DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 888

[Docket No. FR–3694–F–02]

RIN 2501–AB76

Fair Market Rents for Section 8 Existing Housing; Amendments to Method of Calculating

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends the Department's regulations at 24 CFR part 888 governing the method of calculating Fair Market Rents (FMRs) for Section 8 Existing housing programs including the Section 8 Rental Certificate program (including space rentals by owners of manufactured homes under that program); the Moderate Rehabilitation Single Room Occupancy program; the Loan Management and Property Disposition programs; payment standards for the Rental Voucher program; and any other programs which use the Section 8 FMRs.

HUD is changing the definition from the 45th percentile of the rental distribution of standard quality rental housing units to the 40th percentile as a cost saving measure. On average, FMRs will be 3.3 percent less than if they were set at the 45th percentile level. This change will not significantly affect September 8 program operations. Families will continue to have an adequate choice of good housing and neighborhoods at the 40th percentile FMR.

EFFECTIVE DATE: September 14, 1995.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Rental Assistance Division, Office of Public and Indian Housing; telephone (202) 708–0477 or (202) 708–0850 (TDD for speech- or hearing-impaired), for questions relating to the Section 8 Rental Certificate, Rental Voucher, and Moderate Rehabilitation programs;

Barbara Hunter, Program Planning Division, Office of Multifamily Housing Management; telephone (202) 708–3944 or (202) 708–4594 (TDD for speech- or hearing-impaired), for questions relating to all other Section 8 programs.

David Pollack, Office of Community Planning and Development; telephone (202) 708–1234 or (202) 708–2565 (TDD for speech- or hearing-impaired), for questions relating to Moderate Rehabilitation, Single Room Occupancy (SRO).

Michael Allard, Office of Policy Development and Research, (202) 708–0577 or 708–1455 (TDD for speech- or hearing-impaired), for questions relating to measurement of rent levels.

Mailing address for above persons: Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (Telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 8 of the U. S. Housing Act of 1937 (the Act) (42 U.S.C. 1437f) authorizes housing assistance to aid low-income families in renting decent, safe, and sanitary housing. Assistance payments are limited by Fair Market Rents (FMRs) established by HUD, or by payment standards based on the FMRs established by public housing agencies for the Rental Voucher program. In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately-owned, decent, safe, and sanitary rental housing of a modest (non-luxury) nature with suitable amenities.

Under section 8(c) of the Act, the Secretary of HUD is directed to establish FMRs periodically, but not less frequently than annually. HUD publishes proposed FMRs each year, and after a period of public comment, publishes the final FMRs. The method used to calculate FMRs is described in 24 CFR part 888, subpart A. This rule amends the regulations:

(1) To change the FMR rent standard from the 45th to 40th percentile rent of the rent distribution of rental housing units;

(2) To authorize the Secretary to establish FMR areas that differ from the OMB definitions of metropolitan areas where the OMB definitions are determined by HUD to be larger than housing market areas;

(3) To identify Random Digit Dialing (RDD) telephone surveys as a data source used to establish FMRs for selected individual areas and to develop rent-change factors for updating FMRs;

(4) To state the requirement that, in order to be considered as a basis for revising the FMRs, public comments on proposed FMRs must contain statistically valid rental housing survey data justifying the requested changes; and

(5) To provide that the FMR for a manufactured home space in the tenant-based certificate program is 30 percent of the FMR for a two-bedroom housing unit.

The amendments to the method of calculating FMRs in this final rule apply to the following Section 8 Housing Assistance Payments programs: the Rental Certificate program, including space rentals by owners of manufactured homes; the Moderate Rehabilitation SRO Program; the loan management program for projects with HUD-insured or HUD-held mortgages, as well as the Property Disposition program; and any other HUD programs which use these FMRs (*e.g.*, programs to assist the homeless). In addition, the rule amends the regulations to reflect use of FMRs to establish payment standards for the Rental Voucher program. The rule applies to public housing agencies (PHAs) and Indian Housing Authorities (IHAs), which are collectively referred to as housing authorities (HAs).

II. Public Comments on Proposed Rule

On March 2, 1995 (60 FR 11626), HUD published its proposed rule that would amend the Department's regulations at 24 CFR part 888 governing the method of calculating FMRs for the Section 8 Rental Certificate Programs discussed above. The Department received 628 comments on the proposed regulation.

The following presents the major issues raised in the public comments and HUD's responses to these issues.

