and this document, this action adopts, with the changes stated herein, as a final rule, the maturity requirements and variance appeal procedures that were forth in the interim final rule to assist California plum producers and handlers in improving the quality of the plums they market.

It is found and determined that this action, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Plum handlers and producers are aware of these requirements, which have been in effect since May 27, 1988; (2) with the exception of the minor changes for maturity determinations, the requirements set forth below are the same as currently implemented in the interim final rule; and (3) no useful purpose would be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Part 917

Marketing agreement and order, plums, California.

For the reasons set forth in the preamble, the following action pertaining to 7 CFR Part 917 is taken:

Note.—This rule will appear in the Code of Federal Regulations.

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Accordingly, the interim final rule amending § 917.460, which was published in the **Federal Register** (53 FR 19224, May 27, 1988) is adopted as a final rule with the following changes—paragraph (a)(2) is revised and (a)(3)(iii) is amended by removing the first three sentences and adding four sentences in their place to read as follows:

§ 917.460 Plum regulation 19.

(a) * * *

(2) During the 1988 and subsequent seasons, the Federal or the Federal-State Inspection Service will use the maturity guides listed in Table I in making maturity determinations for the specified varieties. For these varieties, not less than 90 percent of any lot shall meet the surface color, flesh color or "spring" requirements established for the variety or not less than 90 percent of any lot shall meet the ground color standard established for the variety except that for the Ebony variety, an additional lot tolerance of 17 percent shall be permitted for fruit not meeting the "spring" requirement. For varieties not listed, the Federal or the Federal-State Inspection Service will use such tests as deemed to be proper by the Plum Commodity Committee and the Federal or Federal-State Inspection Service.

(3) * * *

(iii) If either the fieldman or the inspection representative or both agree that a variance is warranted, the request for the variance and the written views of the fieldman and inspection official shall be forwarded to the maturity subcommittee for review and written determination. A copy of the written report shall be provided to the requester. The fieldman shall notify the requester when the request has been forwarded to the maturity subcommittee and whether the request will be considered at a public or a telephone meeting. The requester may participate in public meetings or telephone meetings and may provide additional information in support of the request to the chairman of the maturity subcommittee prior to a public or telephone meeting.* * *

* * * * *

Dated: March 23, 1989.

Robert C. Keeney,

Duputy Director, Fruit and Vegetable Division.

[FR Doc. 89-7285 Filed 3-24-89; 8:45 am]

BILLING CODE 3410-02-M

---

7 CFR Part 917

[Docket No. AMS-FV-88-055W]

Fresh Pears, Plums, and Peaches Grown in California; Amendments to the Size Requirements and Revision of the Maturity Regulations for Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule, with size and maturity requirement modifications, the provisions of an interim final rule which changed size regulations and specified maturity requirements and maturity variance procedures for California peaches. The coverage of the variety-specific size requirements are changed by removing two peach varieties, no longer produced in commercially significant quantities, from the variety-specific size requirement list. Also, size requirements are modified for varieties of peaches not subject to the variety-specific size requirements which are shipped November 1, through July 2. This action is intended to facilitate maturity determinations and to promote the marketing of the crop.

EFFECTIVE DATE: March 27, 1989.

FOR FURTHER INFORMATION CONTACT: G.J. Kelhart, Section Head, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone (202) 475-3919.

SUPPLEMENTARY INFORMATION: This final rule is issued under the Marketing Agreement and Order No. 917 (7 CFR Part 917), regulating the handling of fresh pears, plums, and peaches grown in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 520 handlers of peaches, plums and nectarines subject to regulation under marketing orders (7 CFR Parts 916 and 917) and there are approximately 2,030 producers of these commodities in the regulated area. The reduction in the number of handlers from that listed in previous documents in this rulemaking proceeding reflects more recent information from the industry. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California peaches may be classified as small entities.

Shipments of California peaches are regulated by grade, maturity, and size under § 917.459 Peach Regulation 14 (7 CFR 917.459). A proposed rule concerning size and maturity regulations was published in the **Federal Register** on April 18, 1988 (53 FR 12694). The proposed changes were recommended by the Peach Commodity Committee (hereinafter referred to as the committee) and the Department. Numerous comments were received in favor of and opposition to the proposed rule.

After reviewing the comments to the proposal, changes were made to § 917.459 by an interim final rule issued May 24, 1988, and published in the **Federal Register** and made effective on May 27, 1988 (53 FR 19234). The comments received as a result of the proposal were addressed in the interim final rule. Interested persons were invited to submit written comments concerning the interim final rule. Comments were received from the committee, the Small Business Administration (SBA), and Mr. Brian Leighton, an attorney (hereinafter referred to as the attorney) representing three entities which operate as handlers in the California peach industry.

This final rule is based upon the committee's recommendation, information submitted by the committee, comments received from those supporting and opposing the action, and other available information.

Inspected shipments of California peaches for the 1987 season totalled 13,854,000 packages. The fruit was sold primarily in the fresh market. In 1987, the production value of California freestone peaches (fresh and processed) and cling stone peaches was about $68,252,000 and $95,612,000 respectively. Although this final rule will impose requirements on the handling of peaches, exemptions from the inspection and certification requirements as specified in § 917.143, will continue. These exemptions include provisions for the shipment of minimum quantities of the fruit.

The interim final rule implemented the size requirement changes to recognize the interest of California peach growers and handlers in providing fruit preferred in the marketplace. To implement the recommendation, § 917.459 paragraph (a)(5) was revised to remove from the variety-specific size requirements Summerset and Windsor peach varieties which were no longer produced in commercially significant quantities.

Also, to foster consistency of size regulations throughout the year, the varieties of peaches not subject to the variety-specific size requirements for fruit packed in No. 12 B standard fruit (peach) boxes were added to paragraph (b) of § 917.459 for shipment during the period November 1 through July 2. The requirements specified were the same as those specified for shipments during the period July 3 to October 31. With this change, such peaches have to be of a size that will pack in accordance with the requirements of standard pack (not more than 65 peaches to the box).

The only comment opposing the changes in size requirements was received from the attorney. He requested that his comments on the size requirements on the proposed rule for plums (7 CFR 917.460; 53 FR 11672, April 8, 1988) be incorporated by reference on this rule. The comments, including the attorney's, concerning the proposed changes to the plum size regulations were addressed in the May 27, 1988, interim final rule (53 FR 19218). The attorney believes that the factors noted in the Department's decision to not approve a proposed increase in plum size requirements, as discussed in the May 27, 1988, interim final rule, should apply equally to changes in the required sizes of peaches.

The Department disagrees with such a comparison and notes that the only similarity between the two actions is that both are concerned with size requirements. There was strong disagreement in the plum industry on the need for size increases; on whether or not profitable markets for the plums would be eliminated; on whether shipments of some varieties would be disproportionately burdened by the higher size requirements; and on whether the impact of the size changes would be harsher on the early growing areas than on those in the later growing areas. Because of the wide divergence of views on these issues, the Department decided not to adopt the plum committee's size recommendations. Rather, the Department decided that further analysis and study of the plum size requirements was needed.

In the case of peaches, however, there is a general consensus throughout the industry that the relatively minor size requirement changes for these varieties not produced in commercially significant quantities would be beneficial to the industry as a whole in providing peaches of the sizes preferred. Information of the 1988 season did not indicate otherwise.

In its comment the committee requested a modification to increase the size requirements for varieties of peaches not subject to the variety-specific size requirements which are shipped November 1, through December 31. These so-called "unlisted varieties" are shipped in combined quantities significant enough to warrant some size requirement coverage even though, individually, each variety is not considered commercially significant. Currently, the minimum size requirement for un-listed varieties of peaches shipped during the period July 3 to October 31 is size "80." For unlisted varieties shipped during the period November 1 through July 2, the minimum size requirement is size "96". The requested modification would have extended for unlisted varieties to be a minimum size "80" to cover July 3 through December 31. Likewise, the effective period of the minimum size "96" requirement would have been shortened to the period January 1 through July 2. The requested modification is based on the committee's concern about the possible development of new late-season peach varieties and the need for tighter requirements during the months of November and December. The Department has determined that this change is not needed at this time because the recommendation did not demonstrate that a present problem exists with late season varieties.

Also, the committee comments that the "Prima Fire" variety of peaches, which is listed in the maturity regulations, is also listed in the size and maturity regulations under its lesser known varietal name of "Firecrest". The committee requests that the commonly used name "Prima Fire" be used in all cases to prevent confusion in the industry. To accomplish this, the Firecrest varietal name in the maturity guide in Table I of § 917.459(a)(1)(i) is deleted, and the varietal name of the Prima Fire is inserted in place of Firecrest in § 917.459(a)(4). Accordingly, except for the previously discussed changes, the Department accepts the size requirement changes as specified in the interim final rule.

Prior to 1980, peaches were required to meet the maturity requirements of U.S. Grade No. 1. Under U.S. Grade No. 1, a peach was considered mature when it reached a condition that would ensure a proper completion of the ripening process. Peaches picked and shipped at that minimum level of maturity often were not well received in the marketplace. Such fruit sometimes was too hard and lacked the flavor found in more mature fruit. Because such fruit was not received well by consumers early in the season, repeat purchases of later season peaches were reduced. The committee met in May of 1980 and recommended regulations providing for a higher maturity standard. Regulations were published in the **Federal Register** on May 16, 1980 [45 FR 32310]. The higher maturity standard, (well-matured) was, and continues to be, based on a system of color guides and other tests which were developed by officials of the Federal-State Inspection Service and ratified by the committee.

