

significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 930 (7 CFR Part 930), regulating the handling of tart cherries grown in eight states. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). It is hereby found that this action will tend to effectuate the declared policy of the Act.

The interim rule provided for public comment through June 29, 1984. Only one comment was received. That comment, from the Cherry Administrative Board, recommended two additional revisions. One suggested revision in § 930.101, extends until September 15 of each year, the deadline for applying for export diversion credit. Because of the contracting problems inherent in exporting, the July 8 application date would be impractical with regard to such diversions. The other revision suggested by the Board is an editorial change in § 930.103. These additional revisions are hereby accepted. Therefore, the regulation is continued in effect as previously issued with the exceptions noted.

It is further found that it is impracticable and contrary to the public interest to engage in further public rulemaking procedures and to postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act and because the changes are minor in nature and the application date change relieves a restriction for all growers. Interested persons were given an opportunity to submit comments on the regulation.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting or recordkeeping provisions that are included in this final rule have been submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained.

List of Subjects in 7 CFR Part 930

Marketing agreements and orders,
Cherries

PART 930—[AMENDED]

Therefore, the interim rule published June 14, 1984 (49 FR 24510) is confirmed as final. The regulations are further amended as follows:

1. Section 930.101 Diversion

Application, is amended by revising paragraph (b) to read:

§ 930.101 Diversion Application.

(b) Each producer who elects to divert cherries into an outlet, as the Board, with the approval of the Secretary may designate as specified in § 930.56, shall prior to such diversion submit to the Board at its office, or such other location as may be specified by the Board, on forms provided by the Board, an application to divert cherries as required by § 930.56(a)(1). Applications for diversion by export shall be filed with the Board not later than September 15 of the current fiscal year. Applications for all other forms of diversion shall be filed with the Board not later than July 8 of the current fiscal year: *Provided*, That such applications for growers who will harvest cherries prior to July 8 of any fiscal year shall be filed on such earlier date as may be specified by the Board or, if not so specified, prior to harvest of such cherries.

2. Section 930.103 Diversion, is revised to read as follows:

§ 930.103 Diversion.

Diversion shall be accomplished by: Processing restricted percentage cherries into juice or juice concentrate by pressing such cherries fresh or freezing them unpitted; Processing restricted percentage cherries into dried products; or Leaving restricted percentage cherries unharvested: *Provided*, That such cherries shall remain on the tree until final inspection and shall not be removed from the premises other than by record approval: *Provided Further*, That unless an alternate method of tree selection is requested by an applicant and is approved by the Board, the trees involved with non-harvest shall be designated on a random basis by the Board through its authorized representatives. Diversion may also be accomplished by exporting restricted percentage cherries to foreign countries other than Canada or Japan.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: August 1, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 84-20759 Filed 8-8-84; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1207

Potato Research and Promotion Plan; Issuance of Amendment Regarding Assessment; Public Representation and USDA Reimbursement of Administrative Expenses; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; correction.

SUMMARY: This corrects FR Doc. 84-13343 on page 20805 of the Federal Register of May 17, 1984, by inserting the word "initially" before "be entitled to at least one member." in the last sentence of § 1207.320(b). The word "initially" was inadvertently dropped in the rulemaking proceedings. Restoring it to the plan will clarify the membership provisions of the Potato Board.

FOR FURTHER INFORMATION CONTACT: Kurt Kimmel, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250, (202) 447-2681.

SUPPLEMENTARY INFORMATION: In FR Doc. 84-13343 on page 20805 in the Federal Register of May 17, 1984, paragraph (b) of § 1207.320 is corrected by inserting the word "initially" as follows:

§ 1207.320 Establishment and membership.

(b) Producer membership upon the Board shall be determined on the basis of the potato production reported in the latest Crop Production Annual Summary Report issued by the Crop Reporting Board, U.S. Department of Agriculture. Unless the Secretary, upon recommendation of the Board, determines an alternate basis, for each five million hundredweight of such production, or major fraction thereof, produced within each State, such State shall be entitled to one member. However, each State shall initially be entitled to at least one member.

(Title III of Pub. L. 91-670; 84 Stat. 2041; 7 U.S.C. 2611-2627; as amended)

Dated: August 2, 1984.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84-20895 Filed 8-8-84; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF ENERGY

10 CFR Part 600

Financial Assistance Rules

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The final rule being issued today makes technical amendments to the Department of Energy (DOE) Assistance Regulations, 10 CFR Part 600, Subpart C (July 8, 1980) and DOE Financial Assistance Rules, 10 CFR Part 600, Subparts A, B, and C, (October 5, 1982). These amendments are necessary because 10 CFR Part 600 incorporates by reference several provisions of the Federal Procurement Regulations (FPR) and the Department of Energy Procurement Regulations (DOE-PR). The FPR was superseded by the Federal Acquisition Regulation (FAR) and the DOE-PR was superseded by the Department of Energy Acquisition Regulations (DEAR) on April 1, 1984. This rulemaking changes all applicable FPR and DOE-PR references in the DOE Financial Assistance Rules and DOE Assistance Regulations to FAR and DEAR references.

EFFECTIVE DATE: August 7, 1984.

FOR FURTHER INFORMATION CONTACT:

Cherlyn Seckinger, Business and Financial Policy Branch, (MA-421.2), Procurement and Assistance Management Directorate, Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585, (202) 252-8173
 Paul Sherry, Office of the Assistant General Counsel for Procurement and Financial Incentives, (GC-43), Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585, (202) 252-1528

SUPPLEMENTARY INFORMATION:**Table of Contents**

- I. Background
- II. Description of Changes
- III. Review Under Executive Order 12291
- IV. Review Under the Regulatory Flexibility Act
- V. Review Under the National Environmental Policy Act
- VI. List of Subjects in 10 CFR Part 600

I. Background

On September 19, 1983, the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration jointly published the Federal Acquisition Regulation (FAR) as a final rule (48 FR 42102). The FAR replaced the Federal Procurement Regulations (FPR), effective April 1, 1984.

The Department of Energy Acquisition Regulations (DEAR), which implement and supplement the FAR, were published as a final rule (49 FR 11922, March 28, 1984). The DEAR replaced the Department of Energy Procurement

Regulations (DOE-PR) effective April 1, 1984, except for the Patent provisions of the DOE-PR.

