

subpart or by any agreements with HUD for the purpose of audit or other examinations.

(a) Each HA receiving a grant shall submit to HUD an annual progress report, participant evaluation and assessment data and other information, as needed, regarding the effectiveness of FIC in achieving self-sufficiency.

(b) The policies, guidelines, and requirements of OMB Circular Nos. A-110 and A-122 are applicable with respect to the acceptance and use of assistance by private nonprofit organizations.

## **PART 965—PHA-OWNED OR LEASED PROJECTS—GENERAL PROVISIONS**

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AUTHORITY: 42 U.S.C. 1437, 1437a, 1437d, 1437g, and 3535(d). Subpart H is also issued under 42 U.S.C. 4821-4846.

SOURCE: 41 FR 20276, May 17, 1976, unless otherwise noted. Redesignated at 49 FR 6714, Feb. 23, 1984.

### **Subpart A—Preemption of State Prevailing Wage Requirements**

#### **§965.101 Preemption of State prevailing wage requirements.**

(a) A prevailing wage rate including basic hourly rate and any fringe benefits) determined under State law shall be inapplicable to a contract or PHA-performed work item for the development, maintenance, and modernization of a project whenever:

(1) The contract or work item: (i) Is otherwise subject to State law requiring the payment of wage rates determined by a State or local government

or agency to be prevailing and (ii) is assisted with funds for low-income public housing under the U.S. Housing Act of 1937, as amended; and

(2) The wage rate determined under State law to be prevailing with respect to an employee in any trade or position employed in the development, maintenance, and modernization of a project exceeds whichever of the following Federal wage rates is applicable:

(i) The wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trade;

(ii) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency;

(iii) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program; or

(iv) The wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

(v) For the purpose of ascertaining whether a wage rate determined under State law for a trade or position exceeds the Federal wage rate: (A) Where a rate determined by the Secretary of Labor or an apprentice or trainee wage rate based thereon is applicable, the total wage rate determined under State law, including fringe benefits (if any) and basic hourly rate, shall be compared to the total wage rate determined by the Secretary of Labor or apprentice or trainee wage rate; and (B) where a rate determined by the Secretary of HUD is applicable, any fringe benefits determined under State law shall be excluded from the comparison with the rate determined by the Secretary of HUD.

(b) Whenever paragraph (a)(1) of this section is applicable:

(1) Any solicitation of bids or proposals issued by the PHA and any contract executed by the PHA for development, maintenance, and modernization of the project shall include a statement that any prevailing wage rate (including basic hourly rate and any fringe benefits) determined under State law to be prevailing with respect to an employee in any trade or position em-

ployed under the contract is inapplicable to the contract and shall not be enforced against the contractor or any subcontractor with respect to employees engaged under the contract whenever either of the following occurs:

(i) Such nonfederal prevailing wage rate exceeds: (A) The applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trade; (B) an applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency or (C) an applicable trainee wage rate based thereon specified in a DOL-certified trainee program; or

(ii) Such nonfederal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

Failure to include this statement may constitute grounds for requiring resolicitation of the bid or proposal;

(2) The PHA itself shall not be required to pay the basic hourly rate or any fringe benefits comprising a prevailing wage rate determined under State law and described in paragraph (a)(2) of this section to any of its own employees who may be engaged in the work item for development, maintenance, and modernization of the project; and

(3) Neither the basic hourly rate nor any fringe benefits comprising a prevailing wage rate determined under State law and described in paragraph (a)(2) shall be enforced against the PHA or any of its contractors or subcontractors with respect to employees engaged in the contract or PHA-performed work item for development, maintenance, and modernization of the project.

(c) Nothing in this section shall affect the applicability of any wage rate established in a collective bargaining agreement with a PHA or its contractors or subcontractors where such wage rate equals or exceeds the applicable Federal wage rate referred to in paragraph (a)(2) of this section, nor does this section impose a ceiling on wage

rates a PHA or its contractors or sub-contractors may choose to pay independent of State law.

(d) The provisions of this section shall be applicable to work performed under any prime contract entered into as a result of a solicitation of bids or proposals issued on or after October 6, 1988 and to any work performed by employees of a PHA on or after October 6, 1988, but not to work or contracts administered by Indian Housing Authorities (for which, see part 905 of this chapter).

[53 FR 30217, Aug. 10, 1988, as amended at 57 FR 28358, June 24, 1992; 61 FR 8736, Mar. 5, 1996]

### Subpart B—Required Insurance Coverage

SOURCE: 58 FR 51957, Oct. 5, 1993, unless otherwise noted.

#### § 965.201 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart is to implement policies concerning insurance coverage required under the Annual Contributions Contract (ACC) between the U.S. Department of Housing and Urban Development (HUD) and a Public Housing Agency (PHA).

(b) *Applicability.* The provisions of this subpart apply to all housing owned by PHAs, including Turnkey III housing. However, these provisions do not apply to Section 23 and Section 10(c) PHA-leased projects or to Section 8 Housing Assistance Payments Program projects.

#### § 965.205 Qualified PHA-owned insurance entity.

(a) *Contractual requirements for insurance coverage.* The Annual Contributions Contract (ACC) between PHAs and the U.S. Department of Housing and Urban Development requires that PHAs maintain specified insurance coverage for property and casualty losses that would jeopardize the financial stability of the PHAs. The insurance coverage is required to be obtained under procedures that provide "for open and competitive bidding." The HUD Appropriations Act for Fiscal Year 1992 provided that a PHA could

purchase insurance coverage without regard to competitive selection procedures when it purchases it from a nonprofit insurance entity owned and controlled by PHAs approved by HUD in accordance with standards established by regulation. This section specifies the standards.