Since that time the committee and the peach maturity subcommittee and the Federal or Federal-State Inspection Service (hereinafter referred to as the inspection service) have worked together to ensure that the maturity requirements are properly applied to the many varieties of peaches. In this regard, the committee and the inspection service meet every Fall to establish which color chip guides and other tests will be used to determine the maturity of each variety of peach in the next production year. Producers and handlers are invited to attend these meetings and are afforded an opportunity to voice objections or concerns regarding which color chip guides will be used. A representative of the Department attends these meetings to ensure that the committee complies with the provisions of the marketing order. The Department's representative prepares a report summarizing and analyzing the actions taken. This report, along with the minutes of the meeting, and other pertinent information are sent to the Department headquarters. The committee's decisions are analyzed, and may be disapproved by the Secretary. The requirements are published in the committee's handler bulletins and were specified in the interim final rule published in the **Federal Register** on May 27, 1988 (53 FR 19238).

To ensure that the higher maturity requirements have been applied fairly and are consistent with program objectives, a procedure has been implemented pursuant to which a handler or producer can obtain a variance from a particular color chip requirement. This procedure is described in detail in the interim final rule published in the **Federal Register** on May 27, 1988 (53 FR 19238). Under this procedure, the maturity subcommittee is given the authority to grant a variance to a particular color requirement if the fruit is well-matured but does not meet the designated color requirement. These procedures are also published in the committee's handler bulletins.

To facilitate maturity determinations, "well-matured" was established by the interim final rule in § 917.459(a) to mean a condition more advanced than mature, but not over-ripe or shriveled. In addition, § 917.459 of the interim final rule established specific skin color requirements and tolerances for determining the well-matured condition of 89 specific peach varieties. Annual changes in these requirements will be made based on recommendations of the committee in consultation with the inspection service and interested producers and handlers. Such changes must also be approved by the Department.

Opposition comments concerning the maturity requirements and variance procedures in the interim final rule were received from the attorney and the SBA. For a variety of reasons, the attorney objected to the designation of "well-matured" as a requirement of peach condition prior to picking. The attorney asserts that while a well-matured standard has been a requirement for peaches since 1980, the term has not been published in the **Federal Register** or officially recognized by the inspection service. However, in our view the higher maturity requirements as applied since 1980 were authorized under the marketing order. Such requirements were specified in the iterim final rule in Peach Regulation 14 on May 27, 1988, (53 FR 19238). The interim final rule was intended to facilitate maturity determinations and promote the marketing of the crop.

The attorney suggests that a study conducted by Ervin D. Thuerk, as discussed in the interim final rule, fails to address issues of consumer satisfaction or dissatisfaction with U.S. No. 1 mature fruit. According to the attorney, some varieties of peaches simply taste better than other varieties, whether they are at the well-matured stage or not. Thus, the attorney contends that consumers' opinons about which fruit has better taste does not necessarily mean that higher maturity is desired by consumers. However, no evidence was submitted that substantiated this claim. The committee contends that consumer complaints are directly related to a lack of maturity of marketed fruit.

The attorney states that many color chips used in 1980 were much greener in color than those used now. He concludes the fruit by today's standards must be more mature than fruit in 1980, with the result that there is less time for the fruit to be sent to the market and sold before spoiling.

The attorney contends that the color chip requirements are not uniformly indicative of the same degree of maturity for all varieties and that is possible for some varieties of peaches to pass the maturity inspection based on an interior inspection of taste and other tests while the skin color fails to indicate a well-matured condition. Thus, some varieties are being discriminated against because they must stay on the tree until the skin meets color requirements, causing a decreased shelf-life or no shelf-life at all. The attorney states that if a variety, after reaching well-maturity based on taste and or other tests, requires a one day delay to reach the well-matured stage based on skin color, it is discriminatory to have a specific color requirement for another variety that would require a delay of six or seven days. In addition, he points out that a peach variety which is well-matured, but must wait for color chip approval, can become unmarketable in two days. Thus, he contends that shipment of fruit at the required-well-matured level based on color can place an undue hardship on some peaches, particularly those shipped to distant markets. The attorney suggests that changes in color chips should be made to lessen the chances of the fruit arriving at market destinations overripe. Currently, the same maturity requirement for each variety applies, regardless of the destination of the fruit.

The committee has made a concerted effort to set the color standards for all varities of peaches at minimum levels of well-maturity for each variety. There are more chips in use today to account for the subtle color differences between varities. It is in the interest of the industry as a whole to provide each of its varieties with as wide a marketing window as possible.

The committee believes it is very important that peaches are well-matured when they reach the marketplace. It is the committee's intention to establish a color standard for each variety which would leave as much time as possible to get that variety to the marketplace recognizing that modern transportation systems allow most commodities to be within three to five days of most markets, thus allowing a reasonable shelf-like. Good business practice would seem to dictate that fruit with more advanced maturity should be shipped to less distant markets when spoilage is a concern. Also, it is important to note that the arrival quality of fruit can suffer if the fruit is improperly handled or is shipped at higher or lower than desired temperatures.

The attorney contends that inspectors should use the color chips and other tests as guides but not as the determining factor in the inspection. He contends that the well-matured standard is too broad and ambiguous because it permits the committee to adopt various color requirements and maturity tests during the production season which could delay picking in any particular orchard. He asserts that if a particular variety fails to meet its predetermined color chip requirement and also fails to be approved by the maturity subcommitte and the variance appeal committee, that orchard may be completely lost, resulting in an undue and unfair financial loss to the producer. This action provides that the inspection service will use the maturity guides as listed in the regulations in making maturity determinations for specified varieties. For varieties not listed in the regulations, the inspection service will use such tests as deemed to be proper by the Peach Commodity Committee and the inspection service. However, a variance from the maturity guides for any listed variety is authorized pursuant to regulations. Further, the time periods involved in the variance process are intended to resolve the appeal in as short a time as possible.

The attorney suggests that since 1980 the inspection service and the committee have not consistently applied color chip requirements or other maturity standards to all producers and handlers. His comment, and the comment received from the SBA, contend that the committee should not be in a position to establish color chip requirements that must be met by competitors of committee members. Likewise, the maturity subcommittee and the appeal committee members should not be allowed to make variance decisions that affect their competitors. Both commenters believe this procedure raises the possibility of conflict of interest. The attorney contends that this procedure has led to inconsistent and sometimes unfair application of maturity standards. He suggests that the well-matured requirement, as implemented by the committee, has been used for volume control purposes and contends that the Department has not conducted proper oversight of the committee and the maturity subcommittee.

The history of the maturity determination process for peaches over the last eight years has indicated that the procedures have worked well. The Department disputes the contention that the well-matured requirements have been used for volume control purposes. On the contrary, the purpose of this change is to promote marketing of the crop by assisting California peach producers and handlers in improving the quality of the peaches they market. The implementation of color standards for each variety, or such other maturity tests as determined to be proper, are within the scope of the marketing order. The actions of the committee with regard to maturity determinations are not unlike any other committee duties or actions authorized pursuant to the marketing order. Accordingly, the maturity determination process is not flawed by the participation of committee members. Further, with regard to Department oversight of the committee and the maturity subcommittee, the maturity determination process is subject to appropriate oversight, as are other marketing order activities. In our view, the maturity determination process has provided over the years fair and equitable treatment of producers and handlers.

The attorney and the SBA believe that decisions regarding maturity requirements should be assigned solely to the inspection service and that the committee should be limited to an advisory role. This would allow the inspection service to determine which specific color chip or maturity test should be used for each variety. According to the commenters, the inspection service should also have the sole responsibility of granting variances. An alternate proposal by the attorney would give individual producers of a specific variety the responsibility to establish the color chip requirements for that variety.

Regarding these proposals, it should be noted that in the April 18, 1988, proposal, the inspection service would have been responsible for variances during a season and for changes between seasons. One purpose of the proposed change was to relieve the maturity subcommittee of the burden of making variances during the season because committee members are dispersed over a wide geographic area and have daily responsibilities with regard to their businesses. However, as discussed in the May 27, 1988, interim final rule and based upon comments received, it was determined that the procedures for handling variances should be similar to those that were already then in use. In addition, an appeal procedure was established. It was concluded that the inspection service and industry officials designated to make variance decisions have the necessary background and expertise in fruit maturity and knowledge about growing conditions in the production area. The Department believes the attorney's alternative proposal—that producers of a specific variety establish their own well-maturity standards—would not provide a uniform set of well-maturity requirements and would raise questions as to fairness and equitability. Based upon all information available, including comments received regarding the proposal, the procedures contained in this final rule best provides for a fair and equitable process for maturity determinations. Accordingly, the commenter's proposed changes are denied.

The attorney and the SBA commented on the composition of the appeal committee. Both commenters believe that the appeal committee should be comprised only of inspection service personnel to ensure that the committee's decisions are fair and knowledgeable. The attorney and the SBA contend that such decisions are impossible with the current membership consisting of one inspection service official and the chairmen of the plum and the nectarine committees, or their designees. The attorney contends that the two chairmen may not have sufficient knowledge of peach maturity characteristics to make informed decisions. The attorney and the SBA commenter also suggest that the appeal committee decisions could be biased against a peach variance because peaches are market competitors of plums and nectarines. The commenters concluded that it could be in the best interest of the two chairmen to keep peaches off the market.

Both the California Department of Food and Agriculture (CDFA), under which the Federally licensed State inspectors serve and the committee submitted comments to the proposed rule stating that full responsibility to allow or disallow variances should not be placed on the inspection service. Moreover, in issuing the interim final rule, the Department concluded that the appeal committee would represent a further level of review or determination of the maturity subcommittee's decisions. Further, the decision in the interim final rule establishing the membership on the appeal committee was based upon consideration that it was important that the members of the appeal committee be different from those serving on the maturity subcommittee and that the appeal committee members be knowledgeable about crop and maturity conditions in the industry. The composition of the California tree fruit industry is such that many handlers and producers are involved with more than just one tree fruit. The sharp distinctions in the California tree fruit industry, as suggested by the commenters, do not exist. Accordingly, this proposed change is denied.

