, 343-6064. George Hollis, 343-8735.
43 CFR Part 2400	Land Classification	Review existing regulations to determine if they are current. The determination of significance and the decision on preparation of a regulatory analysis will be made if it is determined that revision is necessary.				Keith Corrigal, 343-8731. Robert C. Bruce, 343-8735.

CFR citation	Subject	Purpose of review/development	Significant	Regulatory analysis	Expected date(s) of publication (if known)	Knowledgeable official
Bureau of Land Management—Continued						
43 CFR Part 2650	Alaska Native Selections—Miscellaneous Amendments.	Develop regulations to speed up the granting of miscellaneous selection process.	No	No	Proposed Rule March 1980.	Beaumont McClure, 343-6511. Robert C. Bruce, 343-8735.
43 CFR Part 3040	Environment and Safety—Oil and Gas Geophysical Exploration.	Develop regulations to manage oil and gas geophysical operations on the public lands.	No	No	Proposed Rule June 1980.	Doris Koivula, 343-7753. George Hollis, 343-8735.
43 CFR Part 3100	Oil and Gas Leasing—Simultaneous Leasing Procedures Amendments.	Develop amendments to the simultaneous drawing procedures to remove abuses from system. This was published as a proposed rule on September 28, 1979.	No	No	Final Rule June 1980.	Charles Weller, 343-7753. Robert C. Bruce, 343-8735.
43 CFR Part 3100	Oil and Gas Leasing—Simultaneous Leasing redrawing Procedures.	Develop amendments to the simultaneous drawing procedures to covering redrawings. This was published as a proposed rule on October 10, 1979.	No	No	Final Rule March 1980.	Dale Zimmerman, 343-2718. Robert C. Bruce, 343-8735.
43 CFR Subpart 3211	Bureau Motion—Land Previously Leased for Geothermal Resources.	Develop amendment to non-competitive Geothermal leasing procedure to expedite leasing of lands.	No	No	Proposed Rule June 1980.	Doris Koivula, 343-7753. Cecil Feeney, 343-8735.
43 CFR Subpart 3503	Fees, Rentals and Royalties	Develop minimum royalty regulations for potassium, sodium, sulphur and phosphate. This was published as a proposed rule on March 3, 1979.	No	No	Final Rule June 1980.	Dave Carty, 343-7763. Cecil Feeney, 343-8735.
43 CFR Part 3600	Mineral Material Disposals	Review regulations to develop new procedures for the disposal of mineral material.	No	No	Proposed Rule June 1980.	Robert Anderson, 343-7733. George Hollis, 343-8735.
43 CFR Part 8340	Off-Road Vehicles	Amend regulations to clarify area questioned by users.	No	No	Proposed Rule January 1980.	Larry Young, 343-9353. Cecil Feeney, 343-8735.
43 CFR Part 8350	Management Areas	Develop regulations covering enforcement of management decisions in Wild River areas.	No	No	Proposed Rule February 1980.	Larry Young, 343-9353. Robert C. Bruce, 343-8735.
43 CFR Part 8370	Use Authorizations	Develop regulations covering fees for use of recreation areas under Bureau of Land Management jurisdiction.	No	No	Final Rule June 1980.	Larry Young, 343-9353. Cecil Feeney, 343-8735.
43 CFR Part 9230	Trespass	Review existing regulations as they apply to trespass on coal for needed improvement. A Notice of Intent to propose rulemaking was published on October 22, 1979.	No	No		Walter Rewinski, 343-6821. Robert C. Bruce, 343-8735.
43 CFR Part 3500	Leasing of Minerals other than Oil and Gas; General.	Amend regulations to clarify definitions.	No	No	Proposed Rule May 1980.	Dave Carty, 343-7753. George Hollis, 343-8735.
Bureau of Indian Affairs						
25 CFR Part 60	Use of distribution of Indian Judgment Funds.	Will be rewritten to reflect anticipated amendments to Indian Judgment Funds Act of October 19, 1973, 87 Stat. 466, Pub. L. 93-134. Prinicpal amendment would affect time period for submittal of Secretarial plans to the Congress.	No	No		Stephen E. Feraca, 343-4623.
25 CFR Part 43	Enrollment Regulations	Enrollment regulations are in compliance with the judgment funds plans and the Act of October 19, 1973 (87 Stat. 446) Public Law 93-134. Judgment fund plans to be published for:.				
		Caddo, Docket 226 and Ft. Sill Apache, Dockets 182 & 182A.	No	No	April 1980	Mitchell L. Bush, 703-235-8275.
		Goshute, Docket 326 B & J and Kickapoo, Docket 315 & 338.	No	No	May 1980	Mitchell L. Bush, 703-235-8275.
		Yankton Sioux, Docket 332-C-1.	No	No	June 1980	Mitchell L. Bush, 703-235-8275.
25 CFR Part 31c	Procedures and Practices	To codify procedures required by Public Law 95-561.	No	No	Proposed Rule June 1980.	Elizabeth Holmgren, 343-3151.
