**PLACE:** Coach House East, 2101 Eleventh Avenue, Helena, Montana.

**MATTERS TO BE CONSIDERED:**

1. Preliminary Council Decisions on Draft Amendments of the Columbia River Basin Fish and Wildlife Program
   - Resident fish
   - Resident fish goals
   - Capital construction
   - Harvest controls
   - Offsite enhancement
   - Subbasin planning
   - Anadromous fish research
   - Amendment scheduling
   - Program scheduling
2. Council Decision on Site Ranking and Protected Areas Studies (River Assessment Study)
3. Model Conservation Standards Surcharge (Action Item 25 and Appendix D)
4. Council Business

Public comment will follow each agenda item.

*Council Draft Budget*

The Council will seek public comment on its revised FY 1985 and FY 1986 budget. Copies of the draft budget will be available on May 18, 1984 and the Council will seek public comment at its June 6–7 meeting. Written comments for those unable to attend the June 6–7 meeting should be received at the Council's central office by June 4. To receive a copy of the draft budget, please call Beata Teberg at (503) 222–5161.

*Spokane Meeting*

In advance of the Council meeting in Spokane on July 18–19, 1984, the Washington Water Power Company is planning a tour of its Kettle Falls Generation Station and a briefing on the Creston Generating Station on Tuesday July 17. Members of the public interested in the tour or briefing must contact Bess Wong at the Council central office (503–222–5161) by June 12, 1984. No one will be allowed on the tour if they are not signed up by June 12 in order to provide time to prepare for the tour. Because it is a restricted area, appropriate clothing, such as close-toed shoes and pants, is required. Interested persons must provide for their own transportation to Kettle Falls. The tour will start at 11:00 a.m. At 3:00 p.m., a status report on the Creston Generating Station will be given to Council members at Washington Water Power's headquarters, E. 1411 Mission, in Spokane.

**FOR FURTHER INFORMATION CONTACT:** Ms. Bess Wong (503) 222–5161.

**Edward Sheets,**

*Executive Director.*

[FR Doc. 84–12744 Filed 5–8–84; 12:51 pm]

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**9**

**SYNTHETIC FUELS CORPORATION**

Joint Meeting of the Board of Directors and the Advisory Committee.

**ENTITY:** United States Synthetic Fuels Corporation.

**ACTION:** Notice of Meeting.

**SUMMARY:** Interested members of the public are invited to attend and observe a joint meeting of the Board of Directors of the United States Synthetic Fuels Corporation and the Advisory Committee to the Board of Directors to be held at the time, date and place specified below. This public announcement is made pursuant to the open meeting requirements of Section 116(f)(1) of the Energy Security Act (9 Stat. 611, 637; 42 U.S.C. 8701, 8712(f)(1) and Section 4 of the Corporation's Policy on Public Access to Board Meetings.

**MATTERS TO BE CONSIDERED:**

I. Chairman's Opening Remarks
II. Joint Meeting with the Advisory Committee to the Board of Directors
  (A) Briefing on Recommended Comprehensive Strategy

**TIME AND DATE:** 9:45 a.m. (EST), May 17, 1984.

**PLACE:** Washington Marriott Hotel, 22nd and M Streets, NW., Washington, D.C.

**PERSON TO CONTACT FOR MORE INFORMATION:** If you have any questions regarding this meeting, please contact Mr. Owen J. Malone, Assistant Secretary, at (202) 822–6372.

Dated: May 8, 1984.

United States Synthetic Fuels Corporation.

**Robert W. Gambino,**

*Group Vice President-Corporate.*

[FR Doc. 84–12770 Filed 5–8–84; 3:56 pm]

BILLING CODE 0000–00–M

federal register

Thursday
May 10, 1984

Part II

# Environmental Protection Agency

40 CFR Part 261

## Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 261**

**[SWH-FRL 2488-1]**

## Hazardous Waste Management System; Identification and Listing of Hazardous Waste

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is today amending its regulations under the Resource Conservation and Recovery Act to change the hazard class under which commercial chemical products containing low concentrations of warfarin and zinc phosphide are listed. Waste products containing either warfarin at concentrations of 0.3% or less, or zinc phosphide at concentrations of 10% or less, are now listed as hazardous wastes when discarded, instead of acutely hazardous wastes. This change has been made because these lower concentration formulations of warfarin and zinc phosphide do not meet the criteria for classification as acutely hazardous waste.

**EFFECTIVE DATE:** November 12, 1984.

**ADDRESSES:** The public docket for this regulation is located in Room S-212A, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, and is available for viewing from 9:00 am to 4:00 pm Monday through Friday, excluding holidays.

**FOR FURTHER INFORMATION CONTACT:** The RCRA Hotline at (800) 424-9346 or at (202) 382-3000. For technical information contact Wanda LeBleu-Biswas, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 382-5096.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Under the authority of Section 3001 of the Resources Conservation and Recovery Act of 1976, as amended (RCRA), the Agency promulgated, as 40 CFR 261.33 of the regulations, a list of commercial chemical products or manufacturing chemical intermediates which are hazardous wastes if they are discarded or intended to be discarded. The phrase "commercial chemical product or manufacturing chemical intermediate" refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use, and which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. 40 CFR 261.33 also lists as hazardous wastes off-specification variants and the residues and debris from the clean-up of spills of these chemicals, if discarded or intended to be discarded (§ 261.33 (b) and (d)). Finally, § 261.33 lists as hazardous wastes the containers, or the residues remaining in the containers, or the inner liners removed from the containers that have held those chemicals listed in § 261.33(e), if discarded or intended to be discarded, unless the containers or inner liners have been triple-rinsed with an appropriate solvent, or have been decontaminated in an equivalent manner, or the inner liners have been removed. A chemical substance is listed in 40 CFR 261.33(e), and is subject to a small quantity generator exclusion limit of 1 kilogram per month, if it meets the criteria of § 261.11(a)(2); that is, it is acutely hazardous because it has been shown in animal studies to have an oral $LD_{50}$ (rat) toxicity value of less than 50 milligrams per kilogram, a dermal $LD_{50}$ (rabbit) toxicity value of less than 200 milligrams per kilogram, an inhalation $LD_{50}$ (rat) toxicity value of less than 2 mg/l, or is otherwise capable of causing or otherwise significantly contributing to serious illness.

Chemical substances are listed in § 261.33(f), and are subject to the small quantity generator exclusion limit of 1000 kilograms per month,[1] if they satisfy § 261.11(a)(1), exhibiting identified characteristics of EP toxicity, reactivity, corrosivity, or ignitability; or § 261.11(a)(3), satisfying the criteria for listing as toxic, *i.e.*, they have been shown in scientific studies to be toxic, mutagenic, teratogenic, or carcinogenic to humans, other mammals or aquatic animals, or to be phytotoxic.

The National Pest Control Association (NPCA), Vienna, VA had petitioned the Agency to exclude warfarin- and zinc phosphide-containing commercial chemical products used for pest control from the list of acutely hazardous wastes. Petitions had also been received from Sterling Drug Company, New York, NY and the Ralston Purina Company, St. Louis, MO, requesting that certain warfarin-containing products be excluded.

[1] EPA publicly committed to reexamine the small quantity generator exclusion limit, and these products may be subject to a revised small quantity generator exclusion limit at a later date. In fact, there are bills in the Congress at this time which, if passed, will decrease the small quantity generator exclusion limit to less than 1000 kilograms per month.

### II. Petitions for Rulemaking and Proposed Rule

In light of the data submitted by the Sterling Drug Company in their petition, EPA tentatively concluded that commercial chemical products or manufacturing chemical intermediates or any off-specification chemical product containing warfarin at concentrations of 0.3% or less, or containing zinc phosphide at concentrations of 10% or less do not meet the criteria for listing as an acutely hazardous waste since the acute oral $LD_{50}$ (rat) value exceeds 50 mg/kg. EPA therefore proposed on February 23, 1983, that commercial chemical products or manufacturing chemical intermediates or any off-specification chemical product containing warfarin at concentrations of 0.3% or less, or zinc phosphide at concentrations of 10% or less, are not acutely hazardous and should not be listed in § 261.33(e).

However, the Agency further proposed that formulations containing 0.3% or less warfarin should be listed under § 261.33(f) because of their chronic toxicity. In addition, the petitioner's data showed that formulations containing zinc phosphide at concentrations of 10% or less are somewhat toxic, and should not be completely removed from regulation under § 261.33. Rather, the Agency therefore proposed that formulations containing zinc phosphide at concentrations of 10% or less should be listed under § 261.33(f) because of their toxicity (48 FR 7714-7716).

### III. Comments Received and Final Rule

The Agency received only two comments on the proposed rule: one from the State of New Jersey Department of Environmental Protection, and one from the State of Texas Department of Health. Both comments supported the Agency's proposal. Both commenters agreed with the Agency's proposed action.

Accordingly, EPA is today amending 40 CFR 261.33(e) to revise the listing for warfarin to include only those products which contain more than 0.3% warfarin, and is also amending § 261.33(f) to add warfarin when present at concentrations of 0.3% or less as EPA Hazardous Waste No. U248. EPA is also amending both § 261.33(e) to revise the listing for zinc phosphide to include only those products which contain more than 10% of the active substance, and § 261.33(f) to add commercial chemical products, manufacturing chemical intermediates or spill residues containing zinc phosphide at concentrations of 10% or less as EPA Hazardous Waste No. U249.

As a result of today's action, the concentration of warfarin or zinc phosphide in a discarded commercial chemical product becomes critical in determining whether the waste is regulated under § 261.33 (e) or (f). In interpreting today's regulation, EPA intends that the generator shall measure the concentration in the waste resulting from the intended use (*e.g.*, application strength pesticide solutions remaining in the application tank) rather than the initial concentration in the purchased product (unless, of course, the product itself is discarded). Any dilution or other adulteration of discarded products for the purpose of reducing the concentration of warfarin or zinc phosphide, however, is hazardous waste treatment (it is "designed to change the * * * chemical character * * * of * * * the hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous * * * (see RCRA Section 1004(34))) and is subject to the permit requirements of Subtitle C.

## IV. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions to the regulations take effect six months after promulgation. Therefore, this amendment will take effect November 12, 1984.

## V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This final regulation is not major because it will not result in an effect on the economy of $100 million or more, nor will it result in an increase in costs or prices to industry. In fact, this regulation will reduce the overall costs and economic impact of EPA's hazardous waste management regulations. There will be no adverse impact on the ability of United States-based enterprises to compete with the foreign-based enterprises in domestic or export markets. Because this amendment is not a major regulation no Regulatory Impact Analysis is being conducted.

This amendment was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection in Room S-212A at EPA.

## VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small business, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will generally have no adverse economic impact on small entities (as defined in the Regulatory Flexibility Act). Rather, since small pesticide applicators will now not have to dispose of small quantities of certain waste zinc phosphide or warfarin pesticides as hazardous wastes, today's action will result in a savings to small business. Accordingly, I hereby certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities. This regulation therefore does not require a regulatory flexibility analysis.

## VII. Paperwork Reduction Act

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

## VIII. List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Dated: May 3, 1984.

**William D. Ruckelshaus,**
*Administrator.*

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

## PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 reads as follows:

**Authority:** Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921 and 6922).

2. Section 261.33(e) is amended by revising the listings for warfarin, 3-(alpha-acetonylbenzyl)-4-hydroxycoumarin and salts, and zinc phosphide to read as follows:

| Hazardous waste No. | Substance |
|---|---|
| * * * | * * |
| P001 | 3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin and salts, when present at concentrations greater than 0.3%. |
| * * * | * * |
| P001 | Warfarin, when present at concentrations greater than 0.3%. |
| P122 | Zinc phosphide, when present at concentrations greater than 10%. |

3. Section 261.33(f) is amended by adding the following substances:

| Hazardous waste No. | Substance |
|---|---|
| * * * | * * |
| U248 | 3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin and salts, when present at concentrations of 0.3% or less. |
| * * * | * * |
| U248 | Warfarin, when present at concentrations of 0.3% or less. |
| U249 | Zinc phosphide, when present at concentrations of 10% or less. |

[FR Doc. 84-12507 Filed 5-9-84; 8:45 am]
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federal register

Thursday
May 10, 1984

# Part III

# Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 800, 813, 880, 881, 882, 883, 884, 886, and 889

Definition of Income, Income Limits, Rent and Reexamination of Family Income for the Section 8 Housing Assistance Payments Programs; Final Rule

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Assistant Secretary for Housing—Federal Housing Commissioner**

**24 CFR Parts 800, 813, 880, 881, 882, 883, 884, 886, and 889**

**[Docket No. R-84-981; FR-1599]**

## Definition of Income, Income Limits, Rent and Reexamination of Family Income for the Section 8 Housing Assistance Payments Programs

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements changes made by the Housing and Urban-Rural Recovery Act of 1983 and the Housing and Community Development Amendments of 1981 relating to the establishment of income limits for eligibility, definition of income, calculation of rent, and reexamination of income in the Section 8 Housing Assistance Payments Programs and related programs. It does not include the corresponding provisions for the Public and Indian Housing Programs, which were included in the proposed rule on this subject, because a separate and analogous rule for those programs is being published separately.

**EFFECTIVE DATE:** July 1, 1984.

**FOR FURTHER INFORMATION CONTACT:** For Section 8 Programs administered under 24 CFR Parts 880, 881, and 883–886, James J. Tahash, Director, Program Planning Division, Office of Multifamily Management, Department of Housing and Urban Development, Washington, D.C. 20410, (202) 755–5654, or for Section 8 Programs administered under 24 CFR Part 882 (Existing Housing and Moderate Rehabilitation), Madeline Hastings, Director, Existing Housing Division, Office of Elderly and Assisted Housing (202) 755–5597, at the same address. (These are not toll-free telephone numbers.)

**SUPPLEMENTARY INFORMATION:** The Housing and Community Development Amendments of 1981 ("1981 Amendments") contained in Title III, Subtitle A, of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) made several changes in provisions of the United States Housing Act of 1937 ("1937 Act") relating to rents, income limits, definition of income, and reexamination of income and family composition that apply to both the Public and Indian Housing and to the Section 8 Housing Assistance Payments Programs. The principal effects of the 1981 Amendments were to (1) require HUD to increase the amount of rent payable by assisted families from 25% to 30% of adjusted income, (2) restrict the number of families participating in the programs whose annual incomes are between 50% and 80% of area median income, and (3) make the revised income eligibility and rent computation requirements applicable to the Public Housing Program as well as to the Section 8 Programs. The 1981 Amendments also eliminated different statutory provisions governing the calculation of "income" under the Public Housing and Section 8 Programs in favor of a single uniform definition for all programs under the 1937 Act. Establishment of deductions from income to be used for calculation of "adjusted income" was to be left to the discretion of the Secretary.

On May 4, 1982, separate interim rules were published (47 FR 19120 and 19128) implementing only the change in the income-percentage formula for determining the tenant rental payment required in the Public Housing and Section 8 Programs, effective August 1, 1982 (see 47 FR 30969 and 30971). A separate final rule was also published (47 FR 54296) to implement the income reexamination requirements for those programs, effective April 1, 1983 (48 FR 6961).

On December 29, 1982 (47 FR 57954), the Department published a proposed rule to implement all the statutory changes described above for the Public Housing and Section 8 Programs. Public comment received on the interim rent increase rules was considered in the development of the proposed rule. The major features of the proposed rule was the addition of a new Part 813 to cover all the statutory changes for both the Public Housing and Section 8 Programs. This new Part was to replace both Part 889 (covering the Section 8 Programs) and Subparts A and D of Part 860 (covering the Public Housing Program).

Since publication of the proposed rule, Congress has enacted the Housing and Urban-Rural Recovery Act of 1983 ("1983 Act") Pub. L. 98–181, approved November 30, 1983). Section 206 of the 1983 Act amended some of the provisions of the 1981 Amendments that were the subject of this rulemaking. Major changes included the addition of a statutory definition of adjusted income, specific provisions applying a 10% annual cap on rent increases to certain tenants converted from one program to another, and increase of the percentage of persons with incomes between 50% and 80% of the area median income to be admitted to units that were available for occupancy with assistance under the 1937 Act before October 1, 1981 and are leased thereafter—from 10% to 25%. Since these recent changes are specific and do not provide for the exercise of significant discretion, the Department believes that it is unnecessary to solicit public comment on their implementation.

In addition, delay to permit consideration of public comment would be contrary to the public interest. It would be contrary to the interest of many tenants to postpone further the full implementation of changes such as increased deductions from income to be used in calculating rent. It would be contrary to the interest of public housing agencies (PHAs) and project owners to delay the effectiveness of changes such as the new definition of adjusted income, since owners and PHAs would have to bear the additional administrative burden of making an additional rental computation (including determination of the effect of the 10% annual cap on rent increases) for each tenant admitted to the programs between the effective date of this rule and a later rulemaking to implement the 1983 Act's provisions. Furthermore, it would be contrary to the interest of PHAs that administer both Section 8 and Public Housing Programs to delay the adoption of a uniform definition of income and adjusted income for the two programs.

Immediate implementation is especially appropriate, given the fact that the 1983 Act is clearly responsive to many of the concerns expressed in public comments on the proposed rule published in December 1982. Therefore, this final rule incorporates the changes made by the 1983 Act.

An additional change since publication of the proposed rule is the transfer within HUD of the responsibility for Public and Indian Housing Programs to a new Assistant Secretary for Public and Indian Housing. This final rule contains only the provisions applicable to the Section 8 Programs, and a separate final rule is being issued by the new Assistant Secretary, containing the provisions applicable to the Public and Indian Housing Programs.

### Response to Public Comments

More than 1,200 public comments on the proposed rule were received during the comment period. Most of the comments opposed various aspects of the rule, with the proposals concerning elimination of itemized deductions and imposition of income limits for admission drawing criticism from more than 400 commenters each. Although many comments were received on each major category of issues, some of the comments discussed below represent the views of only a few commenters. The comments are discussed here by categories: uniformity of rules for public housing and Section 8, definition of income, income varification and reexamination, income limits for admission, rental payments, and miscellaneous.

## I. Uniformity of Rules

One of HUD's broad objectives in this rulemaking is to achieve uniformity of rules governing the Section 8 and Public Housing (including Indian Housing) Programs, as contemplated by the 1981 Amendments. Despite the decision to issue separate final rules for the two major program categories to reflect the respective Assistant Secretaries' areas of responsibility, uniformity is preserved by including identical provisions in the two rules on the definition of income and rents.