1. *Comment:* Many commenters contended that the reduction to the 40th percentile rent standard would result in a shortage of units available to the Section 8 program and that participants would be limited in their housing choices and, therefore, trapped in poor neighborhoods where units are of marginal quality. Some HAs are claiming that the reduction will kill the program in rural areas.

Response: The proposed rule would have HUD set the FMR standard at the 40th percentile rent level of the distribution of standard quality rental housing units occupied by recent movers. Because the rents of recent movers are almost always higher than the rents of stayers, more than 40 percent of the standard quality rental housing units in each FMR area have rents that would make them available to program participants.

A HUD analysis of Census data shows that, contrary to the perception of most of the commenters, rent-eligible units are actually widely dispersed throughout FMR areas. An analysis of a representative sample of 13 metropolitan areas revealed that, on average, 85 percent of census tract neighborhoods with 10 or more two-bedroom rental units had at least 30 percent of the two-bedroom units below the FMRs. The variation among these areas was not great. All areas had high percentages of neighborhoods with rent eligible units, ranging from 71 to 95 percent of the census tracts with 30 percent or more of the units below the FMR. This is strongly suggestive that families will continue to have an adequate choice of good housing and neighborhoods at the 40th percentile FMR.

A similar analysis was conducted and similar results found for a number of nonmetropolitan counties, supporting the conclusion that rural areas also will have an ample proportion of rental housing that families with housing certificates can afford at the 40th percentile FMR standard.

2. *Comment:* Many commenters were concerned that lower FMRs would result in landlords dropping out of the Section 8 Existing program.

Response: Lowering the standard from the 45th to the 40th percentile rent will reduce FMRs by a small amount, 3.3 percent on average. While some participating landlords with units renting very close to the current FMRs may choose to drop out of the program, the vast majority of units now in the program will continue to be eligible under the new 40th percentile standard. In addition, HUD will be able to use the FMR exception authority available for submarkets of FMR areas to mitigate this situation.

3. *Comment:* The proposed rule was viewed by commenters as an attempt by OMB and HUD to reduce budgets at the expense of low-income Americans.

Response: The reduction in the FMR standard is a cost savings measure. The streamlined Section 8 program will save taxpayers money while still assuring that low-income families participating in the program will be able to improve their housing situations. HUD is confident that providing Section 8 families access to 40 percent of the standard quality rental housing stock in a housing market offers them the opportunity to afford decent, safe, and sanitary housing. Further, a lower FMR standard permits assistance for more families with available funding.

4. *Comment:* Commenters thought that lower FMRs would result in more program vacancies and therefore lower administrative fees to HAs increasing their financial burden and impacting their ability to operate the program.

Response: The fact that FMRs are lower does not mean there will be a lower lease-up rate in the program. Lower FMRs are an issue only for new families entering the program or for families that move. Families in need of housing will find units that rent below the lower FMR rather than give up their rental assistance. Current program participants desiring to move will be less likely to move if they have difficulty finding a unit.

HUD is in the process of decoupling the HA ongoing administrative fees from the current FMR to the extent allowed by law. Under the notice on administrative fees for the Section 8 Rental Voucher and Rental Certificate Programs that was published in the **Federal Register** on January 24, 1995 (59 FR 32492), the HA ongoing administrative fees for the rental vouchers and certificates funded from pre-FY 1989 appropriations, representing more than one-half of the program units, were decoupled from the current FMRs. HUD is seeking legislation to decouple fees from the FMRs for rental vouchers and certificates funded from FY 1989 and subsequent appropriations. Changes in the monthly per unit fee amount would be based on changes in wage data or other objectively measurable data, as determined by HUD, that reflect the costs of administering the program.

5. *Comment:* Commenters objected that the proposed rule encourages HAs to conduct RDD surveys which are too costly and are not as reliable as local surveys of real estate agents, renters, and visual inspections of rental units. RDD surveys do not account for substandard housing, and households with telephones are not necessarily standard quality units, especially in rural areas. HUD requires HAs to use statistically valid surveys, implying the required use of the RDD approach. HUD should allow a common sense, inexpensive approach to rental housing surveys.