The Department of Energy (DOE) Financial Assistance Rules (47 FR 44076, October 5, 1982) and Assistance Regulations (45 FR 46044, July 8, 1980) incorporate by reference certain FPR and DOE-PR provisions. This rule-making conforms the DOE Financial Assistance Rules and Assistance Regulations by replacing all applicable references to the superseded FPR and DOE-PR with reference to the appropriate provisions of the FAR and DEAR except as follows:

Patents—Cooperative Agreements to small business firms and domestic nonprofit organizations as defined in the Office of Management and Budget (OMB) Circular A-124 will continue to be covered by the DOE Financial Assistance Rules, 10 CFR Part 600.118(b). Agreements to other than small business firms and domestic nonprofit organizations are covered by the Patent provisions of the DOE-PR, 41 CFR Part 9-9, including 9-9.107-5(a) as amended by 48 CFR 927.300, pending Departmental rule-making in this area.

Any cooperative agreement solicitation issued on or after the effective date of this rule and any new, continuation or renewal cooperative agreement award with a beginning date on or after the effective date of this rule shall be subject to these amendments. For any cooperative agreement awarded prior to the effective date of this rule, the parties, by mutual agreement, may agree to incorporate the changes contained in this rule.

Section 501(c)(1) of the DOE Organization Act (Pub. L. 95-91; 42 U.S.C. 7191) provides that if DOE determines that no substantial legal or factual issue exists as to a rule, and determines that the amendment is unlikely to have a substantial impact on the Nation's economy or on large numbers of individuals or businesses, that rule may be promulgated in accordance with the Administrative Procedure Act.

DOE has determined that there are no substantial issues of law or fact in this amendment because it reflects only changes in DOE's procedural rule.

Under the Administrative Procedure Act, notice and comment are not required for "rule of agency . . . procedures." (Section 553(b)(A)) DOE has determined that prior notice and comment with respect to this rule are not required because the rule is a procedural rule.

In § 600.6(a)(3) the citations to 41 CFR 9-4.57 and 9-4.58 are changed to 48 CFR 917.72 and 917.73 respectively.

In § 600.103(b)(5) the citation to 41 CFR Subpart 1-15.2 (Federal Procurement Regulations) as modified by 41 CFR 9-15.2 (DOE Procurement Regulations) is changed to 48 CFR 31.2 (Federal Acquisition Regulation) as modified by 48 CFR 931.2 (DOE Acquisition Regulations).

In § 600.118(b)(3) the citation to 41 CFR 9-9.202 is changed to 48 CFR 952.227, and the citation to 41 CFR 9-9.201 in the Rights in Technical Data (Short Form) clause is changed to DEAR 927.401.

In § 600.233(b) the citation to 41 CFR 9-4.57 is changed to 48 CFR 917.72.

In § 600.234(a)(2) the citation to 41 CFR 9-4.58 is changed to 48 CFR 917.73 and the references to the DOE Assistance Regulations (DOE-AR) and the DOE Procurement Regulations (DOE-PR) are changed to the DOE Financial Assistance Rules (DOE-FAR) and the DOE Acquisition Regulations (DEAR).

In § 600.290(b)(1) the citations FPR, 41 CFR Chapter 1 and DOE-PR, 41 CFR Chapter 9 are changed to FAR, 48 CFR Chapter 1 and DEAR, 48 CFR Chapter 9 respectively.

In § 600.290 (b)(2) and (b)(3) references to the FPR and DOE-PR are changed to FAR and DEAR.

In § 600.290(b)(4) the reference to patents, data, and copyright regulations as set forth in 41 CFR Part 9-9 is updated to include 48 CFR Part 927 and 10 CFR Part 600.118(b)(1).

In § 600.290(b)(4)(ii) the citations to 41 CFR 9-9.202-3(e)(2), 41 CFR 9-9.202-3(c) and 41 CFR 9-9.202-3 are changed to 48 CFR 952.227-75, 48 CFR 952.227-73, and 48 CFR 927.402-3 (e)(2) and (e)(3) respectively.

In § 600.290 (b)(4)(iii) and (b)(4)(iv) the references to 41 CFR Part 9-9 are updated to include 48 CFR 952.227 and 10 CFR Part 600.118.

In § 600.290(b)(5) the citation to 41 CFR is changed to 48 CFR.

In § 600.290(b)(6) the references to the FPR and DOE-PR are changed to the FAR and DEAR.

For the purpose of clarity, the listing of contract clauses cited in § 600.29 (c), (d), and (e) of the Assistance Regulations (10 CFR Part 600, Subpart C, July 8, 1980) as amended by the Financial Assistance Rules (10 CFR Part 600, October 5, 1982) is being republished. The citations to the FPR and DOE-PR are updated to the FAR and DEAR except for "Patents" clauses for other than small business firms and domestic non-profit organizations. The DOE-PR citations are still applicable in those instances. The Patents Rights clause of § 600.118(b)(1) is applicable to

awards to small business firms and domestic non-profit organizations. The following clauses are omitted from this rulemaking because they are not contained in the FAR or the DEAR:

600.290(e)(19) Notice Regarding Late Delivery

600.290(e)(22) Disposition of Material

600.290(e)(33) Reports of Work

600.290(e)(35) Standards of Work

III. Review Under Executive Order 12291

In accordance with the requirements of Executive Order 12291 (48 FR 13193, February 17, 1981), this final rule has been reviewed by OMB. DOE has concluded that this is not a "major rule" because its promulgation will not result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local Government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete in domestic or export markets.

IV. Review Under the Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354). DOE certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no final regulatory flexibility analysis has been prepared.

V. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rulemaking clearly would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. et seq. (1976)); the Council on Environmental Quality Regulations (40 CFR Parts 1500-1508); and the DOE guidelines (45 FR 20694, March 28, 1980) and, therefore, does not require an environmental impact statement pursuant to NEPA.

List of Subjects in 10 CFR Part 600

Administrative practice and procedure, Grant programs/energy, Cooperative agreements/energy, Patents, Data, Copyrights.

Authority: Secs. 644 and 646, Pub. L. 95-91, 91 Stat. 599, (42 U.S.C. 7254 and 7256); Pub. L. 95-224, 92 Stat. 3 (41 U.S.C. 501).

Issued in Washington, D.C., July 26, 1984.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

PART 600—FINANCIAL ASSISTANCE RULES

For the reasons set out in the preamble, 10 CFR Part 600 is amended as follows:

1. Section 600.6 is amended by revising paragraph (a)(3) to read as follows:

§ 600.6. Discretionary Awards.

(a) * * *

(3) Applications submitted in response to a Program Opportunity Notice or a Program Research and Development Announcement (see 48 CFR 917.72 and 917.73) if, after an application is selected for award, DOE determines that a grant or cooperative agreement is the appropriate award instrument.