Of the few comments received on the topic of uniformity, most were in favor, but two public housing agencies (PHAs) commented that if income calculations and rent levels are the same in the programs, there will be a shift of tenants from public housing units to Section 8 housing units, since the Section 8 units tend to be newer and sometimes located in better neighborhoods.

We believe that uniformity is a desirable goal because it is more equitable for tenants of the same income in similar HUD programs to pay the same amount for rent. It is also administratively more efficient for PHAs operating both Section 8 and Public Housing Programs, and for HUD, to use uniform rules. Most importantly, however, uniformity is required by statute, since the same section of the 1937 Act defining income and prescribing rent payments applies to both programs.

Furthermore, the Department doubts that public housing units in satisfactory condition will go begging for tenants. Most PHAs have substantial waiting lists of eligible applicants for public housing. In addition, tenants now residing in public housing who are receiving the benefit of rents phased in from 25% of income to 30% will lose the benefit of the phase-in under § 813.107(c)(1) of the final rule if they transfer voluntarily to Section 8 units. This policy will discourage such transfers.

## II. Definition of Income

The 1983 Act preserved the Secretary's discretion to define "income" for both the Public Housing and Section 8 Programs, but prescribed the deductions from income to be used to determine "adjusted income"—the element used in rent computation for both programs under Section 3(a)(1) of the 1937 Act. (Section 206(c) of the 1983 Act, amending Section 3(b)(5) of the 1937 Act.) The proposed and final rules use the term "annual income" as the equivalent of the statutory term "income", and the final rule uses the definition of "adjusted income" contained in the 1937 Act, as amended by the 1983 Act.

### *A. Annual Income*

1. *Net assets.* The definition of annual income used for determining rent in the proposed rule departed from the one found in the current Section 8 definition (24 CFR 889.104) in the treatment of net assets. If a family had net assets exceeding $5,000, the proposed rule would have included the greater of actual income from net assets or 10% of the value of the assets in income for determination of rent, as well as for eligibility (§ 813.107(b)(3)). This measure is currently used in the Section 8 rule in the determination of income level for eligibility purposes (see 24 CFR 889.103), but only actual income from assets is used for calculation of rent.

Objections to this net assets provision were of four types. The first type objected to the inclusion of any unrealized income in the definition of net assets (§ 813.102), especially since if the value of net assets exceeds $5,000, imputed income would be included in income for purposes of calculating rental payments, as well as eligibility. The second type of comment objected to the inclusion of such assets as non-income producing land and any interest in Indian trust lands. The third type objected to the $5,000 threshold amount or to the 10% imputed earnings rate to be used in calculating income under § 813.104(b)(3) of the proposed rule. The fourth type objected to the specific inclusion of the value of property disposed of for less than fair market value within two years before application or income reexamination, to the extent the value of the property exceeds the consideration received for it (§ 813.102).

In response to the first type of objection, the Department agrees with several commenters favoring the rule that expecting tenants with significant assets to invest them and to pay rent based on this expectation, is the best way to assure that the resources available for assisted housing programs are used in the most equitable manner—providing the most assistance to the neediest.

The objections to inclusion of non-income producing land and any interest in Indian trust land are separable. The Department agrees with one commenter favoring the rule who stated that it is reasonable to expect "near exhaustion" of other resources before being eligible for HUD-assisted housing. Even non-income productiong land can be sold and the proceeds invested or used to pay for everyday expenses, including housing. Therefore, there is no change in the final rule as to non-income producing land in general. However, the Department does agree with a number of comments from Indians and Indian Tribal organizations that the nature of Indian trust land makes unrealistic a determination of an individual's interest, or the value of the individual's investment. Therefore, we have revised the definition of net family assets in § 813.102 to exclude interests in Indian trust lands. However, *actual* income from Indian trust land will be included in the determination of annual income under § 813.106 of the final rule, subject to the exclusion in § 813.106(c) for temporary, non-recurring or sporadic income, and the exclusion in § 813.106(d)(3) for statutorily exempt income (including certain per capita payments).

Several commenters stated that $5,000 is an unreasonably low threshold amount, because it was introduced in 1975 and has not been adjusted since. We recognize that $5,000 today may represent less value than it did in 1975 because of inflation. We believe, however, that it is appropriate to retain that amount in the rule, since the programs are now being targeted to persons with lower incomes. However, in response to comment that 10% is now an unreasonably high interest rate to assume a tenant or applicant can realize, we have adopted in the final rule the rate earned on passbook savings accounts. This rate of return is clearly attainable by the ordinary citizen and should be imputed where it exceeds actual income derived from net assets. This lowered rate should also help mitigate the effects of retaining the $5,000 threshold.

The bases stated for objection to the fair market value provision were that it would be impossible to administer fairly, is contrary to legislative intent, would be disruptive of divorce proceedings in which rights to marital property may be relinquished in exchange for non-monetary consideration, would unfairly penalize applicants whose property was disposed of for less than full value because of a forced sale or a sale in bankruptcy, and would have retroactive effect.

While not specifically stated in this final rule, the means of administering this provision is expected to be a procedure (described in the appropriate Department handbook) for certification by an applicant or tenant, under penalty of law, whether he or she has made a disposition of property in a transaction other than an arm's length arrangement in the previous two years. If such a disposition was made, the certification will include a statement of the fair market value and the value of consideration received for the property. PHAs and owners will then investigate only those statements that warrant it. The Department believes this approach minimizes the administrative burden on PHAs and owners, while at the same time assuring that tenants are treated fairly and equitably.

The Department does not believe that inclusion of the difference between fair market value and the consideration actually received for property that has been disposed of in the definition of net family assets against which income may be imputed violates Congressional intent. The Conferees on the 1981 Amendments adopted the House-passed provision, which gives HUD broad discretion on how to determine family income. It is true that the Senate-passed provision (which the Conferees rejected) contained a provision similar to that included in the proposed rule. However, giving the clear, unrestricted discretion accorded the Secretary by the statute and the lack of any guidance in the legislative history as to why the Senate provision was rejected, the Department declines to infer that its proposed application of a fair market value test to assets that are disposed of is in any way at odds with Congressional intent. (See generally H. Rep. (Conf. Rep.) No. 208, Book 2, 97th Congress, 1st Sess., 688, *reprinted in* 1981 U.S.C., Cong. & Admin News 1047.)

One commenter also pointed out that the Senate-passed provision had imposed the requirement only if the disposition had been made to qualify the applicant for the program, whereas the proposed rule included no such fraudulent intent requirement—thus penalizing those who give money to relatives for weddings or family emergencies. The Department's intent in preserving the fair market value provision in the final rule is to target limited housing assistance to those most in need. Adding a fraudulent intent requirement would make the provision more difficult to enforce and would require considerable investigative resources, which none of the entities involved—PHAs, owners or HUD—has.

In response to the third and fourth points discussed above on the fair market value part of the net assets provision, two revisions have been made. With respect to the divorce proceedings issue, the definition of net family assets has been revised to treat dispositions in which the applicant or tenant receives important consideration not measurable in dollar terms, as dispositions for fair market value. Foreclosure sales and bankruptcy sales are also treated as sales for full value in the final rule. (See § 813.102.)

The fifth type of comment concerning the fair market value provision suggested that, in the case of families who are currently in assisted housing and are affected by the rule, there would be, in effect, a retroactive application of the requirement. We disagree. The purpose of the redefinition of income included in the rule is to set out an appropriate measure of eligible families' actual capacity to contribute to the cost of their housing. There will be no retroactive application of the rule in the sense that families will be assessed back rent to adjust for the period between a disposition of assets and the time the rule is effective. Charging rent prospectively, based in part on recent dispositions of assets, is a rational means of basing family contributions on actual income.

2. *Definition of Minor.*

The definition of "minor" in § 813.102 of the proposed rule was used to determine the applicability of a deduction for "each minor" in the calculation of adjusted income under § 813.102 and to apply an exclusion from annual income for income they earned under proposed § 813.104(d)(1). The current provisions governing Public Housing (§§ 960.403(f)(6) and 960.403(o)) and Section 8 Housing (§§ 889.102 and 889.104(a)) define "minor" to include full-time students 18 years of age or older. The proposed rule would have excluded these students from the definition of "minor", thus removing their deduction from income and causing their income to be counted in determining annual income.

Public comments generally opposed the exclusion of full-time students from the definition of minor as contrary to a public policy of encouraging people to continue their education to enable them to earn enough money to support themselves without Government assistance. In its revision of the term "adjusted income", the 1983 Act provides that full-time students are to be treated the same as persons under 18 for purposes of the dependent deduction from annual income, and § 813.102 has been revised accordingly. The 1983 Act is silent, however, on whether the earnings of full-time students at least 18 years old should be excluded from annual income. In light of this silence, the need to preserve scarce subsidy dollars, and the significant increase in the amount of this deduction—from $300 in the existing regulations to $480 in the final rule—we see no reason to exclude the earnings of full-time students age 18 and older from the determination of annual income. Because the 1983 Act broadened the "minor" deduction to include disabled or handicapped persons age 18 and older, the term "minor" in the proposed rule has been replaced with the broader term "dependent." In addition, the final rule incorporates the definition of "full-time student" contained in § 960.403(g), with the clarification that an educational institution includes a vocational school with a diploma or certificate program, as well as an institution offering a college degree.

3. *Welfare Rent Income Component.* There were two major criticisms of the proposed rule's § 813.104(b)(6)(ii). This provision states that when a welfare agency pays a family an amount designated for shelter that is adjusted in accordance with the family's actual housing costs, HUD will include in income the maximum allowance, ratably reduced once, if State law provides for welfare benefits that are a percentage of the established standard of need.

One objection was that recognizing only one application of the ratable reduction was inconsistent with the statute, since a welfare agency might apply the reduction again after the rent was established and the rule would provide that any such reduction be ignored; thus, an amount exceeding the amount paid by the welfare agency for shelter would be included in income. The commenter cited *Smith* v. *Pierce* (D. Vt., June 30, 1982) as holding that HUD's policy was a violation of the statute. In fact, that decision upheld HUD's broad discretion to define income in this manner.

The second major objection was that by using the maximum a welfare agency could pay in computing income and establishing rent, HUD causes the welfare payments to be higher in States that designate shelter allowances, and since welfare benefits are taken into consideration in computing food stamp benefits, the higher welfare benefits reduce the family's food stamp benefits. The Department believes that despite this unfortunate consequence, it is obligated to seek the maximum, since government funds for housing benefits are limited and the welfare rent (now found in Section 3(a)(3) of the 1937 Act) was originally established to require welfare tenants to pay equitable housing costs. See H. Rep. 93–1114, 93rd Cong., 2d Sess. 24, 190–191 (1974). See also Conf. Rep. No. 740, 91st Cong., 1st Sess., *reprinted in* 1969 U.S. Code, Cong. & Admin. News 1582–83.

4. *Food Stamps.* Several PHAs commented that HUD should include the unreimbursed value of food stamps in the income of participating families, arguing that food stamps represent disposable income. A statutory prohibition—7 U.S.C. 2017(b)—currently exists against including the value of food stamps in income for any purpose under any Federal, State or local program. This prohibition is contained in § 813.106(d)(3)(ii).

5. *Armed Forces Pay.* Similar to the current Section 8 rule (§ 889.104(a)(8)), the proposed rule would have provided that all regular pay, special pay and allowances of a member of the Armed Forces who is the head of household or spouse be included in annual income, whether or not the individual lives in the dwelling. One commenter stated that if the service member was not residing in the houshold, only the income actually received by the household should be included. To exclude income from such an absent head of household or spouse based on what that person chose to send home would permit the absent member to reduce his or her contribution to the resident family members to zero without penalty, while HUD would be required to increase its Section 8 payment.

The commenter cited a 1972 response by the HUD Dallas Area Office to an administrative complaint and a 1979 consent order in a case against the Alma, Georgia Housing Authority in support for that position. Since the Department no longer has records on the Texas administrative complaint, we cannot evaluate its contents or its relevance to this discussion. However, the consent order in the Georgia case (*Clark* v. *Housing Authority of Alma, Georgia,* C.A. No. 578–55 (S.D. Ga., March 30, 1979)) is not on point, since it did address the issue of inclusion of income of an absent head of household or spouse serving in the Armed Forces. It was primarily a case about the procedural rights of tenants threatened with eviction, and the only issue with respect to income was whether adjustments to rent would be made following a reported decrease in income (they would). For these reasons, the final rule retains without change the proposed rule's general provision on inclusion of armed forces pay of an absent family member.

However, the exclusion of the special pay to a "serviceman head of family away from home and exposed to hostile fire" found in the current Section 8 regulations (§ 889.104(d)(5)) has been included in this final rule (§ 813.106(c)(5)) and broadened to include any member of the family receiving such pay.

6. *Earned Income Tax Credit.* The list contained in proposed § 813.104(b) of examples of types of income included in annual income has been expanded to include the earned income tax credit, to the extent it exceeds income tax liability. This revision of the rule is intended to clarify the existing practice of counting in annual income all sources of income.

7. *Indian Per Capita Payments.* The list in proposed § 813.104(d)(3) of exclusions from income prescribed by statute has been expanded to include an exclusion required by two statutes (25 U.S.C. 117 and 25 U.S.C. 1407–1408)—the first $2,000 of per capita shares from judgment funds awarded by the Indian Claims Commission or the Court of Claims or from funds held in trust for an Indian Tribe by the Secretary of Interior. The precise interpretation of this exclusion, as well as the others dealing with income or resources of Indians listed in § 813.106(d)(3) of the final rule, is currently the subject of interagency discussions, and additional guidance on them will be provided in HUD Handbooks or directives.

*B. Income Levels*

Section 206(b) of the 1983 Act made a technical change to Section 3(b) of the 1937 Act to permit the Secretary, based on certain findings, to establish income ceilings higher or lower than 50% of the median income for the area for families to be classified as "very low-income". A similar provision had long existed authorizing the Secretary to so modify the income level at which a family qualifies as "lower income"—not over 80 percent of the area median. Since most families served by the program must now qualify as very low-income (see Section 16 of the 1937 Act and §§ 813.104 and 813.105 of the final rule), it is more important than ever that the Secretary have flexibility to modify the ceiling used to determine who qualifies as very low-income. The statute requires that any such modification be supported by a finding that the modification is "necessary because of unusually high or low family incomes". This change is reflected in the definition of "very low-income family" found in § 813.102.

*C. Definition of Adjusted Income*

The proposed rule (§ 813.102) departed from the current Public Housing rule (§ 960.403(f)) and the Section 8 rule (§ 889.102) by eliminating all deductions from income in favor of two standard deductions: $400 for each minor in a family and $300 for an elderly, disabled or handicapped head of household. Comments on the proposed rule evidenced strong opposition to elimination of the 10% deduction for elderly public housing tenants and the institution of a $300 deduction for each elderly head of household.

Section 206(c) of the 1983 Act amended Section 3(b)(5) of the 1937 Act to define "adjusted income" as income that remains after excluding:

1. $480 for each member of the family residing in the household (other than the head of the household or spouse) who is under 18 years of age or who is 18 years of age or older and is disabled or handicapped or a full-time student;
2. $400 for any elderly family;
3. Medical expenses in excess of 3 percent of annual family income for any elderly family; and
4. Child care expenses to the extent necessary to enable another member of the family to be employed or to further his or her education.

This listing of adjustments is all-inclusive and mandatory, and is incorporated in § 813.102 of the final rule.

In addition to increasing the amount of the deduction for dependent members of the household from $400 to $480, the new definition has expanded the category of persons qualifying for the deduction to include persons (other than the head of household or spouse) who are over 18 years old and are disabled, handicapped, or (as discussed above) full-time students. The deduction for elderly families (which includes families whose head or spouse (or sole member) is disabled or handicapped) is increased by the new definition from $300 to $400.

Other changes in the definition of adjusted income in this final rule include the statutorily mandated deductions for medical expenses and child care expenses. These differ from comparable deductions in the current Section 8 (§ 889.102) and Public Housing (§ 960.403) regulations, in that the medical deduction is available only to "elderly families" and the child care deduction (available only for expenses for dependents who are under 13 years of age) has been broadened to apply where child care is necessary to further the education of a family member, as well as where such care is necessary for the employment of a family member (the condition required in current regulations).

Since income and deductions are based on anticipated events, major changes in expectations may render the income or expense projections inaccurate. The final rule provides for adjustments to reflect these changes. The family is required by its lease (or regulations in the case of the Section 8 Existing Housing Program) to report some of these changes. Similarly, if significant changes occur that are not required to be reported, such as large, unanticipated medical expenses for an elderly family, the family may request a reexamination of its income and have its adjusted income recomputed and its rental payment revised, as appropriate. (See § 880.603(c)(2) and comparable provisions.)

### III. Income Verification and Reexamination

#### *A. Verification*

Section 813.107(b) of the proposed rule would have authorized PHAs and Section 8 project owners to examine a family's Federal income tax return and to require access to other financial documents and third party information to verify statements provided by applicants and tenants regarding eligibility for and amounts of housing assistance. After considering the comments, we have decided not to include the provision concerning the family's Federal income tax return, since uncertified returns can be falsified easily, and they provide little assurance of the accuracy of the data. However, we recognize that income tax returns will be used in some cases, such as that of self-employed persons, for whom tax returns may be the only available income information.

The use of third-party verification, such as contact with employers, does not represent a change in HUD policy as reflected in current HUD handbooks. However, a few commenters objected to third-party verification as an invasion of privacy, as violative of a statutory directive on verification, or as an administrative burden on PHAs. A few PHAs objected to the use of a prescribed form for submission of the data to HUD. The final rule preserves the use of third-party verification, as well as explicitly stating that the family can be required to provide documentation directly, as is also current practice.

Although independent, third-party verification may require applicants and tenants to provide more information than a self-certification process, it is the most accurate, objective way to verify information provided by applicants and tenants. We believe that it does not violate the Privacy Act of 1974, 5 U.S.C. 522a, and we have had virtually no complaints about abuse of verification authority, which, as noted above, has been HUD policy.