25 CFR Part 31f	Educational Standards	To codify standards mandated in Public Law 95-561.	No	No	Proposed Rule May 1980.	Elizabeth Holmgren, 343-3151.
25 CFR Part 31e	Dormitory Standards	To codify standards mandated in Public Law 95-561.	No	No	Proposed Rule May 1980.	Elizabeth Holmgren, 343-3151.
25 CFR	Aid to Federally Impacted Areas	To implement amendments to Public Law 81-874 contained in Public Law 95-561 which require establishment of procedures for Indian tribes to follow when conflicts arise between a tribe and a public school district as to the expenditure of impact aid funds for Indian Students in that district. As of this date a part number has not been assigned.	No	No	Proposed Rule March 1980.	Elizabeth Holmgren, 343-3151.

CFR citation	Subject	Purpose of review/development	Significant	Regulatory analysis	Expected date(s) of publication (if known)	Knowledgeable official
		Bureau of Indian Affairs—Continued				
25 CFR	Post-Secondary Schools	To provide for the complimentary administration of secondary schools in accordance with the provisions of Public Law 95-561. As of this date a part number has not been assigned.	No	No	Proposed Rule January 1980.	Leroy Falling, 343-7387.
25 CFR 32	Higher Education Applications for Educational Loans, Grants and Working Scholarships.	To develop new grant regulations in cooperation with the grant programs administered by the Department of Education..	No	No	Proposed Rule January 1980.	Leroy Falling, 343-7387.

Status of Rules Previously Scheduled for Review or Development

Review Period	CFR citation	Subject	Status	Knowledgeable official
		Office of Inspector General		
1/79-6/79	43 CFR Part 20	Employee Responsibilities and Conduct.	Expected date as a proposed rule is in January 1980. Delays were made to incorporate recent GAO and Office of Government Ethics recommendations.	Gabriele J. Paone, 343-3932.
1/79-6/79	43 CFR Part 7	Employees: Interest in Lands and Resources.	Revision is deferred pending legal determination for need to change this part.	Gabriele J. Paone, 343-3932.
		Office of the Solicitor		
1/79-6/79	41 CFR Part 14R-9	Inventions and patents: Data	This was published as a proposed rule on July 5, 1979. A final rule should be published in April 1980.	Gersten Sadowsky, 343-4471.
5/78-12/78	43 CFR Part 1	Practices Before the Department of the Interior.	Revision of this Part is deferred pending revision of 43 CFR Part 20 by the Office of Inspector General.	John D. Trezise, 343-5216.
		Office of Hearings and Appeals, 4015 Wilson Blvd., Arlington, VA 22203 (Area Code 703)		
1/79-6/79	43 CFR Part 4, Subpart B	General Rules Relating to Procedures and Practice.	General rules are under development for inclusion in each of the several Subparts of 43 CFR Part 4; and when this has been accomplished, Subpart B will be removed from the CFR.	Sara Russell, 557-9200.
1/79-6/79	43 CFR Part 4, Subpart C	Special Rules Applicable to Contract Appeals.	Final rule should be published in Spring 1980, to amend and update procedural rules to conform to provisions of the Contract Disputes Act of 1978, and generally to conform with the procedural rules recommended by the Office of Federal Procurement Policy for Boards of Contract Appeals in the Federal Government.	David Doane, 557-1450.
1/79-6/79	43 CFR Part 4, Subpart D	Special Rules Applicable to Proceedings in Indian Probate, Including Hearings and Appeals; Tribal Purchase of Interests Under Special Statutes, Including Hearings and Appeals; and Administrative Appeals in Indian Affairs Generally.	Proposed rule was published on October 9, 1979 (44 FR 57948). Comment period was extended to January 24, 1980 (44 FR 68870, November 30, 1979). Final rule should be published by June 1980.	Sara Russell, 557-9200.
1/79-6/79	43 CFR Part 4, Subpart E	Special Rules Applicable to Public Land Hearings and Appeals.	Review is continuing on proposed rules. Proposed rules should be published in June 1980.	James Burski, 557-9040.
7/79-12/79	43 CFR Part 4, Subpart G	Special Rules Applicable to Other Appeals and Hearings.	Review is continuing on proposed clarification, simplification, and updating of existing rules and providing additional rules for appeals not within the appellate review jurisdiction of established appeals boards of the Office.	Kathryn Russell, 557-9037.
1/79-6/79	43 CFR Part 4, Subpart J	Special Rules Applicable to the Alaska Native Claims Settlement Act Hearings and Appeals.	Proposed rule was published on February 8, 1979 (44 FR 7983). Final rule should be published by July 1980.	Judith M. Brady, Chairman, Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99051, 907-265-5356.