According to recent information, the variance process worked well during the 1988 season. Since implementation of the interim final rule the Department has not been informed of any variance problems such as those outlined by the attorney and SBA. Thus, there is no reason to change substantially the maturity determination and variance appeal process.

The attorney requests changes on two points in the variance procedure. The attorney suggests that any variance report that is completed by the inspector and the committee fieldman, and submitted to the maturity subcommittee and appeal committee, should be made available to the producer or handler who is requesting the variance. Also, the producer or handler requesting a variance should be able to present that producer's or handler's views to all members of the two committees, not only to the chairmen of the committees as implied in the interim final rule. It is determined that these changes have merit and this final rule modifies the interim final rule accordingly.

The attorney also suggests that transcripts of variance meetings be made. The Department considers this proposal expensive and cumbersome because qualified stenographers or court reporters could be financially prohibitive and may not be available on the short notice needed to review a variance request. Because of the perishability of the fruit, it is imperative that decisions on variances be made promptly. Accordingly, the proposed change is denied. Nonetheless, it is important that the committee, maturity subcommittee and appeal committee use all practical means possible to demonstrate that their meetings, whether public or by telephone, are conducted in a fair and open manner.

In a comment the committee requested that, after the appeal committee has decided on a variance appeal, the Department should notify the producer or handler requesting the variance of the appeal committee's decision. The Department believes it is more appropriate for the committee to notify industry members of actions taken by the committee and its subcommittees so that such information may be conveyed in a timely manner. Accordingly, the proposed change is denied.

The committee further requests that the appeal committee should establish a prioritized list of knowledgeable persons who could serve in the place of appeal committee members. The Department believes that such preparations for designation of alternates to the appeal committee can be accomplished under current provisions which authorize designees for specified appeal committee members. However, a prioritized list of names or positions does not have to be published in this rulemaking action. Therefore, no such change to the regulation is necessary.

Minor wording changes are made in paragraph (a)(1)(i) of § 917.459 to clarify that the inspection service does not, on its own, determine what maturity tests are proper for determining the well-maturity of non-listed peach varieties.

In view of the foregoing, the Department denies the comments received and the proposed changes suggested by commenters except as otherwise noted in this final rule. After considering all of the comments received, and based on the reasons that were set forth in the interim final rule and this document, this action adopts, with the change as stated herein, as a final rule, the maturity requirements and variance appeal procedures that were set forth in the interim final rule to assist California peach growers and handlers in improving the quality of the peaches they market.

It is found and determined that this action, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) peach handlers and producers are aware of these requirements which have been in effect since May 27, 1988; (2) with the exception of the minor changes for size and maturity determinations, the requirements set forth below are the same as currently implemented in the interim final rule; and (3) no useful purpose would be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Part 917

Marketing agreement and order, peaches, California.

For the reasons set forth in the preamble, 7 CFR Part 917 is amended as follows:

Note.—This rule will appear in the Code of Federal Regulations.

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Accordingly, the interim final rule amending § 917.459, which was published in the **Federal Register** (53 FR 19234, May 27, 1988), is adopted as final rule with the following changes—paragraph (a)(1)(i) is revised and (a)(1)(iv) is amended by removing the first three sentences and adding four sentences in their place to read as follows:

§ 917.459 Peach Regulation 14.

(a) * * *

(1) * * *

(i) During the 1988 and subsequent seasons, the Federal or Federal-State Inspection Service will use the maturity guides listed in Table I in making maturity determinations for the specified varieties. For these varieties, not less than 90 percent of any lot shall meet the color guide established for the variety, and an aggregate area of not less than 90 percent of the fruit surface shall meet the color guide established for the variety. For varieties not listed, the Federal or Federal-State Inspection Service will use such tests as deemed to be proper by the Peach Commodity Committee and the Federal or Federal-State Inspection Service. A variance for any variety from the application of the maturity guides specified in Table I may be granted during the season to reflect changes in crop, weather, or other conditions that would make the specified guides an inappropriate measure of "well-matured." The maturity determination variance procedure is set forth as follows:

* * * * *

(iv) If either the fieldman or the inspection representative or both agree that a variance is warranted, the request for the variance and the written views of the fieldman and inspection official shall be forwarded to the maturity subcommittee for review and written determination. A copy of the written report shall be provided to the requester. The fieldman shall notify the requester when the request has been forwarded to the maturity subcommittee and whether the request will be considered at a public or a telephone meeting. The requester may participate in public meetings or telephone meetings and may provide additional information in support of the request to the chairman of the maturity subcommittee prior to a public or telephone meeting." * * *

* * * * *

3. Section 917.459(a) is corrected by removing the entry for "Firecrest" from Table I.

4. Section 917.459(a)(4) is corrected by removing the word "Firecrest" from the first sentence and adding the word "Prima Fire" in alphabetical order.

Dated: March 23, 1989.

Robert C. Kenney,

Director, Fruit and Vegetable Division.

[FR Doc. 89-7286 Filed 3-24-89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 87F-0294]

Indirect Food Additives; Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polyvinylcyclohexane as a clarifying agent for polypropylene and propylene containing olefin copolymers intended for use in contact with food. This action is in response to a petition filed by Sumitomo Chemical Co., Ltd.

DATES: Effective March 27, 1989; written objections and requests for a hearing by April 26, 1989.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 7, 1987 (52 FR 37525), FDA announced that a food additive petition (FAP 7B4032) had been filed by Sumitomo Chemical Co., Ltd., 7-9 Nihonbashi, 2-Chome, Chuo-ku, Tokyo, Japan, proposing that § 177.1520 *Olefin polymers* (21 CFR 177.1520) be amended to provide for the safe use of polyvinylcyclohexane as a clarifying agent in polypropylene complying with § 177.1520(c), item 1.1, and olefin copolymers complying with § 177.1520(c), items 3.1 and 3.2, for use in contact with food.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed use of the food additive is safe, and that the food additive regulations should be amended in § 178.3295 *Clarifying agents for polymers* (21 CFR 178.3295), rather than in § 177.1520 as proposed in the filing notice, because § 178.3295 is specifically for clarifying agents used for polymers, the use requested by the petitioner.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before April 26, 1989, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right of a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall consititute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.3295 is amended in the table by alphabetically adding a new entry under the headings "Substances and "Limitations" to read as follows:

§ 178.3295 Clarifying agents for polymers.

* * * * *

Substances	Limitations
* *	* * * *
Polyvinylcyclohexane (CAS Reg. No. 25498-06-0).	For use only as a clarfiying agent for polypropylene complying with § 177.1520(c) of this chapter, item 1.1., and in propylene containing copolymers complying with § 117.1520(c) of this chapter, items 3.1 and 3.2, at a level not exceeding 0.1 percent by weight of the polyolefin.
* *	* * * *

Dated: March 17, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-7150 Filed 3-24-89; 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 840 and 841

[Docket No. R-89-1433; FR-2581]

Supportive Housing Demonstration Program

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

ACTION: Technical amendments to final rule.

SUMMARY: The Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988) (Amendments Act) made several changes to the Supportive Housing Demonstration Program. As required by section 485 of the Amendments Act, HUD published a Notice on January 9, 1989 (54 FR 736), for immediate effect, describing the changes, and invited public comments for consideration in amending the final rule within 12 months of enactment. This publication codifies the changes to the Supportive Housing final rule, which was published on June 24, 1988 (53 FR 23898) and codified at 24 CFR Parts 840 and 841. These changes to the rule will be in effect only until HUD publishes the amended final rule within 12 months of enactment of the Amendments Act, as required by section 485. The sole purpose of this rule is to codify the changes in the Supportive Housing program required to be implemented by the Amendments Act, so that participants in the program will not find it necessary to consult two separate documents (HUD's existing final rule published on June 24, 1988 and the Notice published January 9, 1989) in order to determine what regulatory requirements will govern Fiscal Year 1989 grants.

EFFECTIVE DATE: March 27, 1989.

FOR FURTHER INFORMATION CONTACT: Morris Bourne, Department of Housing and Urban Development, Room 9140, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-1520. Hearing or speech-impaired individuals may call HUD's TDD number (202) 426-0015. (These phone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: This rule contains collection of information requirements that were not contained in the final rule published on June 24, 1988. Revised collection of information requirements were submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980 and were approved on under OMB control number 2502-0361. Information on the revised reporting burden is contained in the January 9, 1989 **Federal Register** Notice.

The rule does not constitute a "major rule" as that term is defined in section 1(d) of Executive Order 12291 issued by the President on February 17, 1981. An 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 of 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.

The January 9, 1989 Notice contained information with respect to the amendments and the National Environmental Policy Act of 1969, Executive Orders 12606 (The Family) and 12612 (Federalism), and the Regulatory Flexibility Act. The reader may refer to that document for HUD's analyses under those provisions.

This document was not listed on the Department's Semiannual Agenda of Regulations published on October 24, 1988 (53 FR 41974).

The Catalog of Federal Domestic Assistance program number is 14.178.

List of Subjects

24 CFR Part 840

Grant programs, Housing and community development, Housing, Homeless.

24 CFR Part 841

Grant programs, Housing and community development, Housing, Handicapped, Homeless.