Perhaps the real thrust of the concern about invasion of privacy is that individual tenant income data will be reported by each PHA or owner to HUD, a practice that is required by HUD now, although not universally observed. This reporting is necessary to enable HUD to monitor progress toward meeting the statutory 25% and 5% limits on admissions of families with income between 50% and 80% of the area median. In addition, the data will permit the Department to carry out its responsibility to assure that income information provided by families is complete and accurate, to verify that eligibility and rental payment determinations have been made properly, to monitor compliance with equal opportunity requirements, and to analyze the effect of these programs. The data collected by HUD will be used only for purposes directly connected with administration of HUD programs.

Section 8(k) of the 1937 Act, 42 U.S.C. 1437f(k), requires the Secretary to:

> establish procedures which are appropriate and necessary to assure that income data provided to public housing agencies and owners by families applying for or receiving assistance under this section is complete and accurate.

One commenter argued that the statute goes on to mandate taking a sample to verify income, and that this rule violates the sampling provision by requiring verification of income for all applicants and tenants. The Secretary has determined that verification of income for all families is necessary and appropriate for the reasons stated above. Therefore, the rule goes beyond a required sample in an effort to carry out the more encompassing mandate.

HUD requires use of a prescribed HUD form to assure that it has sufficient data to verify that HUD requirements are being followed. The PHA or owner may use whatever form it chooses to collect the information sought on the HUD 50059 form. To simplify a PHA or owner's task in submitting the data, HUD has issued procedures for accepting the information contained on the prescribed Form 50059 from PHAs and owners in the form of a computer-generated form in lieu of the HUD form, and we intend to issue procedures for accepting computer magnetic tapes, so that there will be no additional burden placed on owners or PHAs by the use of the HUD form.

Section 205 of the 1983 Act prohibits the Secretary from imposing "any unnecessarily duplicative or burdensome reporting requirements on tenants or public housing agencies." The verification requirement is consistent with the duty to minimize burden because it does not require tenants to prepare any new documents or PHAs or owners to submit any information not necessary to assure compliance with statutory requirements. This rule and the form that must be completed are subject to review by the Office of Management and Budget to assure that such burdens are minimized, as required by the Paperwork Reduction Act of 1980.

#### *B. Reexamination*

The requirement that *all* tenants' incomes be reexamined at least annually was established by the 1981 Amendments' revision of Sections 6(c)(2) and 8(c)(3) of the 1937 Act, and by the 1983 Act's revision of Section 3 of the 1937 Act. This requirement was implemented by a final rule (47 FR 54296), effective April 1, 1983 (48 FR 6961). Section 813.107 of the proposed rule would have required annual reexamination of family income and composition, as prescribed in individual program regulations. The proposed amendment to those individual regulations tracked the statutory language, requiring the PHA or owner to reexamine income at least annually. In addition, the amendment expressly would have permitted a PHA or owner to conduct reexaminations more frequently than annually and preserved reference to tenant-initiated reexaminations. See, e.g., § 880.603(c).

A few commenters suggested that the authority to conduct more frequent than annual reexaminations could be used to harass tenants who somehow offend management. Although more frequent than annual reexaminations have been permitted in the past, we have not received complaints of actual harassment. We believe that some owners and PHAs need the flexibility to conduct reexaminations more frequently than annually under procedures now provided in HUD Handbooks. For example, earlier recertifications are appropriate if the owner has performed a tenant-requested reexamination for a change in circumstances that is found to have been temporary. In light of the lack of evidence of abuse, we have chosen to preserve this discretion in the final rule, but have deemphasized it by eliminating the sentence explicitly authorizing owners to initiate the reexaminations more frequently than annually.

One commenter requested that the rule make clear that annual reexaminations are contingent on lease provisions. We agree that such reexaminations are contingent on lease provisions, and PHAs and owners who have a lease prescribing a reexamination interval greater than one year should amend the lease so that annual or more frequent reexaminations can occur. We have not included language to this effect in the rule, since it is a problem that arose only once—when the PHA or owner first implemented the annual requirement after the April 1, 1983 effective date of the rule requiring annual reexaminations for all tenants.

We have added a provision to the individual program regulations contained in the final rule requiring tenants to comply with any lease provisions (or regulatory provisions) regarding interim reporting of specified changes in income. This simply states current policy, as reflected in Handbook and model lease provisions.

Several commenters suggested that elderly tenants who are converted from the Rent Supplement program to the Section 8 Program will have their rents increased significantly unless the 10% statutory cap on annual rent increases is applied to them. This may be a problem in some cases, since the Rent Supplement Program did not provide for any reexamination of elderly tenants' incomes. The commenters argue that the cap should be applied, since the annual reexamination is required by Section 322 of the 1981 Amendments, and the cap applies to changes made by that section of the 1981 Amendments.

Section 206(d) of the 1983 Act contains provisions responsive to these and related concerns. Section 206(d)(3) applies the 10% cap to all tenants converted from the Farmers Home Administration's rental assistance program to the Section 8 Program. These provisions are contained in § 813.107(c)(4) of the final rule. Section 206(d)(4)(A) applies the 10% cap to elderly tenants (62 years of age or older) converted to the Section 8 Program at any time from the Rent Supplement Program, as well as from the Section 236 Rental Assistance Program and the Section 23 Program. In addition, Section 206(d)(4)(B) of the 1983 Act provides that, for elderly tenants converted from the Rent Supplement, Section 236 Rental Assistance or Section 23 Program on or after October 1, 1981 and before November 30, 1983, rental payments after November 30, 1983 will be computed as if the tenant's rental payment on the date of conversion had been the lesser of the actual rent required or 25% of the tenant's income. This provision will result in a more gradual phase-in of rent requirements for those elderly tenants with low rents at the time of conversion. The implementation of the various protective provisions of Sections 206(d) (3) and (4) of the 1983 Act are found in § 813.107(c) (2) through (6) of the final rule. (Because full implementation of Section 206(d)(4)(A) will occur on October 1, 1984, the rule extends the protection of Section 206(d)(4)(A) to conversions occurring after November 30, 1983, and before October 1, 1984.)

## IV. Income Limits for Admission

Well over one-third of the public comments received addressed the restrictions in proposed § 813.103 on admission of lower income families that are not very low-income families: i.e., those families with incomes between 50% and 80% of the area median. This provision was designed to implement Section 16 of the 1937 Act, which limits the number of units that may be leased to these families to (1) not more than 25% (10% before Section 213 of the 1983 Act raised the ceiling) of the units that were available for occupancy before October 1, 1981 and are leased thereafter, and (2) not more than 5% of the units that first become available for occupancy after that date. The commenters almost unanimously opposed these percentage restrictions.

From the tenant perspective, commenters insisted that there should be no evictions of families with incomes above 50% of median. Comments on behalf of applicants with incomes above 50% of median who are on waiting lists claimed the rule unfairly deprived them of a benefit. PHAs, Section 8 owners and managers had other concerns. The requirements, they asserted, would (1) violate existing contracts with owners; (2) jeopardize the financial viability of recently approved Section 8 projects, for which marketability analyses were based on 30% occupancy by very low-income families; (3) cost government millions of dollars in additional subsidies; and (4) effectively exclude working families from assisting housing—leading to greater vandalism and property deterioration, as well as damaging the image of such housing in the community.

In addition to these objections, there were a number of questions about how the priorities for exceptions would be administered. What entity will grant the exceptions? Are some of the priorities given greater weight than others? Could a project qualify for approval of more than 5% of its units for families above 50% of median? What is the meaning of the phrase "local commitment to attaining occupancy by families with a broad range of incomes" in proposed § 813.103(d)(4)?

### *A. Evictions and Waiting Lists*

Answering the tenant-perspective comments first, the Department from the outset intended that implementation of the income limit provision should not result in eviction of current residents of assisted housing. The income limit provision only prescribes the level of income *at admission* and does not affect any tenant's right to continued occupancy. Applicants who are on the waiting list when the rule goes into effect, however, are affected by these restrictions on admissions. The statute clearly imposes restrictions on income level at first occupancy—not at first inclusion on a waiting list.

### *B. Violation of Contracts*

The argument that the proposed rule would violate existing contracts is primarily made by State agencies, and it focuses on units under Housing Assistance Payments (HAP) Contracts and Agreements to Enter into HAP Contracts executed under Parts 880, 881, and 883–885, for which initial occupancy did not occur until on or after October 1, 1981, and which are thus covered by § 813.105 of the rule.

The commenters argue that the rule's restriction on the percentage of lower income families who are not very low-income (i.e., none without HUD approval, and only 5% of all units nationwide) is in conflict with the percentage of very low-income families required by their Contracts (i.e., *at least 30%*). They also argue that both the Agreement and the HAP Contract prohibit changes in their terms, including this percentage change. The substitution of the new requirement for the existing one is argued to impair their contract rights (and therefore, presumably, to violate their constitutional right to due process).

HUD has determined that the effect of the proposed rule, as clarified in §§ 813.103 through 813.105 of the final rule, does not impair rights of owners or State agencies under existing contracts in violation of the Constitution. With respect to one version of the Form HAP Contract referred to by a commenter, the same provision that was cited by the commenter as prohibiting changes in that contract (section 1.1(f)), actually binds the parties to applicable regulations. Part 813 of this rule is such a regulation, duly issued to implement a statutory mandate. Morever, the fact that such owners have heretofore been required (by statute, regulation and contract) to attain *at least* 30% occupancy by very low-income families at initial occupancy and to use "best efforts" to maintain at least thirty percent did not guarantee them that they were forever assured that they could maintain *no more than* 30% occupancy by very low-income families—especially in an undertaking such as the provision of federally assisted housing, known to be subject to legislative and regulatory direction. In this case, the Congress has chosen to restrict the degree of discretion an owner had to choose a percentage above 30%, by mandating a national requirement of 95%.

Even if the statute and regulation could be construed to constitute an impairment, they do not violate the rights of owners and State agencies to due process, because there is a rational basis both for the congressional action and the Department's implementing action. Congress acted rationally because it was deciding to distribute limited funds by targeting them to the neediest. (See, S. Rep. (Budget Committee) No. 139, 97th Cong., 1st Sess., 5, *reprinted in* 1981 U.S. Code, Cong. & Admin. News, 1054.) Information available to Congress was that at least 90% of assisted units were then occupied by very low-income families. By requiring at least 90% (changed to 75% by the 1983 Act) occupancy by very low-income families for occupied projects and raising the percentage to 95% for future projects (a compromise between proposals for 90% and 100%), Congress implicitly rejected the contention that restricting the income mix in this small way would change the living environment for tenants (see Housing and Community Development Amendments of 1981: Hearings on S. 1022 and S. 1074 before the Subcommittee on Housing and Urban Affairs, 97th Cong., 1st Sess. 676 (1981)).

HUD acted rationally by requiring the 95% limitation to apply to units first rented under agreements and HAP contracts effective on or after October 1, 1981, even if the contracts were executed before that date. The statute states that the 95% requirement applies to "units which become available for occupancy under [Contracts] under this Act on or after the effective date of [the 1981 Amendments]." Despite the date of execution of the contract, the statute clearly focuses on availability for occupancy. To have focused on the execution date of the contract and to have disregarded the date of initial occupancy (as urged by some commenters) would not have been in accord with the statute.

The provision of § 813.105 that any admission of lower income families who are not very low-income families must be approved by the Department is also a reasonable exercise of discretion. The statutory 95% requirement was intended to be achieved on a nationwide basis. See H. Rep. (Conf. Rep.) No. 208 (Book 2), 97th Cong., 1st Sess., 689, *reprinted in* 1981 U.S. Code, Cong. & Admin. News, 1048. If the Department is to consider permitting some projects to have less than 95% occupancy by very low-income families—as many commenters stated was necessary—then other projects must have greater than 95%. The limitation on admission of lower income families that are not very low-income will permit apportioning any exceptions to the overall limitation in a manner consistent with national housing goals and conservation of scarce Federal housing funds.

### *C. Financial Viability*

The financial viability of recently approved Section 8 projects for which marketability analyses were based on 30% occupancy by very low-income families is not a problem unless the number of very low-income families in the market area interested in living in those projects is insufficient to fill units vacated by families with higher incomes. Since the 5% limit on families with incomes above 50% of median is a nationwide limit, a higher percentage of such families may be approved by HUD to lease units in individual projects that would otherwise be in serious financial trouble. Financial viability of a project is one basis for exception listed in § 813.105(c)(1) to be considered in HUD's determination of whether and how many families with incomes above 50% of median may be admitted.

In addition, no families with higher incomes will be evicted to reach the 5% limit, so projects that are occupied before the effective date of this rule will only feel the impact upon turnover.

### *D. Increased Subsidy Outlay*

On a nationwide basis, more than 90% of assisted housing residents have incomes below 50% of median. Therefore, application of the rule's limitation is not expected to cause a dramatic shift in the income group served by the programs as a whole, or in the amount of Federal subsidy paid. In any event, the statute requires the limitation on families with incomes above 50% of median that are admitted to the programs. The Senate Banking Committee recognized that the change would result in increased subsidy: "Although this lower eligibility limit will tend to increase housing program costs, the Committee rejects the argument that for cost reasons moderate-income people should get housing while the poor wait in line. It will always be less expensive to house only those who can afford to pay more of the rent themselves. The Government's purpose in lower-income housing programs though should be to help those who most need assistance." S. Rep. No. 87, 97th Cong., 1st Sess. 5 (1981).

### *E. Effect on Working Families and Deterioration of Living Conditions*

The effect of the income limits provision on participation by working families is uncertain. Some working families (as opposed to families supported solely by welfare) may well earn less than 50% of median income for their area. For working families that are eligible fund the income limits, the child care deduction will provide an additional incentive to participate. Congress implicitly rejected the contention that imposing these income limits would cause serious deterioration in living conditions. (See Housing and Community Development Amendments of 1981: Hearings on S. 1022 and S. 1074 before the Subcommittee on Housing and Urban Affairs, 97th Cong., 1st Sess. 676 (1981)).

### *F. Administration of New Provision*

Changes have been made in the rule in response to the numerous questions about how the exceptions to the limitations on admission of families with incomes above 50% of median will be administered. The proposed § 813.103 has been divided into three sections in this final rule: § 813.103 for the overall restriction limiting admission to families with incomes not exceeding 80% of the area median, § 813.104 for units first available before October 1, 1981, and § 813.105 for units first available on or after that date.

A provision has been included in both §§ 813.104 and 813.105 requiring PHAs and owners to comply with reporting requirements, and stating what units will be counted, (1) for purposes of monitoring the 25% requirement and (2) for determining how HUD will calculate the 5% of units for which permission can be granted to admit lower income families who are not very low-income families. Consistent with Section 205 of the 1983 Act, these reporting requirements are being kept to the minimum necessary to permit HUD to track the units covered by Section 16 of the 1937 Act to assure compliance with that provision. The reporting required by both §§ 813.104(b) and 813.105(e) is expected to be accomplished by completion of one form (HUD 50059) for each family, which is submitted at the time of annual and interim reexaminations.

The following is noted for determining what units fell within the 25%/5% limitations. For programs involving "project-based" subsidies such as the Section 8 New Construction program, where all assisted units in a project become available for initial occupancy under a Housing Assistance Payments (HAP) Contract at one time, the units are classified in either the 25% or 5% universe and thereafter retain that character. However, for the Section 8 Existing Housing (Finders-Keepers) Program where units in a PHA's program become available for initial occupancy under HAP contracts as each family approved for participation finds a unit, one "unit" may be counted as within the 25% universe but then shift to the 5% one. This occurs when the original HAP contract was executed before October 1, 1981, and a later one (for the same family when it moves or for a family new to the program) is executed after that date under the same annual contributions contract (ACC).

Similarly, a unit could shift from one universe to another if it were first assisted under the Section 23 Program (and categorized as within the 25% universe since all such units were available for initial occupancy before October 1, 1981), and then the family was converted to assistance under the Section 8 Finders-Keepers Program (under § 882.123). It would not shift, however, until "the unit" first became available for occupancy under a HAP Contract, as required by Section 16 of the 1937 Act: i.e., when a later HAP Contract is executed under the same ACC for the same family moving to a new unit or for another family admitted to the program. Other units assisted under the 1937 Act may be slow to move into either universe. If a Rent Supplement unit were converted to assistance under the Section 8 Program, it would be included in the 5% universe only when the unit becomes available for a new tenant. In each of these cases, the income level of the tenants converted from another assistance program to Section 8 would not be categorized as below 50% of median or between 50% and 80% of median, since the "unit" is not "available for occupancy", and consequently not subject to the statutory income limit, until the tenant in place moves out.

As described above, all units that meet the statutory test of being available for occupancy under the programs covered by Part 813 and its counterpart for Public and Indian Housing Programs (Part 913) will be counted in either the 25% or 5% universe. However, the income level of tenants who have moved into the units between October 1, 1981 and the effective date of this rule will not be categorized as 50% of median or below, or between 50% and 80% of median. Thus, these tenants will not be counted against the 25% or 5% limitations. This result should cause no problem in meeting the 25% requirement, since HUD data show that from 1974 through 1982, for each of the five years for which we have data, the percentage of families in the 50% to 80% of median income moving into public housing and Section 8 housing was approximately 6%. This consistently low rate of new tenants in that income category is well below the rate of 25% now required by statute. The answer is less clear with respect to the 5% post-October 1981 universe. The Department has determined, however, that not considering the incomes of tenants already in place is the most effective way of achieving our desire to maximize the statutory objective of targeting housing assistance to the neediest families without eviction or otherwise jeopardizing the continued tenancy of existing tenants.

The final rule retains the provisions of proposed § 813.103(c) that reserves HUD's right to limit the admission of families with incomes between 50% and 80% of median to units under contract and first available for occupancy before October 1, 1981. No specific limitation on admission to these units is imposed in this rule (beyond the existing general requirement that income not exceed 80% of area median at admission), since the Department believes that the requirement can be achieved without the imposition of restrictions. HUD will monitor the income levels of families admitted to these units after the effective date of the rule to determine whether at some point in the future it is necessary to impose restrictions on the percentage of admissions of families with incomes in the 50% to 80% range.

The final rule also retains the requirement in proposed § 813.103(d) that admission of families with incomes between 50% and 80% of area median to units subject to the 5% limit generally be permitted only with prior HUD approval. Section 813.105(b) of the final rule specifies how a PHA or project owner applies for permission to admit families of this income range to units covered by the admissions restrictions stated in § 813.105(a). In answer to a question raised in public comments, the list of "priority" categories to be considered for exception to the 5% rule is not in rank order. The final rule does not call these categories "priorities" but identifies them as "bases for exception". The list is not exhaustive, so other bases may be stated in a request for exception. Applications received by HUD under this rule (and under the companion rule for Public and Indian Housing) will be weighed against each other for exceptions that may be available when the decision is made. Since the limitation is a nationwide one, it is conceivable that a project might qualify for permission to admit families with income between 50% and 80% of area median to more than 5% of its units. However, no implication is intended that the Department necessarily will grant exceptions up to the 5% limit, nor shall there be any presumption of entitlement to an exception created by an application's statement of certain grounds for exception.