(b) *Method of selecting insurance coverage.* While 24 CFR part 85 requires that grantees solicit full and open competition for their procurements, the HUD Appropriations Act for Fiscal Year 1992 provides an exception to this requirement. PHAs are authorized to obtain any line of insurance from a nonprofit insurance entity that is owned and controlled by PHAs and approved by HUD in accordance with this section, without regard to competitive selection procedures. Procurement of insurance from other entities is subject to competitive selection procedures.

(c) *Approval of a nonprofit insurance entity.* Under the following conditions, HUD will approve a nonprofit self-funded insurance entity created by PHAs that limits participation to PHAs (and to nonprofit entities associated with PHAs that engage in activities or perform functions only for housing authorities or housing authority residents):

(1) *An insurance company (including a risk retention group).* (i) The insurance company is licensed or authorized to do business in the State by the State Insurance Commissioner and has submitted documentation of this approval to HUD; and

(ii) The insurance company has not been suspended from providing insurance coverage in the State or been suspended or debarred from doing business with the federal government. The insurance company is obligated to send to HUD a copy of any action taken by the authorizing official to withdraw the license or authorization.

(2) *An entity not organized as an insurance company.* (i) The entity has competent underwriting staff (hired directly or engaged by contract with a third party), as evidenced by professionals with an average of at least five years of experience in large risk (exceeding \$100,000 in annual premiums) commercial underwriting or at least

five years of experience in the underwriting of risks for public entity risk pools. This standard may be satisfied by submission of evidence of competent underwriting staff, including copies of resumes of underwriting staff for the entity;

(ii) The entity has efficient and qualified management (hired directly or engaged by contract with a third party), as evidenced by the report submitted to HUD in accordance with paragraph (d)(3) of this section and by having at least one senior staff person who has a minimum of five years of experience;

(A) At the management level of Vice President of a property/casualty insurance entity;

(B) As a senior branch manager of a branch office with annual property/casualty premiums exceeding \$5 million; or

(C) As a senior manager of a public entity risk pool. Documentation for this standard must include copies of resumes of key management personnel responsible for oversight and for the day-to-day operation of the entity;

(iii) The entity maintains internal controls and cost containment measures, as evidenced by an annual budget;

(iv) The entity maintains sound investments consistent with the State insurance commissioner's requirements for licensed insurance companies, or other State statutory requirements controlling investments of public entities, in the State in which the entity is organized, investing only in assets that qualify as "admitted assets";

(v) The entity maintains adequate surplus and reserves for undischarged liabilities of all types, as evidenced by a current audited financial statement and an actuarial review conducted in accordance with paragraph (d) of this section; and

(vi) Upon application for initial approval, the entity has proper organizational documentation, as evidenced by copies of the articles of incorporation, by-laws, business plans, copies of contracts with third party administrators, and an opinion from legal counsel that establishment of the entity conforms with all legal requirements under Fed-

eral and State law. Any material changes made to these documents after initial approval must be submitted for review and approval before becoming effective.

(d) *Professional evaluations of performance.* Audits and actuarial reviews are required to be prepared and submitted annually to the HUD Office of Public and Indian Housing, for review and appropriate action, by nonprofit insurance entities that are not insurance companies approved under paragraph (c)(1) of this section. In addition, an evaluation of other management factors is required to be performed by an insurance professional every three years. For fiscal years ending on or after December 31, 1993, the initial audit, actuarial review, and insurance management review required for a nonprofit insurance entity must be submitted to HUD within 90 days after the entity's fiscal year.

(1) The annual financial statement prepared in accordance with generally accepted accounting principles (including any supplementary data required under GASB 10) is to be audited by an independent auditor (see 24 CFR part 44), in accordance with generally accepted auditing standards. The independent auditor shall express an opinion on whether the entity's financial statement is presented fairly in accordance with generally accepted accounting principles. A copy of this audit must be submitted to HUD.

(2) The actuarial review must be done consistent with requirements established by the National Association of Insurance Commissioners and must be conducted by an independent property/casualty actuary who is an Associate or Fellow of a recognized professional actuarial organization, such as the Casualty Actuary Society. The report issued, a copy of which must be submitted to HUD, must include an opinion on any over or under reserving and the adequacy of the reserves maintained for the open claims and for incurred but unreported claims.

(3) A review must be conducted, a copy of which must be submitted to

HUD, by an independent insurance consulting firm that has at least one person on staff who has received the professional designation of chartered property/casualty underwriter (CPCU), associate in risk management (ARM), or associate in claims (AIC), of the following:

- (i) Efficiency of any Third Party Administrator;
- (ii) Timeliness of the claim payments and reserving practices; and
- (iii) The adequacy of reinsurance coverage.

(e) *Revocation of approval of a non-profit insurance entity.* HUD may revoke its approval of a nonprofit insurance entity under this section when it no longer meets the requirements of this section. The nonprofit insurance entity will be notified in writing of: the proposed revocation of its approval, the reasons for the action, and the manner and time in which to request a hearing to challenge the determination. The procedure to be followed is specified in 24 CFR part 26, subpart A.