* * *

2. Section 600.103 is amended by revising paragraph (b)(5) to read as follows:

§ 600.103. Cost determinations.

* * *

(b) * * *

(5) 48 CFR 31.2 (Federal Acquisition Regulation) as modified by 48 CFR 931.2 (DOE Acquisition Regulations) for grants to for-profit organizations (other than for-profit hospitals) including corporations, partnerships, and sole proprietorships.

* * *

3. Section 600.118 is amended by revising paragraph (b)(3) to read as follows:

§ 600.118. Patents, data, and copyrights.

* * *

(b) * * *

(3) *Rights in Technical Data (Short Form)*. This clause shall apply to all grants other than those having as a purpose the conduct of a conference, symposium, or training. However, this clause does not provide protection for proprietary data. If proprietary data may be utilized under a grant, other appropriate technical data clauses (as provided in 48 CFR 952.227) may be included in the award.

Rights in Technical Data (Short Form)

(a) *Definitions*. The definitions of terms set forth in DEAR 927.401 apply to the extent these terms are used herein.

(b) *Allocation of rights*. (1) The Government shall have:

(i) Unlimited rights in technical data first produced or specifically used in the performance of this grant.

(ii) The right of the Contracting Officer or his representatives to inspect at all reasonable times up to three years after final payment under this grant all technical data first produced or specifically used in the grant (for which inspection the grantee or its contractor or subcontractor shall afford proper facilities to DOE), and

(iii) The right to have any technical data first produced or specifically used in the performance of this grant delivered to the Government as the Contracting Officer may from time-to-time direct during the progress of the work, or in any event as the Contracting Officer shall direct upon completion or termination of this grant.

(2) The grantee shall have: The right to use for its private purposes, subject to patent, security or other provisions of this grant, technical data it first produces in the performance of this grant provided the date requirements of this grant have been met as of the date of the private use of such data. The grantee agrees that to the extent it receives or is given access to proprietary data or other technical, business or financial data in the form of recorded information from DOE or a DOE contractor or subcontractor, the grantee shall treat such data in accordance with any restrictive legend contained thereon, unless use is specifically authorized by prior written approval of the Contracting Officer.

(c) *Copyrighted material*. (1) The grantee agrees to and does hereby grant to the Government and to others acting on its behalf:

(i) A royalty-free, nonexclusive, irrevocable, world-wide license for Governmental purposes to reproduce, distribute, display, and perform all copyrightable material first produced or composed in the performance of this grant by the grantee, its employees or any individual or concern specifically employed or assigned to originate and prepare such material and to prepare derivative works based thereon.

(ii) A license as aforesaid under any and all copyrighted or copyrightable work not first produced or composed by the grantee in the performance of this grant but which is incorporated in the material furnished under the grant, provided that such license shall be only to the extent the grantee now has, or prior to completion or close-out of the grant, may acquire the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

(2) The grantee agrees that it will not knowingly include any material copyrighted by others in any written or copyrightable material furnished or delivered under this grant without a

license as provided for in paragraph (c)(1)(ii) of this section, or without the consent of the copyright owner, unless it obtains specific written approval of the Contracting Officer for the inclusion of such copyright material.

4. Section 600.233 is amended by revising paragraph (b) to read as follows:

§ 600.233 Program Opportunity Notice (PON).

(b) A PON is a unique form of solicitation used by DOE in accelerating the demonstration of the technical feasibility and commercial application of potentially beneficial nonnuclear energy sources and utilization technologies. The Federal Nonnuclear Energy Research and Development Act of 1974, Pub. L. 93-577 (as amended) section 6, authorized the Department to accelerate commercial application of new energy technologies and to provide Federal assistance for participation in demonstration projects. Section 6d(1) of the Act required the Agency to promulgate regulations to provide a procedure for selection of proposals for projects authorized under this section of the Act and the PON implements a portion of this requirement. (See 48 CFR 917.72)

5. Section 600.234 is amended by revising paragraph (a)(2) to read as follows:

§ 600.234 Program Research and Development Announcement (PRDA).

(a) * * *

(2) As a result of a PRDA, a procurement contract, grant, or cooperative agreement may be awarded. If the intended relationship is expected to be a procurement contract, DEAR 917.73 shall be followed. If the intended relationship is expected to be a financial assistance instrument, the DOE Financial Assistance Rules (DOE-FAR) shall be followed. Specifically, this section will apply if the intended relationship is expected to be a Cooperative Agreement. In any event, any public notice, solicitation, request for applications or proposals, should indicate whether the intended relationship will be one of procurement or assistance and state that the applicable DEAR will govern if a procurement contract is entered into and that the DOE-FAR will govern if a financial assistance instrument is utilized.

6. Section 600.290 is amended by revising paragraphs (b)(1), (b)(2), (b)(3),

(b)(4), (b)(5), (b)(6), (c)(1)-(24), (d)(1)-(13), and (e)(1)-(37) to read as follows:

§ 600.290 General and Special Provisions.

(b) *General and Special Provisions.*

(1) In Federal procurement, the Government's need to acquire goods and services at fair value has led to highly developed procurement procedures. The operational rules for guiding DOE procurement transactions are contained in the Federal Acquisition Regulation (FAR), 48 CFR Chapter 1 and the Department of Energy Acquisition Regulations (DEAR), 48 CFR Chapter 9. These regulations contain a panoply of standard, optional, and special provisions which spell out rights and obligations of the parties in detail. Although these regulations are not applicable *per se* to Cooperative Agreements, some of the provisions contained in these regulations provide a reference point for negotiating Cooperative Agreement terms conditions. Use of these provisions, modified as appropriate, should insure that the agreement reached by the parties is considered in the light of the experience gained in interpretation of these provisions based on established legal precedent in the procurement field. Hopefully, by avoiding many of the problems that have arisen in the procurement field, the parties will be able to negotiate an agreement that reflects the true nature of the Cooperative Agreement.

(2) Some FAR and DEAR provisions express basic federal policies that are equally applicable to procurement contracts and Cooperative Agreements. These provisions are contained in paragraph (c) of this section and constitute mandatory General Provisions for Cooperative Agreements under this regulation for certain classes of participants.