In § 813.105(b) of the final rule (the paragraph dealing with project-based programs), the category for consideration of exception for projects where there is a local commitment to serving families with a broad range of incomes, has been revised to clarify that this "commitment" must be evidenced by furtherance of the policy throughout the PHA's assisted housing projects in the community. Another category has been added for families with incomes not exceeding 80% of area median that are actually displaced as a result of Rental Rehabilitation or Development activities assisted under Section 17 of the 1937 Act (as added by Section 301 of the 1983 Act) or as a result of activities assisted under the Rental Rehabilitation Demonstration Program.

Section 813.105(c) (the paragraph dealing with the unit-based program) includes a new provision governing a family that (1) participated in the Section 8 Existing Housing (Finders-Keepers) Program before the effective date of this rule, (2) moves to a new unit after that date, and (3) does not qualify as a very low-income family at the time of new lease approval and execution of a new HAP Contract. Such a family will be automatically granted permission to continue participation in the program. The specific categorical exception in § 813.103(a) of the proposed rule for families converted from another federal assistance program to the Section 8 Finders-Keepers Program has been omitted from the final rule as unnecessary because it has been determined that the units they represent would not be subject to the statutory limit so long as occupancy of the original unit is maintained. (See discussion above.) A PHA may also apply to HUD for an exception to the 5% limit for families participating in the Existing Housing (Finders-Keepers) Program that have incomes between 50% to 80% of median income. One basis for exception explicitly stated in the final rule for this program is for families that would otherwise be displaced as a result of activities assisted in connection with the Rental Rehabilitation or Development Programs under Section 17 of the 1937 Act or as a result of activities assisted under the Rental Rehabilitation Demonstration Program.

Finally, because of the difficulty in keeping the number of lower income families that are not very low-income families below the 5% requirement nationwide, and the complexity of judgments about what projects most merit exceptions to the overall limit on admission of such families, we believe that the Congress committed solely to the Secretary's discretion decisions concerning which projects, if any, may be permitted to admit lower income families that are not very low-income. (See H. Rep. (Conf. Rep.) No. 208 (Book 2), 97th Cong., 1st Sess. 689, *reprinted in* 1981 U.S. Code, Cong. & Admin. News 1048.) Indeed, the statute allows the Secretary to prohibit any such family from being admitted, so there are no statutory standards to apply. In light of this fact, the Department believes that determinations whether to grant exceptions to the otherwise applicable 50% of area median income ceiling on admissions are agency actions committed to agency discretion by law, and accordingly these determinations will not be reviewable in any court.

**V. Rental Payments**

*A. Phased-in Rent Increase and Cap on Increases*

We received numerous comments on the phased-in rent increase and the 10% annual cap on rent increases. Most of the comments were critical either because the system—as applied to the changes in definition of income as well as the changes in rental rates—would be difficult to administer, or because the applicability of the phase-in or cap was not regarded as sufficiently broad.

Commenters stated that in order to apply the 10% cap, many calculations would be necessary to determine the effect of the changes in the definition of income, as well as the rent increases. First, it would be necessary to make calculations using the tenant's old circumstances under old and new definitions and formulas, and then using the tenant's new circumstances (including income, medical expenses, number of minors, etc.) under old and new definitions and formulas. Unfortunately, this procedure cannot be avoided. Multiple calculations are necessary to apply the cap. Sections 206(d) (1) through (4) of the 1983 Act clearly require that the cap be applied to a variety of tenants and circumstances.

Another criticism of the proposed rule made by housing managers involved proposed § 813.105(b)(2)'s provision that made eligible for the rent phase-in families that were receiving housing assistance before August 1, 1982 (the effective date of the rent increase rule) and whose assistance has been continuous thereafter, irrespective of whether the family moved from one unit, project or assistance program to another after August 1, 1982. These commenters believed that this provision was too burdensome, since it would require project managers to verify the previous occupancy of a new tenant claiming to have moved from another assisted unit. To eliminate this administrative burden, § 813.107(c)(1)(ii) of the final rule requires that to qualify as an existing tenant in a non-PHA administered program, the tenant must have resided in the same project, or within buildings that are adjacent and managed as one project. In a PHA-administered program, the final rule requires the tenant to remain within the same project or program in order to qualify for the phase-in. However, in the case of an involuntary move, a tenant will qualify if moving within the same PHA's programs.

On the other side of this issue, legal services organizations representing tenants argue the phase-in and cap should apply to new tenants as well as existing tenants, so that all tenants with the same incomes would pay the same rent. Under § 813.107(c)(2) of the final rule, the cap will apply to new and existing tenants to the extent they experience changes as a result of this rule or later changes in law defining which governmental benefits are required to or may be considered as income. The 1983 Act removed the authority of the Secretary to permit a phase-in for new tenants—at least if they are not in occupancy by the effective date of this rule. With respect to other "new tenants", i.e., those whose initial occupancy began after the effective date of the rent increase rule (August 1, 1982) but before the effective date of this rule, the Department has decided not to exercise its discretion under Section 206(d)(1)(A) of the 1983 Act to provide for a rent phase-in. These tenants are already paying the full statutory amount of rent, as provided in the Interim Rent Increase Rule. The Department believes that it would be inappropriate and administratively burdensome to provide what would be, in effect, a rent decrease for these tenants.

One commenter stated that HUD should make it clear that the 10% cap applies to tenants whose income is recertified as a result of the 1981 legislation and to tenants who are involuntarily converted from one program to another. Recertifications conducted in the Section 8 Programs as a result of the 1981 Amendments are believed to be completed, thus rendering language in the rule dealing with this question unnecessary. However, § 813.107(c) of the final rule does apply the cap to tenants who are converted from one program to another, in conformity with Sections 206(d) (3) and (4) of the 1983 Act. Elderly tenants converted from the Rent Supplement Program (who have never had their income reexamined) are given special consideration under § 813.107(c), consistent with Section 206(d)(4)(B) of the Act. (See section on reexaminations, above.)

In the final rule, the cap is not being applied to families receiving welfare payments whose rental payments are based on the housing component of their welfare grant if the housing component is adjusted in accordance with their actual housing costs (Section 3(a)(3) of the 1937 Act), without reduction. The reason for this exception is that the failure to apply the cap to these families will not affect them adversely, and application of the cap would, therefore, not serve its purpose of protecting tenants from precipitous rent increases and preserving disposable income for other basic needs. The full cost of such families' rent charges are, in essence, paid by the welfare agency. Since the cap would not serve its purpose in such cases, it is not being applied to them.

*B. Utility Reimbursement*

Section 813.102 of the proposed rule provided that tenants who pay directly for utilities and whose utility allowances exceed the amount they must pay for rent under the statutory formula, receive a utility reimbursement to cover the difference. A few commenters disapproved of this provision as "paying people to live in assisted housing" and accelerating the decline of housing projects, because such tenants (the commenters claimed) would not appreciate and respect their accommodations. This provision does not constitute a new policy or practice, as noted in the preamble to the proposed rule (47 FR 57960). Historically, the term "rent" under the 1937 Act has been interpreted to mean gross rent, that is, including utilities. Therefore, when the percentage of income maximum was first imposed by statute in 1969, the Department took the position that a tenant could pay no more than that percentage for housing costs including utilities, and the practice of utility reimbursements was born. The change in the statute from one percentage of income ceiling on rents to a choice of the highest of three figures as the rent does not necessitate a change in that practice, and considering the increase in the applicable percentage of income a tenant is required to pay for rent, the Department chooses not to change its utility reimbursement policy at this time.

The Department's position that any tenant payment of utilities is a payment toward "rent" is further buttressed by Section 221 of the 1983 Act, which provides that for purposes of determining benefits under the Aid to Families with Dependent Children program, any utility payment up to the amount of the utility allowance is to be considered a rental payment. (The Department of Health and Human Services has responsibility for implementation of that provision.)

Another comment on utility reimbursements, from the tenants' perspective, was that they should be made payable either jointly to the tenant and the utility company or solely to the utility company. It has been suggested that such a change in the rule would remove the impression that people are being paid to live in assisted housing and would decrease the opportunity for fraud. By permitting a PHA or owner to make a utility reimbursement in the form of an in-kind benefit, the revision would also clarify that utility reimbursements are a part of the program's subsidy of total shelter costs, reducing the likelihood that other government agencies would count the utility reimbursements as income for purposes of determining eligibility and levels of assistance for other assistance programs, while not counting the value of the rest of the housing benefit (a practice which effectively discriminates against tenants who pay their own utilities directly). The HUD Handbook now applicable to management of Section 8 projects already suggests direct payments of utility reimbursements to the utility or jointly to the family and the utility. Consistent with current policy, we have added a sentence to § 813.108 of the final rule, and to operative provisions of the individual program regulations (§§ 880.501(e), 881.501(e), 882.105(a), 882.210(c), 883.602(e), 884.106(a), 886.109(a), and 886.309(a)), permitting PHAs or project owners to follow such a practice, if all parties consent.

### VI. Transition Provisions

The 1983 Act became law on November 30, 1983. Congress did not provide a specific effective date for the amendments contained in Section 206 of the 1983 Act. However, by referring in Section 206(d)(1) to "the effective date of regulations implementing this section," Congress evidenced a contemplation that changes in tenant rental payments would become effective upon administrative implementation of the amendments through rulemaking procedures. Such an understanding is consistent with prior practice. For example, while the 1981 Act became effective October 1, 1981, no tenant rents were increased as a result of those amendments before the effective date of the interim rules referred to at the beginning of this preamble (August 1 1982, in the case of Public Housing and Section 8).

The effective date of this final rule is July 1, 1984. However, the Secretary has determined, pursuant to Section 206(d)(1)(A) of the 1983 Act, that immediate applicability of the definition of Annual Income and Adjusted Income would not be practicable. Implementation by PHAs and Owners of the extensive changes in current procedures required by this rule will require receipt of detailed instructions (principally in the form of HUD handbooks) and forms and staff training. In many cases, reprogramming of automated systems also will be required. Handbook and form revisions could not be completed before publication of this final rule, and full capability to implement the changes made by this rule may not be achieved for several months. Accordingly, utilization of the new definitions of Annual Income and Adjusted Income will not commence until examinations or reexaminations conducted on or after October 1, 1984.

Although applicability of the new definitions will be effective on October 1, 1984, it would not be possible for PHAs and Owners to conform the rent computations for all tenants to the new definitions immediately. Actual application will occur as reexaminations are conducted during the following 12 months in accordance with regular schedules. However, in order that the benefits, if any, of the revised definitions will be realized by tenants for the full period commencing October 1, 1984, Section 813.110 of the rule requires a retroactive calculation to October 1, 1984, to be made at the time of the first reexamination occurring thereafter. This recalculation will apply the revised deductions to the Annual Income actually certified for that period. If the recalculation produces a lower tenant contribution than that actually paid, the "overcharge" will be credited to the tenant. If the recalculation results in a higher contribution than that actually paid, no adjustment will be made.

### VII. Miscellaneous

Comments submitted on the proposed rule concerning tenants' rights to a hearing in the Public Housing Program or establishment of utility allowances are not discussed here since those topics deal with public housing and are addressed in separate rulemakings, Docket No. R–82–1020 (47 FR 55689) and Docket No. R–82–853 (47 FR 35249), respectively. The portion of the proposed rule that dealt with hearings in the Public Housing Program, § 860.211, has been dropped from the final rule, since it is the subject of a separate rulemaking.

One commenter stated that a public hearing should be held before issuance of a final rule. He stated that the impact on rural areas of proposed § 813.103, limiting the number of families that could be admitted to the Public Housing and Section 8 Programs, had not been considered sufficiently. The Department has considered the effect of that provision on non-urban areas and on projects within a submarket in an urban area that might not attract families in the required income category. Although permitting families with incomes above 50% of area median to occupy 5% of the units might pose a marketability problem for a few projects, the 5% limit is a nationwide one, permitting HUD to approve a greater number of units for such occupancy in some projects, where demonstrably necessary. In fact, one possible basis for permitting admission of a family with an income between 50% and 80% of median stated in § 813.105(b)(3) is just such a marketability problem. In any event, the data presented by commenters on many topics, combined with data compiled by the Department, provide an ample record on which to base a final rule, and HUD does not find it appropriate, under

24 CFR 10.11, to provide for oral presentation of views before issuing this final rule.

**Other Matters**

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR Part 50 that implement Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, D.C.

The Department has determined that this rule does not constitute a "major rule" as defined in Executive Order 12291. Analysis of the rule indicates that it does not (1) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (2) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with Foreign-based enterprises in domestic or export markets. While its economic impact, when considered together with the Interim Rent Increase Rules published on May 4, 1982 (47 FR 19120 and 19128) and effective on August 1, 1982 (47 FR 30969 and 30971), and the companion final rule published today for the Public and Indian Housing Programs, may exceed $100 million annually, such impact results to the greatest degree from the legislative enactment and only to a substantially lesser degree from its administrative implementation.

The undersigned hereby certifies, under Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule does not have a significant economic impact on a substantial number of small entities because the administrative burden will not increase substantially. Small public housing agencies are simply being required to use, in both HUD programs they administer, the same procedures they already use in one HUD program. Small Section 8 project owners will use procedures similar to their current ones, for the most part.

This rule was listed as item H-79-82, RIN 2502-AA05, under the Office of Housing in the Department's Semiannual Agenda of Regulations published on October 17, 1983 (48 FR 47441), pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.156, Lower Income Housing Assistance Program (Section 8).

Information collection requirements contained in §§ 813.104(b), 813.105(e), 813.107 and 813.109(b) of this rule have been approved by the Office of Management and Budget and the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) and have been assigned OMB control number 2502-0204. The information collection requirements contained in § 813.105(b) and § 813.105(c)(2) of this rule have been approved by OMB and been assigned OMB control number 2402-0315. Please send any comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Desk Officer for HUD.

**List of Subjects**

*24 CFR Part 800*

Grant programs—housing and community development, Rent subsidies.

*24 CFR Part 813*

Lower income housing, Loan programs—housing and community development, Utilities.

*24 CFR Part 880*

Grant programs—housing and community development, Rent subsidies, Low and moderate income housing, New construction.

*24 CFR Part 881*

Grant programs—housing and community development, Rent subsidies, Low and moderate income housing, Substantial rehabilitation.

*24 CFR Part 882*

Grant programs—housing and community development, Housing, Mobile homes, Rent subsidies.

*24 CFR Part 883*

Grant programs—housing and community development, Rent subsidies, New construction and substantial rehabilitation.

*24 CFR Part 884*

Grant programs—housing and community development, Rent subsidies, Rural area, Low and moderate income housing.

*24 CFR Part 886 and 889*

Grant programs—housing and community development, Low and moderate income housing, Rent subsidies.

Accordingly, the Department amends 24 CFR Chapter VIII as follows:

1. A new Part 813 is added to read as follows:

## PART 813—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS AND RELATED PROGRAMS

Sec.

813.101 Purpose and applicability.
813.102 Definitions.
813.103 Overall income eligibility for admission.
813.104 Admission to units available before October 1, 1981.
813.105 Admission to units available on or after October 1, 1981.
813.106 Annual income.
813.107 Total tenant payment.
813.108 Utility reimbursement.
813.109 Initial determination, verification, and reexamination of family income and composition.
813.110 Transition provisions.

**Authority:** Sections 3, 8 and 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437f, 1437n); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

### § 813.101 Purpose and applicability.

This Part establishes definitions, policies and procedures related to income limits and the determination of eligibility, income and rent for applicants and tenants in housing assisted under Section 8 of the United States Act of 1937 ("the 1937 Act"), including those for which loans are made under Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q); and applicants and tenants assisted under Sections 10(c) and 23 of the 1937 Act as in effect before amendment by the Housing and Community Development Act of 1974 (42 U.S.C. 1410 and 1421b (1970 ed.)). (See 24 CFR Part 913 for the analogous rule applicable to the Public Housing and Indian Housing Programs.) However, § 813.107 and the definitions of Tenant Rent, Total Tenant Payment, Utility Allowance and Utility Reimbursement found in § 813.102 shall not apply to families assisted with vouchers under Section 8(o) of the 1937 Act (42 U.S.C. 1437f(o)).

### § 813.102 Definitions.

*Adjusted Income.*

Annual Income less:

(a) $480 for each Dependent,

(b) $400 for any Elderly Family,

(c) Medical Expenses in excess of three percent of Annual Income for any Elderly family, and

(d) Child Care Expenses.

*Annual Income.* See § 813.106.

*Child Care Expenses.* Amounts anticipated to be paid by the Family for the care of children under 13 years of age during the period of which Annual Income is computed, but only where such care is necessary to enable a Family member to be gainfully employed or to further his or her education. The amount deducted shall reflect reasonable charges for child care, and, in the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of income received from such employment.

*Contract Rent.* The total amount of rent specified in the Housing Assistance Payments (HAP) Contract as payable by HUD (or the PHA) and the tenant to the Owner (including a PHA) for an assisted unit. In the case of the rental of only a manufactured home space, Contract Rent is the total rent specified in the HAP Contract as payable by HUD (or the PHA) and the tenant to the Owner for rental of the space, including fees or charges for management and maintenance services with respect to the space, but excluding utility charges for the manufactured home.

*Dependent.* A member of the Family household (excluding foster children) other than the Family head or spouse, who is under 18 years of age or is a Disabled Person or Handicapped Person, or is a Full-time Student.

*Disabled Person.* A person under a disability as defined in Section 223 of the Social Security Act (42 U.S.C. 423) or in Section 102 of the Development Disabilities Services Facilities Construction Amendments of 1970 (42 U.S.C. 2691(1)).

*Elderly Family.* A Family whose head or spouse (or sole member) is a person who is an Elderly, Disabled or Handcapped Person. It may include two or more Elderly, Disabled or Handicapped Persons living together, or one or more such persons living with another person who is determined to be essential to their care or well-being.

*Elderly Person.* A person who is at least 62 years of age.

*Family.* See definition in Part 812 of this chapter.