5/78-12/78	43 CFR Part 4, Subpart L	Special Rules Applicable to Surface Coal Mining Hearings and Appeals.	Proposed rules are under development and should be published in June 1980 to add sections to govern hearings and appeals procedures provided for in the permanent regulatory program regulations (44 FR 15311, March 13, 1979).	Bruce Harris, 557-9037
7/79-12/79	43 CFR Part 4, Subpart M	Special Rules Applicable to Fish and Wildlife Civil Penalty Proceedings.	Review is continuing on proposed rules. Proposed rules should be published in June 1980.	James Burski, 557-9040.
		Office of Youth Programs		
7/79-12/79	43 CFR Part 32	Young Adult Conservation Corps (YACC) State Grant Program.	Revision of this Part has been deferred pending final publication of Department of Labor regulations in 20 CFR 675-685.	Doyle Hughes, 343-4148.

CFR citation	Subject	Purpose of review/development	Significant	Regulatory analysis	Expected date(s) of publication (if known)	Knowledgeable official
Office for Equal Opportunity						
1/79-6/79	43 CFR Part 17, Subpart C	Nondiscrimination on the Basis of Age.			This was published as a proposed rule on January 3, 1980.	James Poole, 343-4331.
1/79-6/79	43 CFR Part 17, Subpart B	Nondiscrimination on the Basis of Handicap.			The advance notice of proposed rulemaking was published on April 13, 1979. The proposed rule will be published in January 1980.	James Poole, 343-4331.
1/79-6/79	43 CFR Part 34	Nondiscrimination in Activities Conducted Under and Authorized by Pub. L. 94-566, Alaska Gas Pipeline.			The proposed rule was published on October 12, 1979. The final rule should be published in February 1980.	Edward Shelton, 343-5693.
U.S. Fish and Wildlife Service						
5/78-12/78	50 CFR Part 18, Subpart C	Marine Mammal—General Exceptions.			The Service has determined that revisions are not needed at this time.	Clark Bavin 343-9242
5/78-12/78	50 CFR Part 17	Endangered and Threatened Wildlife and Plants.			Final rule published on September 21, 1979, to lessen paperwork burden for members of the public engaged in captive wildlife propagation.	Richard Parsons, 703-235-1937.
5/78-12/78	50 CFR Part 21	Migratory Bird Permits			Regulations for raptor propagation permits are currently being developed and a proposed rule should be published in early 1980.	Clark Bavin, 343-9242.
5/78-12/78	50 CFR Part 22	Eagle Permits			A proposed rule was published on January 3, 1980	Clark Bavin, 343-9242.
5/78-12/78	50 CFR Part 25	National Wildlife Refuge System—Administrative Provisions.			Final rule to be published in February 1980	Ronald Fowler, 343-4305.
1/79-6/79	50 CFR Part 17	Marine Mammals—Manatee Protection Areas.			A final rule was published on October 22, 1979	Clark Bavin, 343-9242.
1/79-6/79	50 CFR Part 26	National Wildlife Refuge System—Public Entry and Use.			A final rule reflecting administrative changes was published on July 23, 1979.	Marcus Nelson, 343-4791.
1/79-6/79	50 CFR Part 32	Hunting on National Wildlife Refuge Areas.			A final rule reflecting administrative changes was published on July 23, 1979.	Marcus Nelson, 343-4791.
1/79-6/79	50 CFR Part 33	Sport Fishing on National Wildlife Refuge Areas.			A final rule reflecting administrative changes was published on July 23, 1979.	Marcus Nelson, 343-4791.
1/79-6/79	50 CFR Part 80	Federal Aid to States in Fish and Wildlife Restoration.			A proposed rule should be published in February 1980.	Charles Phenicie, 703-235-1526.
1/79-6/79	50 CFR Part 20, Subpart K	Annual Season, Limit and Shooting Hour Schedules.			Final rule frameworks for 1979-80 early seasons on certain migratory game birds published on July 24, 1979.	John P. Rogers, 254-3207.
					Supplemental proposed rules for frameworks for 1979-80 late seasons on certain migratory game birds published on August 10, 1979.	John P. Rogers, 254-3207.
					Final rule setting season dates, limits and shooting hours for early season migratory birding hunting published on published on August 20, 1979.	John P. Rogers, 254-3207.
					Final rule frameworks for 1979-80 late seasons on certain migratory game birds published on August 28, 1979.	John P. Rogers, 254-3207.
					Final rule setting season dates, limits and shooting hours for late season migratory game bird hunting published on September 28, 1979.	John P. Rogers, 254-3207.
1/79-6/79	50 CFR Part 410	Fish and Wildlife Coordination Act.			A Notice of Intent to prepare an Environmental Impact Statement was published on August 30, 1979. Further publication of rules is deferred pending preparation of this statement.	R. K. Robinson, 343-7242. T.J. Bond, 343-7242.
7/79-12/79	50 CFR Part 20, Subpart K	Annual Season, Limit and Shooting Hour Schedules.			Final rule establishing non-toxic shot areas for waterfowl hunting for 1979 was published on July 17, 1979.	Robert I. Smith, 254-3207.