[41 FR 20276, May 17, 1976, as amended at 61 FR 7969, Feb. 29, 1996; 61 FR 50219, Sept. 24, 1996]

**§ 965.215 Lead-based paint liability insurance coverage.**

(a) *General.* The purpose of this section is to specify what HUD deems reasonable insurance coverage with respect to the hazards associated with testing for and abatement of lead-based paint that the PHA undertakes, in accordance with the PHA's ACC with HUD. The insurance coverage does not relieve the PHA of its responsibility for assuring that lead-based paint testing and abatement activities are conducted in a responsible manner.

(b) *Insurance coverage requirements.* When the PHA undertakes lead-based paint testing and abatement, it must assure that it has reasonable insurance coverage for itself for potential personal injury liability associated with those activities. If the work is being done by PHA employees, the PHA must obtain a liability insurance policy directly to protect the PHA. If the work is being done by a contractor, the PHA may obtain, from the insurer of the contractor performing this type of work in accordance with a contract, a

certificate of insurance providing evidence of such insurance and naming the PHA as an additional insured; or it may obtain such insurance directly. Insurance must remain in effect during the entire period of testing and abatement and must comply with the following requirements:

(1) *Named insured.* If purchased by the PHA, the policy shall name the PHA as insured. If purchased by an independent contractor, the policy shall name the contractor as insured and the PHA as an additional insured, in connection with performing work under the PHA's lead-based paint testing and abatement contract. If the PHA has executed a contract with a Resident Management Corporation (RMC) to manage a building/project on behalf of the PHA, the RMC shall be an additional insured under the policy in connection with the lead-based paint testing and abatement contract. (The duties of the RMC are similar to those of a real estate management firm.)

(2) *Coverage limits.* The minimum limit of liability shall be \$500,000 per occurrence written, with a combined single limit for bodily injury and property damage.

(3) *Deductible.* A deductible, if any, may not exceed \$5,000 per occurrence.

(4) *Supplementary payments.* Payments for such supplementary costs as the costs of defending against a claim must be in addition to, and not as a reduction of, the limit of liability. However, it will be permissible for the policy to have a limit on the amount payable for defense costs. If a limit is applicable, it must not be less than \$250,000 per claim prior to such costs being deducted from the limit of liability.

(5) *Occurrence form policy.* The form used must be an "occurrence" form, or a "claims made" form that contains an extended reporting period of at least five years. (Under an occurrence form, coverage applies to any loss regardless of when the claim is made.)

(6) *Aggregate limit.* If the policy contains an aggregate limit, the minimum acceptable limit is \$1,000,000.

(7) *Cancellation.* In the event of cancellation, at least 30 days' advance notice is to be given to the insured and any additional insured.

(c) *Exception to requirements.* Insurance already purchased by the PHA or contractor and in force on the date this rule is effective which provides coverage for the hazards involved in testing for and abatement of lead-based paint, shall be considered as meeting the requirements of this rule until the expiration of the policy. This rule is not applicable to architects, engineers, or consultants who do not physically perform lead-based paint testing and abatement work.

(d) *Insurance for the existence hazard.* A PHA may also purchase special liability insurance against the existence hazard of lead-based paint, although it is not a required coverage. A PHA may purchase this coverage if, in the opinion of the PHA, the policy meets the PHA's requirements, the premium is reasonable, and the policy is obtained in accordance with applicable procurement standards. (See 24 CFR part 85 and §§965.205.) If this coverage is purchased, the premium must be paid from funds available under the Performance Funding System or from reserves.

[59 FR 31930, June 21, 1994]

### Subpart C—Energy Audits and Energy Conservation Measures

SOURCE: 61 FR 7969, Feb. 29, 1996, unless otherwise noted.

#### §965.301 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart C is to implement HUD policies in support of national energy conservation goals by requiring PHAs to conduct energy audits and undertake certain cost-effective energy conservation measures.

(b) *Applicability.* The provisions of this subpart apply to all PHAs with PHA-owned housing, but they do not apply to Indian Housing Authorities. (For similar provisions applicable to Indian housing, see part 950 of this chapter.) No PHA-leased project or Section 8 Housing Assistance Payments Program project, including a PHA-owned Section 8 project, is covered by this subpart.

#### §965.302 Requirements for energy audits.

All PHAs shall complete an energy audit for each PHA-owned project under management, not less than once every five years. Standards for energy audits shall be equivalent to State standards for energy audits. Energy audits shall analyze all of the energy conservation measures, and the payback period for these measures, that are pertinent to the type of buildings and equipment operated by the PHA.

#### §965.303 [Reserved]

#### §965.304 Order of funding.

Within the funds available to a PHA, energy conservation measures should be accomplished with the shortest payback periods funded first. A PHA may make adjustments to this funding order because of insufficient funds to accomplish high-cost energy conservation measures (ECM) or where an ECM with a longer pay-back period can be more efficiently installed in conjunction with other planned modernization. A PHA may not install individual utility meters that measure the energy or fuel used for space heating in dwelling units that need substantial weatherization, when installation of meters would result in economic hardship for residents. In these cases, the ECMs related to weatherization shall be accomplished before the installation of individual utility meters.

#### §965.305 Funding.

(a) The cost of accomplishing cost-effective energy conservation measures, including the cost of performing energy audits, shall be funded from operating funds of the PHA to the extent feasible. When sufficient operating funds are not available for this purpose, such costs are eligible for inclusion in a modernization program, for funding from any available development funds in the case of projects still in development, or for other available funds that HUD may designate to be used for energy conservation.