*Full-time Student.* A person who is carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution attended. An educational institution includes a vocational school with a diploma or certificate program, as well as an institution offering a college degree.

*Gross Rent.* 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. In the case of rental of only a manufactured home space, Gross Rent also includes the Family's monthly payment to amortize the purchase price of the manufactured home.

*Handicapped Person.* A person having a physical or mental impairment that (a) is expected to be of a long-continued and indefinite duration, (b) substantially impedes his or her ability to live independently, and (c) is of such a nature that such ability could be improved by more suitable housing conditions.

*Lower Income Family.* A Family whose Annual Income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 80 percent of the median income for the area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs or unusually high or low family incomes.

*Medical Expenses.* Those medical expenses, including medical insurance premiums, that are anticipated during the period for which Annual Income is computed, and that are not covered by insurance.

*Monthly Adjusted Income.* One-twelfth of Adjusted Income.

*Monthly Income.* One-twelfth of Annual Income.

*Net Family Assets.* Value of equity in real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land. The value of necessary items of personal property such as furniture and automobiles shall be excluded. (In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the Family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining Annual Income under §813.106.) In determining Net Family Assets, PHAs and Owners shall include the value of any assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollars terms.

*Owner.* The meaning ascribed to such term in the pertinent program regulations.

*Public Housing Agency (PHA).* The meaning ascribed to such term in pertinent program regulations. As used in this Part where appropriate, PHA shall also include an Agency as defined in 24 CFR Part 883.

*Tenant Rent.* The amount payable monthly by the Family as rent to the Owner (including a PHA). Where all utilities (except telephone) and other essential housing services are supplied by the Owner, Tenant Rent equals Total Tenant Payment. Where some or all utilities (except telephone) and other essential housing services are not supplied by the Owner and the cost thereof is not included in the amount paid as rent to the Owner, Tenant Rent equals Total Tenant Payment less the Utility Allowance. In the case of a Family renting only a manufactured home space, Tenant Rent equals the space rental minus the Housing Assistance Payment, as defined in the applicable program regulation.

*Total Tenant Payment.* The portion of the Gross Rent payable by an eligible Family participating in a program covered by this Part, determined in accordance with §813.107.

*Utility Allowance.* If the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the Tenant Rent but is the responsibility of the Family occupying the unit, an amount equal to the estimate made or approved by a PHA or HUD under applicable sections of these regulations (see 24 CFR 880, 881, 882, 883, 884, and 886) of the monthly costs of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.

*Utility Reimbursement.* The amount, if any, by which the Utility Allowance for the unit, if applicable, exceeds the Total Tenant Payment for the Family occupying the unit.

*Very-Low-Income Family.* A Lower Income Family whose Annual Income does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 50 percent of the median income for the area on the basis of its finding that such variations are necessary because of unusually high or low family incomes.

*Welfare Assistance.* Welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by Federal, State or local governments.

**§ 813.103 Overall income eligibility for admission.**

No Family other than a Lower Income Family shall be eligible for admission to a program covered by this Part.

**§ 813.104 Admission to units available before October 1, 1981.**

(a) *General.* Section 16(a) of the 1937 Act (42 U.S.C. 1437n) provides that not more than 25 percent of the dwelling units that were available for occupancy under public housing Annual Contributions Contracts and Section 8 HAP Contracts before October 1, 1981 and that are leased on or after that date shall be available for leasing by Lower Income Families other than Very Low-Income Families. HUD reserves the right to limit the admission of Lower Income Families other than Very Low-Income Families to these units.

(b) *Reporting.* PHAs (including State Housing Finance Agencies) and Owners shall comply with HUD-prescribed reporting requirements that will permit HUD to maintain reasonably current data as to (1) the number of dwelling units that are subject to paragraph (a) of this section and are encompassed by the categories specified in paragraph (a) of § 813.105 for which the effective date of the HAP Contract is before October 1, 1981, as well as dwelling units assisted under the Section 10(c) and Section 23 Programs; (2) the number of units that are subject to paragraph (a) of this section and are occupied by Families for whom HAP Contracts were effective under Part 882, Subpart B (Section 8 Housing Assistance Payments Program—Existing Housing (Finders-Keepers)), before October 1, 1981; and (3) the number of Families occupying units described in clause (1) of this paragraph that were admitted to such units on or after June 1, 1984 and were not Very Low-Income Families when admitted.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under OMB Control Number 2502-0204.)

**§ 813.105 Admission to units available on or after October 1, 1981.**

(a) *General.* Section 16(b) of the 1937 Act (42 U.S.C. 1437n) provides that not more than five percent of the dwelling units that initially become available for occupancy under public housing Annual Contributions Contracts and Section 8 HAP Contracts on or after October 1, 1981 shall be available for leasing by Lower Income Families other than Very Low-Income Families. Except with the prior approval of HUD, no Lower Income Family other than a Very Low-Income Family shall, after June 1, 1984, be approved for admission to any unit assisted under the following programs for which the effective date of the HAP Contract is October 1, 1981 or later:

(1) Part 880 (Section 8 Housing Assistance Payments Program for New Construction);

(2) Part 881 (Section 8 Housing Assistance Payments Program for Substantial Rehabilitation);

(3) Part 882, Subparts D and E (Section 8 Housing Assistance Payments Program, Moderate Rehabilitation);

(4) Part 883 (Section 8 Housing Assistance Payments Program—State Housing Agencies);

(5) Part 884 (Section 8 Housing Assistance Payments Program, New Construction Set-Aside for Section 515 Rural Rental Housing Projects);

(6) Part 885 (Loans for Housing for the Elderly or Handicapped);

(7) Part 886, Subpart A (Section 8 Housing Assistance Payments Program—Special Allocations (Loan Management Set-Aside)); or

(8) Part 886, Subpart B or C (Section 8 Housing Assistance Payments Program—Special Allocations (Disposition of HUD-Owned Projects)).

(b) *Request for exception.* A request by a PHA or Owner for approval of admission of Lower Income Families other than Very Low-Income Families to units described in paragraph (a) of this section must state the basis for requesting the exception and provide supporting data. Bases for exceptions that may be considered by HUD include the following:

(1) Lower Income Families that would otherwise be displaced from Section 8 Substantial Rehabilitation or Moderate Rehabilitation projects;

(2) Lower Income Families that are displaced as a result of Rental Rehabilitation or Development activities assisted under Section 17 of the 1937 Act, or as a result of activities assisted under the Rental Rehabilitation Demonstration Program;

(3) Need for admission of a broader range of tenants to preserve the financial or management viability of a project because there is an insufficient number of potential applicants who are Very Low-Income Families;

(4) Commitment of an Owner to attaining occupancy by Families with a broad range of incomes, as evidenced in the application for development. An application citing this basis should be supported by evidence that the Owner is pursuing this goal throughout its assisted projects in the community; and

(5) Project supervision by a State Housing Finance Agency having a policy of occupancy by families with a broad range of incomes, supported by evidence that the Agency is pursuing this goal throughout its assisted projects in the community, or a project with financing under Section 11(b) of the 1937 Act or under Section 103 of the Internal Revenue Code.

(c) *Specific limitation on certificates.* (1) Except with the prior approval of HUD, no Certificate of Family Participation shall be granted under Part 882, Subparts A and B or F, of this chapter on or after June 1, 1984 to any Lower Income Family that is not a Very Low-Income Family, except a Family (i) that resided in a unit with assistance under Subparts A and B or F before that date, (ii) whose participation in the Program has been continuous, and (iii) that wants to move to another dwelling unit with continued participation in the Section 8 Existing Housing Program under § 882.209(e).

(2) A request by a PHA for HUD approval to grant a Certificate of Family Participation under Part 882, Subparts A and B or F, of this chapter on or after June 1, 1984 to Lower Income Families other than Very Low-Income Families must state the basis for requesting the exception and provide supporting data. One basis for exception that may be considered by HUD is that Lower Income Families would otherwise be displaced or are actually displaced as a result of Rental Rehabilitation or Development activities assisted under Section 17 of the 1937 Act or as a result of activities assisted under the Rental Rehabilitation Demonstration Program.

(d) *Action on request for exception.* Whether to grant any request for exception is a matter committed by law to HUD's sole discretion, and no implication is intended to be created that the Department will seek to grant approvals up to the maximum limits permitted by statute, nor is any presumption of an entitlement to an exception created by the specification of certain grounds for exception that HUD may consider. HUD will review exceptions granted to Owners or PHAs at regular intervals. HUD may withdraw permission to exercise those exceptions for program applicants at any time that exceptions are not being used or after a periodic review, based on the findings of the review.

(e) *Reporting.* PHAs and Owners shall comply with HUD-prescribed reporting requirements that will permit HUD to maintain reasonably current data as to (1) the number of dwelling units that are subject to paragraph (a) of this section, (2) the number of units that are subject to paragraph (c) of this section and are occupied by Families who moved, for whom HAP Contracts were first effective under Part 882, Subpart B of this chapter on or after October 1, 1981 (including new HAP Contracts for Families for whom HAP Contracts had been in effect before that date with a different owner), (3) the number of Families occupying units described in clause (1) of this paragraph that were admitted to such units on or after June 1, 1984 and were not Very Low-Income Families when admitted, and (4) the number of Families who moved to units as described in clause (2) of this paragraph on or after June 1, 1984 that were not Very Low-Income Families when such Certificates were granted.

(Information collection requirements contained in paragraphs (b) and (c)(2) approved by the Office of Management and Budget under control number 2402–0315. Information collection requirements contained in paragraph (e) approved by the Office of Management and Budget under control number 2502–0204)

§ 813.106 **Annual Income.**

(a) Annual Income is the anticipated total income from all sources received by the Family head and spouse (even if temporarily absent) and by each additional member of the Family, including all net income derived from assets, for the 12-month period following the effective date of initial determination or reexamination of income, exclusive of income that is temporary, nonrecurring or sporadic as defined in paragraph (c) of this section, and exclusive of certain other types of income specified in paragraph (d) of this section.

(b) Income includes, but is not limited to:

(1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

(2) The net income from operation of a business or profession (for this purpose, expenditures for business expansion or amortization of capital indebtedness and an allowance for depreciation of capital assets shall not be deducted to determine the net income from a business);

(3) Interest, dividends, and other net income of any kind from real or personal property (for this purpose, expenditures for amortization of capital indebtedness and an allowance for depreciation of capital assets shall not be deducted to determine the net income from real or personal property). Where the Family has Net Family Assets in excess of $5,000, Annual Income shall include the greater of the actual income derived from all Net Family Assets or a percentage of the value of such Assets based on the current passbook savings rate as determined by HUD;

(4) The full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, including a lump-sum payment for the delayed start of a periodic payment;

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (but see paragraph (c)(3) of this section);

(6) Welfare Assistance. If the Welfare Assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the Welfare Assistance agency in accordance with the actual cost of shelter and utilities, the amount of Welfare Assistance income to be included as income shall consist of:

(i) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities, plus

(ii) The maximum amount that the Welfare Assistance agency could in fact allow the Family for shelter and utilities. If the Family's Welfare Assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph (b)(6)(ii) shall be the amount resulting from one application of the percentage;

(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling;

(8) All regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is head of the Family, spouse, or other person whose dependents are residing in the unit (but see paragraph (c)(5) of this section); and

(9) Any earned income tax credit to the extent it exceeds income tax liability.

(c) Annual Income does not include such temporary, non-recurring or sporadic income as the following:

(1) Casual, sporadic or irregular gifts;

(2) Amounts that are specifically for or in reimbursement of the cost of Medical Expenses;

(3) Lump-sum additions to Family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (but see paragraph (b)(5) of this section);

(4) Amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the Government to a veteran, for use in meeting the costs of tuition, fees, books and equipment. Any amounts of such scholarships, or payments to veterans, not used for the above purposes that are available for subsistence are to be included in income; and

(5) The hazardous duty pay to a Family member in the Armed Forces away from home and exposed to hostile fire.

(d) Income does not include:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children;

(3) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under the 1937 Act. The following types of income are subject to such exclusion:

(i) Relocation payments made under title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4621–4638);

(ii) The value of the allotment provided to an eligible household for coupons under the Food Stamp Act of 1977 (7 U.S.C. 2011–2029);

(iii) Payments to volunteers under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951–4993);

(iv) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(a));

(v) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);

(vi) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8621–8629);

(vii) Payments received from the Job Training Partnership Act (29 U.S.C. 1552(b));

(viii) Income derived from the disposition of funds of the Grand River Band of Ottawa Indians (Pub. L. 94–540, 90 Stat. 2503–2504); and

(ix) The first $2,000.00 of per capita shares received from judgment funds awarded by the Indian Claims

Commission or the Court of Claims (25 U.S.C. 1407–1408) or from funds held in trust for an Indian tribe by the Secretary of Interior (25 U.S.C. 117).

(e) If it is not feasible to anticipate a level of income over a 12-month period, the income anticipated for a shorter period may be annualized, subject to a redetermination at the end of the shorter period.

**§ 813.107 Total tenant payment.**

(a) *Total tenant payment for families whose initial lease is effective on or after August 1, 1982.* Total Tenant Payment shall be the highest of the following, rounded to the nearest dollar:

(1) 30 percent of Monthly Adjusted Income;

(2) 10 percent of Monthly Income; or

(3) If the Family receives Welfare Assistance from a public agency and a part of such payments, adjusted in accordance with the Family's actual housing costs, is specifically designated by such agency to meet the Family's housing costs, the monthly portion of such payments which is so designated. If the Family's Welfare Assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph (a)(3) shall be the amount resulting from one application of the percentage.

(b) *Total tenant payment for families whose initial lease was effective before August 1, 1982.* Total Tenant Payment shall be calculated in accordance with paragraph (a) of this section, except that instead of 30 percent, the percentage applied to Monthly Adjusted Income shall be in accord with the following table:

| Effective date of reexamination | Percentage |
|---|---|
| Aug. 1, 1982 to Sept. 30, 1982 | 26 |
| Oct. 1, 1982 to Sept. 30, 1983 | 27 |
| Oct. 1, 1983 to Sept. 30, 1984 | 28 |
| Oct. 1, 1984 to Sept. 30, 1985 | 29 |
| Oct. 1, 1985 and after | 30 |

(c) *Special conditions.* (1) For purposes of this section, a Family is considered to be a Family whose initial lease was effective before August 1, 1982 only if it satisfies one of the following conditions:

(i) The Family resided on July 31, 1982 in a unit under lease with assistance under the Section 8, Section 10(c), Section 23, Public Housing or Indian Housing Program, and its assistance has been continuous thereafter in the same project; or

(ii) The Family resided in a unit under lease in a HUD-owned project paying a below market rent at the time HUD sold the project; received assistance under the Section 8 Program immediately after sale; and the Family's assistance has been continuous thereafter in the same project; or

(iii) The Family resided on April 30, 1983 in a unit under lease with assistance under the Rent Supplement Program (Section 101 of the Housing and Urban Development Act of 1965), or the Section 236 Rental Assistance Program (Section 236(f)(2) of the National Housing Act); continued to receive such assistance until the Family was converted to assistance under the Section 8 Program; and after conversion its assistance has been continuous in the same project; or

(iv) The Family resided in a unit under lease with assistance under the Rent Supplement Program or the Section 236 Rental Assistance Program; was converted to assistance under the Section 8 Program on or after August 1, 1982 and before May 1, 1983; and continued to receive assistance under the Rent Supplement or the Section 236 Rental Assistance Program until the time of conversion, and after conversion its assistance has been continuous in the same project.

(2) So long as a Family whose initial lease was effective prior to August 1, 1982, continues to reside in the same Project, its Total Tenant Payment shall not be increased by more than 10 percent during any 12-month period as a result of: (i) Application of the percentages in subsection (b) of this section, and (ii) application of the changes in the definitions contained in §§ 813.102 and 813.106 from definitions of comparable terms in regulations in effect immediately prior to July 1, 1984.

(3) So long as a Family whose initial lease was effective on or after August 1, 1982, but which was in occupancy on September 30, 1984, continues to reside in the same project, its Total Tenant Payment shall not be increased by more than 10 percent during any 12-month period as a result of application of the changes in the definitions contained in §§ 813.102 and 813.106 from definitions of comparable terms in regulations in effect immediately prior to July 1, 1984.

(4) In the case of a Family receiving rental assistance under Section 521(a) of the Housing Act of 1949 on November 30, 1983, whose assistance is converted to Section 8 assistance on or after such date, the Total Tenant Payment payable by such Family shall not be increased by more than 10 percent during any 12-month period as a result of (i) such conversion, and (ii) if such Family was in occupancy on September 30, 1984, and continues to reside in the same project, application of the changes in the definitions contained in §§ 813.102 and 813.106 from definitions of comparable terms in regulations in effect immediately prior to July 1, 1984.

(5) This paragraph (5) applies to any Family that was converted to Section 8 assistance from assistance under the Rent Supplement Program, the Section 236 Rental Assistance Program, or the Section 23 Program on or after October 1, 1984, whose head of household, spouse or sole member was 62 years of age or older on the date of conversion. So long as such Family continues to reside in the same project, its Total Tenant Payment shall not be increased by more than 10 percent during any 12-month period as a result of such conversion.