Response: HUD encourages HAs that believe their FMRs are too low to conduct statistically valid surveys to test these numbers. HUD recommends the use of RDD-type surveys, but these surveys are not mandatory. Both the RDD and the traditional methods that HUD recommends emphasize the need to obtain a complete list of the rental universe and conduct the survey in an unbiased way. Very small samples, if carefully drawn and surveyed, are more accurate than large samples drawn from biased sources or surveyed in a biased manner. Regardless of how the survey itself is conducted, the universe list must reflect the entire rent distribution of the FMR area. HAs may continue to submit traditional rental housing surveys and HUD will continue to evaluate them in terms of their sample validity.

HUD provides extensive step-by-step guidance on how to conduct statistically valid surveys, including sample selection (using either the RDD or traditional method), questionnaire wording, follow-ups of nonrespondents, and data processing. HUD is also willing to help HAs that want to conduct their own surveys.

HUD's past analysis indicates that RDD surveys appropriately reflect the rent levels of the standard quality housing stock. The impact of substandard housing is offset by the use of samples of rental housing units with telephones. The upward rent bias from surveying only units with telephones is offset by the high proportion of non-telephone units that would not meet quality standards.

HUD has always required the use of statistically valid housing surveys in FMR comments and has stated the requirements for such surveys in the preambles to the notices of proposed FMRs. In recent years, HUD has also publicized the availability of its rental housing survey guides and has conducted an outreach program to help HAs conduct statistically valid surveys. These surveys need not be conducted by professionals, and are cheap enough that most HAs can afford to conduct them. Even very small HAs have been able to use these surveys by joining their resources and conducting combined surveys.

6. *Comment:* The proposed change was particularly perplexing to several commenters in view of the Section 8 NOFA selection criteria—Efforts of HA to Provide Area-Wide Housing Opportunities for Families.

Response: Prior to issuing the proposed regulation, HUD considered the impact of this change on efforts to encourage families to move from high poverty neighborhoods. As discussed in the response to the first comment, HUD is confident that rental housing units meeting the program standards are available throughout FMR areas, and will favorably consider requests for submarket exception rents in order to maintain opportunities for families to rent units in non-poverty neighborhoods.

7. *Comment:* The reduction in the FMR standard would make it more difficult to administer a program that mandates Family Self-Sufficiency (FSS).

Response: HUD provided special funding in FY 1994 for HAs to hire a service coordinator under the FSS program. The Notice of Funding Availability for FY 1995 provides additional funding for HAs to hire FSS service coordinators.

8. *Comment:* Several commenters stated that reduced FMRs were insufficient to support new construction programs like the Low Income Housing Tax Credit (LIHTC) or HOME program.

Response: The FMRs, set at the 40th percentile level of standard quality recent mover rental units, would include approximately the bottom half of an area's standard quality rental stock. It is not HUD's intention to set the FMRs at a level high enough to support new construction and only in very unusual situations would this occur. Over the years, some production programs, such as the HOME and LIHTC programs, have had program rents tied to the FMRs to ensure that the end result was affordable housing. HOME participants can use the grant money in a variety of ways ranging from leveraging production costs to directly paying for them. Many of the HOME and LIHTC participants have used other sources of funds to write down rents on these projects.

9. *Comment:* Commenters objected to the 30-day comment period as being too short a time period to comment on the proposed changes.

As stated in the preamble to the proposed rule and repeated here, HUD's position in providing a 30-day comment period, rather than 60 days, is that the public had already had ample notice that HUD was considering this change. On June 23, 1994 (59 FR 32492), HUD published a notice in the **Federal Register** containing two separate sets of FMRs—one based on the 45th percentile rent levels and the other based on the 40th percentile rent levels. The notice explained that HUD was considering a 40th percentile FMR standard. A reduction in the FMR standard was also announced as a proposed cost savings measure in HUD's FY 1995 budget presentation. The June 23, 1994 notice requested public comment on the proposed FMRs at both the 40th and 45th percentiles. Since the public had already had the opportunity to consider the proposed change in the FMR standard and to comment on the actual proposed FMRs at the 40th percentile level, HUD believes that a 60-day comment period was unnecessary since the abbreviated comment period did not adversely impact the public's ability to participate in this rule making. In fact, HUD received and evaluated all comments received after the 30-day comment period had ended.

10. *Comment:* Commenters contended that HUD's proposal to provide for a 30-day comment period for the annual notice of proposed FMRs is not enough time for HAs to do rental housing surveys. Some commenters requested a comment period longer than the 60 days currently allowed.