(b) If a PHA finances energy conservation measures from sources other than modernization or operating reserves, such as a loan from a utility entity or a guaranteed savings agreement

with a private energy service company, HUD may agree to provide adjustments in its calculation of the PHA's operating subsidy eligibility under the PFS for the project and utility involved based on a determination that payments can be funded from the reasonably anticipated energy cost savings (See §990.107(g) of this chapter).

**§965.306 Energy conservation equipment and practices.**

In purchasing original or, when needed, replacement equipment, PHAs shall acquire only equipment that meets or exceeds the minimum efficiency requirements established by the U.S. Department of Energy. In the operation of their facilities, PHAs shall follow operating practices directed to maximum energy conservation.

**§965.307 Compliance schedule.**

All energy conservation measures determined by energy audits to be cost effective shall be accomplished as funds are available.

**§965.308 Energy performance contracts.**

(a) *Method of procurement.* Energy performance contracting shall be conducted using one of the following methods of procurement:

(1) Competitive proposals (see 24 CFR 85.36(d)(3)). In identifying the evaluation factors and their relative importance, as required by §85.36(d)(3)(i) of this title, the solicitation shall state that technical factors are significantly more important than price (of the energy audit); or

(2) If the services are available only from a single source, noncompetitive proposals (see 24 CFR 85.36(d)(4)(i)(A)).

(b) *HUD Review.* Solicitations for energy performance contracting shall be submitted to the HUD Field Office for review and approval prior to issuance. Energy performance contracts shall be submitted to the HUD Field Office for review and approval before award.

**Subpart D—Individual Metering of Utilities for Existing PHA-Owned Projects**

SOURCE: 61 FR 7970, Feb. 29, 1996, unless otherwise noted.

**§965.401 Individually metered utilities.**

(a) All utility service shall be individually metered to residents, either through provision of retail service to the residents by the utility supplier or through the use of checkmeters, unless:

(1) Individual metering is impractical, such as in the case of a central heating system in an apartment building;

(2) Change from a mastermetering system to individual meters would not be financially justified based upon a benefit/cost analysis; or

(3) Checkmetering is not permissible under State or local law, or under the policies of the particular utility supplier or public service commission.

(b) If checkmetering is not permissible, retail service shall be considered. Where checkmetering is permissible, the type of individual metering offering the most savings to the PHA shall be selected.

**§965.402 Benefit/cost analysis.**

(a) A benefit/cost analysis shall be made to determine whether a change from a mastermetering system to individual meters will be cost effective, except as otherwise provided in §965.405.

(b) Proposed installation of checkmeters shall be justified on the basis that the cost of debt service (interest and amortization) of the estimated installation costs plus the operating costs of the checkmeters will be more than offset by reduction in future utilities expenditures to the PHA under the mastermeter system.

(c) Proposed conversion to retail service shall be justified on the basis of net savings to the PHA. This determination involves making a comparison between the reduction in utility expense obtained through eliminating the expense to the PHA for PHA-supplied utilities and the resultant allowance for resident-supplied utilities, based on the cost of utility service to the residents after conversion.

**§965.403 Funding.**

The cost to change mastermeter systems to individual metering of resident consumption, including the costs of

benefit/cost analysis and complete installation of checkmeters, shall be funded from operating funds of the PHA to the extent feasible. When sufficient operating funds are not available for this purpose, such costs are eligible for inclusion in a modernization project or for funding from any available development funds.

**§ 965.404 Order of conversion.**

Conversions to individually metered utility service shall be accomplished in the following order when a PHA has projects of two or more of the designated categories, unless the PHA has a justifiable reason to do otherwise, which shall be documented in its files.

(a) In projects for which retail service is provided by the utility supplier and the PHA is paying all the individual utility bills, no benefit/cost analysis is necessary, and residents shall be billed directly after the PHA adopts revised payment schedules providing appropriate allowances for resident-supplied utilities.

(b) In projects for which checkmeters have been installed but are not being utilized as the basis for determining utility charges to the residents, no benefit/cost analysis is necessary. The checkmeters shall be used as the basis for utility charges, and residents shall be surcharged for excess utility use.

(c) Projects for which meter loops have been installed for utilization of checkmeters shall be analyzed both for the installation of checkmeters and for conversion to retail service.

(d) Low- or medium-rise family units with a mastermeter system should be analyzed for both checkmetering and conversion to retail service, because of their large potential for energy savings.

(e) Low- or medium-rise housing for the elderly should next be analyzed for both checkmetering and conversion to retail service, since the potential for energy saving is less than for family units.

(f) Electric service under mastermeters for high-rise buildings, including projects for the elderly, should be analyzed for both use of retail service and of checkmeters.

**§ 965.405 Actions affecting residents.**

(a) Before making any conversion to retail service, the PHA shall adopt revised payment schedules, providing appropriate allowances for the resident-supplied utilities resulting from the conversion.

(b) Before implementing any modifications to utility services arrangements with the residents or charges with respect thereto, the PHA shall make the requisite changes in resident dwelling leases in accordance with 24 CFR part 966.

(c) PHAs must work closely with resident organizations, to the extent practicable, in making plans for conversion of utility service to individual metering, explaining the national policy objectives of energy conservation, the changes in charges and rent structure that will result, and the goals of achieving an equitable structure that will be advantageous to residents who conserve energy.