(6) This paragraph (6) applies to any Family that was converted to Section 8 assistance from assistance under the Rent Supplement Program, the Section 236 Rental Assistance Program, or the Section 23 Program on or after October 1, 1981, and before October 1, 1984, whose head of household, spouse or sole member was 62 years of age or older on the date of conversion and that continued to reside in the same project on November 30, 1983. At the first regularly scheduled or interim reexamination for such Family conducted on or after October 1, 1984, the PHA or Owner shall recompute the contribution due from such Family for the period from December 1, 1983, or the date of conversion, whichever is later, to the effective date of such reexamination. Such recomputation shall be based on an assumption that the Family's contribution immediately prior to conversion was the lesser of (i) the actual contribution charged to the Family, or (ii) 25% of such Family's Annual Income After Allowances as determined as of the date of conversion or, if no reexamination was conducted as of such date, as determined at the first reexamination thereafter. The contribution of such Family for periods following conversion and prior to the effective date of the first reexamination conducted on or after October 1, 1984, shall be recomputed on a basis which provides that such contribution is not increased by more than 10% during any 12-month period as a result of conversion. If the contribution actually charged to such Family during the period commencing December 1, 1983 (or the date of conversion, if later) exceeds the maximum amount chargeable according to such recomputation, the excess amount collected shall first be offset against any amounts due from the Family to the PHA or Owner and any remaining

balance shall be applied as a credit to the Total Tenant Payment due immediately after the effective date of such reexamination. If the amount of any such credit to a Family exceeds 25 percent of the Total Tenant Payment due from such Family, such credit may be applied in not more than four installments. So long as such Family continues to reside in the same project, its Total Tenant Payment for periods commencing on the effective date of the first reexamination conducted on or after October 1, 1984, shall not be increased by more than 10 percent during any 12-month period as a result of the conversion, and application of the changes in the definitions contained in §§ 813.102 and 813.106 from definitions of comparable terms in regulations in effect immediately prior to July 1, 1984. If a Family to which this paragraph (6) would otherwise apply vacates a unit after November 30, 1983, and before the first reexamination conducted on or after October 1, 1984, the PHA or Owner will notify the Family of the possibility of a rent adjustment for the period commencing December 1, 1983 (or the date of conversion, if later). In order to obtain a refund, such a Family must submit (within 60 days of receiving the notice) a request therefor, including a current address to which any refund can be sent. For any Family making such a timely request, the PHA or Owner will make all calculations necessary to determine whether an adjustment is due to the Family under this paragraph (6) and, if so, the amount of any such adjustment will first be offset against any amounts due from the Family and any balance will be refunded to the Family.

(7) For the purposes of paragraphs (b) (2)-(6) of this section, the "same project" includes—

(i) For the Public Housing, Section 10(c), Section 23, and Section 8 Existing Housing (Finders-Keepers) and Moderate Rehabilitation Programs, units in the same program of a PHA and, in the case of an involuntary move, units in any of a PHA's programs; and

(ii) For all other programs, units in buildings located in adjacent sites that are managed as one project.

(8) The limitations contained in paragraphs (b) (2)-(6) of this section do not apply to portions of increases in Total Tenant Payment which are attributable to increases in income or changes in Family composition or circumstances unrelated to the factors referred to in paragraphs (b) (2)-(6) of this section.

(9) The limitations contained in paragraphs (b) (2)-(6) of this section do not apply to Families subject to paragraph (a)(3) of this section when the welfare agency includes as the housing component of the Family's grant an amount equal to the Total Tenant Payment, without reduction.

(10) In order to facilitate administration of the limitations provided in paragraphs (b) (2)-(4) and (6) of this section, upon any regular or interim reexamination of a Family which was in occupancy on July 1, 1984, the PHA or Owner shall continue to collect and verify information which would have been taken into account in calculating Annual Income and Annual Income After Allowances, as defined in regulations in effect immediately prior to September 30, 1984, as if such regulations were in effect at the date of such reexamination.

(11) The limitations prescribed in paragraphs (b) (2) through (6), of this section, shall be applied in accordance with procedures prescribed by HUD.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under OMB control number 2502-0204.)

### § 813.108 Utility reimbursement.

Where applicable, the Utility Reimbursement shall be paid to the Family in the manner provided in the pertinent program regulation. If the Family and the utility company consent, a PHA or Owner may pay the Utility Reimbursement jointly to the Family and the utility company, or directly to the utility company. Section 813.109 Initial determination, verification, and reexamination of family income and composition.

(a) *Responsibility for initial determination and reexamination.* The Owner or PHA shall be responsible for determination of eligibility for admission, for determination of Annual Income, Adjusted Income and Total Tenant Payment, and for reexamination of Family income and composition at least annually, as provided in pertinent program regulations and handbooks (see, *e.g.*, Part 880, Subpart F; Part 881, Subpart F; Part 882, Subparts B and E; Part 883, Subpart G; Part 884, Subpart B; Part 886, Subpart A; and Part 886, Subpart C. For purposes of this Part, the provisions of Subpart F of Part 880 or 881, as appropriate, shall apply to projects developed under Part 885). As used in this Part, the "effective date" of an examination or reexamination refers to (1) in the case of an examination for admission, the effective date of initial occupancy, and (2) in the case of a reexamination of an existing tenant, the effective date of the redetermined Total Tenant Payment.

(b) *Verification.* As a condition of housing assistance under any program covered by this Part, the PHA or Owner shall require the Family head and other such Family members as it designates to execute a HUD-approved release and consent authorizing any depository or private source of income, or any Federal, State or local agency, to furnish or release to the PHA or Owner and to HUD such information as the PHA, Owner or HUD determines to be necessary. The PHA or Owner shall also require the Family to submit directly documentation determined to be necessary. Information or documentation shall be determined to be necessary if it is required for purposes of determining or auditing a Family's eligibility to receive housing assistance, for determining the Family's Adjusted Income or Tenant Rent, for verifying related information, or for monitoring compliance with equal opportunity requirements. The use or disclosure of information obtained from a Family or from another source pursuant to this release and consent shall be limited to purposes directly connected with administration of this Part 813 or the housing program under which the Family is receiving or applying for assistance.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under OMB Control Number 2502-0204.)

### § 813.110 Transition Provisions.

(a) *Delayed implementation for rent calculations.* This Part shall be effective on July 1, 1984. However, applicability of the definitions of Annual Income and Adjusted Income contained in this Part shall be delayed until October 1, 1984, due to the need for distribution of instructions and forms, instruction of PHA and Owner staffs, and similar administrative adjustments.

(b) *Examinations and Reexaminations prior to October 1, 1984.* In the case of (1) any current tenant whose regularly scheduled reexamination is conducted on or after July 1, 1984, and before October 1, 1984, (2) current tenants for whom interim reexaminations are conducted during such period, and (3) applicants for admission whose initial examinations are conducted during such period, the PHA or Owner shall conduct the examination as scheduled and determine the tenant's contribution in accordance with regulations and procedures in effect immediately prior to July 1, 1984 (including the percentage to be applied to adjusted income in the case of such tenants pursuant to § 813.107 based on the effective date of the examination or reexamination). For purposes of this section, an examination or reexamination will be considered to be "conducted" at the time a PHA or owner, based upon its regular practice, begins scheduling and verifying the submission of data by an applicant or tenant, regardless of the "effective date" of the examination or reexamination (see § 813.109(a)).

(c) *Admissions.* On or after July 1, 1984, and prior to October 1, 1984, for purposes of application of §§ 813.103 and 813.105, a Family will be determined to be a Lower-Income Family or a Very Low-Income Family on the basis of a determination of Annual Income made in accordance with regulations and procedures in effect immediately prior to July 1, 1984. The admission of any Family on such basis prior to October 1, 1984, shall not be affected by a recalculation of Annual Income made pursuant to this Part on or after October 1, 1984.

(d) *Admissions and Reexaminations on or after October 1, 1984.* All regular or interim reexaminations, or examinations for admission, conducted on or after October 1, 1984, and determinations of Annual Income, Adjusted Income, Tenant Total Payments and Tenant Rent based thereon, shall be made in accordance with the requirements of this Part.

(e) *Optional Interim Reexamination.* Each PHA or Owner shall have the right, at its discretion, to require any Family in occupancy at October 1, 1984, to undergo an interim reexamination, and determination of Annual Income, Adjusted Income, Total Tenant Payment, and Tenant Rent based thereon, in accordance with the requirements of this Part, at any time after October 1, 1984, and prior to the next scheduled regular reexamination for such Family.

(f) *Retroactive Adjustment.* For all Families other than those whose examination for admission was conducted on or after October 1, 1984, in accordance with this Part, at the time of the first regular or interim reexamination conducted after October 1, 1984, the PHA or Owner shall make an additional calculation with respect to the period between October 1, 1984, and the effective date of such reexamination. An adjusted tenant rental payment shall be calculated for such period on the basis of—

(1) The Annual Income determined for such period in accordance with regulations and procedures in effect immediately prior to July 1, 1984;

(2) The Dependent and Elderly Family deductions prescribed by § 813.102;

(3) Estimated Medical Expenses taken into account in the calculation of Annual Income After Allowances for such period in accordance with regulations and procedures in effect immediately prior to July 1, 1984, but only if the Family was an Elderly Family during such period;

(4) Unusual Expenses taken into account in the calculation of Annual Income After Allowances for such period in accordance with regulations and procedures in effect immediately prior to July 1, 1984, but only if such unusual expenses qualify as Child Care Expenses as defined in § 813.102.

(5) The percentage applied to Monthly Adjusted Income in accordance with regulations and procedures in effect immediately prior to July 1, 1984, to determine the rental payment actually charged during such period.

(g) *Adjustments.* (1) If the adjusted tenant rental payment calculated under paragraph (f) is higher than the tenant payment actually charged for the applicable period, no adjustment shall be made. If the adjusted tenant rental payment calculated under paragraph (f) is lower than the tenant rental payment actually charged for the applicable period, the amount of such difference shall first be offset against any amounts due from the Family to the PHA or Owner and any remaining balance shall be applied as a credit to the Total Tenant Payment due immediately after the effective date of the reexamination. If the amount of any such credit to a Family exceeds 25 percent of the Total Tenant Payment due from such Family, such credit may be applied in not more than four installments.

(2) If a Family vacates a unit after October 1, 1984, and before the first reexamination occurring after such date, the PHA or Owner will notify the Family of the possibility of a rent adjustment for the period commencing October 1, 1984, subject to the requirement of a request therefor (made not later than 60 days after vacating the unit) together with notification of a current address to which any refund can be sent. For any Family making such a timely request, the PHA or Owner will make all calculations necessary to determine whether an adjustment is due to the Family pursuant to this subsection (g) and, if so, the amount of any such adjustment will first be offset against any amounts due from the Family and any balance will be refunded to the Family.

(h) *Increased Subsidy Needs.* If a PHA or Owner notifies HUD that its subsidy needs exceed the amount available under its contract with HUD as a result of reduced rental income caused by implementation of this Part, HUD will follow regular procedures appropriate to the circumstances.

## PART 800—SECTION 23 HOUSING ASSISTANCE PAYMENTS PROGRAM—NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION

2. Section 800.102 is amended by revising paragraph (b)—the definition of Gross Family Contribution, and adding a new definition of Utility Reimbursement as paragraph (k), as follows:

### § 800.102 Definitions.

* * * * *

(b) *Gross family contribution.* Total Tenant Payment, as defined in Part 813 of this chapter.

* * * * *

(k) *Utility reimbursement.* As defined in Part 813 of this chapter.

3. Sections 800.103(b)(1) and 800.103(i) are revised as follows:

### § 800.103 Basic policies.

* * * * *

(b) *Housing assistance payments.* (1) The housing assistance payments will be made to the owner in an amount that does not exceed the difference between the rent chargeable by the owner as specified in the Contract and the portion of said rent payable by the family, except where the Utility Allowance exceeds the Gross Family Contribution, in which case the housing assistance payments will include a payment in trust to the Owner solely for the purpose of paying the Utility Reimbursement to the Family.

* * * * *

(i) *Responsibilities of the LHA.* The LHA shall be responsible for determining family eligibility for assistance in accordance with provisions of Parts 812 and 813; determining the amount of adjusted income, the amount of rent payable by the Family, and housing assistance payments in accordance with Part 813; issuing Certificates of Family Participation to eligible families; notifying families determined eligible; approving owner-family leases; making housing assistance payments on behalf of eligible families; reexamining family eligibility at least annually; inspecting units before leasing, and at least annually thereafter, to determine that the units are maintained in decent, safe and sanitary condition (failure to do so shall constitute a Substantial Default by the LHA under the Annual Contributions Contract); authorizing evictions; and complying with equal opportunity requirements. The LHA shall provide advice and guidance to eligible families in finding suitable housing, including advice and guidance to families experiencing discrimination, in an affirmative manner to further the policies of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968 and Executive Order 11063.

* * * * *

Authority: Sec. 10(d), United States Housing Act, 1937 (42 U.S.C. 1410(b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

## PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

4. The authority citation for Part 880 is revised to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

5. Section 880.101(c) is revised to read as follows:

### § 880.101 General.

* * * * *

(c) *Tenant Rents and Eligible Families.* In addition to the Housing Assistance Payments, the project Owner receives a Tenant Rent directly from the assisted family. The total amount received by the Owner for rent is called the Contract Rent. Eligible families are Families that at admission have incomes within the HUD-specified income limits and are unable to pay the Gross Rent with their Total Tenant Payment.

* * * * *

6. Section 880.201 is amended by removing the definitions of Total Family Contribution, and Total Housing Expense; by adding, in alphabetical order, definitions of Annual Income, Gross Rent, Total Tenant Payment, and Utility Reimbursement; and by revising the definitions of Elderly Family, Family (eligible family), Housing Assistance Payment, Lower Income Family, Tenant Rent, Utility Allowance, and Very Low-Income Family, to read as follows:

### § 880.201 Definitions.

* * * * *

*Annual Income.* As defined in Part 813 of this chapter.

* * * * *

*Elderly Family.* As defined in Parts 812 and 813 of this chapter.

* * * * *

*Family (eligible family).* As defined in Part 812 of this chapter.

* * * * *

*Gross Rent.* As defined in Part 813 of this chapter.

* * * * *

*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 Contract Rent and the Tenant Rent. An additional payment is made to the Family when the Utility Allowance is greater than the Total Tenant Payment. In the case of a Family renting only a manufactured home space as provided in §880.202(j), the Housing Assistance Payment is the difference between the Gross Rent and the Total Tenant Payment, but such payment may not exceed the Contract Rent for the space, and no additional payment is made to the Family. A Housing Assistance Payment, known as a "vacancy payment", may be made to the Owner when an assisted unit is vacant, in accordance with the terms of the Contract.

* * * * *

*Lower Income Family.* As defined in Part 813 of this chapter.

* * * * *

*Tenant Rent.* The monthly amount defined in, and determined in accordance with Part 813 of this chapter.

*Total Tenant Payment.* The monthly amount defined in, and determined in accordance with Part 813 of this chapter.

*Utility Allowance* As defined in Part 813 of this chapter, made or approved by HUD.

*Utility Reimbursement.* As defined in Part 813 of this chapter.

*Very Low-Income Family.* As defined in Part 813 of this chapter.

7. Section 880.501(e) is revised as follows:

### § 880.501 The contract.

* * * * *

(e) *Payment of Utility Reimbursement.* Where applicable, the Utility Reimbursement 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 will be paid to the Owner in trust solely for the purpose of making the additional payment. If the Family and the utility company consent, the Owner may pay the Utility Reimbursement jointly to the Family and the utility company or directly to the utility company.

8. Section 880.603 is amended by removing paragraph (d), by revising the paragraph (b) introductory text, and paragraph (c), to read as follows:

### § 880.603 Selection and admission of assisted tenants

* * * * * *

(b) *Determination of Eligibility and Selection of Tenants.* The Owner is responsible for determining whether the applicant is eligible, in accordance with Parts 812 and 813 of this chapter, and for the selection of families:

* * * * *

(c) *Reexamination of Family Income and Composition.* (1) *Regular reexaminations.* The Owner must reexamine the income and composition of all Families at least every 12 months. Upon verification of the information, the Owner shall make appropriate adjustments in the Total Tenant Payment in accordance with Part 813 of this chapter and determine whether the Family's unit size is still appropriate. The Owner must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment and must carry out any unit transfer required by HUD.

(2) *Interim reexaminations.* The Family must comply with provisions in its lease regarding interim reporting of changes in income. If the Owner receives information concerning a change in the Family's income or other circumstances between regularly scheduled reexaminations, the Owner must make any adjustments determined to be appropriate. Any change in the Family's income or other circumstances that results in an adjustment in the Total Tenant Payment, Tenant Rent and Housing Assistance Payment must be verified.

(3) *Continuation of housing assistance payments.* A Family's eligibility for Housing Assistance Payments continues until the Total Tenant Payment equals the Gross Rent. The termination of eligibility at such point will not affect the family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information.

9. Section 880.604 is revised to read as follows:

### § 880.604 Tenant rent.

The eligible Family pays the Tenant Rent directly to the Owner.

### § 880.608 [Amended]

10. Section 880.608(a) is amended by removing the term "total family contribution" and by adding in its place the term "Total Tenant Payment."

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

11. The authority citation for Part 881 is revised to read as follows:

**Authority:** Secs. 3, 5 and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

12. Section 881.101(c) is revised to read as follows:

**§ 881.101 General.**

* * * * *

(c) *Tenant rents and eligible families.* In addition to the Housing Assistance Payments, the project Owner receives a Tenant Rent directly from the assisted family. The total amount received by the Owner for rent is called the Contract Rent. Eligible families are Families that at admission have incomes within the HUD-specified income limits and are unable to pay the Gross Rent with their Total Tenant Payment.

* * * * *

13. Section 881.201 is amended by: removing the definitions of Total Family Contribution and Total Housing Expense; by adding, in alphabetical order, definitions of Annual Income, Gross Rent, Total Tenant Payment, and Utility Reimbursement; and by revising the definitions of Elderly Family, Family (eligible family), Housing Assistance Payment, Lower-Income Family, Tenant Rent, Utility Allowance, and Very Low-Income Family, to read as follows:

**§ 881.201 Definitions.**

* * * * *

*Annual Income.* As defined in Part 813 of this chapter.

* * * * *

*Elderly Family.* As defined in Parts 812 and 813 of this chapter.

* * * * *

*Family (eligible family).* As defined in Part 812 of this chapter.

* * * * *

*Gross Rent.* As defined in Part 813 of this chapter.

* * * * *

*Housing Assistance Payment.* The payment made by the PHA to the Owner of a unit as provided in the Contract. The payment is the difference between the Contract Rent and the Tenant Rent. An additional payment is made to the Family when the Utility Allowance is greater than the Total Tenant Payment. In the case of a Family renting only a manufactured home space, as provided in § 881.202(i), the Housing Assistance Payment is the difference between the Gross Rent and the Total Tenant Payment, but such payment may not exceed the Contract Rent for the space. A Housing Assistance Payment, known as a "vacancy payment", may be made to the Owner when an assisted unit is vacant, in accordance with the terms of the Contract.

* * * * *

*Lower Income Family.* As defined in Part 813 of this chapter.

* * * * *

*Tenant Rent.* The monthly amount defined in, and determined in accordance with Part 813 of this chapter.

*Total Tenant Payment.* The monthly amount defined in, and determined in accordance with Part 813 of this chapter.

*Utility Allowance.* As defined in Part 813 of this chapter, made or approved by HUD.