					Notice of Intent to develop rules establishing non-toxic shot areas and to propose specific areas for the 1980-81 season should be published in February 1980.	Robert I. Smith, 254-3207.
					Notice of Intent and initial proposal to develop rules estabishing 1980-81 annual seasons, limits and shooting hours schedules for migratory birds should be published in February 1980. The Service has determined that this rule is significant but that it does not require a regulatory analysis.	John P. Rogers, 254-3207.
7/79-12/79	50 CFR Part 17	Endangered and Threatened Wildlife and Plants.			Proposed rule revising listing procedures to ensure compliance with the Endangered Species Act Amendments of 1978 were published on August 15, 1979. A final rule should be published in May 1980.	John Spinks, 703-235-2771.
7/79-12/79	50 CFR Parts 96-106	National Wildlife Monuments			Proposed rule was published on June 28, 1979. A final rule should be published in April 1980.	Clay Hardy, 1101 E. Tudor Road, Anchorage, AK 99507, 907-276-3800.
7/79-12/79	50 CFR Part 402	Endangered Species—Interagency Cooperation.			Proposed rule to revice consultation procedures under § 7 should be published in February 1980. The Service has determined that this is not a significant rule and does not require a regulatory analysis.	John Spinks, 703-235-2771.
Heritage Conservation and Recreation Service, 440 G Street NW., Washington, D.C. 20243 (Area Code 202)						
5/78-12/78	36 CFR Part 61	Criteria for Comprehensive Statewide Historic Surveys and Plans.			To ensure issuance of a comprehensive rule publication has been delayed. Part will be transferred to 36 CFR Part 1201.	Larry E. Aten, 343-6221.
5/78-12/78	43 CFR Part 31	Grants and Allocations for Recreation and Conservation Use of Abandoned Railroad Right-of-Way.			This Part was transferred to 36 CFR Part 1226 on January 3, 1980.	Rowland T. Bowers, 343-7801.

CFR citation	Subject	Purpose of review/development	Significant	Regulatory analysis	Expected date(s) of publication (if known)	Knowledgeable official
Heritage Conservation and Recreation Service, 440 G Street NW., Washington, D.C. 20243 (Area Code 202)—Continued						
1/79-6/79	36 CFR Part 1205	National Historic Landmarks	An interim rule with request for comments was published on December 18, 1979.			Bill Lebovich, 343-6401.
1/79-6/79	36 CFR Part 1210	Recovery of Scientific, Prehistoric, Historic and Archeological Data: Procedures for Notification, Reporting and Data Recovery.	Exigencies precluded review and publication of this regulation. Publication and transfer from 36 CFR Part 66 scheduled for March 1980.			Roy W. Reaves, III, 343-7105.
1/79-6/79	36 CFR Part 1228 Appendicies A&B.	Urban Park and Recreation Recovery Program Criteria for Eligibility and List of Eligible Jurisdictions.	Final rule published in FEDERAL REGISTER on Oct. 9, 1979.			Sam L. Hall, 343-5971.
1/79-6/79	36 CFR Part 1228 Subpart B	Urban Park and Recreation Recovery Program Local Recovery Action Program.	Interim rule published in FEDERAL REGISTER on July 5, 1979. A final rule should be published in May 1980.			Sam L. Hall, 343-5971.
1/79-6/79	36 CFR Part 1228, Subparts A, C & D.	Urban Park and Recreation Recovery Program Grants Procedures.	Interim rule published in FEDERAL REGISTER on August 9, 1979. Final rule expected to be published in March 1980.			Sam L. Hall, 343-5971.
1/79-6/79	36 CFR Part 1230	Land and Water Conservation Fund State Assistance Program.	Draft of proposed rule in review process. Expected date of publication moved to February 1980.			Rowland T. Bowers, 343-7801.
7/79-12/79	36 CFR Part 1202	National Register of Historic Places.	Published Interim amendment of rule and transferred rule from 36 CFR Part 60, Chapter 1 on November 7, 1979. Publication of final amendments to rule expected by June 1980.			Carol Shull, 343-6401.
7/79-12/79	36 CFR Part 1204	Determinations of Eligibility for Inclusion in the National Register of Historic Places.	Publication of interim rule as final rule with editorial corrections and transfer from 36 CFR Part 63 moved to June 1980 to permit adequate agency review.			Ray Luce, 343-6401.
7/79-12/79	36 CFR Part 1206	Historic Preservation Fund Grants Administration Procedures.	To provide for adequate agency review publication of Notice of Intent to provide a general presentation on the Historic Preservation Fund Grants Administration Procedures is moved to March 1980.			Stephen Newman, 343-4941.
7/79-12/79	36 CFR Part 1208	Historic Preservation Certifications Pursuant to the Tax Reform Act of 1976.	Publication to change existing regulations because of technical corrections in the Revenue Act of 1978 and to transfer from 36 CFR Part 67 moved to June 1980 to permit adequate review.			Sally Oldham, 343-6401. H. Ward Jandl, 343-6384.