(3) Many other provisions in the FAR and DEAR are normally suitable for Cooperative Agreements and should be utilized unless the context of the specific Agreement being negotiated calls for different provisions. These provisions are specified in paragraph (d) of this section. Finally, many of the provisions in the FAR and DEAR might be appropriate and as a minimum, should be considered by DOE and the participant to insure the issues raised by the provisions have been considered. These provisions are contained in paragraph (e) of this section. The provisions contained in paragraphs (d) and (e) constitute the Special Provisions of the Cooperative Agreement along with any provisions negotiated between the parties. When used, the Special

Provisions in paragraphs (d) and (e) of this section should be modified to reflect the intent of the parties to the Cooperative Agreement. For example, the Government's rights of termination and change under paragraphs (d)(2) and (e)(20) of this section (which could constitute separate Article(s) in the Cooperative Agreement Schedule) are clearly appropriate where the Government bears all the costs but when there is an undertaking on a cooperative basis, the Participant who has a direct financial interest should have a voice regarding termination, and/or changes (recognizing DOE may need to retain final decision authority in these areas). In the area of liability and indemnifications, provisions in the Cooperative Agreement should reflect the hazards, and risks, and respective responsibilities of the Government and the participant, especially in regard to liability to third parties.

(4) Cooperative Agreements entered into pursuant to this part are subject to the patents, data, and copyright regulations set forth in 41 CFR Part 9-9, 48 CFR 927, and 10 CFR Part 600.118(b)(1), as appropriate. For cooperative agreements, the terms "grant," "grantee," and "subgrant" in the Patent Rights clause of § 600.118(b)(1) shall be substituted to include "cooperative agreement," "participant," and "subagreement" respectively.

(i) The long form Patent Rights clause of 41 CFR 9-9.107-5(a) shall be used in all Cooperative Agreements with other than domestic small business firms or nonprofit organizations having as a purpose the conduct of research, development or demonstration work, except where a waiver is granted or in agreements for which the short form patent rights clause of 41 CFR 9-9.107-6 is appropriate. In such agreements with domestic small business firms or nonprofit organizations, the patent rights clause of § 600.118(b)(1) shall be used.

(ii) The Rights in Technical Data Clause (long form) of 48 CFR Part 952.227-75 shall be used in all Cooperative Agreements having as a purpose the conduct of research, development, or demonstration work, or in any other agreement where technical data are expected to be first produced under the Agreement, where technical data are specified to be delivered in the Agreement, or where the Agreement contains the Additional Technical Data Requirements clause of 48 CFR 952.227-73. As more fully explained in the discussion contained in 48 CFR 927.402-3 (e)(2) and (e)(3), optional paragraph (g) "Limited Rights in Proprietary Data" of

Alternate I of the Rights in Technical Data (long form) clause shall be used where DOE may have a need for delivery of proprietary data under the Agreement; optional paragraph (h) "Contractor Licensing" of Alternate II shall be used where licensing of proprietary data is necessary for the achievement of DOE's objectives relating to the purpose of the Agreement;

(iii) The other clauses relating to patents and technical data for Cooperative Agreements listed in paragraphs (c), (d), and (e) of this section are set forth in 41 CFR Part 9-9, 48 CFR Part 952.227, and 10 CFR Part 600.118(b) (1).

(iv) Any modifications of the provisions of 41 CFR Part 9-9, 48 CFR Part 952.227, or 10 CFR Part 600.118(b)(1) shall be obtained from the DOE Assistant General Counsel for Patents.

(5) The citations in paragraphs (c), (d), and (e) of this section are all 48 CFR unless indicated otherwise.

(6) The provisions of paragraphs (c), (d), and (e) of this section will be utilized under the conditions set forth in the cited FAR or DEAR. For example, if for particular provisions there is a \$100,000 threshold for applicability, the provisions should not be used below that threshold. [Note: Any applicable threshold means cost of the total project, including DOE and participant share and any later phases of the same project that may receive DOE support]. The provisions must always be revised to change "contract" to "Cooperative Agreement" or "agreement," and "contractor" to "participant." The use of the term "subcontractor" in any of the provisions means contractor to the participant and all tiers of subcontractor thereunder unless the conditions for use of a provision as set forth in the FAR or DEAR provide otherwise.

(c) * * *

- (1) Order of Precedence 952.215-18.
- (2) Definitions 952.202-1.
- (3) Inspection 52.246-9.
- (4) Examination of Records by Comptroller General 10 CFR 600.25.
- (5) Convict Labor 52.222-3.
- (6) Officials Not to Benefit 52.203-1.
- (7) Covenant Against Contingent Fees 52.203-5.

(8) Notice and Assistance Regarding Patent and Copyright Infringement 41 CFR 9-9.104.

(9) Competition in Subcontracting 52.244-5.

(10) Audit 52.215-2.

(11) Clean Air and Water 10 CFR 600.12.

(12) Preference for U.S. Flag Carriers 10 CFR 600.12.

(13) Use of U.S. Flag Commercial Vessels 10 CFR 600.12.

(14) Permits and Responsibilities 52.236-7.

(15) Reporting of Royalties 41 CFR 9-9.110.

(16) Authorization and Consent 41 CFR 9-9.102-2.

(17) Nondiscrimination in Federally Assisted Programs 10 CFR Part 1040.

(18) Rights in Technical Data (Long Form) 952.227-75, unless the Rights in Technical Data (Short Form) 952.227-77 is applicable.

(19) Contract Work Hours and Safety Standards Act 52.222-4.

(20) Patent Rights 41 CFR 9-9.107-5(a), or, for domestic small firms and domestic nonprofit organizations as defined in Pub. L. 96-517, the Patent Rights Clause of §600.118(b)(1).

(21) Flood Insurance 10 CFR 600.12.

(22) Utilization of Labor Surplus Area Concerns 52.220-3.

(23) Labor Surplus Area Subcontracting Program 52.220-4.

(24) Disputes 10 CFR 600.26.

(d) * * *

(1) Subcontracts 52.244-2.

(2) Termination for Convenience of the Government 52.249-1-6.

(3) Government Property 952.245-5.

(4) Patent Indemnity 41 CFR 9-9.103-3(b).

(5) Limitation of Costs 52.232-20.

(6) Limitation of Funds 52.232-22.

(7) Allowable Cost and Payment 952.216-7.

(8) Buy American Act 52.225-3 or 52.225-5.

(9) Price Reduction for Defective Cost or Pricing Data 52.215-22.

(10) Subcontractor Cost or Pricing Data 52.215-24.

(11) Additional Technical Data Requirements 952.227-73.

(12) Utilization of Small Business Concerns and Small Disadvantaged Business Concerns 52.219-8.

(13) Utilization of Women-Owned Business Concerns 52.219-13.

(e) * * *

(1) Payment for Overtime Premiums 52.222-2.

(2) Affirmative Action for Special Disabled and Vietnam Era Veterans 52.222-35.