For the reasons stated in the preamble, Parts 840 and 841 of Title 24 of the Code of Federal Regulations are amended as set forth below:

PART 840—[AMENDED]

1. The Table of Contents for Part 840 is amended by adding new sections, to read as follows:

* * * * *

Subpart B—Assistance Provided

* * * * *

840.112 New construction advances.

* * * * *

840.117 Grants for employment assistance programs.

* * * * *

Subpart D—Application and Selection Process

* * * * *

840.220 Environmental review by applicants.

* * * * *

Subpart E—Program Requirements

* * * * *

840.314 Flood insurance.

* * * * *

Subpart F—Administration

* * * * *

840.405 Site change.

2. The authority citation for Part 840 is revised to read as follows:

Authority: Section 426(a), Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11386(a)); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

3. Section 840.5 is amended by revising the paragraphs defining "Project" and "Transitional housing" to read as follows:

§ 840.5 Definitions.

* * * * *

Project means one or more existing structures or incomplete structures, or parts of one or more existing structures or incomplete structures.

* * * * *

Transitional housing means a project assisted under this part:

(a) That provides housing and supportive services to homeless persons; and

(b) That has as its purpose facilitating the movement of homeless individuals to independent living within 24 months, or within a longer period determined by HUD as necessary to facilitate the transition.

All or part of the supportive services may be provided directly by the recipient or by arrangement with public or private service providers. Transitional housing means housing that is designed to serve the homeless including (but not limited to): deinstitutionalized homeless individuals with mental disabilities, homeless families with children, homeless runaway children, homeless victims of domestic violence, the homeless unemployed, or appropriate combinations of these populations.

* * * * *

4. Section 840.100 is revised to read as follows:

§ 840.100 Types of assistance.

(a) *Assistance available.* Six types of assistance are available for transitional housing: acquisition/rehabilitation advances, new construction advances, moderate rehabilitation grants, funding for annual operating costs, funding for establishing and operating employment assistance programs, and technical assistance.

(b) *Eligibility for more than one type of assistance.* Applicants may be eligible for one or any combination of the types of assistance, except that HUD will offer technical assistance only in connection with other assistance under this part.

5. Section 840.105 is amended by revising paragraph (a) and by adding paragraphs (d), (e), (f), and the OMB control number, to read as follows:

§ 840.105 Acquisition/rehabilitation advances.

(a) *Use.* HUD will advance sums to recipients to:

(1) Defray the cost of the acquisition, substantial rehabilitation, or acquisition and rehabilitation of existing structures selected by the recipients for use in the provision of transitional housing; or;

(2) Repay any outstanding debt on a loan made to purchase existing structures for use in the provision of transitional housing.

* * * * *

(d) *Increased advances.* In areas determined by HUD to have costs that exceed the statutory limits of section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) by at least 75 percent, advances of more than $200,000 but not more than $400,000 may be available. (A list of these geographic areas is included in the application package or is available from HUD field offices.) All requirements with regard to matching funds described in § 840.130 are applicable to such increased advances.

(e) *Repayment of outstanding debt.* An applicant for an acquisition/rehabilitation advance that intends to use the advance to repay an outstanding debt on a loan made to purchase an existing structure, as described in paragraph (a)(2) of this section, must provide the following information and documentation as a part of the application for the advance:

(1) A copy of the contract of sale;

(2) A copy of the loan agreement, mortgage agreement, or deed of trust;

(3) Documentation showing the purpose of the loan;

(4) Documentation of the balance owed on the loan, mortgage, or deed of trust; and

(5) Certification that the structure has not been used as supportive housing before the receipt of assistance.

(f) *Retroactive applicability.* The provision regarding the use of advances to repay an outstanding debt on a loan made to purchase an existing structure, contained in paragraph (a)(2) of this section, is applicable to awards of assistance under this part on or after November 1, 1987.

(Approved by the Office of Management and Budget under OMB Control Number 2502–0361)

6. Section 840.110 is amended by revising paragraph (b)(1)(i) and by adding paragraph (d) to read as follows:

§ 840.110 Moderate rehabilitation grants.

* * * * *

(b) * * *

(1) * * *

(i) $200,000;

* * * * *

(d) *Increased grants.* In areas determined by HUD to have costs that exceed the statutory limits of section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) by at least 75 percent, grants of more than $200,000 but not more than $400,000 may be available. (A list of these geographic areas is included in the application package or is available from HUD field offices.) All requirements with regard to matching funds described in § 840.130 are applicable to such increased grants.

7. Part 840, Subpart B, is amended by adding § 840.112 to read as follows:

§ 840.112 New construction advances.

(a) *Use.* HUD will advance sums to recipients to defray the cost of new construction of facilities for use in the provision of transitional housing where HUD finds the following factors:

(1) The project involves the cooperation of a city and a State university;

(2) The land has been donated to the applicant by a State university;

(3) The applicant proposes a transitional housing structure of at least 10,000 square feet; and

(4) The applicant proposes a model transitional housing project with a comprehensive support system, including health services, job counseling, mental health services, and housing assistance and advocacy.

(b) *Amount.* An advance for new construction may not exceed the lesser of:

(1) $200,00; or

(2) 50 percent of the aggregate cost of the new construction (see § 840.130 for a full discussion of the 50 percent matching requirements).

(c) *Increased advances.* In areas determined by HUD to have costs that exceed the statutory limits of section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) by at least 75 percent, advances of more than $200,000 but not more than $400,000 may be available. (A list of these geographic areas is included in the application package or is available from HUD field offices.) All requirements with regard to matching funds described in § 840.130 are applicable to such increased advances.

8. Section 840.115 is amended by redesignating paragraph (b) as paragraph (c) and by adding a new paragraph (b) and the OMB control number, to read as follows:

§ 840.115 Funding for annual operating costs.

* * * * *

(b) *Operating costs for incomplete structure.* If an applicant seeks operating cost assistance for projects with incomplete structures, the applicant must provide reasonable assurance of completion of construction within nine months after notification of an award. Reasonable assurance may be satisfied by submission with the application for assistance the following:

(1) Plans and specifications for the proposed structure;

(2) Evidence that construction financing has been obtained; and

(3) A copy of the construction contract for the proposed structure containing the terms and conditions with regard to cost and date of completion.

* * * * *

(Approved by the Office of Management and Budget under OMB Control Number 2502–0361)

9. Part 840, Subpart B, is amended by adding § 840.117 to read as follows:

§ 840.117 Grants for employment assistance programs.

(a) *Use.* HUD will provide grants for up to 50 percent of the cost of establishing and operating an employment assistance program for residents for one year, and for up to 50 percent of the cost of operating an employment assistance program for up to four additional years.

(b) To be eligible for assistance, an employment assistance program must provide for at least the following:

(1) Employment of residents in the operation and maintenance of the transitional housing; and

(2) Where necessary and appropriate, payment of reasonable transportation costs of residents to places of employment outside the transitional housing.

(c) *Commitment of amounts for assistance.* Upon approval of an application for assistance for an employment assistance program, HUD will obligate amounts for the period sought, not to exceed five years. The funding level for the first year will not exceed the recipient's estimate of the cost of establishing and operating the program for the first year, less the recipient's matching contribution. The funding level for each of the next four years will not exceed the recipient's estimate of the cost of operating the program for the first year, less the recipient's annual matching contribution. Amounts obligated for an employment assistance program grant are subject to the deobligation rules set out in § 840.400.

10. Section 840.120 is revised to read as follows:

§ 840.120 Technical assistance.

Technical assistance will be offered only in connection with an award of funds under §§ 840.105, 840.110, 840.112, 840.115, or 840.117. Technical assistance is offered to recipients through HUD field offices in such matters as the computation of resident rent under § 840.320, compliance with other Federal requirements under § 840.330, the identification of Federal housing assistance resources that may be available to residents upon their departure from transitional housing, and engineering recommendations and other advice on rehabilitation plans and work write-ups. HUD will also facilitate the exchange of information among recipients, and help recipients to learn from the experience of other participants in the program.

§ 840.125 [Amended]

11. Section 840.125 is amended by removing paragraph (d) and redesignating paragraphs (e), (f), and (g) as paragraphs (d), (e), and (f), respectively.

12. Section 840.130 is amended by revising paragraphs (a), (b), and (c)(1), and by adding paragraph (h), to read as follows:

§ 840.130 Matching requirements.

(a) *General.* The recipient must match the funding provided by HUD under this part with at least an equal amount of funds from non-Federal sources.

(b) *Assistance categories.* Recipients must meet this matching requirement for *each* category of assistance received. The most HUD will provide for an acquisition/rehabilitation advance, a new construction advance, a moderate rehabilitation grant, funding for an employment assistance program, or funding for annual operating costs is 50 percent of the *respective* costs of each of these activities. No match is required for technical assistance.

(c) *"In-kind" contributions.* (1) HUD will include in the matching calculation, at the value of $5 an hour, the time and services contributed by volunteers to carry out the transitional housing program. The volunteer time and services will be included in the matching calculation for the type of assistance to which the contribution relates.

* * * * *

(h) *Salaries and transportation costs.* (1) HUD will include in the matching calculation for funding for operating costs any salaries paid to staff to carry out the recipient's transitional housing program.

(2) HUD will include in the matching calculation for funding for an employment assistance program any salaries paid to residents of transitional housing under an employment assistance program, and the cost of transportation paid for residents to places of employment outside the transitional housing. Transportation costs must not exceed the cost of public transportation. Other transportation costs, subject to HUD approval, may be substituted if public transportation is not available.

13. Section 840.210 is amended by revising paragraphs (b)(3)(i), (b)(3)(ii)(B)(l), (b)(4)(iv) (B), (C), and (D), and (b)(7), to read as follows:

§ 840.210 Threshold requirements.

* * * * *

(b) * * *

(3) *Matching*—(i) *General.* Each applicant must demonstrate that it will match the amount of the assistance to be provided by HUD under this part with at least an equal amount of funds from non-Federal sources, in accordance with the requirements of § 840.130.