7/79-12/79	36 CFR Part 1213	Procedures for the Identification and Protection of Archeological, Historic and Scientific Properties.	Proposed rule published in FEDERAL REGISTER on August 2, 1979. Publication of final rule expected in February 1980.			Roy W. Reaves III, 343-7105.
National Park Service						
5/78-12/78	36 CFR Parts 1-4	Miscellaneous provisions, public use and recreation, boating, vehicle and traffic safety.	Proposed revisions were reviewed and scheduled for publication as proposed rules during the Spring of 1980.			Michael Finley, 343-5607.
5/78-12/78	36 CFR Part 3	Boating	This Part has been rescheduled for revision by Fall of 1980.			Harry Delashmutt, 343-5607.
5/78-12/78	36 CFR Part 5	Commercial and Private Operations.	Revisions to this Part have been deferred for approximately six months.			Don Roush, 523-1714.
6/79-12/79	36 CFR Part 7	Special Regulations of the National Park Service.	New rules for Fishery Management at Everglades National Park published on September 14, 1979.			Michael Finley, 343-5607.
6/79-12/79	36 CFR Part 13	Alaska National Monuments	Proposed rules were published on June 28, 1979, for public use and recreation, subsistence and special Alaska provisions. Final rules will be published in Spring 1980.			Michael Finley, 343-5607.
6/79-12/79	36 CFR Part 50	National Capital Parks	An interim rule with request for comments on the sale and distribution of printed matter were published on October 3, 1979. (§ 50.24).			Rick Robbins, 343-4338.
			A revision of rules for demonstration activities should be published in the Spring 1980.			Rick Robbins, 343-4338.
6/79-12/79	36 CFR Part 51	Concession Contracts and Permits.	This was published as a final rule on November 11, 1979. (This was previously scheduled as 36 CFR 14).			Don Roush, 523-1741.
6/79-12/79	36 CFR Parts 1-4	Miscellaneous provisions, public use and recreation, boating and vehicles and traffic safety.	Special amendments to existing rules are proposed to comply with revised Service policy and to reduce the number of special regulations contained in 36 CFR Part 7. Proposed rules should be published in the Spring 1980.			Michael Finley, 343-5607.
Bureau of Mines, 2401 E Street NW., Washington, D.C. 20241 (Area Code 202)						
1/79-6/79	30 CFR Part 601	Sales of Helium by and Rental of Containers from Bureau of Mines.	Revised Fee Schedule and Amendment published as a Final rule on December 5, 1979 (44 FR 69927).			Ray D. Munnerlyn, 634-4734.
Geological Survey, National Center, Reston, VA 22092 (Area Code 703)						
5/78-12/78	30 CFR Part 221	Oil and Gas Operating Regulations.	A revision of 30 CFR 221.53-56 should be published as a proposed rule in June 1980.			Eddie Wyatt, 860-7636.
5/78-12/78	30 CFR Part 211	Coal Mining Regulations	A proposed rule should be published in February 1980.			Tom Leshendok, 860-7506.
5/78-12/78	30 CFR Part 250	Oil and Gas and Sulfur Operations on the Outer Continental Shelf.	30 CFR 250.34 was published as a final rule on September 14, 1979.			Gerald Rhodes, 860-7531.
			30 CFR 250.1-33 and 35-56 and 58-96 were published as final rules on October 26, 1979.			Gerald Rhodes, 860-7531.
			30 CFR 250.57 will be published as a final rule in February 1980.			John Goll, 860-7136.

CFR citation	Subject	Purpose of review/development	Significant	Regulatory analysis	Expected date(s) of publication (if known)	Knowledgeable official
National Park Service—Continued						
1/79-6/79	30 CFR Part 241	Leasing and Acquisition of Water Wells.	A proposed rule will be published in June 1980			Charles Sours, 860-7521.
1/79-6/79	30 CFR Part 251	G & G Exploration of the Outer Continental Shelf.	A final rule will be published in February 1980			Gordon Burton, 860-7564.
1/79-6/79	30 CFR Part 252	Oil and Gas Information	A final rule was published on August 7, 1979			Gerald Rhodes, 860-7531.
Office of Surface Mining Reclamation and Enforcement						
7/79-1/79	30 CFR Part 705	Definition of Employee	Proposed rule published on September 6, 1979. Public Hearings held on September 25, 1979. Final rule Scheduled for publication in January 1980.			Art Abbs, 343-5351.
1/79-6/79	30 CFR Part 875	Abandoned Mine Land Performance Standards.	The Secretary decided on July 27, 1979 not to publish these standards as rules, but as guidelines. The proposed guidelines were published on November 6, 1979. Final guidelines are scheduled for publication in February 1980.			Richard Nalbandian, 343-4057.
7/79-12/79	30 CFR Part 723	Civil Penalties	Conform interim regulations to permanent regulations and adjust penalties in certain cases. Proposed rules will be published in January 1980. Final rules are anticipated to be published in March 1980..			Richard Robinson, 343-8061.