Response: The regulation requires the Department to provide a comment period of at least 30 days to identify areas where the FMRs are believed to be too high or too low. HUD's practice has been, and will continue to be, to allow interested parties 60 days to prepare their comments. The 60-day comment period was adopted in recognition that the additional time was needed for HAs to conduct rental housing surveys. HUD reserves the right, however, to abbreviate the comment period in the event that special circumstances should warrant such an action.

HUD cannot provide for a comment period longer than 60 days and still be able to publish final FMRs on October 1 of each year. Because of the time required to obtain the year-end data used to update and process the FMR schedules each year, the earliest these estimates can be published is in mid-April. The 60-day comment period, therefore, ends in mid-June, and the remainder of that month is required to process and distribute the comments to the respective HUD Field offices. HUD reviews the comments for the next month and a half, through mid-August. The remainder of the time is spent preparing the revised FMRs for publication, clearing the publication, and submitting them to the **Federal Register**.

11. *Comment:* Commenters objected to the proposal to give the Secretary the discretion to make modifications to the FMR area definitions of large metropolitan areas.

Response: HUD generally uses the OMB definitions of metropolitan areas as FMR definitions because they are good approximations of housing market area definitions—the criterion that HUD uses to define FMR areas. OMB in its publication establishing these definitions (OMB Bulletin NO. 93–17), however, directs agencies who use the definitions for nonstatistical purposes to ensure that they are appropriate for the specific program use. OMB recommends that the agency in such a circumstance seek public comment on their appropriateness. The OMB bulletin further states that an agency may deviate from the definitions, but should identify the deviations and specify the program for which they will apply. In establishing the FMR area definitions, HUD followed the OMB procedures. First, HUD conducted an evaluation of the revised OMB metropolitan area definitions and determined there were seven metropolitan areas for which the OMB definitions were too large to represent housing market area definitions. HUD then invited public comment in the notice of proposed FMRs published on May 6, 1993 (58 FR 27062). HUD received only one public comment on this issue. After reviewing the comment, HUD decided to make the modified definitions effective, which it did in the October 1, 1993, **Federal Register** publication of final FMRs (58 FR 51410). This rule merely codifies HUD's existing policy of making exceptions to FMR definitions, as warranted, in accordance with OMB's instructions.

12. *Comment:* Several commenters objected to HUD's rule to set manufactured home space rents at the 30 percent of the FMRs for a two-bedroom unit.

Response: HUD first announced in the May 6, 1993, notice of proposed FMRs that it was considering other alternatives for establishing manufactured home space FMRs. It was explained in the notice that the data base used to estimate the FMRs for manufactured home space rents was quite old, from a 1978 survey, and that no new data sources were available. HUD did not consider the existing data sufficiently accurate to continue using these estimates. Because there is very limited use of the manufactured home space rents in the tenant-based rental assistance programs, the expected cost of obtaining new survey data was not justified.

HUD did not receive any comments on this proposal and, therefore, on June 23, 1994, proposed that the manufactured home space FMR would be 30 percent of the Section 8 two-bedroom FMR. The 30-percent ratio was selected on the basis of an analysis which showed that the vast majority of the manufactured home space FMRs were within a 20 to 30 percent range of the regular two-bedroom FMR. Recognizing that there would be valid exceptions to this relationship, HUD informed the public that it would accept local surveys of space rentals in manufactured home parks as a basis for modifying the FMRs where the proposed new standard was not adequate to operate the program. HUD also announced that it was retaining all local surveys that had been accepted since 1990 as the basis for modifying the manufactured home space FMRs. On September 28, 1994 (59 FR 49494), HUD published separately in Schedule D, the manufactured home space FMRs for 13 areas that had recent local surveys and established the FMRs for all other areas at 30 percent of the two-bedroom FMR.

13. *Comment*: A commenter requested that HUD publish a contract rent and a utility amount rather than a gross rent FMR estimate. The basis for this request is the concern that the amount HUD is using for the utility component is less than what is used at the local level.