(ii) * * *

(B) * * *

(*1*) A commitment to provide matching funds for an acquisition/rehabilitation advance, a new construction advance, or a moderate rehabilitation grant must be a firm commitment from the funding source. This firm commitment must demonstrate the source's binding commitment to provide funds and the date upon which funds will be available. This commitment may be contingent upon the selection of the applicant for funding under this part.

* * * * *

(4) * * *

(iv) * * *

(B) If the applicant is unable to show site control, it may meet the requirement of paragraph (b)(4)(iv)(A) of this section by providing reasonable assurance that it will have control of a site for the proposed project not later than six months after notification of an award for grant assistance. "Reasonable assurance" must be satisfied by identification of a suitable site and:

(*1*) Certification that the applicant is engaged in negotiations or in other efforts for the purpose of gaining control of the identified site; or

(*2*) Other evidence satisfactory to HUD showing that the applicant will gain control of the identified site.

(C) The applicant must demonstrate that the proposed use of the site is permissible under applicable zoning ordinances and regulations; or provide a statement describing the proposed actions necessary to make the use of the site permissible under applicable zoning ordinances and regulations, and demonstrate that there is a reasonable basis to believe that the proposed zoning actions will be completed successfully and within four months following the submission of the application.

(D) The provision in paragraph (b)(iv)(B) of this section is applicable to awards of assistance under this part on or after November 1, 1987.

* * * * *

(7) *Environmental review.* (i) The environmental effects of each application must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) (NEPA) and the related authorities listed in HUD's implementing regulations at 24 CFR Part 50. HUD will perform the environmental review for applications from private nonprofit organizations, governmental entities with special or limited purpose powers, and any governmental entities with general purpose powers found not to have the legal capacity to carry out this responsibility. For the environmental review requirements for all other applicants, see § 840.220.

(ii) With regard to the environmental effects of applications for which HUD performs the review, HUD will make the assessment in accordance with the provisions of NEPA and the related authorities listed in 24 CFR 50.4. Any application subject to environmental review by HUD that requires an Environmental Impact Statement (EIS) (generally, an application that HUD determines would have a significant impact on the human environment, in accordance with the environmental assessment procedures at 24 CFR Part 50, Subpart E) will not pass threshold review and will not be eligible for assistance under this part.

(iii) Applications for projects that are to be acquired, rehabilitated, or assisted with transitional housing funds and that are located in any 100-year floodplain (or 500-year floodplain for critical actions, *i.e.*, projects intended to serve developmentally disabled, chronically mentally ill, or mobility impaired residents), as designated by maps prepared by the Federal Emergency Management Agency (FEMA), are subject to the floodplain review requirements of Executive Order 11988, Floodplain Management (May 24, 1977). The floodplain review will be a part of the environmental review described in paragraphs (b)(7) (i) and (ii) of this section. Applicants may be required to provide engineering and structural information in order for HUD to undertake the floodplain review. If HUD is unable to make a floodplain determination within 60 days from the date it publishes the first notice required under the floodplain review, and the applicant has not provided the HUD-requested information in a timely manner, the application will be rejected.

(iv) *Alternative considerations.* Executive Order 11988 requires HUD (or the applicant where the applicant assumes environmental review responsibilities under § 840.220) to consider alternatives to avoid adverse impacts associated with the occupancy and modification of floodplains. The alternatives may include actions resulting in less risk to human life or property. The review process may result in specific mitigation requirements or rejection of the site or application for assistance. As part of the eight-step process, HUD (or the applicant) must reevaluate alternatives to projects/sites located in floodplains and, where HUD performs the review, HUD will assign a higher environmental rating to applications with less hazardous sites.

(v) As a result of the environmental review of those applications for which HUD performs the review, HUD may find that it cannot approve an application unless adequate measures are taken to mitigate environmental impacts. (See *e.g.*, 24 CFR Part 51). If an application passes threshold review, HUD will consider the anticipated time delays in adopting appropriate impact mitigation measures in the ranking stage of the selection process. The environmental review may also reveal other information not contained in the application that may have relevance to the selection process. HUD will consider such information in the selection process, but, in all cases in which HUD performs the review, the environmental review must be accomplished before an application may be approved.

14. Section 840.215 is amended by adding paragraphs (b) (6) and (7), to read as follows:

§ 840.215 Ranking criteria.

* * * * *

(b) * * *

(6) *Employment assistance program.* HUD will consider the extent to which the applicant has an employment assistance program. The most points will be assigned under this criterion to applicants that demonstrate an employment assistance program that is operated with funds obtained from sources other than the transitional housing program and with funds not used as part of the applicant's matching contribution, and that demonstrate an employment assistance program providing for:

(i) The employment of all residents, either in the operation and maintenance of the housing or outside the housing, except where they are participating in a job training program, are actively seeking employment, or are unable to obtain employment due to disabilities (including mental disabilities) or other causes; and

(ii) The payment of the full transportation costs of residents to places of employment outside the housing, where such payment is necessary and appropriate.

(7) *Site control.* The most points will be assigned under this criterion to applicants that demonstrate that:

(i) The applicant owns or has a contract of sale for the site at the time of the application;

(ii) The applicant has a lease for the site for a period of 10 years from the date of the application;

(iii) The applicant has an option to purchase the site at the time of the application; or

(iv) The applicant has an option to lease the site for a period of 10 years from the date of the application.

15. Part 840, Subpart D, is amended by adding § 840.220 to read as follows:

§ 840.220 Environmental review by applicants.

(a) *Responsibility for review.* Applicants that are States, metropolitan cities, urban counties, tribes, or other governmental entities with general purpose powers, and that are deemed to have the legal capacity to do so, must assume responsibility for environmental review, decisionmaking, and action for each application for assistance, in accordance with the procedural provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) (NEPA) and related laws and authorities defined in HUD's implementing regulations in 24 CFR Part 58. (The environmental review process for all other applicants is discussed in § 840.210(b)(7).)

(b) *Assurance in application.* An applicant that is required under paragraph (a) of this section to assume environmental review responsibility must include in its application an assurance that the applicant will assume all the environmental review responsibility that would otherwise be performed by HUD under 24 CFR Part 50 as the responsible Federal official under NEPA, including acceptance of jurisdiction of the Federal courts.

(c) *Location of projects in floodplains.* Applications for projects that are to be acquired, rehabilitated, or assisted with transitional housing funds and that are located in any 100-year floodplain (or in any 500-year floodplain for critical actions, *i.e.*, projects intended to serve developmentally disabled, chronically mentally ill, or mobility impaired residents), as designated by maps prepared by the Federal Emergency Management Agency (FEMA), are subject to the floodplain review requirements of Executive Order 11988, Floodplain Management (May 24, 1977). Executive Order 11988 review, as referenced under under 24 CFR Part 58, is to be performed during the environmental review.

(d) *Timing of review and restrictions on release of funds.* An applicant that is required under paragraph (a) of this section to assume environmental review responsibility need not complete the review until a reasonable time after selection for funding. In such cases, the award is subject to completion of the environmental responsibilities set out in 24 CFR Part 58 within a reasonable time period after notification of the award. (This provision does not preclude the applicant from completing the review before application and enclosing its environmental certification and Request for the Release of Funds with its application.) Section 840.210(b)(7) will not apply to an applicant that assumes environmental review responsibility, and HUD will not consider environmental impacts or time delays associated with mitigation measures for such an application in ranking the applications.

(1) Upon completion of the requirements in 24 CFR Part 58, applicants must certify the completion and submit a Request for Release of Funds.

(2) HUD will not release funds for a transitional housing project if the recipient or any other party commits transitional housing funds (*i.e.*, incurs any costs or expenditures to be paid or reimbursed with such funds) before the grantee submits its Request for Release of Funds.

(e) *Lack of legal capacity.* A general government applicant that believes that it does not have the legal capacity to carry out the responsibilities required by 24 CFR Part 58 should contact the appropriate HUD field office for further instructions. Determinations of legal capacity will be made on a case-by-case basis.

(Approved by the Office of Management and Budget under OMB Control Number 2502-0361)

16. Section 840.310 is amended by revising paragraphs (b) (1) and (2), to read as follows:

§ 840.310 Term of commitment and repayment of advance.

* * * * *

(b) *Repayment of advance.* (1) The recipient of an acquisition/rehabilitation advance under § 840.105 or of a new construction advance under § 840.112 must repay the advance in the amount prescribed under paragraph (b)(2) of this section and in accordance with the terms prescribed by HUD.

(2) The recipient must repay the full amount of the acquisition/rehabilitation advance or the new construction advance if the project is used for transitional housing for less than 10 years following the date of initial occupancy. For each full year that the project is used for transitional housing following the expiration of this 10-year period, the amount that the recipient will be required to pay will be reduced by one-tenth of the original advance. If the project is used for transitional housing for 20 years following the date of initial occupancy, the recipient will not be required to repay any portion of the advance under this section.

* * * * *

17. Section 840.312 is revised to read as follows:

§ 840.312 Casualty insurance.

The recipient must obtain, and maintain in force, property casualty insurance, with HUD named as beneficiary, in an amount at least equal to the amount of the acquisition/rehabilitation advance, the new construction advance, or the moderate rehabilitation grant provided to the recipient.

18. Section 840.313 is revised to read as follows:

§ 840.313 Eminent domain.

A recipient whose structure is taken by eminent domain must repay the acquisition/rehabilitation advance, the new construction advance, or the moderate rehabilitation grant provided to the recipient, to the extent that funds are available from the eminent domain proceeding.

19. Part 840 is amended by adding § 840.314, to read as follows:

§ 840.314 Flood insurance.