7/79-12/79	30 CFR Part 722	Enforcement Procedures	Minor adjustments in enforcement procedures (minesite review and service of notices and orders). Proposed rule published August 20, 1979. Final rule scheduled for January 11, 1980..			Richard Robinson, 343-8061.
7/79-12/79	30 CFR Part 850	Blasting Programs	To repropose blasting programs for blasters and members of blasting crews and certification programs for blasters. Proposed rules were published on June 29, 1979. Final rules to be published in January 1980..			David Maneval, 343-4264.
7/79-12/79	30 CFR Part 716	Prime Farmlands	To repropose prime farmlands regulations to replace those portions of the initial prime farmlands regulations which the court enjoined and remanded. Proposed rules were published on June 11, 1979. Final rules to be published in January 1980.			David Maneval, 343-4264.
7/79-12/79	30 CFR Part 770	Permit Requirements	A memorandum of understanding (MOU) between the Office of Surface Mining and the Environmental Protection Agency is being written to incorporate the NPDES (National Pollution Discharge Elimination System) permit requirements. The MOU itself will not be a rule, but the results of the final MOU will initiate rulemaking procedures to implement the agreed upon permit requirements. On September 6, 1979 the Department determined that this action was not a significant rule and did not require a regulatory analysis. Proposed MOU published on September 25, 1979. Final MOU to be published in April 1980.			David Maneval, 343-4264.
7/79-12/79	30 CFR Subchapter J	Bonding	The Department has determined that this amendment to this part of the regulation is not significant and does not require a regulatory analysis. Proposed rule scheduled for January 1980. Final rule to be published in April 1980.			David Maneval, 343-4264.
Water and Power Resources Service						
1/79-6/79	43 CFR Part 21	Cabin Sites	The Service has determined that this Part needs to be updated. The determination of significance and decision on preparation of a regulatory analysis have not been made at this time.			L. D. Williamson, 343-5204.
1/79-6/79	43 CFR Part 401	Entry on Reclamation Lands	The Service determined that this Part was no longer applicable and therefore it was removed from the CFR on January 9, 1980.			T. G. Cooper, 343-5204.
1/79-6/79	43 CFR Part 403	Unproductive Land	Minor corrections were made to this Part which were published on January 9, 1980.			T. G. Cooper, 343-5204.
1/79-6/79	43 CFR Part 406	Exchange/Amendment of Farm Units.	Minor corrections were made to this Part which were published on January 9, 1980.			T. G. Cooper, 343-5204.
Office of Water Research and Technology						
5/78-12/78	18 CFR Chapter IV	Office of Water Resources Research, Department of Interior.	The Department has determined that these regulations are no longer applicable. They will be removed from the CFR by March 1980.			F. W. Koop, 343-4607. George Cassaday, 343-4607.
Bureau of Land Management						
5/78-12/78	43 CFR Group 2900	Land use, occupancy and development.	Proposed rulemaking should be published in Spring 1980, Final rulemaking in summer 1980.			Ralph Conrad, 343-8731. Robert C. Bruce, 343-8735.
5/78-12/78	43 CFR Group 2700	Land disposals (sales)	Proposed rulemaking published on October 26, 1979, Final rulemaking should be published in summer 1980.			Stephen Spector, 343-8731. Robert C. Bruce, 343-8735.
1/79-6/79	43 CFR Group 1600	Planning, programming and budgeting.	Final rulemaking published on August 7, 1979			Robert Jones, 343-5682. Robert C. Bruce, 343-8735.
1/79-6/79	43 CFR Part 1700	Advisory Boards	Proposed rulemaking published on October 1, 1979. Final rulemaking should be published early in 1980.			Lee Latala, 343-5629. Cecil Feeney, 343-8735.
1/79-6/79	43 CFR Part 2200	Exchanges of public lands	Notice of intent to propose rulemaking published on August 2, 1979, Proposed rulemaking should be published early in 1980, with final rulemaking published in summer of 1980.			David Hemstreet, 343-8731. Robert C. Bruce, 343-8735.

CFR citation	Subject	Purpose of review/development	Significant	Regulatory analysis	Expected date(s) of publication (if known)	Knowledgeable official
Bureau of Land Management—Continued						
1/79-6/79	43 CFR Part 2300	Withdrawal of public lands	Proposed rulemaking published on December 4, 1979. Final rulemaking should be published in summer of 1980.			Keith Corrigal, 343-8731. Robert C. Bruce, 343-8735.
1/79-6/79	43 CFR Parts 2540, 2740 and 9160.	Color-of-title and Omitted lands	Final rulemaking published on July 18, 1979			Stephen Spector, 343-8731. Robert C. Bruce, 343-8735.
1/79-6/79	43 CFR Part 2610	Carey Act grants	Final rulemaking awaiting action by Supreme Court on suit on issue.			Keith Corrigal, 343-8731. Robert C. Bruce, 343-8735.