(3) Cost Reimbursement Type Research and Development Clauses for Contracts Involving Construction, FPR Temporary Regulation 70, (June 28, 1983).

(4) Excusable Delays 52.249-14.

(5) Negotiated Overhead Rates 52.216-7.

(6) Notice to Government of Labor Disputes 52.222-1.

(7) Make or Buy Program 52.215-21.

(8) Advance Payments 10 CFR 600.283(b)(4).

(9) Workmen's Compensation Insurance 52.228-3.

(10) Required Source for Jewel Bearings 52.208(1).

(11) Government Supply Sources 52.251-1.

(12) Interest 52.232-17.

(13) Balance of Payments Program 52.225-7.

(14) Care of Laboratory Animals 10 CFR 600.12.

(15) Cost Accounting Standards 52.230-3.

(16) Alterations in Contract 52.252-4.

(17) Approval of Contract 52.204-1.

(18) Date of Incurrence of Cost 952.231-70.

(19) Changes 52.243-2.

(20) Key Personnel 952.235-70.

(21) Insurance—Liability to Third Parties 52.228-7.

(22) Printing 952.208-70.

(23) Federal Reports Act 10 CFR 600.12.

(24) Foreign Travel 952.247-70.

(25) Security Requirements 952.204-2.

(26) Privacy Act 52.224-2.

(27) Safety and Health 952.223-71.

(28) Priorities, Allocations, and Allotments for Energy Programs 952.212-71.

(29) Sensitive Foreign Nations Controls 952.204-71.

(30) Nuclear Hazards Indemnity 952.250-70.

(31) Stop Work Order 52.212-13.

(32) Walsh-Healy Public Contracts Act 52.222-20.

(33) Preservation of Individual Occupational Radiation Exposure Records 952.223-75.

(34) Waiver of Indemnity 41 CFR 9-9.103-4.

(35) Classified Inventions 41 CFR 9-9.106.

(36) Rights to Proposal Data 10 CFR 600.18.

(37) Small Business and Small Disadvantaged Business Subcontracting Plan 52.219-9.

[FR Doc. 84-20837 Filed 8-6-84; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 680

[Docket No. 80N-0051]

Allergenic Products; Criteria for Source Materials; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the final rule that amended the biologics regulation to establish manufacturing or propagation criteria for certain allergenic source materials (49 FR 25430; June 21, 1984). The name of the Center for Drugs and Biologics was inadvertently written as the National Center for Drugs and Biologics. This document corrects that error.

EFFECTIVE DATE: October 19, 1984.

FOR FURTHER INFORMATION CONTACT:

Agnes Black, Federal Register Writer (HFC-11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 84-16508 appearing at page 25430 in the issue of Thursday, June 21, 1984, the following correction is made on page 25433 in the first column: In § 680.1 *Allergenic products*, paragraph (b)(3)(iv) is corrected by changing "National Center for Drugs and Biologics" to read "Center for Drugs and Biologics."

Dated: July 31, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-20796 Filed 8-6-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 880, 881, 883, 884, and 886

[Docket No. R-84-1035; FR-1688]

Section 8 Housing Assistance Payments Program for New Construction and Substantial Rehabilitation (100% Occupancy by Eligible Tenants)

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Final rule.

SUMMARY: This final rule amends those Section 8 Housing Assistance Payments Program regulations which involve newly constructed or substantially rehabilitated housing. The amendments are needed to comply with a change made by the Housing and Community Development (HCD) Amendments of 1981, which requires that each

assistance contract for newly constructed or substantially rehabilitated housing under section 8 of the U.S. Housing Act of 1937 provide that during the term of the contract the owner shall make available for occupancy by eligible families the number of units for which assistance is committed under the contract. Although not required under the statute, the final rule also applies to existing housing assisted under Part 886, Subpart A, Additional Assistance Program for Projects with HUD-Insured and HUD-Held Mortgages, and Part 886, Subpart C, Housing Assistance Program for the Disposition of HUD-Owned Projects.

EFFECTIVE DATE: October 3, 1984.

FOR FURTHER INFORMATION CONTACT:

James J. Tahash, Director, Program Planning Division, Office of Multifamily Housing Management, Room 6182, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, telephone (202) 426-3944. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:**Background**

Section 325(l) of the HCD Amendments of 1981 amended section 8(b)(2) of the U.S. Housing Act of 1937 to require that all contracts to make assistance payments for newly constructed or substantially rehabilitated section 8 housing provide that, during the term of the contract, the owner shall make available for occupancy by eligible families the number of units for which assistance is committed under the contract. Section 371(b) of the HCD Amendments of 1981 further states that this provision shall apply only with respect to contracts entered into on and after October 1, 1981.

The Department administers six section 8 programs that involve newly constructed or substantially rehabilitated housing and which are, therefore, affected by section 325(l) of the HCD Amendments of 1981. They are the Section 8 New Construction Program, the Substantial Rehabilitation Program, the State Housing Agencies Program (insofar as it involves new construction and substantial rehabilitation), the New Construction Set-Aside for Section 515 Rural Rental Housing Projects Program, the Section 202 Loans for Housing for the Elderly or Handicapped Program, and the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects (insofar as it involves substantial rehabilitation).

Except for the Section 202 Loan Program, current regulations do not require a reduction in units under the contract until rental to ineligibles exceeds 10 percent of the units (up to 20 percent in the Set-Aside Program for Rural Rental Housing Projects) to ineligible families. The final rule would amend these regulations to conform with the statutory requirement that, during the term of the Housing Assistance Payments Contract, all assisted units will be made available for occupancy by eligible families.

There currently are no regulations on this matter for the Section 202 Loan Program. However, the same policy as under other current regulations applies under the current contract documents for that program. The Department is preparing a regulation amending Part 885 which, among other matters, would incorporate this amendment and other statutory changes to section 8 programs affected by the HCD Amendments of 1981.

This rule eliminates the authority of a section 8 project owner to lease a percentage of assisted units to ineligible families without approval of the contract administrator. The authority to lease assisted units to ineligible families with the prior approval of the contract administrator in accordance with HUD guidelines, is retained to cover situations in which temporary market conditions prevent leasing all assisted units to eligible families. Approval to lease assisted units to ineligible families does not relieve a section 8 project owner of the obligation to continue making assisted units which become vacant available for occupancy by eligible families.

The final rule authorizes HUD to reduce the number of assisted units if an owner fails to make those units available to eligible families. The final rule also authorizes HUD to reduce the number of assisted units notwithstanding its prior approval to lease to ineligible families, if HUD determines that the inability to lease to eligible families is not a temporary problem.