(d) A transition period of at least six months shall be provided in the case of initiation of checkmeters, during which residents will be advised of the charges but during which no surcharge will be made based on the readings. This trial period will afford residents ample notice of the effects the checkmetering system will have on their individual utility charges and also afford a test period for the adequacy of the utility allowances established.

(e) During and after the transition period, PHAs shall advise and assist residents with high utility consumption on methods for reducing their usage. This advice and assistance may include counseling, installation of new energy conserving equipment or appliances, and corrective maintenance.

**§ 965.406 Benefit/cost analysis for similar projects.**

PHAs with more than one project of similar design and utilities service may prepare a benefit/cost analysis for a representative project. A finding that a change in metering is not cost effective for the representative project is sufficient reason for the PHA not to perform a benefit/cost analysis on the remaining similar projects.

**§ 965.407 Reevaluations of mastermeter systems.**

Because of changes in the cost of utility services and the periodic changes in utility regulations, PHAs with mastermeter systems are required to reevaluate mastermeter systems without checkmeters by making benefit/cost analyses at least every 5 years. These analyses may be omitted under the conditions specified in § 965.406.

**Subpart E—Resident Allowances for Utilities**

SOURCE: 61 FR 7971, Feb. 29, 1996, unless otherwise noted.

**§ 965.501 Applicability.**

(a) This subpart E applies to public housing, including the Turnkey III Homeownership Opportunities program. This subpart E also applies to units assisted under sections 10(c) and 23 of the U. S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) as in effect before amendment by the Housing and Community Development Act of 1974 (12 U.S.C. 1706e) and to which 24 CFR part 900 is not applicable. This subpart E does not apply to Indian housing projects (see 24 CFR part 950).

(b) In rental units for which utilities are furnished by the PHA but there are no checkmeters to measure the actual utilities consumption of the individual units, residents shall be subject to charges for consumption by resident-owned major appliances, or for optional functions of PHA-furnished equipment, in accordance with § 965.502(e) and 965.506(b), but no utility allowance will be established.

**§ 965.502 Establishment of utility allowances by PHAs.**

(a) PHAs shall establish allowances for PHA-furnished utilities for all checkmetered utilities and allowances for resident-purchased utilities for all utilities purchased directly by residents from the utilities suppliers.

(b) The PHA shall maintain a record that documents the basis on which allowances and scheduled surcharges, and revisions thereof, are established

and revised. Such record shall be available for inspection by residents.

(c) The PHA shall give notice to all residents of proposed allowances, scheduled surcharges, and revisions thereof. Such notice shall be given, in the manner provided in the lease or homebuyer agreement, not less than 60 days before the proposed effective date of the allowances or scheduled surcharges or revisions; shall describe with reasonable particularity the basis for determination of the allowances, scheduled surcharges, or revisions, including a statement of the specific items of equipment and function whose utility consumption requirements were included in determining the amounts of the allowances or scheduled surcharges; shall notify residents of the place where the PHA's record maintained in accordance with paragraph (b) of this section is available for inspection; and shall provide all residents an opportunity to submit written comments during a period expiring not less than 30 days before the proposed effective date of the allowances or scheduled surcharges or revisions. Such written comments shall be retained by the PHA and shall be available for inspection by residents.

(d) Schedules of allowances and scheduled surcharges shall not be subject to approval by HUD before becoming effective, but will be reviewed in the course of audits or reviews of PHA operations.

(e) The PHA's determinations of allowances, scheduled surcharges, and revisions thereof shall be final and valid unless found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

**§ 965.503 Categories for establishment of allowances.**

Separate allowances shall be established for each utility and for each category of dwelling units determined by the PHA to be reasonably comparable as to factors affecting utility usage.

**§ 965.504 Period for which allowances are established.**

(a) *PHA-furnished utilities.* Allowances will normally be established on a quarterly basis; however, residents may be

surcharged on a monthly basis. The allowances established may provide for seasonal variations.

(b) *Resident-purchased utilities.* Monthly allowances shall be established. The allowances established may provide for seasonal variations.

**§ 965.505 Standards for allowances for utilities.**

(a) The objective of a PHA in designing methods of establishing utility allowances for each dwelling unit category and unit size shall be to approximate a reasonable consumption of utilities by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.

(b) Allowances for both PHA-furnished and resident-purchased utilities shall be designed to include such reasonable consumption for major equipment or for utility functions furnished by the PHA for all residents (e.g., heating furnace, hot water heater), for essential equipment whether or not furnished by the PHA (e.g., range and refrigerator), and for minor items of equipment (such as toasters and radios) furnished by residents.

(c) The complexity and elaborateness of the methods chosen by the PHA, in its discretion, to achieve the foregoing objective will depend upon the nature of the housing stock, data available to the PHA and the extent of the administrative resources reasonably available to the PHA to be devoted to the collection of such data, the formulation of methods of calculation, and actual calculation and monitoring of the allowances.

(d) In establishing allowances, the PHA shall take into account relevant factors affecting consumption requirements, including:

(1) The equipment and functions intended to be covered by the allowance for which the utility will be used. For instance, natural gas may be used for cooking, heating domestic water, or space heating, or any combination of the three;

(2) The climatic location of the housing projects;

(3) The size of the dwelling units and the number of occupants per dwelling unit;

(4) Type of construction and design of the housing project;

(5) The energy efficiency of PHA-supplied appliances and equipment;

(6) The utility consumption requirements of appliances and equipment whose reasonable consumption is intended to be covered by the total resident payment;

(7) The physical condition, including insulation and weatherization, of the housing project;

(8) Temperature levels intended to be maintained in the unit during the day and at night, and in cold and warm weather; and

(9) Temperature of domestic hot water.