(a) The Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128) prohibits the approval of applications for assistance for acquisition or construction (including rehabilitation) for projects/sites located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(1) The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR Parts 59 through 79), or less than a year has passed since FEMA notification regarding such hazards; and

(2) Flood insurance is obtained as a condition of approval of the application.

(b) Applicants with projects/sites located in an area identified by FEMA as having special flood hazards are responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.

20. Section 840.315 is amended by revising paragraph (a), to read as follows:

§ 840.315 Prevention of undue benefits.

(a) *General.* If assistance in the form of an acquisition/rehabilitation advance, a new construction advance, or a moderate rehabilitation grant is provided for a project and the project is sold or otherwise disposed of during the 20 years following initial occupancy, the recipient must comply with such terms and conditions as HUD may prescribe to prevent the recipient from unduly benefiting from the sale or the disposition.

* * * * *

21. Section 840.330 is amended by adding paragraph (j), to read as follows:

§ 840.330 Applicability of other Federal requirements.

* * * * *

(j) *Drug- and alcohol-free facilities.* Section 402 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 requires grantees, recipients, and project sponsors of programs assisted under this part to administer, in good faith, a policy designed to ensure that the homeless facility is free from the illegal use, possession, or distribution of drugs or alcohol by its beneficiaries.

22. Section 840.400 is amended by revising paragraphs (a), (b), and (c)(1) and (2), and by adding paragraph (d), to read as follows:

§ 840.400 Obligation of funds, funding amendments, and deobligation.

(a) *Obligation of funds.* When HUD selects an application for funding and notifies the recipient, it will obligate funds to cover the amount of the approved assistance under Subpart B.

(b) *Increases.* After the initial obligation of funds, HUD will not make any upward revisions to the amount obligated for any approved assistance.

(c) *Deobligation.* (1) HUD may deobligate amounts for the acquisition/rehabilitation advance, the moderate rehabilitation grant, or the new construction advance:

(i) If the actual total costs of acquisition/rehabilitation, moderate rehabilitation, or new construction are less than the total cost anticipated in the application; or

(ii) If proposed activities for which funding was approved are not begun or completed within a reasonable time after selection.

(2)(i) HUD may deobligate the amounts for annual operating costs or for annual operating costs of an employment assistance program in any year following the first year of operations, based on the recipient's actual cost experience. Additionally, if a recipient's operations generate a substantial amount of resident rent (see § 840.320), HUD may adjust the operating costs allowed under the grant agreement downward, to the extent of the rent received in excess of that anticipated and budgeted in the application.

(ii) HUD may deobligate the amounts for annual operating costs or for establishing and operating an employment assistance program if the proposed transitional housing operations are not begun within a reasonable time following selection.

* * * * *

(d) *Site control.* HUD will deobligate any award for assistance if the recipient does not have control of a suitable site within one year after notification of an award.

23. Part 840, Subpart F, is amended by adding § 840.405, to read as follows:

§ 840.405 Site change.

(a) *General.* A recipient may obtain ownership or control of a suitable site different from the one specified in its application. Retention of an assistance award is subject to the new site's meeting all requirements under this part for suitable sites.

(b) *Increased cost.* If the acquisition/rehabilitation or moderate rehabilitation costs for the substitute site are greater than the amount of the advance or grant awarded for the site specified in the application, the recipient must provide for all additional costs. If the recipient is unable to demonstrate to HUD that it is able to provide for the difference in costs, HUD may deobligate the award of assistance.

(c) *Applicability*. This section is applicable to awards of assistance made under this part on or after November 1, 1987.

PART 841—[AMENDED]

24. The Table of Contents for Part 841 is amended by adding new sections, to read as follows:

* * * * *

Subpart B—Assistance Provided

* * * * *

841.112 Funding for annual operating costs.

841.114 New construction advances.

* * * * *

Subpart D—Application and Selection Process

* * * * *

841.220 Environmental review.

* * * * *

Subpart E—Program Requirements

* * * * *

841.314 Flood insurance.

* * * * *

Subpart F—Administration

* * * * *

§ 841.405 Site change.

25. The authority citation for Part 841 is revised to read as follows:

Authority: Section 426(a), Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11386(a)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

26. Section 841.5 is amended by adding a paragraph defining "Operating costs", and by revising the paragraphs defining "Project" and "Project sponsor", to read as follows:

§ 841.5 Definitions

* * * * *

Operating costs means expenses that a recipient incurs for:

(a) The administration, maintenance, minor or routine repair, security and rental of the housing;

(b) Utilities, fuel, furnishings, and equipment for the housing;

(c) Conducting resident supportive services needs assessments (see § 841.305(b)); and

(d) The provision of supportive services to the residents of the housing. This term does not include expenses that a recipient incurs for debt service in connection with a loan used to finance acquisition or rehabilitation costs under the program.

* * * * *

Project means one or more existing structures or incomplete structures, or parts of one or more existing structures or incomplete structures, owned or leased by the project sponsor (or by the recipient) for use in connection with permanent housing for handicapped homeless persons. The project must be:

(a) A group home designed solely for housing handicapped homeless persons, or

(b) Dwelling units in a rental apartment building, a condominium project or a cooperative project.

Project sponsor means a private nonprofit organization that an authorized official of the applicant approves as to financial responsibility, or a public housing agency (PHA). The project sponsor must operate the permanent housing for handicapped homeless persons, and must provide (or coordinate the provision of) supportive services to the residents of such housing.

27. Section 841.100 is revised to read as follows:

§ 841.100 Types of assistance.

(a) *Types of assistance available*. Five types of assistance are available for permanent housing for handicapped homeless persons: acquisition/rehabilitation advances, moderate rehabilitation grants, new construction advances, annual operating costs (up to two years), and technical assistance.

(b) *Eligibility for more than one type of assistance*. Applicants may be eligible for one or any combination of the types of assistance, except that HUD will offer technical assistance only in connection with other assistance under this part.

28. Section 841.105 is amended by revising paragraph (a) and by adding paragraphs (d), (e), (f), and the OMB control number, to read as follows:

§ 841.105 Acquisition/rehabilitation advances.

(a) *Use*. HUD will advance sums to recipients to defray the cost of the acquisition, substantial rehabilitation, or acquisition and rehabilitation of existing structures selected by the recipients for use in the provision of permanent housing for handicapped homeless persons.

* * * * *

(d) *Increased advances*. In areas determined by HUD to have costs that exceed the statutory limits of section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) by at least 75 percent, advances of more than $200,000 but not more than $400,000 may be available. (A list of these geographic areas is included in the application package or is available from HUD field offices.) All requirements with regard to matching funds described in §841.125 are applicable to such increased advances.

(e) *Repayment of outstanding debt*. An applicant for an acquisition/rehabilitation advance that intends to use the advance to repay an outstanding debt on a loan made to purchase an existing structure must provide the following information and documentation as a part of the application for the advance:

(1) A copy of the contract of sale;

(2) A copy of the loan agreement, mortgage agreement, or deed of trust;

(3) Documentation showing the purpose of the loan;

(4) Documentation of the balance owed on the loan, mortgage, or deed of trust; and

(5) Certification that the structure has not been used as supportive housing before the receipt of assistance.

(f) *Retroactive applicability*. The provision regarding advances to repay an outstanding debt on a loan made to purchase an existing structure, contained in paragraph (a) of this section, is applicable to awards of assistance made under this part on or after November 1, 1987.

(Approved by the Office of Management and Budget under OMB Control Number 2502–0361)

29. Section 841.110 is amended by revising paragraph (b)(1), to read as follows:

§ 841.110 Moderate rehabilitation grants.

* * * * *

(b) *Amount*. (1) The moderate rehabilitation grant may not exceed the lesser of:

(i) $200,000;

(ii) The project limit; or

(iii) 50 percent of the cost of rehabilitation (see § 841.125 for a full discussion of the 50 percent matching requirements).

* * * * *

30. Part 841, Subpart B, is amended by adding § 841.112, to read as follows:

§ 841.112 Funding for annual operating costs.

(a) *General*. HUD will provide funding not to exceed 50 percent of the annual operating costs for the first year and 25 percent for the second year of permanent housing for handicapped homeless persons. (See § 841.125 for a full discussion of the matching requirements.)

(b) *Operating costs for incomplete structures.* If an applicant seeks operating cost assistance for projects with incomplete structures, the applicant must provide reasonable assurance of completion of construction within nine months after notification of an award. Reasonable assurance may be satisfied by submission, with the application for assistance, the following:

(1) Plans and specifications for the proposed structure;

(2) Evidence that construction financing has been obtained; and

(3) A copy of the construction contract for the proposed structure containing the terms and conditions with regard to cost and date of completion.

(c) *Commitment of amounts for operating costs.* Upon approval of an application requesting operating cost assistance, HUD will obligate amounts for the period sought, not to exceed two years. Each annual funding level will be equal to an amount not exceeding the recipient's estimate of operating costs for the first year of operation, less the recipient's matching contribution of 50 percent the first year and 75 percent the second year. In each of the two years, HUD will make operating cost payments to the recipient from the amounts obligated. The annual funding level will be subject to reduction under § 841.400.

(Approved by the Office of Management and Budget under OMB Control Number 2502–0361)

31. Part 841, Subpart B, is amended by adding § 841.114, to read as follows:

§ 841.114 New construction advances.

(a) *Use.* HUD will advance sums to recipients to defray the cost of new construction of facilities for use in the provision of permanent housing for handicapped persons, where HUD finds the following factors:

(1) The project involves the cooperation of a city and a State university;

(2) The land has been donated to the applicant by a State university;

(3) The applicant proposes a transitional housing structure of at least 10,000 square feet; and

(4) The applicant proposes a model transitional housing project with a comprehensive support system, including health services, job counseling, mental health services, and housing assistance and advocacy.