The final rule makes it clear that section 8 project owners of newly constructed or substantially rehabilitated housing who executed an Agreement to Enter into Housing Assistance Payments Contract on or after October 1, 1981, are subject to this statutory requirement, notwithstanding the fact that their Contracts may not contain such an express provision or even contain a contrary provision, since section 325(l) constituted law in effect at the time the Agreements were executed. A section 8 project owner of

newly constructed or substantially rehabilitated housing who, before the effective date of this rule and consistent with then-current regulations, had leased an assisted unit to an ineligible family can continue to lease the unit to that family. However, the section 8 project owner is required to make the unit available for occupancy by an eligible family whenever the ineligible family vacates the unit.

The Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects (24 CFR Part 886, Subpart C) involves existing housing in addition to substantially rehabilitated housing. The Additional Assistance Program for Projects with HUD-Insured and HUD-Held Mortgages (24 CFR Part 886, Subpart A) involves only existing housing. Under both subparts the assistance is project-based. The provisions of this final rule apply to owners of all housing under these Programs, not only substantial rehabilitation, because HUD has determined administratively that project-based assistance programs should be treated similarly to new construction and substantial rehabilitation for the purposes of this rule. However, the final rule applies only to a project owner of existing housing who executes a Contract under Part 886, Subpart A or C on or after the effective date of this final rule (instead of on or after October 1, 1981) since application of the rule to an owner of existing housing is not mandated by section 325(l) of the HCD Amendments of 1981.

The final rule does not affect the obligations of: (1) A section 8 project owner of newly constructed or substantially rehabilitated housing who entered a Housing Assistance Payments Contract pursuant to an Agreement to Enter into Housing Assistance Payments Contract executed before October 1, 1981 or (2) a section 8 project owner of existing housing assisted under Part 886 who executed a Contract before the effective date of this rule. Any such owner is subject to the restriction on making assisted units available to ineligible families that appear in the owner's Contract.

Comments

The Department received four comments on the proposed rule which was published on February 23, 1983, in the *Federal Register* (48 FR 7586). This rule, with the exception of the change recommended by the Farmers Home Administration and minor technical and editorial revisions, is essentially the same as the proposed rule.

The Department received one comment from the Farmers Home Administration (FmHA), with respect to the proposed amendment to 24 CFR Part 884. That Part establishes policies and procedures implementing a Memorandum of Understanding between HUD and FmHA (41 FR 34348, dated August 13, 1976). The Memorandum provides for a set-aside of section 8 contract authority for new construction financed by FmHA under section 515 of the Housing Act of 1949. FmHA requested that the final rule contain a provision to assure that FmHA has some participation in the decision to reduce section 8 units before such action takes place. The Department agrees and has revised § 884.223(b) to make it clear that reductions in the number of units covered by contract will be made only after consultation with FmHA.

Three commenters objected to the requirement that all units for which assistance is committed under the contract be made available to eligible families. One of these commenters, a State housing agency, noted that it was not opposed to eliminating an owner's privilege to rent up to 10 percent of its assisted units to ineligible families. However, the State agency expressed concern that an owner would not be able, even on a temporary basis, to rent a unit to an ineligible person who is needed in the project for security reasons or to handle maintenance.

Another of these commenters, a sponsor of an elderly housing project, urged that the full utilization requirement not apply to projects constructed with loans provided under section 202 of the Housing Act of 1959.

The third commenter, a manager of section 8 projects, urged that owners should be free to rent to whomever they please. This commenter stated that market conditions do not always allow for 100 percent of the units to be rented to eligible families, and that units should be rented to ineligible families rather than be left vacant.

The obligation to make the total number of units for which assistance is committed under the contract available to eligible tenants is statutory. While the Department is sympathetic to the State housing agency's desire for flexibility to lease to security or maintenance personnel, it cannot create exceptions to the statutory requirement. If the owner wishes to use a unit for this purpose, the unit may be removed from the Contract. It also cannot exempt section 202-financed projects. As previously indicated, the Department is preparing a regulation amending Part 885, which among other matters, would incorporate

this amendment. Finally, the rule permits an owner, with the prior approval by the contract administrator in accordance with HUD guidelines, to rent to ineligible families if the owner is temporarily unable to rent to eligible families. This should provide sufficient flexibility to avoid extended vacancies.

The Department also received two internal comments on §§ 886.129(c) and 886.329(c). Those paragraphs deal with the restoration under a contract of units which have been removed from a contract for failure to lease to eligible families. The first comment suggested that since Parts 880, 881, 883, 884 and 886 were being revised, the language for these sections of Part 886, as well as for §§ 883.605 and 884.223 be made consistent with §§ 880.504(c) and 881.504(c). Sections 880.504 and 881.504 contain the most recently developed language on this subject matter. The second comment suggested that the last sentence of §§ 886.129(c) and 886.329(c) was technically irrelevant and, therefore, unnecessary, and should be deleted. That sentence provides that HUD may take such steps authorized by section 8(c)(6) of the U.S. Housing Act of 1937 as necessary to carry out the restoration. Section 8(c)(6) makes no reference to restoration authority. The sentence is, therefore, unnecessary and is not included in Part 880 or 881 for this reason. These two comments have been adopted.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10278, 451 Seventh Street, SW., Washington, D.C. 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) 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.

Pursuant to 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule reflects a statutory requirement which applies to all section 8 newly constructed or substantially rehabilitated housing without regard to the size of the entities involved.

This rule was listed at 49 FR 15902, 15932 as Item H-138-82 in the Department's Semiannual Agenda of Regulations published on April 19, 1984, pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number and title is 14.156, Lower Income Housing Assistance Program.

List of Subjects

24 CFR Part 880

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

24 CFR Part 881

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

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

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

Accordingly, the Department amends 24 CFR Parts 880, 881, 883, 884, and 886 as follows:

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

1. Section 880.504 is amended by revising paragraphs (a), (b), (c)(3), and (d) to read as follows:

§ 880.504 Leasing to eligible families.

(a) *Availability of Units for Occupancy by Eligible Families.* During

the term of the Contract, an owner shall make available for occupancy by eligible families the total number of units for which assistance is committed under the Contract. For purposes of this section, making units available for occupancy by eligible families means that the owner: (1) Is conducting marketing in accordance with § 880.601(a); (2) has leased or is making good faith efforts to lease the units to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families; and (3) has not rejected any such applicant family except for reasons acceptable to the contract administrator. If the owner is temporarily unable to lease all units for which assistance is committed under the Contract to eligible families, one or more units may be leased to ineligible families with the prior approval of the contract administrator in accordance with HUD guidelines. Failure on the part of the owner to comply with these requirements is a violation of the Contract and grounds for all available legal remedies, including specific performance of the Contract, suspension or debarment from HUD programs, and reduction of the number of units under the Contract as set forth in paragraph (b) of this section.