Response: HUD FMRs are gross rent estimates, which means that they include the cost of all utilities. HUD prefers using gross rent as a basis because it accounts for the total costs to tenants and it provides a consistent basis for comparison. There is no one contract rent for an FMR area. Contract arrangements vary with regard to the types of utilities paid by the landlord and those paid by the tenant. HUD actually uses two methods to develop gross rent estimates. For the base-year estimates of FMR areas using the 1990 Census and post-1990 American Housing Surveys, a series of detailed questions are asked to determine what utilities the tenants pay and how much they pay. The contract rent and tenant paid utilities are then combined on an individual unit basis to derive the gross rent of each unit. For those areas based on RDD surveys, the gross rents are determined by asking the tenant to identify the utilities they pay themselves. HUD then uses the approved HA utility allowances to determine the appropriate amount of tenant paid utilities, which are added to the contract rent amount to determine a gross rent. HUD has found no evidence to suggest there is a downward bias introduced into the estimates using either method. The RDD procedure uses the most current HA estimates of utilities, while the Census surveys use tenant estimates of utilities. If anything, the latter source may be somewhat overstated.

14. *Comment:* A commenter stated that HUD should not implement this change without specific Congressional approval. They also stated that Congressional opposition last year should have convinced HUD not to take this action unless Congress specifically directs it to do so.

Response: The law does not specify the percentile standard used to establish the FMRs and permits HUD to change the FMR standard from the 45th to the 40th percentile standard. Accordingly, HUD has the authority to implement this change.

15. *Comment:* A commenter claimed that HUD's FMR calculations are flawed because they do not include newly constructed units which would allow for greater choice of locations and increase the number of units passing HQS.

Response: HUD is authorized to provide assistance for existing housing units and to determine FMRs for such units. Newly constructed units—units built within the past 2 years—are excluded from the FMR calculations. An objective of the Section 8 Housing Assistance Payments program is to serve as many low-income families as possible by making available standard quality rental housing units of modest (nonluxury) quality. Newly constructed units generally have much higher initial rent levels than other units. HUD, therefore, considers that such units should be deleted from the data base used to calculate the Existing Housing FMRs. Deletion of new units from the data base does not significantly affect the number of units that would pass HQS. HUD also calculates the FMRs by deleting substandard units from the Census distributions of rental housing and making an additional adjustment to factor out the affects of substandard housing on rents using the more refined housing quality data available in the American Housing Survey distributions.

16. *Comment:* A commenter, concerned that FMRs in nonmetropolitan areas were too low, suggested HUD consider establishing minimum FMRs based on State averages.

Response: HUD's use of the 1990 Census to re-benchmark the FMRs significantly improved the accuracy of these estimates in nonmetropolitan counties. For the first time, rent data were available for all counties individually rather than for county groups as had been the situation with previous Censuses. To protect against unrealistically low FMRs being set as the result of insufficient sample sizes, exceptions were made to the use of county level FMRs. The exceptions involved the use of State-wide minimum rent estimates that were applied to all FMR areas with fewer than 100 two-bedroom rental unit cases in the Census and with FMRs below the State minimum comparable rent of areas with 100 or more such cases. The base year FMR estimates for these counties were set at the lower of the State-wide minimum or the upper end of the confidence interval of the Census-based rent. HUD is concerned about the continued number of inquiries on this issue, however, and is currently reviewing its exception procedure to determine if a further adjustment may be warranted for nonmetropolitan counties with extremely low rents.

17. *Comment:* A commenter objected that comments should not be restricted in any way. Requiring smaller housing authorities to submit exhaustive statistics (from rental housing surveys) violated the spirit, if not the letter of the law. The comment stated that nearly all HAs have complete data for rental properties to establish rent reasonableness and comparability and that the results of RDD surveys pale to insignificance when compared to the actual day to day experience of a local housing authority.

Response: As explained in the response to comment number 5, HUD does not mandate the use of RDD surveys and continues to accept the traditional type rental housing surveys as a basis for revising the FMRs as long as the survey samples are not biased and are representative of the rental housing stock of the entire FMR area. HUD disagrees with the contention that local rent reasonableness data are a better, or even an acceptable alternative, to an RDD survey or a traditional survey conducted in accordance with HUD survey guidelines. The rent reasonableness data base is a restricted source of information that is collected for specific units being considered for participation in the program, for limited parts of FMR areas, and at various points in time. As such, the data are not likely to constitute a representative sample. For many areas these data were collected for units that entered the program prior to the re-benchmarking of the FMRs and, therefore, include concentrations of units above the current FMRs.

18. *Comment:* Commenters suggested that if HUD insists on going to the 40th percentile rent level, it should allow Certificate holders the same flexibility to exceed the FMR as Voucher Holders.