(b) *Amount.* An advance for new construction may not exceed the lesser of:

(1) $200,000; or

(2) 50 percent of the aggregate cost of the new construction (see § 841.125 for a full discussion of the 50 percent matching requirements).

(c) *Increased advances.* In areas determined by HUD to have costs that exceed the statutory limits of section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) by at least 75 percent, advances of more than $200,000 but not more than $400,000 may be available. (A list of these geographic areas is included in the application package or is available from HUD field offices.) All requirements with regard to matching funds described in § 841.125 are applicable to such increased advances.

32. Section 841.115 is revised to read as follows:

§ 841.115 Technical assistance.

Technical assistance will be offered only in connection with an award of funds under § 841.105, § 841.110, § 841.112, or § 841.114. Technical assistance is offered to recipients through HUD field offices in such matters as the computation of resident rent under § 841.320, compliance with other Federal requirements under § 841.330, and engineering recommendations and other advice on rehabilitation plans and work write-ups. HUD will also facilitate the exchange of information among recipients and project sponsors, and help recipients and project sponsors to learn from the experience of other participants in the program.

§ 841.120 [Amended]

33. Section 841.120 is amended by removing paragraph (d), and by redesignating paragraphs (e), (f), and (g) as paragraphs (d), (e), and (f), respectively.

34. Section 841.125 is revised to read as follows:

§ 841.125 Matching requirements.

(a) *General.* An applicant must certify that it will match the assistance provided by HUD under this part with at least an equal amount of funds from non-Federal sources.

(b) *Assistance categories.* Recipients must meet this matching requirement for *each* category of assistance received. The most HUD will provide for an acquisition/rehabilitation advance, a new construction advance, a moderate rehabilitation grant, or funding for annual operating costs is 50 percent of the *respective* costs of each of these activities. No match is required for technical assistance.

(c) *"In-kind" contributions.* (1) HUD will include in the matching calculation, at the value of $5 an hour, the time and services contributed by volunteers to carry out the permanent housing program. The volunteer time and services will be included in the matching calculation for the type of assistance to which the contribution relates.

(2) HUD will include in the matching calculation the value of contributions of materials or contributions of existing structures or parts of structures, as described below:

(i) A contribution of materials may be included in the calculation of a recipient's match for an acquisition/rehabilitation advance, new construction advance, or a moderate rehabilitation grant if the materials will be used in the rehabilitation or construction of a structure for use as permanent housing for the handicapped homeless.

(ii) A contribution of materials may be included in the calculation of a recipient's match for funding of annual operating costs if the cost of the materials would fall within the definition of operating costs under § 840.5.

(iii) A contribution of a fee ownership in a structure may be included in the calculation of a recipient's match for an acquisition/rehabilitation advance, to the extent of the fair market value of the structure.

(iv) A contribution of a leasehold interest in a structure may be included in the calculation of a recipient's match for funding of annual operating costs, to the extent of the fair rental value of the building.

(d) *Existing homeless programs.* Applicants seeking funding for existing programs must commit *new* funds in order to satisfy the matching requirement. The resources necessary to maintain and operate the program at the current level are excluded from the matching computation (see § 841.120(a))

(e) *Maintenance of effort.* State or local government funds used in the matching contribution are subject to the maintenance of effort requirements described at § 841.120(b).

(f) *Other federally assisted programs.* Except for funds made available under HUD's Community Development Block Grant program, applicants may not include funds provided under a federally assisted program in the computation of their portion of the match requirement.

(g) *Rental income.* Rental amounts paid by residents of permanent housing for the handicapped homeless under § 841.320 may be included in the calculation of the recipient's match for funding of annual operating costs.

(h) *Salaries.* HUD will include in the matching calculation for funding for annual operating costs any salaries paid to staff to carry out the recipient's permanent housing for the handicapped homeless program.

(Approved by the Office of Management and Budget under OMB Control Number 2502-0361)

35. Section 841.205 is amended by revising paragraphs (b)(5) and (b)(7), and by adding the OMB control number, to read as follows:

§ 841.205 Application requirements.

* * * * *

(b) * * *

(5) Project financial data (amount of assistance requested, a two-year operating budget, and a description of the public and private resources that are expected to be made available to comply with the matching requirements of § 841.125);

* * * * *

(7) A letter of participation as described in § 841.210(b)(2)(ii)(A), and assessment of how the proposal will meet the needs of handicapped homeless persons as described in § 841.210(b)(4)(i)(B), the designation of State agencies as described in § 841.210(b)(4)(ii)(B), and a maintenance of effort certification as described in § 841.210(b)(5);

* * * * *

(Approved by the Office of Management and Budget under OMB Control Number 2502-0361)

36. Section 841.210 is amended by revising paragraphs (b)(2)(i), (b)(2)(ii), (b)(3), and (b)(4)(v), and by removing paragraph (b)(7), and adding the OMB control number, to read as follows:

§ 841.210 Threshold requirements.

* * * * *

(b) * * *

(2) *Applicant and project sponsor*—(i) *Eligibility to receive assistance.* The applicant must be the State in which the permanent housing is to be located and must demonstrate that the project sponsor is either a private nonprofit organization or a PHA.

(ii) *Financial responsibility.* (A) HUD has determined, for purposes of this part, that all applicants are financially responsible. Applicants, however, must provide a letter of participation from an authorized official of the State containing assurances that the applicant will promptly transmit assistance to the project sponsor and will facilitate the provision of necessary supportive services to the residents of the project.

(B) Where the project sponsor is a private nonprofit organization, the applicant must demonstrate that the project sponsor has been approved by an authorized official of the State as to financial responsibility. * * *

* * * * *

(3) *Matching.* Each applicant must provide a certification stating that the assistance to be provided by HUD under this part will be matched with at least an equal amount of funds from non-Federal sources.

(4) *Proposed housing and supportive services.*

* * * * *

(v) *Siting and zoning.* Except as provided in paragraph (a) of this section, applicants must meet the following siting and zoning requirements at the time of the application:

(A) The applicant must demonstrate that it (or the project sponsor) has control of the site involved. For example, the applicant may demonstrate that it (or the project sponsor) owns or has an option to purchase, or leases or has an option to lease, the structure involved.

(B) If the applicant is unable to show site control, it may meet the requirement of paragraph (b)(4)(v)(A) of this section by providing reasonable assurance that the applicant (or the project sponsor) will have control of a site for the proposed project not later than six months after notification of an award for grant assistance. "Reasonable assurance" must be satisfied by identification of a suitable site and:

(*1*) Certification that the applicant (or the project sponsor) is engaged in negotiations or in other efforts for the purpose of gaining control of the identified site; or

(*2*) Other evidence satisfactory to HUD showing that the applicant will gain control of the identified site.

(C) The applicant must demonstrate that the proposed use of the site is permissible under applicable zoning ordinances and regulations; or provide a statement describing the proposed actions necessary to make the use of the site permissible under applicable zoning ordinances and regulations, and demonstrate that there is a reasonable basis to believe that the proposed zoning acitons will be completed successfully and within four months following the submission of the application.

(D) The provision in paragraph (b)(4)(v)(B) is applicable to awards of assistance under this part on or after November 1, 1987.

* * * * *

(Approved by the Office of Management and Budget under OMB Control Number 2502-0361)

37. Section 841.215 is amended by revising paragraph (b)(3) and by adding paragraph (b)(6), to read as follows:

§ 841.215 Ranking criteria.

* * * * *

(b) * * *

(3) *Matching.* HUD will consider the extent to which the applicant proposes to match the amount of assistance to be provided by HUD with more than an equal amount of funds from non-Federal sources. Requirements for matching amounts are discussed at §§ 841.125 and 841.210(b)(3).

* * * * *

(6) *Site control.* The most points will be assigned under this criterion to applicants that demonstrate that:

(i) The applicant (or the project sponsor) owns or has a contract of sale for the site at the time of the application;

(ii) The applicant (or the project sponsor) has a lease for the site for a period 10 years from the date of the application;

(iii) The applicant (or the project sponsor) has an option to purchase the site at the time of the application; or

(iv) The applicant (or the project sponsor) has an option to lease the site for a period of 10 years from the date of the application.

38. Part 841 is amended by adding § 841.220, to read as follows:

§ 841.220 Environmental review.

(a) *Responsibility for review.* Applicants must assume responsibility for environmental review, decisionmaking, and action for each application for assistance, in accordance with the procedural provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) (NEPA) and related environmental laws and authorities defined in HUD's implementing regulations in 24 CFR Part 58.

(b) *Assurance in application.* An applicant must include in its application an assurance that the applicant will assume all the environmental review responsibility that would otherwise be performed by HUD under 24 CFR Part 50 as the responsible Federal official under NEPA, including acceptance of jurisdiction of the Federal courts.

(c) *Location of projects in floodplains.* Applications for projects to be acquired, rehabilitated, or assisted with permanent housing funds that are located in any 500-year floodplain, as designated by maps prepared by the Federal Emergency Management Agency (FEMA), are subject to the floodplain review requirements of Executive Order 11988, Floodplain

Management (May 24, 1977). Executive Order 11988 review, as referenced under 24 CFR Part 58, is to be performed during the environmental review.

(d) *Timing of review process and restrictions on release of funds.* An applicant need not complete the review until a reasonable time after selection for funding. In such cases, the award is subject to completion of the environmental responsibilities set out in 24 CFR Part 58 within a reasonable time period after notification of the award. (This provision does not preclude the applicant from completing the review before the application, and enclosing its environmental certification and Request for the Release of Funds with its application.)