(e) If a PHA installs air conditioning, it shall provide, to the maximum extent economically feasible, systems that give residents the option of choosing to use air conditioning in their units. The design of systems that offer each resident the option to choose air conditioning shall include retail meters or checkmeters, and residents shall pay for the energy used in its operation. For systems that offer residents the option to choose air conditioning, the PHA shall not include air conditioning in the utility allowances. For systems that offer residents the option to choose air conditioning but cannot be checkmetered, residents are to be surcharged in accordance with § 965.506. If an air conditioning system does not provide for resident option, residents are not to be charged, and these systems should be avoided whenever possible.

**§ 965.506 Surcharges for excess consumption of PHA-furnished utilities.**

(a) For dwelling units subject to allowances for PHA-furnished utilities where checkmeters have been installed, the PHA shall establish surcharges for utility consumption in excess of the allowances. Surcharges may be computed on a straight per unit of purchase basis (e.g., cents per kilowatt hour of electricity) or for stated blocks of excess consumption, and shall be based on the PHA's average utility

rate. The basis for calculating such surcharges shall be described in the PHA's schedule of allowances. Changes in the dollar amounts of surcharges based directly on changes in the PHA's average utility rate shall not be subject to the advance notice requirements of this section.

(b) For dwelling units served by PHA-furnished utilities where checkmeters have not been installed, the PHA shall establish schedules of surcharges indicating additional dollar amounts residents will be required to pay by reason of estimated utility consumption attributable to resident-owned major appliances or to optional functions of PHA-furnished equipment. Such surcharge schedules shall state the resident-owned equipment (or functions of PHA-furnished equipment) for which surcharges shall be made and the amounts of such charges, which shall be based on the cost to the PHA of the utility consumption estimated to be attributable to reasonable usage of such equipment.

**§ 965.507 Review and revision of allowances.**

(a) *Annual review.* The PHA shall review at least annually the basis on which utility allowances have been established and, if reasonably required in order to continue adherence to the standards stated in § 965.505, shall establish revised allowances. The review shall include all changes in circumstances (including completion of modernization and/or other energy conservation measures implemented by the PHA) indicating probability of a significant change in reasonable consumption requirements and changes in utility rates.

(b) *Revision as a result of rate changes.* The PHA may revise its allowances for resident-purchased utilities between annual reviews if there is a rate change (including fuel adjustments) and shall be required to do so if such change, by itself or together with prior rate changes not adjusted for, results in a change of 10 percent or more from the rates on which such allowances were based. Adjustments to resident payments as a result of such changes shall

be retroactive to the first day of the month following the month in which the last rate change taken into account in such revision became effective. Such rate changes shall not be subject to the 60 day notice requirement of § 965.502(c).

**§ 965.508 Individual relief.**

Requests for relief from surcharges for excess consumption of PHA-purchased utilities, or from payment of utility supplier billings in excess of the allowances for resident-purchased utilities, may be granted by the PHA on reasonable grounds, such as special needs of elderly, ill or disabled residents, or special factors affecting utility usage not within the control of the resident, as the PHA shall deem appropriate. The PHA's criteria for granting such relief, and procedures for requesting such relief, shall be adopted at the time the PHA adopts the methods and procedures for determining utility allowances. Notice of the availability of such procedures (including identification of the PHA representative with whom initial contact may be made by residents), and the PHA's criteria for granting such relief, shall be included in each notice to residents given in accordance with § 965.502(c) and in the information given to new residents upon admission.

**Subpart F—Physical Condition Standards and Physical Inspection Requirements**

**§ 965.601 Physical condition standards; physical inspection requirements.**

Housing owned or leased by a PHA, and public housing owned by another entity approved by HUD, must be maintained in accordance with the physical condition standards in 24 CFR part 5, subpart G. For each PHA, HUD will perform an independent physical inspection of a statistically valid sample of such housing based upon the physical condition standards in 24 CFR part 5, subpart G.

[63 FR 46580, Sept. 1, 1998]

## Subpart G [Reserved]

## Subpart H—Lead-Based Paint Poisoning Prevention

SOURCE: 51 FR 27789, Aug. 1, 1986, unless otherwise noted.

**§ 965.701 Purpose and applicability.**

The purpose of this subpart is to implement the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) by establishing procedures to eliminate as far as practicable the immediate hazards from the presence of paint that may contain lead in PHA-owned housing assisted under the United States Housing Act of 1937. This subpart applies to PHA-owned lower-income public housing projects, including Turnkey III, conveyed Lanham Act and Public Works Administration projects, and to section 23 Leased Housing Bond-Financed projects. This subpart does not apply to projects under the Section 23 and Section 8 Housing Assistance Payments programs, or to Indian Housing. This subpart is promulgated pursuant to the authorization granted in 24 CFR 35.24(b)(4) and supersedes, with respect to all housing to which it applies, the requirements prescribed by subpart C of 24 CFR part 35.

[57 FR 28358, June 24, 1992]

**§ 965.702 Definitions.**

*Applicable surface.* All intact and non-intact interior and exterior painted surfaces of a residential structure.