*Utility Reimbursement.* As defined in Part 813 of this chapter.

*Very Low-Income Family.* As defined in Part 813 of this chapter.

14. Section 881.501(e) is revised to read as follows:

**§ 881.501 The contract.**

* * * * *

(e) *Payment of Utility Reimbursement.* Where applicable, the Utility Reimbursement 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. If the Family and the utility company consent, the Owner may pay the Utility Reimbursement jointly to the Family and the utility company or directly to the utility company.

15. Section 881.603 is amended by removing paragraph (d), by revising the paragraph (b) introductory text and paragraph (c), to read as follows:

**§ 881.603 Selection and admission of assisted tenants.**

* * * * *

(b) *Determination of Eligibility and Selection of Tenants.* The Owner is responsible for determining whether the applicant is eligible, in accordance with Parts 812 and 813 of this chapter, and for the selection of families:

* * * * *

(c) *Reexamination of Family Income and Composition.* (1) *Regular reexaminations.* The Owner must reexamine the income and composition of all Families at least once every 12 months. After consultation with the Family and upon verification of the information, the Owner shall make appropriate adjustments in the Total Tenant Payment in accordance with Part 813 of this chapter and determine whether the Family's unit size is still appropriate. The Owner must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment and carry out any unit transfer required by HUD.

(2) *Interim reexaminations.* The Family must comply with provisions in its lease regarding interim reporting of changes in income. If the Owner receives information concerning a change in scheduled reexaminations the Owner must make any adjustments determined to be appropriate. Any change in the Family's income or other circumstances that results in an adjustment in the Total Tenant Payment, Tenant Rent and Housing Assistance Payment must be verified.

(3) *Continuation of housing assistance payments.* A Family's eligibility for Housing Assistance Payments continues until the Total Tenant Payment equals the Gross Rent. The termination of eligibility at such point will not affect the Family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information.

16. Section 881.604 is revised to read as follows:

**§ 881.604 Tenant rent.**

The eligible Family pays the Tenant Rent directly to the Owner.

**§ 881.608 [Amended]**

17. Section 881.608(a) is amended by removing the term "total family contribution" and by adding in its place the term "Total Tenant Payment".

## PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

18. The authority citation for Part 882 is revised to read as follows:

**Authority:** Sections 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

19. Section 882.102 is amended by removing the definitions of Allowance for Utilities and Other Services ("Allowance"), Gross Family Contribution, Housing Assistance Payment on Behalf of Eligible Family, Income, and Eligible Family ("Family"); by adding, in alphabetical order, definitions for Annual Income, Family

("eligible family"), Housing Assistance Payment, Tenant Rent, Total Tenant Payment ("Gross Family Contribution"), Utility Allowance, and Utility Reimbursement; and by revising the definitions of Gross Rent, Lower Income Family, and Very Low-Income Family, to read as follows:

**§ 882.102 Definitions.**

* * * * *

*Annual Income.* As defined in Part 813 of this chapter.

* * * * *

*Family (eligible family).* As defined in Part 812 of this chapter.

* * * * *

*Gross Rent.* As defined in Part 813 of this chapter.

* * * * *

*Housing Assistance Payment.* The payment made by the PHA to the Owner of a unit under lease by an eligible Family, as provided in the Contract. The payment is the difference between the Contract Rent and the Tenant Rent. An additional payment is made by the PHA to the Family when the Utility Allowance is greater than the Total Tenant Payment. In the case of a Family renting only a manufactured home space as provided in Subpart F of this part, the Housing Assistance Payment is determined in accordance with § 882.604. A Housing Assistance Payment, known as a "vacancy payment", may be made to the Owner when a unit is vacant, in accordance with 882.105.

* * * * *

*Lower Income Family.* As defined in Part 813 of this chapter.

* * * * *

*Tenant Rent.* The monthly amount defined in, and determined in accordance with Part 813 of this chapter.

*Total Tenant Payment ("Gross Family Contribution").* The monthly amount defined in, and determined in accordance with Part 813 of this chapter.

* * * * *

*Utility Allowance.* As defined in Part 813 of this chapter, approved by a PHA.

*Utility Reimbursement.* As defined in Part 813 of this chapter. It is inapplicable to a Family renting only a manufactured home space.

*Very Low-Income Family.* As defined in Part 813 of this chapter.

20. Section 882.105(a) is revised as follows:

**§ 882.105 Housing assistance payments to owners.**

(a) *General.* Housing Assistance Payments shall be paid to an Owner for the unit under lease by an eligible Family, in accordance with the Contract. Where applicable, the Utility Reimbursement will be paid by the PHA to the Family as an additional Housing Assistance Payment. If the Family and the utility company consent, the PHA may pay the Utility Reimbursement jointly to the Family and the utility company or directly to the utility company. No Section 8 assistance may be provided for any unit occupied by an Owner; however, cooperatives are considered rental housing rather than Owner-occupied housing for this purpose.

**§ 882.112 [Amended]**

21. Section 882.112 is amended by removing the term "Gross Family Contribution" and adding in its place the term "Total Tenant Payment", and by removing the term "Family Contribution" in each place where it occurs and adding in its place the term "Tenant Rent".

**§ 882.113 [Removed]**

22. Section 882.113 is removed and reserved.

**§ 882.116 [Amended]**

23. Section 882.116(m) is amended by removing the phrase "exceptional medical or other unusual expenses" and adding in its place the term "medical or child care expenses", by removing the term "Gross Family Contribution" and adding in its place "Total Tenant Payment", and by removing the phrase "HUD-established schedules and criteria" and adding in its place "Part 813 of this chapter".

24. Section 882.212 is revised to read as follows:

**§ 882.212 Reexamination of Family income and composition.**

(a) *Regular reexaminations.* The PHA must reexamine the income and composition of all Families at least once every 12 months. After consultation with the Family and upon verification of the information, the PHA shall make appropriate adjustments in the Total Tenant Payment in accordance with Part 813 of this chapter and determine whether the Family's unit size is still appropriate (see § 882.213) The PHA must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment.

(b) *Interim reexaminations.* The Family must comply with provisions in § 882.118 regarding interim reporting of changes in income. If the PHA receives information concerning a change in the Family's income or other circumstances between regularly scheduled reexaminations the PHA must consult with the Family and make any adjustments determined to be appropriate. Any change in the Family's income or other circumstances that results in an adjustment in the Total Tenant Payment, Tenant Rent, and Housing Assistance Payment must be verified.

(c) *Continuation of housing assistance payments.* A Family's eligibility for Housing Assistance Payments shall continue until the Total Tenant Payment equals the Gross Rent. The termination of eligibility at such point will not affect the Family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents or other relevant cirumstances during the term of the Contract. However, eligibility also may be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information.

(d) *Termination of Contract.* If one year has elapsed since the date of the last Housing Assistance Payment, the Contract shall be terminated.

25. Section 882.514(a)(1) is revised to read as follows:

**§ 882.514 Family participation.**

(a) *Initial Determination of Family Eligibility.* (1) The PHA will be responsible for determining Family eligibility for participation, in accordance with HUD regulations (see Parts 812 and 813). The PHA is responsible for verifying the sources and amount of the Family's income and other information necessary for determining eligibility and the amount of the assistance payments.

* * * * *

26. Section 882.514(d) is amended by removing the terms "Gross Family Contribution" and "Allowances for Utilities and Other Services" and adding in their place, respectively, the terms "Tenant Rent" and "Utility Allowances".

27. Section 882.515 is revised to read as follows:

**§ 882.515 Reexamination of Family income and composition.**

(a) *Regular reexaminations.* The PHA must reexamine the income and composition of all Families at least once every 12 months. After consultation with the Family and upon verification of the information, the PHA shall make appropriate adjustments in the Total Tenant Payment in accordance with Part 813 of this chapter and determine whether the Family's unit size is still appropriate (see § 882.213). The PHA must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment.

(b) *Interim reexaminations.* The Family must comply with provisions in § 882.118 regarding interim reporting of changes in income. If the PHA receives information concerning a change in the Family's income or other circumstances between regularly scheduled reexaminations the PHA must consult with the Family and make any adjustments determined to be appropriate. Any change in the Family's income or other circumstances that results in an adjustment in the Total Tenant Payment, Tenant Rent, and Housing Assistance Payment must be verified.

(c) *Continuation of housing assistance payments.* A Family's eligibility for Housing Assistance Payments shall continue until the Total Tenant Payment equals the Gross Rent. The termination of eligibility at such point will not affect the Family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information.

**§ 882.602 [Amended]**

28. In § 882.602, the term "Gross Rent", is removed from the introductory language, the reference "Part 813 of this chapter" is substituted for "24 CFR 889.103" in the definition of Assisted Family, and the definition of Family Contribution is removed.

**§§ 882.510 and 882.606 [Amended]**

29. Sections 882.510 and 882.606 are amended by removing the terms "Allowances for Utilities and Other Services" and "Allowances for Utilities and Other Services" and adding in their place the terms "Utility Allowance", and "Utility Allowances", respectively.

30. Section 882.604 is revised to read as follows:

**§ 882.604 Assistance Payments.**

The provisions of § 882.105, Housing Assistance Payments to Owners, shall apply except for paragraph (a) of that section. Instead of § 882.105(a), the following shall apply: Assistance payments to the Owner will cover the difference between the Tenant Rent and the Gross Rent. However, the assistance payment may not exceed the Contract Rent. Amortization payments included in Gross Rent may include costs other than furniture included in the purchase price of the Mobile Home; the portion of the amortization costs covering principal and interest shall be reduced by 15 percent to exclude the cost of furniture unless there is evidence that furniture was not included in the purchase price. Principal and interest payments are those established at time of application; any increase in principal and interest due to later refinancing must not be allowed. Set-Up Charges incurred by an Assisted Family that relocates its home may be included in the monthly amortization payments made by the Family; in addition, Set-Up Charges incurred before the Family became an Assisted Family may be included to the extent that monthly payments are still being made to amortize them.

## PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

31. The authority citation for Part 883 is revised to read as follows:

Authority: Sections 3, 5 and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); section 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

32. Section 883.101(c) is revised as follows:

**§ 883.101 General.**

* * * * *

(c) *Tenant Rents and Eligible Families.* In addition to the Housing Assistance Payments, the project Owner receives a Tenant Rent directly from the assisted Family. The total amount received by the Owner for rent is called the Contract Rent. Eligible families are Families that at admission have incomes within the HUD-specified income limits and are unable to pay the Gross Rent with their Total Tenant Payment.

* * * * *

33. Section 883.302 is amended by removing the definitions of Total Family Contribution and Total Housing Expense; by adding, in alphabetical order, definitions of Annual Income, Gross Rent, Total Tenant Payment, and Utility Reimbursement; and by revising the definitions for Family-(Eligible Family), Housing Assistance Payment, Lower-Income Family, Tenant Rent, Utility Allowance, and Very Low-Income Family, to read as follows:

**§ 883.302 Definitions.**

* * * * *

*Annual Income.* As defined in Part 813 of this chapter.

* * * * *

*Family (Eligible Family).* As defined in Part 812 of this chapter.

* * * * *

*Gross Rent.* As defined in Part 813 of this chapter.

* * * * *

*Housing Assistance Payment.* The payment made to the Owner of an assisted unit by the State Agency as provided in the Contract. Where the unit is leased to an eligible Family, the payment is the difference between the Contract Rent and the Tenant Rent. An additional payment is made to the Family when the Utility Allowance is greater than Total Tenant Payment. In the case of a Family renting only a manufactured home space as provided in § 883.303(i), the Housing Assistance Payment is the difference between Gross Rent and the Total Tenant Payment, but such payment may not exceed the Contract Rent for the space, and no additional payment is made to the Family. A Housing Assistance Payment, known as a "vacancy payment", may be made to the Owner when an assisted unit is vacant, as provided in § 883.712.

* * * * *

*Lower Income Family.* As defined in Part 813 of this chapter.

* * * * *

*Tenant Rent.* The monthly amount defined in, and determined in accordance with Part 813 of this chapter.

*Total Tenant Payment.* The monthly amount defined in, and determined in accordance with Part 813 of this chapter.

*Utility Allowance.* As defined in Part 813 of this chapter, made or approved by HUD.

*Utility Reimbursement.* As defined in Part 813 of this chapter.

*Very Low-Income Family.* As defined in Part 813 of this chapter.

34. Section 883.602(e) is revised to read as follows:

**§ 883.602 The contract.**

* * * * *

(e) *Payment of utility reimbursement.* Where applicable, the Utility Reimbursement 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 Agency. Funds will be paid to the Owner in trust solely for the purpose of making this additional payment. If the Family and the utility company consent, the Owner may pay the Utility Reimbursement jointly to the Family and the utility company or directly to the utility company.

35. Section 883.704 is amended by removing paragraph (d), by revising the paragraph (b) introductory text, and paragraph (c), to read as follows:

**§ 883.704 Selection and admission of assisted tenants.**

* * * * *

(b) *Determination of Eligibility and Selection of Tenants.* The Owner is responsible for determining whether the applicant is eligible, in accordance with Parts 812 and 813 of this chapter, and for the selection of families:

* * * * *

(c) *Reexamination of Family Income and Composition.* (1) *Regular reexaminations.* The Owner must reexamine the income and composition of all Families at least once every 12 months. After consultation with the Family and upon verification of the information, the Owner shall make appropriate adjustments in the Total Tenant Payment in accordance with Part 813 of this chapter and determine whether the Family's unit size is still appropriate. The Owner must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment, and carry out any unit transfer required by HUD.

(2) *Interim reexaminations.* The Family must comply with provisions in its lease regarding interim reporting of changes in income. If the Owner receives information concerning a change in the Family's income or other circumstances between regularly scheduled reexaminations, the Owner must make any adjustments determined to be appropriate. Any change in the Family's income or other circumstances that results in an adjustment in the Total Tenant Payment, Tenant Rent and Housing Assistance Payment must be verified.

(3) *Continuation of housing assistance payments.* A Family's eligibility for Housing Assistance Payments continues until the Total Tenant Payment equals the Gross Rent. The termination of eligibility at such point will not affect the Family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information.

36. Section 883.705 is revised to read as follows:

**§ 883.705 Tenant rent.**

The eligible Family pays the Tenant Rent directly to the Owner.

**§ 883.709 [Amended]**

37. Section 883.709(a) is amended by removing the term "total family contribution" and by adding in its place the term "Total Tenant Payment".

## PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

38. The authority citation for Part 884 is revised to read as follows:

**Authority:** Sections 3, 5 and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); section 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

39. Section 884.102 is amended by removing definitions of Allowance for Utilities and Other Services ("Allowance"), Eligible Family ("family"), Housing Assistance Payment on Behalf of Eligible Family, and Gross Family Contribution; by adding, in alphabetical order, definitions of Annual Income, Family, Housing Assistance Payment, Tenant Rent, Total Tenant Payment, Utility Allowance and Utility Reimbursement; and by revising the current definitions of Gross Rent, Lower-Income Family, and Very Low-Income Family, to read as follows:

**§ 884.102 Definitions.**

* * * * *

*Annual Income.* As defined in Part 813 of this chapter.

* * * * *

*Family (eligible family).* As defined in Part 812 of this chapter.

* * * * *

*Gross Rent.* As defined in Part 813 of this chapter.

* * * * *

*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 Contract Rent and Tenant Rent. An additional Housing Assistance Payment is made to the Family when the Utility Allowance is greater than the Total Tenant Payment. A Housing Assistance Payment may be made to the Owner when a unit becomes vacant, in accordance with the terms of the Contract.

* * * * *

*Lower Income Family.* As defined in Part 813 of this chapter.

* * * * *

*Tenant Rent.* The monthly amount defined in, and determined in accordance with Part 813 of this chapter.

*Total Tenant Payment.* The monthly amount defined in, and determined in accordance with Part 813 of this chapter.

*Utility Allowance.* As defined in Part 813 of this chapter, made or approved by HUD.

*Utility Reimbursement.* As defined in Part 813 of this chapter.

*Very Low-Income Family.* As defined in Part 813 of this chapter.

40. Section 884.106(a) is revised to read as follows:

**§884.106 Housing assistance payments to owners.**

(a) *General.* Housing Assistance Payments shall be paid to Owners for units under lease by eligible families, in accordance with the Contract and as provided in this section. These Housing Assistance Payments will cover the difference between the Contract Rent and the Tenant Rent. Where applicable, the Utility Reimbursement 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 will be paid to the Owner in trust solely for the purpose of making this additional payment. If the Family and the utility company consent, the Owner may pay the utility reimbursement jointly to the Family and the utility company or directly to the utility company. No Section 8 assistance may be provided for any unit occupied by an Owner; however, cooperatives are considered rental housing, rather than Owner-occupied housing, for this purpose.

41. Section 884.116(b) is revised to read as follows:

**§ 884.116 Establishment of income limit schedules; occupancy by very low-income families.**

* * * * *

(b) In the leasing of units, the Owner shall comply with HUD requirements concerning the permissible income levels of families, as prescribed in 24 CFR Part 813.

**§ 884.117 [Removed]**

42. Section 884.117 is removed and reserved.

**§ 884.118 [Amended]**

43. Section 884.118 is amended by removing the terms "Family contribution" and "Family rents" and adding in their places respectively, the terms "Tenant Rent" and "Tenant Rents"; by removing the term "Allowance for Utilities and Other Services" and adding in its place the term "Utility Allowance"; and by removing the term "HUD-established schedules and criteria" and adding in its place the words "Part 813 of this chapter".

44. Section 884.218 is revised as follows:

**§ 884.218 Reexamination of Family income and composition.**

(a) *Regular reexaminations.* The Owner must reexamine the income and composition of all Families at least once each year. Upon verification of the information, the Owner shall make appropriate adjustments in the Total Tenant Payment in accordance with Part 813 of this chapter and determine whether the Family's unit size is still appropriate. The Owner must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment and carry out any unit transfer required by HUD.

(b) *Interim reexaminations.* The Family must comply with provisions of its lease regarding interim reporting of changes in income. If the Owner receives information concerning a change in the Family's income or other circumstances between regularly scheduled reexaminations, the Owner must make any adjustments determined to be appropriate. Any change in the Family's income or other circumstances that results in an adjustment in the Total Tenant Payment, Tenant Rent and Housing Assistance Payment must be verified.