(1) Upon completion of the requirements in 24 CFR Part 58, applicants must certify the completion and submit a Request for Release of Funds.

(2) HUD will not release funds for a permanent housing project if the recipient or any other party commits permanent housing funds (*i.e.,*) incurs any costs or expenditures to be paid or reimbursed with such funds) before the grantee submits its Request for Release of Funds.

(e) *Lack of legal capacity.* An applicant that believes that it does not have the legal capacity to carry out the responsibilities required by 24 CFR Part 58 should contact the appropriate HUD field office for further instructions. Determinations of legal capacity will be made on a case-by-case basis.

(Approved by the Office of Management and Budget under OMB Control Number 2502–0361)

39. Section 841.310 is amended by revising paragraphs (b)(1) and (2), to read as follows:

§ 841.310 Term of commitment and repayment of advance.

* * * * *

(b) *Repayment of advance.* (1) The recipient of an acquisition/rehabilitation advance under § 841.105 or a new construction advance under § 841.114 must repay the advance in the amount prescribed under paragraph (b)(2) of this section and in accordance with the terms prescribed by HUD.

(2) The recipient must repay the full amount of the acquisition/rehabilitation advance or the new construction advance if the project is used for permanent housing for less than 10 years following the date of initial occupancy. For each full year that the project is used for permanent housing following the expiration of this 10-year period, the amount that the recipient will be required to pay will be reduced by one-tenth of the original advance. If the project is used for permanent housing for 20 years following the date of initial occupancy, the recipient will not be required to repay any portion of the acquisition/rehabilitation or new construction advance under this section.

* * * * *

40. Section 841.312 is revised, to read as follows:

§ 841.312 Casualty insurance.

The recipient must obtain, and maintain in force, property casualty insurance, with HUD named as beneficiary, in an amount at least equal to the amount of the acquisition/rehabilitation advance, the new construction advance, or the moderate rehabilitation grant provided to the recipient.

41. Section 841.313 is revised, to read as follows:

§ 841.313 Eminent domain.

A recipient whose structure is taken by eminent domain must repay the acquisition/rehabilitation advance, the new constuction advance, or the moderate rehabilitation grant provided to the recipient, to the extent that funds are available from the eminent domain proceeding.

42. Part 841 is amended by adding § 841.314, to read as follows:

§ 841.314 Flood insurance.

(a) The Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128) prohibits the approval of applications for assistance for acquisition or construction (including rehabilitation) for projects/sites located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(1) The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR Parts 59 through 79), or less than a year has passed since FEMA notification regarding such hazards; and

(2) Flood insurance is obtained as a condition of approval of the application.

(b) Applicants with projects/sites located in an area identified by FEMA as having special flood hazards are responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.

42. Section 841.315 is amended by revising paragraph (a), to read as follows:

§ 841.315 Prevention of undue benefits.

(a) *General.* If assistance in the form of an acquisition/rehabilitation advance, a new construction advance, or a moderate rehabilitation grant is provided for a project and the project is sold or otherwise disposed of during the 20 years following initial occupancy of the project, the recipient must comply with such terms and conditions as HUD may prescribe to prevent the recipient from unduly benefiting from the sale or the disposition.

* * * * *

43. Section 841.325 is revised, to read as follows:

§ 841.325 Number of residents.

(a) *General.* If the permanent housing consists of dwelling units in a rental building, a condominium, or a cooperative, the project may not serve more than eight handicapped homeless persons, and the homeless families of the eight homeless persons (if the head of the family or the spouse of the head of the family is a handicapped homeless person). If the permanent housing is a group home, the project may not serve more than eight handicapped homeless persons, and may not serve the families of the handicapped homeless persons.

(b) *Waiver.* HUD may waive, on a case-by-case basis, the limitation on residents contained in paragraph (a) of this section if the applicant demonstrates that local market conditions dictate the development of a larger project, and that a larger project will achieve the neighborhood integration objectives of the program within the community.

44. Section 841.330 is amended by adding paragraph (j), to read as follows:

§ 841.330 Applicability of other Federal requirements.

* * * * *

(j) *Drug- and alcohol-free facilities.* Section 402 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 requires grantees, recipients, and project sponsors of programs assisted under this part to administer, in good faith, a policy designed to ensure that the homeless facility is free from the illegal use, possession, or distribution of drugs or alcohol by its beneficiaries.

45. Section 841.400 is amended by revising paragraphs (a), (b), and (c) (1) and (2), and by adding paragraph (d), to read as follows:

§ 841.400 Obligation of funds, funding amendments, and deobligation.

(a) *Obligation of funds.* When HUD selects an application for funding and notifies the recipient, it will obligate funds to cover the amount of the approved assistance under Subpart B of this part.

(b) *Increases.* After the initial obligation of funds, HUD will not make any upward revisions to the amount obligated for any approved funding.

(c) *Deobligation.* (1) HUD may deobligate amounts for the acquisition/rehabilitation advance, the moderate rehabilitation grant, or the new construction advance:

(i) If the actual total costs of acquisition/rehabilitation, moderate rehabilitation, or new construction are less than the total cost anticipated in the application; or

(ii) If proposed activities for which funding was approved are not begun or completed within a reasonable time after selection.

(2) HUD may deobligate the amounts for annual operating costs for the year following the first year of operation, based on the recipient's actual cost experience. Additionally, if a recipient's operations generate a substantial amount of resident rent (see § 841.320), HUD may adjust the operating costs allowed under the grant agreement downward, to the extent of the rent received in excess of that anticipated and budgeted in the application.

* * * * *

(d) *Site control.* HUD will deobligate any award for assistance if the recipient does not have control of a suitable site within one year after notification of an award.

46. Part 841, Subpart F, is amended by adding § 841.405, to read as follows:

§ 841.405 Site change.

(a) *General.* A recipient may obtain ownership or control of a suitable site different from the one specified in its application. Retention of an assistance award is subject to the new site's meeting all requirements under this part for suitable sites.

(b) *Increased costs.* If the acquisition/rehabilitation or moderate rehabilitation costs for the substitute site are greater than the amount of the advance or grant awarded for the site specified in the application, the recipient must provide for all additional costs. If the recipient is unable to demonstrate to HUD that it is able to provide for the difference in costs, HUD may deobligate the award of assistance.

(c) *Applicability.* This section is applicable to awards of assistance made under this part on or after November 1, 1987.

Dated: March 9, 1989

James E. Schoenberger,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 89-7209 Filed 3-24-89; 8:45 am]

BILLING CODE 4210-27-M

---

24 CFR Part 888

[Docket No. N-89-1911; FR-2603]

Section 8 Housing Assistance Payments Program; Fair Market Rents for New Construction and Substantial Rehabilitation—Providence, RI; Special Revisions for Fiscal Year 1987

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

ACTION: Final notice.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to establish Fair Market Rents (FMRs) periodically, but not less frequently than annually. This document amends the Fiscal Year 1987 Fair Market Rent Schedule to establish new FMRs for the Providence, Rhode Island market area for that fiscal year. These rents are necessary to provide FMRs more comparable to market rents for new construction in this market area.

EFFECTIVE DATE: March 27, 1989.

FOR FURTHER INFORMATION CONTACT: Edward M. Winiarski, Chief Appraiser, Valuation Branch, Technical Support Division, Office of Insured Multifamily Housing Development, 451 Seventh Street, SW., Washington, DC 20410-0500. telephone (202) 426-7624. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) (the Act) authorizes a system of housing assistance payments to aid lower income families in renting decent, safe, and sanitary housing. These programs, known collectively as the Section 8 Housing Assistance Payments Program, provide assistance payments for lower income families for a veriety of housing options, including new construction and substantial rehabilitation.

Under these programs, HUD or public housing agencies (PHAs) make rental assistance payments on behalf of eligible families to owners. When families lease an eligible unit, the housing assistance payment is made and is based upon the difference between the total housing expense and the total family contribution. Initial contract rents, plus an allowance for utilities generally may not exceed area-wide Fair Market Rents (FMRs) established by the Department. FMRs are based primarily on the level of rentals paid for recently completed or newly constructed dwelling units of modest design within each market area as determined by HUD Field Office staff. For the FY 1987 FMRs previously promulgated by the Department (see the April 26, 1988 Federal Register, 53 FR 14954), these rents reflected the Department's cost containment efforts in relation to housing assistance provided in the Section 8 New Construction and Substantial Rehabilitation Programs.

This Document

This document announces a special revision to the entire Fiscal Year 1987 Fair Market Rent schedules applicable to the Providence, Rhode Island market area. The existing 1987 FMRs reflected data submitted by the Providence Office, as well as the cost containment efforts implemented for all 1987 New Construction and Substantial Rehabilitation rents. While the data submitted by the field office was proper, it reflected comparables built primarily during the early 1970s because there has been little construction of modestly designed rental housing in the Providence market area for the past several years. HUD's procedures, which are consistent with sound appraisal practices, permit the use of such comparables which are then adjusted for all variables, including age. Where sufficient market rental comparables do not exist, HUD procedures permit the use of an interpolation technique to arrive at indicated FMRs. Although the use of interpolation and adjustments to establish rents are sound principles and techniques, the best data for "market rents" would be that from recently constructed projects, as it would necessarily reflect current conditions in the marketplace with respect to financing, vacancy rates, etc., and would provide a degree of assurance that rents so derived should be adequate to support new projects, all factors being equal.

The Providence Office requested that the Department establish new rents for the Providence, Rhode Island market area. Careful analysis of this request and reanalysis of the FY 1987 FMRs for this market area indicate that the rents resulting from the application of the aforementioned techniques, when modified to reflect the Department's cost containment policies, are not adequate, even when it is clear that there has been compliance with the Department's cost containment guidelines with respect to