*Defective lead-based paint surface.* Paint on applicable surfaces having a lead content of greater than or equal to 1 mg/cm<sup>2</sup>, that is cracking, scaling, chipping, peeling or loose.

*Defective paint surface.* Paint on applicable surfaces that is cracking, scaling, chipping, peeling or loose.

*Elevated blood lead level or EBL.* Excessive absorption of lead, that is, a confirmed concentration of lead in whole blood of 25 ug/dl (micrograms of lead per deciliter of whole blood) or greater.

*Family project.* Any project assisted under section 9 of the U.S. Housing Act of 1937 which is not an elderly project. For this purpose, an elderly project is

one which was designated for occupancy by the elderly at its inception (and has retained that character) or, although not so designated, for which the PHA gives preference in tenant selection (with HUD approval) for all units in the project to elderly families. A building within a mixed-use project which meets these qualifications shall, for purposes of this subpart, be excluded from any family project. Zero bedroom units, for purposes of this subpart, are excluded from any family project.

*Lead-based paint.* A paint surface, whether or not defective, identified as having a lead content greater than or equal to 1.0 mg/cm<sup>2</sup>, or .5% by weight.

[51 FR 27789, Aug. 1, 1986, as amended at 53 FR 20802, June 6, 1988; 56 FR 15174, Apr. 15, 1991]

**§ 965.703 Notification.**

(a) *General LBP Hazard Notification for all Residents.* Tenants in PHA-owned low income public housing projects constructed prior to 1978 shall be notified:

(1) That the property was constructed prior to 1978;

(2) That the property may contain lead-based paint;

(3) Of the hazards of lead-based paint;

(4) Of the symptoms and treatment of lead-based paint poisoning;

(5) Of the precautions to be taken to avoid lead-based paint poisoning (including maintenance and removal techniques for eliminating such hazards); and

(6) Of the advisability and availability of blood lead level screening for children under seven years of age.

Tenants shall be advised to notify the PHA if an EBL condition is identified.

(b) *Lead-Based Paint Hazard Notification for Applicants and Prospective Purchasers.* A notice of the dangers of lead-based paint poisoning and a notice of the advisability and availability of blood lead level screening for children under seven years of age shall be provided to every applicant family at the time of application. The applicant family shall be advised, if screening is utilized and an EBL condition identified, to notify the PHA.

(c) *Notification of Positive Lead-Based Paint Test Results.* In the event that a

PHA-owned low income public housing project constructed or substantially rehabilitated prior to 1978 is tested and the test results using an x-ray fluorescence analyzer (XRF) are identified as having a lead content greater than or equal to 1.0 mg/cm<sup>2</sup>, or is tested by laboratory chemical analysis (atomic absorption spectroscopy (AAS)) and found to contain .5% lead by weight or more, the PHA shall provide written notification of such result to the current residents, applicants, prospective purchasers, and homebuyers of such units in a timely manner. The PHA shall retain written records of the notification.

[51 FR 27789, Aug. 1, 1986, as amended at 56 FR 15174, Apr. 15, 1991]

**§ 965.704 Maintenance obligation.**

In family projects constructed prior to 1978 or substantially rehabilitated prior to 1978, the PHA shall visually inspect units for defective paint surfaces as part of routine periodic unit inspections. If defective paint surfaces are found, covering or removal of the defective paint spots as described in § 35.24(b)(2)(ii) of this title shall be required. Treatment shall be completed within a reasonable period of time.

[53 FR 20802, June 6, 1988]

**§ 965.705 Insurance coverage.**

For the requirements concerning a PHA's obligation to obtain reasonable insurance coverage with respect to the hazards associated with testing for and abatement of lead-based paint, see § 965.215.

[59 FR 31930, June 21, 1994]

**§ 965.706 Procedures involving EBLs.**

(a) *Procedures where a current resident child has an EBL.* When a child residing in a PHA-owned low income family project has been identified as having an EBL, the PHA shall: (1) Test all surfaces in the unit and applicable surfaces of the PHA-owned or operated child care facility if used by the EBL child for lead-based paint and abate the surfaces found to contain lead-based paint. Testing of exteriors and interior common areas (including non-dwelling PHA facilities which are commonly used by the EBL child under seven

years of age) will be done as considered necessary and appropriate by the PHA and HUD; or (2) assign the family to a post-1978 or previously tested unit which was found to be free of lead-based paint hazards or in which such hazards have been abated as described in this section.

(b) *Procedures where a non-resident child using a PHA-owned or operated child care facility has an EBL.* When a non-resident child using a PHA-owned or operated child facility has been identified as having an EBL, the PHA shall test all applicable surfaces of the PHA-owned or operated child care facilities and abate the surfaces found to contain lead-based paint.

(c) *Testing.* Testing shall be completed within five days after notification to the PHA of the identification of the EBL child. It is strongly recommended, but not required, that PHAs use the testing methods outlined in the Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing (Lead-Based Paint Interim Guidelines) for the Comprehensive Improvement Assistance Program (CIAP), and other Public and Indian Housing programs, and issued and published at 55 FR 14555, April 18, 1990, part II, with an amendment of chapter 8 and typographical clarifications at 55 FR 39874, as periodically amended or updated, and other future official departmental issuances related to lead-based paint. A qualified inspector or laboratory shall certify in writing the precise results of the inspection. Testing services available from State, local or tribal health or housing agencies or an organization recognized by HUD shall be utilized to the extent available. If the results equal or exceed a level of 1 mg/cm<sup>2</sup> or .5% by weight, the results shall be provided to the tenant or the family of the EBL child using PHA owned or operated child care facilities. Testing will be considered an eligible modernization cost under part 968 only upon PHA certification that testing services are otherwise unavailable.