(c) *Continuation of housing assistance payments.* A Family's eligibility for Housing Assistance Payments continues until the Total Tenant Payment equals the Gross Rent, or until the Family loses eligibility for continued occupancy under Farmer's Home Administration regulations.

## PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS—SPECIAL ALLOCATIONS

45. The authority citation for Part 886 is revised to read as follows:

Authority: Sections 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

46. Section 886.102 is amended by removing the definitions of Allowance for Utilities and Other Services ("Allowance"), Eligible Family ("Family"), Gross Family Contribution, and Housing Assistance Payment on behalf of Eligible Family; by adding, in alphabetical order, definitions of Annual Income, Family, Housing Assistance Payment, Tenant Rent, Total Tenant Payment, Utility Allowance, and Utility Reimbursement; and by revising the current definitions for Fair Market Rent, Gross Rent, Lower-Income Family, and Very Low-Income Family to read as follows:

**§ 886.102 Definitions**

* * * * *

*Annual Income.* As defined in Part 813 of this chapter.

* * * * *

*Fair Market Rent.* (a) * * *

(b) The Fair Market Rent, minus any applicable Utility Allowance, shall be the maximum amount that can be approved as the Contract Rent, except that the maximum approvable amount may be higher or lower as provided in § 886.110 or § 886.812.

*Family (eligible family).* As defined in Part 812 of this chapter.

*Gross Rent.* As defined in Part 813 of this chapter.

* * * * *

*Housing Assistance Payment.* The payment made by HUD 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 Contract Rent and the Tenant Rent. An additional Housing Assistance Payment is made when the Utility Allowance is greater than the Total Tenant Payment. A Housing Assistance Payment may be made to the Owner when a unit is vacant, in accordance with § 886.109.

*Lower Income Family.* As defined in Part 813 of this chapter.

* * * * *

*Tenant Rent.* The monthly amount defined in, and determined in accordance with Part 813 of this chapter.

*Total Tenant Payment.* The monthly amount defined in, and determined in accordance with Part 813 of this chapter.

*Utility Allowance.* As defined in Part 813 of this chapter made or approved by HUD.

*Utility Reimbursement.* As defined in Part 813 of this chapter.

*Very Low-Income Family.*As defined in Part 813 of this chapter.

47. Section 886.109(a) is revised to read as follows:

**§ 886.109 Housing assistance payments to owners.**

(a) *General.* Housing Assistance Payments shall be paid to Owners for units under lease by eligible families, in accordance with the Contract and as provided in this section. These Housing Assistance Payments will cover the difference between the Contract Rent and the Tenant Rent. Where applicable, the Utility Reimbursement 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 HUD. Funds will be paid to the Owner in trust solely for the purpose of making this additional payment. If the Family and the utility company consent, the Owner may pay the Utility Reimbursement jointly to the Family and the utility company or directly to the utility company.

* * * * *

**§ 886.117 [Removed]**

48. Section 886.117 is removed and reserved.

49. Section 886.118 amended by removing paragraph (a), redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively, and by revising the heading to read as follows:

**§ 886.118 Amount of housing assistance payments in projects receiving other HUD assistance.**

* * * * *

**§ 886.119 [Amended]**

50. Section 886.119 is amended by removing the terms "Family contribution" and "Family rents" and adding in their places, respectively, the terms "Tenant Rent" and "Tenant Rents"; by removing the term "Allowance for Utilities and Other Services" and adding in its place the term "Utility Allowance"; and by removing the term "HUD-established schedules and criteria" and adding in its place the words "Part 813 of this chapter".

51. Section 886.124 is revised to read as follows:

**§ 886.124 Reexamination of family income and composition.**

(a) *Regular reexaminations.* The Owner must reexamine the income and composition of all Families at least once each year. Upon verification of the information, the Owner shall make appropriate adjustments in the Total Tenant Payment in accordance with Part 813 of this chapter and determine whether the Family's unit size is still appropriate. The Owner must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment and carry out any unit transfer required by HUD.

(b) *Interim reexaminations.* The Family must comply with provisions in its lease regarding interim reporting of changes in income. If the Owner receives information concerning a change in the Family's income or other circumstances between regularly scheduled reexaminations, the Owner must make any adjustments determined to be appropriate. Any change in the Family's income or other circumstances that results in an adjustment in the Total Tenant Payment, Tenant Rent and Housing Assistance Payment must be verified.

(c) *Continuation of housing assistance payments.* A Family's eligibility for housing assistance payments shall continue until the Total Tenant Payment equals the Gross Rent. The termination of eligibility will not affect the Family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated in accordance with program requirements for such reasons as failure to submit requested verification information.

52. Section 886.302 is amended by removing definitions of Allowance for Utilities and Other Services ("Allowance"), Eligible Family ("Family"), Gross Family Contribution, Housing Assistance Payment on Behalf of Eligible Family, and Income; by adding, in alphabetical order, definitions of Family, Tenant Rent, Total Tenant Payment, Utility Allowance, and Utility Reimbursement; and by revising paragraph (d) of the definition of Fair Market Rent, and the definitions of Gross Rent, Housing Assistance Payment, Lower-Income Family and Very Low-Income Family, to read as follows:

**§ 886.302 Definitions**

* * * * *

*Annual Income.* As defined in Part 813 of this chapter.

* * * * *

*Fair Market Rent.* * * *

(d) The Fair Market Rent, minus the amount of any applicable Utility Allowance, shall be the maximum amount that can be approved as the Contract Rent, except that the maximum approvable amount may be higher or lower as provided in § 886.310 or § 886.312.

*Family (eligible family).* As defined in Part 812 of this chapter.

*Gross Rent.* As defined in Part 813 of this chapter.

* * * * *

*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 Contract Rent and the Tenant Rent. A Housing Assistance Payment may be made to the Owner when a unit is vacant, in accordance with the terms of the Contract. An additional Housing Assistance Payment is made when the Utility Allowance is greater than the Total Tenant Payment.

* * * * *

*Lower Income Family.* As defined in Part 813 of this chapter.

* * * * *

*Tenant Rent.* The monthly amount defined in, and determined in accordance with Part 813 of this chapter.

*Total Tenant Payment.* The monthly amount defined in, and determined in accordance with Part 813 of this chapter.

*Utility Allowance.* As defined in Part 813 of this chapter, made or approved by HUD.

*Utility Reimbursement.* As defined in Part 813 of this chapter.

*Very Low-Income Family.* As defined in Part 813 of this chapter.

53. Section 886.309(a) is revised to read as follows:

**§ 886.309 Housing assistance payment to owners.**

(a) *General.* Housing Assistance Payments shall be paid to Owners for units under lease by eligible Families, in accordance with the Contract and as provided in this section. These Housing Assistance Payments will cover the difference between the Contract Rent and the Tenant Rent. Where applicable, the Utility Reimbursement 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 HUD. Funds will be paid to the Owner in trust solely for the purpose of making this additional payment. If the Family and the utility company consent, the Owner may pay the Utility Reimbursement jointly to the Family and the utility company or directly to the utility company.

* * * * *

**§§ 886.316 and 886.317 [Removed]**

54. Sections 886.316 and 886.317 are removed and reserved.

**§ 886.318 [Amended]**

55. Section 886.318 is amended by removing the terms "family contribution" and "family rents" and adding in their places, respectively, the terms "Tenant Rent" and "Tenant Rents"; by removing the term "allowance for utilities and other services" and adding in its place the term "Utility Allowance"; and by removing the term "HUD-established schedules and criteria" and adding in its place the words "Part 813 of this chapter".

56. Section 886.324 is revised to read as follows:

**§ 886.324 Reexamination of Family income and composition.**

(a) *Regular reexaminations.* The Owner must reexamine the income and composition of all Families at least once each year. Upon verification of the information, the Owner shall make appropriate adjustments in the Total Tenant Payment in accordance with Part 813 of this chapter and determine whether the Family's unit size is still appropriate. The Owner must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment and carry out any unit transfer required by HUD.

(b) *Interim reexaminations.* The Family must comply with provisions in its lease regarding interim reporting of changes in income. If the Owner receives information concerning a change in the Family's income or other circumstances between regularly scheduled reexaminations, the Owner must consult with the Family and make any adjustments determined to be appropriate. Any change in the Family's income or other circumstances that results in an adjustment in the Total Tenant Payment, Tenant Rent and Housing Assistance Payment must be verified.

(c) *Continuation of housing assistance payments.* A Family's eligibility for Housing Assistance Payments shall continue until the Total Tenant Payment equals the Gross Rent. The termination of eligibility at such point will not affect the Family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information.

**PART 889—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—DETERMINATION OF INCOME FOR ELIGIBILITY AND GROSS FAMILY CONTRIBUTION—[REMOVED]**

58. Part 889 is removed.

* * * * *

(42 U.S.C. 1437a, 1437(f), 1437c(b) and 3535(d))

Dated: May 4, 1984.

**Maurice L. Barksdale,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

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May 10, 1984

# Part IV

# Department of the Treasury

## Customs Service

## 19 CFR Part 103

## Customs Regulations Amendment Relating to Disclosure of Information on Cargo Declarations of Inward Vessel Manifests; Final Rule

**DEPARTMENT OF THE TREASURY**

**Customs Service**

**19 CFR Part 103**

**[T.D. 84-111]**

## Customs Regulations Amendment Relating to Disclosure of Information on Cargo Declarations of Inward Vessel Manifests

**AGENCY:** Customs Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations relating to the disclosure of information on cargo declarations of inward vessel manifests, by allowing accredited representatives of the press, except in certain instances, to copy and publish all the information appearing on the cargo declaration submitted to Customs upon entry of the vessel. This change, which implements a court order, will provide the press with access to more information as to imported cargo, thus resulting in wider dissemination of trade statistics to the public.

**EFFECTIVE DATE:** May 10, 1984.

**FOR FURTHER INFORMATION CONTACT:** Doris B. Robinson, Regulations Control & Disclosure Law Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8681).

**SUPPLEMENTARY INFORMATION:**

### Background

Section 4.7, Customs Regulations (19 CFR 4.7), provides that the master of every vessel entering the United States must submit an inward foreign manifest and a copy thereof to the appropriate Customs officer. This manifest consists of various documents, among them the cargo declaration (Customs Form 1302), which lists all the inward foreign cargo, its gross weight, all bills of lading, all container and seal numbers, a description of the cargo, the names of foreign shippers and the country of dispatch, and the names of importers or consignees.

Pursuant to § 103.14, Customs Regulations (19 CFR 103.14), the above information may be revealed to accredited members of the press, who are permitted to examine and copy the manifest for publication of information and data not of a confidential nature. Of the information shown on the cargo declaration of the inward manifest, however, only the name of the consignee, the general character of the commodity, the quantity (or value but not both) of the cargo, the name of the vessel, and the country of dispatch may be copied and published. Furthermore, in the event that an importer or consignee has at any time made a written request for confidentiality under § 103.14(d)(1), the name of the importer or consignee on the cargo declaration must be withheld.

Controversy arose between the Government and the *Journal of Commerce*, a subsidiary of Twin Coasts Newspapers, Inc., over the withholding of the name of an importer or consignee who has requested confidentiality, and also the withholding of other information on the cargo declaration, such as bills of lading numbers, container numbers, and seal numbers, which were considered by Customs to be exempt from disclosure. On April 18, 1983, Twin Coasts Newspapers, Inc., on behalf of the *Journal of Commerce*, filed suit in the U.S. District Court for the District of Columbia, under the Freedom of Information Act (5 U.S.C. 552), requesting the Court to order the Customs Service to grant the *Journal of Commerce* access to the names of importers or consignees who had submitted requests for confidentiality, as well as access to bills of lading, container and seal numbers, and other notations appearing on the cargo declaration.

Customs gave written notification of the pending suit to 339 companies which were on record as having requested confidentiality with respect to the identity of consignees and importers as shown on the cargo declaration. This notification informed the companies that as parties in interest they could intervene in the pending suit, under rule 24 of the Federal Rules of Civil Procedure. They were also requested to submit to Customs a written explanation as to how disclosure of the consignee's or importer's name, as well as the other information on the cargo declaration sought by the *Journal of Commerce*, would cause substantial harm to the competitive position of their firms.

None of the contacted firms chose to intervene in the court action. A total of 129, however, did respond to Customs on the confidentiality issue. Of this number, 90 stated that they desired to maintain the confidentiality of the importer's or consignee's identity, citing reasons why disclosure of this and other information on the cargo declaration would cause substantial harm to their firms.

Settlement of the suit filed by Twin Coast Newspapers, Inc., was reached by a Consent Order of March 2, 1984, signed by Judge Joyce Hens Green. By the terms of the Consent Order, on May 31, 1984, and thereafter, Customs must permit the *Journal of Commerce* and other accredited representatives of the press to examine, copy and publish all the information appearing on cargo declarations submitted to Customs on May 31, 1984, and thereafter, except as provided below:

(a) If the Secretary of the Treasury makes a finding, on a shipment-by-shipment basis, that the disclosure of the information on the cargo declaration is likely to pose a threat of personal injury or property damage, the information shall not be disclosed; or

(b) If an importer or consignee wishes to request confidential treatment of its name and address on the cargo declaration, or the name and address of the shipper or shippers to such importer or consignee, this information may not be copied or published by accredited representatives of the press provided that:

(1) The importer or consignee, or authorized representative of the importer or consignee, submits a certification claiming confidential treatment of its name and address and/or the name and address of the shipper to the importer or consignee; and

(2) The certification contains sufficient facts to support the conclusion that the disclosure of the importer's or consignee's name and address and/or the shipper's name and address are exempt from mandatory public disclosure as personal or financial information obtained from a person, the public disclosure of which is likely to cause substantial harm to the competitive position of the importer or consignee.

Each certification meeting the requirements of paragraphs (1) and (2) above, upon approval by Customs, will be valid from the date of approval through the end of February 1986. Subsequent certifications will be valid through the end of February of even-numbered years. Information so certified may not be copied or published by accredited members of the press during the effective period of the certification.

Copies of the Consent Order will be furnished to any interested party upon written request to Customs.

### Inapplicability of Public Notice and Delayed Effective Date Requirement

The amendment implements a Court Order which becomes effective on May 31, 1984. In view of this fact, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are impracticable and unnecessary. For the same reasons, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d).

**Executive Order 12291**

The amendment does not meet the criteria for a "major rule" as defined by section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

**Regulatory Flexibility Act**

The provisions of the Regulatory Flexibility Act relating to an initial and final flexibility analysis (5 U.S.C. 603, 604) are not applicable to the amendment because it will not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

Pursuant to the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the information collection requirements contained in this document have been reviewed and approved by the Office of Management and Budget and assigned control number 1515–0124.

**Drafting Information**

The principal author of this document was Susan Terranova, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

**List of Subjects in 19 CFR Part 103**

Customs duties and inspection, Freedom of information.

**Amendments to the Regulations**

Part 103, Customs Regulations (19 CFR Part 103), is amended as set forth below.

**John P. Simpson,**

*Acting Commissioner of Customs.*

Approved: May 4, 1984.

**John M. Walker, Jr.,**

*Assistant Secretary of the Treasury.*

## PART 103—AVAILABILITY OF INFORMATION

Section 103.14 is amended by revising paragraphs (a), (a)(3), (c) and (d)(1), and by adding new paragraphs (d)(1)(i), (d)(1)(ii), (d)(1)(iii), and (d)(1)(iv), to read as follows:

**§ 103.14 Information on vessel manifests and summary statistical reports.**

(a) *Disclosure to members of the press.* Accredited representatives of the press, including newspapers, commercial magazines, trade journals, and similar publications may be permitted to examine vessel manifests and summary statistical reports of imports and exports and to copy therefrom for publication information and data subject to the following rules:

(1) * * *

(2) * * *

(3) All the information appearing on the cargo declaration (Customs Form 1302) of the inward vessel manifest may be copied and published. However, if the Secretary of the Treasury makes an affirmative finding on a shipment-by-shipment basis that the disclosure of the information contained on the cargo declaration is likely to pose a threat of personal injury or property damage, that information shall not be disclosed to the press.

(b) * * *

(c) *Disclosure to the public.* Members of the public shall not be permitted to examine vessel manifests. However, they may request and obtain from Customs, information from vessel manifests, subject to the rules set forth in paragraph (a) of this section. However, importers and exporters, or their duly authorized brokers, attorneys, or agents may be permitted to examine manifests with respect to any consignment of goods in which they have a proper and legal interest as principal or agent, but shall not be permitted to make any general examination of manifests or make any copies or notations from them except with reference to the particular importation or exportation in which they have a proper and legal interest.

(d) *Confidential treatment.* (1) *Inward manifest.* If an importer or consignee wishes to request confidential treatment of its name and address contained in inward manifests, or if an importer or consignee wishes to request confidential treatment of the name and address of the shipper or shippers to such importer or consignee, the following procedures shall be followed:

(i) An importer or consignee, or authorized employee or official of the importer or consignee, must submit a certification claiming confidential treatment of its name and address. The name and address of an importer or consignee includes marks and numbers which reveal the name and address of such importer or consignee. An importer or consignee filing a certification requesting shipper confidentiality must either designate with particularity the name and address of each shipper for whom it seeks confidentiality or it may certify that it seeks confidentiality for all shippers to such importer or consignee.

(ii) There is no prescribed format for a certification. Such certification, however, shall contain sufficient facts to support the conclusion that the disclosure of the name and address of the importer or consignee, and/or the name and address of the shipper or shippers to such importer or consignee certified as confidential, are exempt from mandatory public disclosure as commercial or financial information obtained from a person, the public disclosure of which would likely cause substantial harm to the competitive position of the importer or consignee. The certification shall include the importer's or consignee's Internal Revenue Service Employer Number, if available.

(iii) The certification must be submitted to the regional commissioner for the region in which the port of entry is located.

(iv) Each initial certification meeting the above requirements and approved by Customs will be valid from the date of its approval through the end of February 1986. Subsequent certification will be valid through the end of February of even-numbered years. Renewal certification should be submitted to the regional commissioner at least 60 days prior to the expiration of the current certification. Information so certified may not be copied or published during the effective period of the certification. An importer or consignee shall be given written notification of approval or nonapproval of its certification of confidentiality. An importer or consignee notified of nonapproval of its certification of confidentiality may submit additional facts to support its claim.

(Approved by the Office of Management and Budget under control number 1515–0124)

(R.S. 251 as amended, sec. 624, 46 Stat. 759 (5 U.S.C. 301; 19 U.S.C. 66, 1624))

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