(b) *Reduction of Number of Units Covered by Contract.* HUD (or the PHA at the direction of HUD, as appropriate) may reduce the number of units covered by the Contract to the number of units available for occupancy by eligible families if:

(1) The owner fails to comply with the requirements of paragraph (a) of this section; or

(2) Notwithstanding any prior approval by the contract administrator to lease such units to ineligible families, HUD (or the PHA at the direction of HUD, as appropriate) determines that the inability to lease units to eligible families is not a temporary problem.

(c) * * *

(3) Contract and budget authority are available.

(d) *Applicability.* In accordance with section 8(b)(2) of the United States Housing Act of 1937 and section 371(b) of the Housing and Community Development Amendments of 1981, paragraphs (a) and (b) of this section apply only to Contracts entered pursuant to Agreements executed on or after October 1, 1981. An owner who is subject to paragraphs (a) and (b) of this section and who, before October 3, 1984 and consistent with regulations in effect at the time, had leased an assisted unit to an ineligible family may continue to lease the unit to that family. The owner

must make the unit available for occupancy by an eligible family when the ineligible family vacates the unit.

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

2. Section 881.504 is amended by revising paragraphs (a), (b), (c)(3), and (d) to read as follows:

§ 881.504 Leasing to eligible families.

(a) *Availability of Units for Occupancy by Eligible Families.* During the term of the Contract, an owner shall make available for occupancy by eligible families the total number of units for which assistance is committed under the Contract. For purposes of this section, making units available for occupancy by eligible families means that the owner: (1) Is conducting marketing in accordance with § 881.601(a); (2) has leased or is making good faith efforts to lease the units to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families; and (3) has not rejected any such applicant family except for reasons acceptable to the contract administrator in accordance with HUD guidelines. If the owner is temporarily unable to lease all units for which assistance is committed under the Contract to eligible families, one or more units may be leased to ineligible families with the prior approval of the contract administrator in accordance with HUD guidelines. Failure on the part of the owner to comply with these requirements is a violation of the Contract and grounds for all available legal remedies, including specific performance of the Contract, suspension or debarment from HUD programs, and reduction of the number of units under the Contract as set forth in paragraph (b) of this section.

(b) *Reduction of Number of Units Covered by Contract.* HUD (or the PHA at the direction of HUD, as appropriate), may reduce the number of units covered by the Contract to the number of units available for occupancy by eligible families if:

(1) The owner fails to comply with the requirements of paragraph (a) of this section; or

(2) Notwithstanding any prior approval by the contract administrator to lease such units to ineligible families, HUD (or the PHA at the direction of HUD, as appropriate) determines that the inability to lease units to eligible families is not a temporary problem.

(c) * * *

(3) Contract and budget authority are available.

(d) *Applicability.* In accordance with section 8(b)(2) of the United States Housing Act of 1937 and section 371(b) of the Housing and Community Development Amendments of 1981, paragraphs (a) and (b) of this section apply only to Contracts entered pursuant to Agreements executed on or after October 1, 1981. An owner who is subject to paragraphs (a) and (b) of this section and who, before October 3, 1984 and consistent with regulations in effect at the time, had leased an assisted unit to an ineligible family may continue to lease the unit to that family. The owner must make the unit available for occupancy by an eligible family when the ineligible family vacates the unit.

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

3. Section 883.605 is revised to read as follows:

§ 883.605 Leasing to eligible families.

(a) *Availability of Units for Occupancy by Eligible Families.* During the term of the Contract, an owner shall make available for occupancy by eligible families the total number of units for which assistance is committed under the Contract. For purposes of this section, making units available for occupancy by eligible families means that the owner: (1) Is conducting marketing in accordance with § 883.702(a); (2) has leased or is making good faith efforts to lease the units to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families; and (3) has not rejected any such applicant family except for reasons acceptable to the Agency. If the owner is temporarily unable to lease all units for which assistance is committed under the Contract to eligible families, one or more units may be leased to ineligible families with the prior approval of the Agency in accordance with HUD guidelines. Failure on the part of the owner to comply with these requirements is a violation of the Contract and grounds for all available legal remedies, including specific performance of the Contract, suspension or debarment from HUD programs, and reduction of the number of units under the Contract as set forth in paragraph (b) of this section.

(b) *Reduction of Number of Units Covered by Contract.* HUD and the Agency may reduce the number of units covered by the Contract to the number

of units available for occupancy by eligible families if:

(1) The owner fails to comply with the requirements of paragraph (a) of this section; or

(2) Notwithstanding any prior approval by the Agency to lease such units to ineligible families, HUD and the Agency determine that the inability to lease units to eligible families is not a temporary problem.

(c) *Restoration.* HUD will agree to an amendment of the ACC and the Agency may agree to an amendment to the Contract to provide for subsequent restoration of any reduction made pursuant to paragraph (b) of this section if:

(1) HUD and the Agency determine that the restoration is justified by demand;

(2) The owner otherwise has a record of compliance with his or her obligations under the Contract; and

(3) Contract and budget authority are available.

(d) *Applicability.* In accordance with section 8(b)(2) of the United States Housing Act of 1937 and section 371(b) of the Housing and Community Development Amendments of 1981, paragraphs (a) and (b) of this section apply only to Contracts entered pursuant to Agreements executed on or after October 1, 1981. An owner who is subject to paragraphs (a) and (b) of this section and who, before October 3, 1984 and consistent with regulations in effect at the time, had leased an assisted unit to an ineligible family may continue to lease the unit to that family. The owner must make the unit available for occupancy by an eligible family when the ineligible family vacates the unit.

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

4. Section 884.223 is revised to read as follows:

§ 884.223 Leasing to eligible families.

(a) *Availability of Units for Occupancy by Eligible Families.* During the term of the Contract, an owner shall make available for occupancy by eligible families the total number of units for which assistance is committed under the Contract. For purposes of this section, making units available for occupancy by eligible families means that the owner: (1) Is conducting marketing in accordance with § 884.214; (2) has leased or is making good faith efforts to lease the units to eligible and otherwise acceptable families, including

taking all feasible actions to fill vacancies by renting to such families; and (3) has not rejected any such applicant family except for reasons acceptable to HUD (or the PHA in accordance with HUD guidelines and at the direction of HUD, as appropriate). If the owner is temporarily unable to lease all units for which assistance is committed under the Contract to eligible families, one or more units may be leased to ineligible families with the prior approval of HUD (or the PHA in accordance with HUD guidelines and at the direction of HUD, as appropriate). Failure on the part of the owner to comply with these requirements is a violation of the Contract and grounds for all available legal remedies, including specific performance of the Contract, suspension or debarment from HUD programs, and reduction of the number of units under the Contract as set forth in paragraph (b) of this section.