1/79-6/79	43 CFR Part 2740	Recreation and Public Purposes Act.	Final rulemaking published July 25, 1979			Stephen Spector, 343-8731. Robert C. Bruce, 343-8735.
1/79-6/79	43 CFR Part 2800	Rights-of-way; principles and Procedure.	Proposed rulemaking published on October 9, 1979. Final rulemaking should be published in Summer 1980.			Robert Mollohan, 343-5537. Robert C. Bruce, 343-8735.
1/79-6/79	43 CFR Part 3802	Surface protection—wilderness	Final rulemaking should be published in January 1980.			Robert Anderson, 343-7733. Robert C. Bruce, 343-8735.
1/79-6/79	43 CFR Part 3809	Surface management of unpatented mining claims located on public lands.	Second proposed rulemaking should be published early in 1980.			Robert Anderson, 343-7733. Robert C. Bruce, 343-8735.
1/79-6/79	43 CFR Part 4100	Amendments to the Grazing Administration and Trespass regulations.	Proposed rulemaking published on July 30, 1979			David Little, 343-6011. Cecil Feeney, 343-8735.
1/79-6/79	43 CFR Part 3400	Coal Management	Final rulemaking published on July 19, 1979			Don Mitchell, 343-4537. Robert C. Bruce, 343-8735.
7/79-12/79	43 CFR Subpart 1881	Payments in Lieu of Taxes	Proposed rulemaking being drafted, should be published early in 1980, with final rulemaking in summer 1980.			Edward P. Greenberg, 343-3607. George Hollis, 343-8735.
7/79-12/79	43 CFR Part 2650	Alaska Native Selections Federal Installations.	Proposed rulemaking published on September 18, 1979, final rulemaking should be published early in 1980.			Beaumont McClure, 343-6511. Robert C. Bruce, 343-8735.
7/79-12/79	43 CFR Part 3300	Outer Continental Shelf Minerals and rights-of-way management.	Final rulemaking published June 29, 1979			William Quinn, 343-8457. Robert C. Bruce, 343-8735.
7/79-12/79	43 CFR Part 3500	Leasing of Minerals other than Oil and Gas.	Revision study continuing, with proposed rulemaking to be published in June 1980.			David M. Carty, 343-7763. Cecil Feeney, 343-8735.
7/79-12/79	43 CFR Part 4700	Wild Free Roaming Horses and Burro Protection, Management and Control.	Proposed rulemaking published on April 6, 1979			Robert J. Springer, 343-6011. Cecil Feeney, 343-8735.
7/79-12/79	43 CFR Part 7100	Protection of Endangered Plants	Study of this rulemaking and the extent of its application under review.			Richard J. Verniman, 343-6188. Robert C. Bruce, 343-8735.
Bureau of Indian Affairs						
5/78-12/78	25 CFR Part 161	Rights-of-way over Indian lands	Proposed rule published on July 7, 1978. Final rule will be published in January 1980.			Richard S. McDermott, Palm Springs Area Ofc., 587 S. Palm Canyon Dr., Palm Springs, CA 92262, 714-325-2163.
5/78-12/78	25 CFR Part 104	Individual Indian Money Accounts	The Bureau has determined that this part is current and no revision is necessary.			William Bucholz, 343-2963.
5/78-12/78	25 CFR Part 141	General Forest Contracts	The Bureau has determined that this part is current and no revision is necessary.			George Smith, 343-2336.
5/78-12/78	25 CFR Part 174	Leasing of Restricted Lands of Members of Five Civilized Tribes, Oklahoma for Mining.	The Bureau has determined that this part is current and no revision is necessary.			Tom Riggs, 343-3722.
5/78-12/78	25 CFR Part 274	School Construction Contracts or Services for Tribally Operated previously Private Schools.	Proposed rule published August 23, 1978. Final rule will be published January 1980.			John Carmody, Albuquerque Area Ofc., P.O. Box 1788, Albuquerque, NM, 87103, 505-474-2805.
5/78-12/78	25 CFR Part 277	School Construction Contracts for Public Schools.	Proposed rule published August 23, 1978. Final rule will be published January 1980.			John Carmody, Albuquerque Area Ofc., P.O. Box 1788, Albuquerque, NM, 87103, 505-474-2805.
5/78-12/78	25 CFR Part 105	Deposit of Indian Funds in Banks.	This rule is no longer applicable and will be removed from the CFR by June 1980.			William Bucholz, 343-2963.
5/78-12/78	25 CFR Part 273	Education Contracts under Johnson-O'Malley Act.	Proposed rule should be published by February 1980.			Elizabeth Holmgren, 343-3151.
5/78-12/78	25 CFR Part 34	Vocational Training for Adult Indians.	Proposed rule was published on October 14, 1977. Final rule should be published by April 1980.			Bob Delaware, 703-235-8355.
5/78-12/78	25 CFR Part 171	Leasing of Tribal Lands for mining.	Proposed rule published on April 5, 1978. Final rule will be published in April 1980.			Tom Riggs, 343-3722.