Response: HUD is preparing the last part of the final rule to implement the provisions of the National Affordable Housing Act of 1990, that would allow certificate holders to pay more than 30 percent of their income toward rent. Under the provisions of law, up to 10 percent of the families renting units with assistance under the rental certificate program could pay more than 30 percent of their income toward rent. Similarly, under HUD's proposed Housing Certificate Fund, 90 percent of the participants would be allowed to pay up to 35 percent of their income toward rent and 10 percent of the families could pay more than 35 percent of their income for rent.

19. *Comment:* A commenter disputed the General Counsel's findings on executive orders 12606, Family and 12611, Federalism.

Response: This rule will not restrict families to spatial concentrations of poverty. HUD is still committed to providing affordable housing to as many families as possible in today's market. The establishment of FMRs at the 40th percentile level does not have any substantial direct impact on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibility among the various levels of government.

20. *Comment:* One commenter stated that the change from the 45th to the 40th percentile FMR standard will cause still more families to be unsuccessful in finding decent, safe, and sanitary housing. The comment cited the nationwide success rate of 81 percent as evidence supporting this claim.

Response: A recent HUD study found just the opposite situation. The study, completed in 1994, found 80 percent of recipients in large cities were successful in finding housing that qualified for the program. Excluding New York City from the sample, the nationwide success rate was even higher, 87 percent. The success rates in the Section 8 program have been increasing over time, rising from about 50 percent in the late-1970's, to 65 percent in the mid-1980's, to the current 80 percent rate. As pointed out in the response to comment number 1, there is a more than adequate supply of housing in good condition and in good neighborhoods available to program participants. The Census data for the 13 selected metropolitan areas show that at the 40th percentile standard at least 40 percent of the two-bedroom rental housing stock had rents at or below the FMRs. Five of these areas had more than half of all two-bedroom units at or below the FMR, and most of the other areas had from 45 to 50 percent of the two-bedroom units at or below the FMR.

III. Other Matters

Executive Order 12866, Regulatory Planning and Review

This final rule was reviewed and approved by the Office of Management and Budget as a significant rule, as that term is defined in Executive Order 12866, which was signed by the President on September 30, 1993. Any changes to the final rule as a result of that review are contained in the public file of the rule in the office of the Department's Rules Docket Clerk.

Environmental Assessment

A Finding of No Significant Impact with respect to the environment required by the National Environmental Policy Act (42 U.S.C. 4321–4374) is unnecessary, since the establishment and review of fair market rents is categorically excluded from the Department's regulations implementing the National Environmental Policy Act at 24 CFR 50.20(*l*).

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this document before publication and by approving it certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities, because FMRs reflect the rents for similar quality units in the area. Therefore, FMRs do not change the rent from that which would be charged if the unit were not in the Section 8 program.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family,* has determined that this proposed rule would not have a significant impact on family formation, maintenance, or well-being. The proposed rule would amend the method for calculating Fair Market Rent for various Section 8 assisted housing programs, and would not affect the amount of rent a family receiving rental assistance pays, which is based on a percentage of the family's income.

Executive Order 12611, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12611, *Federalism*, has determined that this proposal would not involve the preemption of State law by Federal statute or regulation and would not have Federalism implications. The establishment of FMRs does not have any substantial direct impact on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibility among the various levels of government.

Semiannual Regulatory Agenda

This rule was listed as sequence number 1727 in the Department's Semiannual Regulatory Agenda published on May 8, 1995 (60 FR 23368, 23377) under Executive Order 12866 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance

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

List of Subjects in 24 CFR Part 888

Grant programs—housing and community development, Rent subsidies.

Accordingly, part 888 of title 24 of the Code of Federal Regulations would be amended as follows:

PART 888—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—FAIR MARKET RENTS AND CONTRACT RENT ANNUAL ADJUSTMENT FACTORS

1. The authority citation for part 888 is revised to read as follows:

Authority: 42 U.S.C. 1437c, 1437f, and 3535(d).

2. Sections 888.101 and 888.105 are removed and § 888.111 is revised to read as follows:

§ 888.111 Fair market rents for existing housing: Applicability.

The Fair Market Rents (FMRs) for existing housing (see definition in § 882.102 of this chapter) are determined by the Department of Housing and Urban Development (HUD) and apply to the Section 8 Certificate Program, including space rentals by owners of manufactured homes under the Section 8 Certificate Program, the Section 8 Moderate Rehabilitation Program, Section 8 existing housing project-based assistance, and Section 8 existing housing assisted under part 886 of this chapter. FMRs are also used to determine payment standard schedules in the Rental Voucher program.