(b) *Reduction of Number of Units Covered by Contract.* HUD (or the PHA at the direction of HUD, as appropriate), after consultation with the Farmers Home Administration, may reduce the number of units covered by the Contract to the number of units available for occupancy by eligible families if:

(1) The owner fails to comply with the requirements of paragraph (a) of this section; or

(2) Notwithstanding any prior approval by HUD (or the PHA at the direction of HUD, as appropriate) to lease such units to ineligible families, HUD (or the PHA at the direction of HUD, as appropriate) determines that the inability to lease units to eligible families is not a temporary problem.

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

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

(2) The owner otherwise has a record of compliance with his or her obligations under the Contract; and

(3) Contract and budget authority are available.

(d) *Applicability.* In accordance with section 8(b)(2) of the United States Housing Act of 1937 and section 371(b) of the Housing and Community Development Amendments of 1981, paragraphs (a) and (b) of this section apply only to Contracts entered pursuant to Agreements executed on or after October 1, 1981. An owner who is subject to paragraphs (a) and (b) of this section and who, before October 3, 1984 and consistent with regulations in effect

at the time, had leased an assisted unit to an ineligible family may continue to lease the unit to that family. The owner must make the unit available for occupancy by an eligible family when the ineligible family vacates the unit.

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

5. Section 886.129 is revised to read as follows:

§ 886.129 Leasing to eligible families.

(a) *Availability of Units for Occupancy by Eligible Families.* During the term of the Contract, an owner shall make available for occupancy by eligible families the total number of units for which assistance is committed under the Contract. For purposes of this section, making units available for occupancy by eligible families means that the owner: (1) Is conducting marketing in accordance with § 886.121; (2) has leased or is making good faith efforts to lease the units to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families; and (3) has not rejected any such applicant family except for reasons acceptable to HUD. If the owner is temporarily unable to lease all units for which assistance is committed under the Contract to eligible families, one or more units may be leased to ineligible families with the prior approval of HUD. Failure on the part of the owner to comply with these requirements is a violation of the Contract and grounds for all available legal remedies, including specific performance of the Contract, suspension or debarment from HUD programs, and reduction of the number of units under the Contract as set forth in paragraph (b) of this section.

(b) *Reduction of Number of Units Covered by Contract.* HUD may reduce the number of units covered by the Contract to the number of units available for occupancy by eligible families if:

(1) The owner fails to comply with the requirements of paragraph (a) of this section; or

(2) Notwithstanding any prior approval by HUD to lease such units to ineligible families, HUD determines that the inability to lease units to eligible families is not a temporary problem.

(c) *Restoration.* HUD will agree to an amendment of the Contract to provide for subsequent restoration of any reduction made pursuant to paragraph (b) of this section if:

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

(2) The owner otherwise has a record of compliance with his or her obligations under the Contract; and

(3) Contract and budget authority are available.

(d) *Applicability.* Paragraphs (a) and (b) of this section apply to Contracts executed on or after October 3, 1984.

6. Section 886.329 is revised to read as follows:

§ 886.329 Leasing to eligible families.

(a) *Availability of Units for Occupancy by Eligible Families.* During the term of the Contract, an owner shall make available for occupancy by eligible families the total number of units for which assistance is committed under the Contract. For purposes of this section, making units available for occupancy by eligible families means that the owner: (1) Is conducting marketing in accordance with § 886.321; (2) has leased or is making good faith efforts to lease the units to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families; and (3) has not rejected any such applicant family except for reasons acceptable to HUD. If the owner is temporarily unable to lease all units for which assistance is committed under the Contract to eligible families, one or more units may be leased to ineligible families with the prior approval of HUD. Failure on the part of the owner to comply with these requirements is a violation of the Contract and grounds for all available legal remedies, including specific performance of the Contract, suspension or debarment from HUD programs, and reduction of the number of units under the Contract as set forth in paragraph (b) of this section.

(b) *Reduction of Number of Units Covered by Contract.* HUD may reduce the number of units covered by the Contract to the number of units available for occupancy by eligible families if:

(1) The owner fails to comply with the requirements of paragraph (a) of this section; or

(2) Notwithstanding any prior approval by HUD to lease such units to ineligible families, HUD determines that the inability to lease units to eligible families is not a temporary problem.

(c) *Restoration.* HUD will agree to an amendment of the Contract to provide for subsequent restoration of any reduction made pursuant to paragraph (b) of this section if:

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

(2) The owner otherwise has a record of compliance with his or her obligations under the Contract; and

(3) Contract and budget authority are available.

(d) *Applicability.* In accordance with section 8(b)(2) of the United States Housing Act of 1937 and section 371(b) of the Housing and Community Development Amendments of 1981, paragraphs (a) and (b) of this section apply to Contracts involving substantial rehabilitation entered pursuant to Agreements executed on or after October 1, 1981. These paragraphs apply to all other Contracts executed on or after October 3, 1984. An owner of substantially rehabilitated housing who is subject to paragraphs (a) and (b) of this section and who, before [insert the effective date of this rule] and consistent with regulations in effect at the time, had leased an assisted unit to an ineligible family may continue to lease the unit to that family. The owner must make the unit available for occupancy by an eligible family when the ineligible family vacates the unit.

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); Sec. 8(b)(2) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(b)(2)).

Dated: July 31, 1984.

Maurice L. Barksdale,
Assistant Secretary for Housing—Federal
Housing Commissioner.

[FR Doc. 84-20858 Filed 8-6-84; 9:45 am]

BILLING CODE 4210-27-M

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 965

[Docket No. R-84-853; FR-350]

PHA-Owned or Leased Projects; Maintenance and Operation; Tenant Allowances for Utilities

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

ACTION: Final rule.

SUMMARY: This rule amends the current requirements regarding the establishment and revision of utility allowances and surcharges for excess utility consumption in the Public Housing program. The rule adopts a new standard for allowances that emphasizes energy conservation by setting the allowance amounts based upon the reasonable consumption of utilities by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary and healthful living environment. In addition, the rule eliminates previous distinctions in