5/78-12/78	25 CFR Part 177, Subpart A	Plans for Prospecting Mining on Indian Mineral lands: Reclamation of Non-mineral resources.	Originally published as proposed rule on April 5, 1978. Final rule now being processed and will be published in April 1980.			Tom Riggs, 343-3722.
1/79-6/79	25 CFR Part 31a	Indian Education Policies	Final rule published October 9, 1979			Elizabeth Holmgren, 343-3151.
1/79-6/79	25 CFR Part 31b	Transfer of Indian Education Functions.	Final rule published October 9, 1979			Elizabeth Holmgren, 343-3151.
1/79-6/79	25 CFR Part 31g	Education Personnel	Final rule published November 8, 1979			Elizabeth Holmgren, 343-3151.
1/79-6/79	25 CFR Part 42	Enrollment Appeals	Proposed rule was published May 30, 1978. New judicial rulings have necessitated publication of a new proposed rule. This will be done by June 1980.			Janet Parks, 703-235-8275.
1/79-6/79	25 CFR Part 20	Financial Assistance and Social Services Program.	The Bureau has determined that this part is current and no revision is necessary.			Ray Butler, 703-235-2756.
1/79-6/79	25 CFR Part 120a	Land Acquisitions	This was published as proposed new regulations on July 26, 1978. Final rulemaking document should be published in February 1980.			Raymond W. Jackson, Phoenix Area Ofc., P.O. Box 7007, Phoenix, AZ 85011, 602-261-4195.
1/79-6/79	25 CFR Part 121	Issuance of Patents in Fee, Certificates of Competency, Removal of Restrictions, and Sale of Certain Indian Lands.	Proposed revision was published on October 5, 1978. Final publication should be made by April 1980.			Wilford Bowker, Portland Area Ofc. P.O. Box 3785, Portland, OR 97208, 509-429-6714.
1/79-6/79	25 CFR Part 182	Oil and Gas Contracts	Proposed rule published April 5, 1977. Final rule being processed and will be published in April 1980.			Tom Riggs, 343-3722.

CFR citation	Subject	Purpose of review/development	Significant	Regulatory analysis	Expected date(s) of publication (if known)	Knowledgeable official
		Bureau of Land Management—Continued				
1/79-6/79	41 CFR Part 14H	Buy Indian Act Contracting	Proposed rule under review. Will be published by June 1980.			Donald F. Asbra, 703-235-8061.
		Bureau of Indian Affairs—Continued				
1/79-6/79	25 CFR Part 252	Business Practices on Navajo, Hopi and Zuni Reservations.	Proposed rule was published on October 16, 1979. Publication as Final rule delayed pending receipt of input from tribes.			Rugene Suarez, 343-5786.
1/79-6/79	25 CFR Part 31h	Indian School Equalization Program.	Final rule published October 26, 1979			Elizabeth Holmgren, 343-3151.
1/79-6/79	25 CFR Part 31i	Student Rights and Responsibilities and Due Process Procedures.	Proposed rule published May 22, 1979. Final rule should be published by February 1980.			Elizabeth Holmgren, 343-3151.
1/79-6/79	25 CFR Part 32b	Grants for Tribally Controlled Community Colleges and Navajo Community College.	Final rule published November 21, 1979. This was incorrectly listed in the previous agenda as 25 CFR Part 33.			Elizabeth Holmgren, 343-3151.
1/79-6/79	25 CFR Part 31h	Education of the Exceptional Child in Bureau Schools.	This regulation was listed separately in the previous agenda without a part number. This material has now been incorporated into 25 CFR Part 31h, which was published as a final rule on October 26, 1979.			Dr. Charles G. Cordova, 343-5517.
7/79-12/79	25 CFR Part 131	Leasing and Permitting	Proposed revision was published on October 2, 1978. Final publication should be made by March 1980.			Robert Schoewe, Minneapolis Area Ofc., 831 Second Avenue, Minneapolis, MN 55402, 612-725-2914.
7/79-12/79	25 CFR Part 271	Contracts and Grants Under Indian Self-Determination and Education Assistance Act.	Proposed rule published August 23, 1978. Final rule will be published January 1980. This was listed in the previous agenda as "Contracting for Education Services under 638 or Regular Services".			Jay T. Suagee, 343-2706.
7/79-12/79	25 CFR Part 52	Conduct of elections to adopt or amend tribal constitutions and corporate charters.	Published as a proposed rule on July 10, 1979. The final rule should be published in January 1980.			Robert Farring, 343-4045.
7/79-12/79	25 CFR Part 53	Procedures for petitioning to request the Secretary or the Commissioner to take certain actions.	Published as a proposed rule on July 10, 1979. The final rule should be published in January 1980.			Robert Farring, 343-4045.
7/79-12/79	25 CFR Part 177, Subpart B	Surface Exploration, Mining and Reclamation of Lands.	Revision of this part has been deferred pending approval of state reclamation programs.			Tom Riggs, 343-3722.

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