3. Section 888.113 is revised to read as follows:

§ 888.113 Fair market rents for existing housing: Methodology.

(a) *Basis for setting fair market rents.* Fair Market Rents (FMRs) are estimates of rent plus the cost of utilities, except telephone. They are housing market-wide estimates of rents that provide opportunities to rent standard quality housing throughout the geographic area in which rental housing units are in competition. The level at which FMRs are set is expressed as a percentile point within the rent distribution of standard quality rental housing units in the FMR area. FMRs are set at the 40th percentile rent—the dollar amount below which 40 percent of standard quality rental housing units rent. The 40th percentile rent is drawn from the distribution of rents of all units that are occupied by recent movers. Adjustments are made to exclude public housing units, newly built units and substandard units.

(b) *FMR Areas.* FMR areas are metropolitan areas and nonmetropolitan counties (nonmetropolitan parts of counties in the New England States). With several exceptions, the most current Office of Management and Budget (OMB) metropolitan area definitions of Metropolitan Statistical Areas (MSAs) and Primary Metropolitan Statistical Areas (PMSAs) are used because of their generally close correspondence with housing market area definitions. HUD may make exceptions to OMB definitions if the MSAs or PMSAs encompass areas that are larger than housing market areas. The counties deleted from the HUD-defined FMR areas in those cases are established as separate metropolitan county FMR areas. FMRs are established for all areas in the United States, the

District of Columbia, Puerto Rico, the Virgin Islands, and the Pacific Islands.

(c) *Data sources.* (1) HUD uses the most accurate and current data available to develop the FMR estimates and may add other data sources as they are discovered and determined to be statistically valid. The following sources of survey data are used to develop the base-year FMR estimates:

(i) The most recent decennial Census, which provides statistically reliable rent data.

(ii) The American Housing Survey (AHS) data, conducted by the Bureau of the Census for HUD. AHS's have comparable accuracy to the decennial Census, and are used to develop between-census revisions for the largest metropolitan areas on a four-year revolving schedule.

(iii) Random Digit Dialing (RDD) telephone survey data, based on a sampling procedure that uses computers to select statistically random samples of rental housing.

(iv) Statistically valid information, as determined by HUD, presented to HUD during the public comment and review period.

(2) Base-year FMRs are updated and trended to the midpoint of the program year they are to be effective using Consumer Price Index (CPI) data for rents and for utilities or using rent-change factors obtained from the RDD regional surveys. The RDD rent-change factors are developed annually for the metropolitan and nonmetropolitan parts of the HUD-specified geographic regions not covered by CPI surveys, and are used to update the base-year FMR estimates within these regions.

(d) *Bedroom size adjustments.* (1) For most areas the ratios developed from the most recent decennial Census are applied to the two-bedroom FMR estimates to derive FMRs for other bedroom sizes. Exceptions to this procedure may be made for areas with local bedroom intervals below an acceptable range. To help the largest most difficult to house families find units, higher ratios than the actual market ratios may be used for three-bedroom and larger-size units.

(2) The FMR for single room occupancy housing is 75 percent of the FMR for a zero bedroom unit.

(e) *Manufactured home space.* The FMR for a manufactured home space is 30 percent of the FMR for a two-bedroom unit, or, where approved by HUD on the basis of survey data submitted in public comments, the 40th percentile of the rental distribution of manufactured home spaces for the FMR area. HUD accepts public comments requesting revision of the proposed manufactured home space FMRs for areas where space rentals are thought to differ from the 30 percent standard. To be considered for approval, the comments must contain statistically-valid survey data that show the 40th percentile manufactured home space rent (excluding the cost of utilities) for the FMR area. Once approved, the revised manufactured home space FMRs establish new base-year estimates that will be updated annually using the same data used to update the Rental Certificate program FMRs.

4. Section 888.115 is revised to read as follows:

§ 888.115 Fair market rents for existing housing: Manner of publication.

FMRs will be published at least annually in the **Federal Register**. The Department will propose FMRs and provide a comment period of at least 30 days for the purpose of identifying areas where the FMRs are believed to be too high or too low. To be considered for FMR revisions, public comments must include statistically valid rental housing survey data that justify the requested changes. After the comments have been considered, the Department will publish a final notice announcing FMRs to be effective on October 1 each year.

Dated: August 4, 1995.

Henry G. Cisneros,

Secretary.

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