(d) *Hazard abatement requirements—(1) Abatement actions.* Hazard abatement actions shall be carried out in accordance with the following requirements and order of priority:

(i) Unit housing a child with an EBL. Any surface in the unit found to contain lead-based paint shall be treated. Where full treatment of a unit housing an EBL child cannot be completed within five days after positive testing, emergency intervention actions (including removing defective lead-based paint and scrubbing surfaces after such removal with strong detergents) shall be taken within such time. Full treatment of a unit housing an EBL child shall be completed within 14 days after positive testing, unless funding sources are not immediately available. In such event, the PHA may use its operating reserves and, when necessary, may request reimbursement from the current fiscal year CIAP funds, or request the reprogramming of previously approved CIAP funds.

(ii) PHA owned or operated child care facilities used by a child with an EBL. Any applicable surface found to contain lead-based paint shall be treated.

(iii) Interior common areas (including non-dwelling PHA facilities which are commonly used by EBL children under seven years of age) and exterior surfaces of projects in which children with EBLs reside. Abatement shall be provided to all surfaces containing lead-based paint.

(2) *Abatement methods.* PHAs shall select a safe and cost effective treatment for surfaces found to contain lead-based paint, including clean-up procedures, and are strongly encouraged, but not required, to follow those methods specified in the Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing (Lead-Based Paint Interim Guidelines), and other future official departmental issuances relating to lead-based paint abatement in effect at the time the surfaces are to be abated. Certain prohibited abatement methods are set forth in 24 CFR 35.24(b)(2)(ii). Final inspection and certification of the treatment shall be made by a qualified inspector, industrial hygienist, or local health official based on clearance levels specified in HUD departmental issuances and guidelines.

[53 FR 20803, June 6, 1988, as amended at 56 FR 15175, Apr. 15, 1991]

#### **§ 965.707 Tenant protection.**

The PHA shall take appropriate action in order to protect tenants, including children with EBLs, other children, and pregnant women, from hazards associated with abatement procedures, and is strongly encouraged, but not required, to take actions more fully outlined in the Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing (Lead-Based Paint Interim Guidelines) and other future official Departmental issuances related to tenant protection in effect at the time the abatement procedure is undertaken. Tenant relocation may be accomplished with CIAP assistance.

[56 FR 15175, Apr. 15, 1991]

#### **§ 965.708 Disposal of lead-based paint debris.**

The PHA shall dispose of lead-based paint debris in accordance with applicable local state or Federal requirements. (See *e.g.*, 40 CFR parts 260 through 271.) Additional information covering disposal practices is contained in the Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing (Lead-Based Paint Interim Guidelines) and other future official departmental issuances relating to lead-based paint. In any event, EPA has primary responsibility for waste disposal regulations and procedures.

[53 FR 20803, June 6, 1988, as amended at 56 FR 15175, Apr. 15, 1991]

#### **§ 965.709 Records.**

The PHA shall maintain records on which units, common areas, exteriors and PHA child care facilities have been tested, results of the testing, and the condition of painted surfaces by location in or on the unit, interior common area, exterior surface or PHA child care facility. The PHA shall report information regarding such testing, in accordance with such requirements as shall be prescribed by HUD. The PHA shall also maintain records of abatement provided under this subpart, and shall report information regarding such abatement, and its compliance with the requirements of 24 CFR part 35, subpart A and § 965.703 of this part,

## § 965.710

in accordance with such requirements as shall be prescribed by HUD. If records establish that a unit, PHA owned or operated child care facility, exterior or interior common area was tested or treated in accordance with the standards prescribed in this subpart, such units, child care facilities, exterior or interior common areas are not required to be re-tested or re-treated.

(Information collection requirements contained in this section were approved by the Office of Management and Budget under control number 2577-0090)

[53 FR 20803, June 6, 1988, as amended at 56 FR 15175, Apr. 15, 1991]

### **§ 965.710 Compliance with state and local laws.**

(a) *PHA responsibilities.* Nothing in this subpart H is intended to relieve a PHA of any responsibility for compliance with state or local laws, ordinances, codes or regulations governing lead-based paint testing or hazard abatement. The PHA shall maintain records evidencing compliance with applicable state or local requirements, and shall report information concerning such compliance, in accordance with such requirements as shall be prescribed by HUD.

(b) *HUD responsibility.* If HUD determines that a state or local law, ordinance, code or regulation provides for lead-based paint testing or hazard abatement in a manner which provides a comparable level of protection from the hazards of lead-based paint poisoning to that provided by the requirements of this subpart and that adherence to the requirements of this subpart would be duplicative or otherwise cause inefficiencies, HUD may modify or waive the requirements of this subpart in such manner as may be appropriate to promote efficiency while ensuring such comparable level or protection.

(Approved by the Office of Management and Budget under control number 2577-0090)

[51 FR 27789, Aug. 1, 1986. Redesignated at 53 FR 20803, June 6, 1988]

### **§ 965.711 Monitoring and enforcement.**

PHA compliance with the requirements of this subpart will be included

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in the scope of HUD monitoring of PHA operations. Noncompliance with any requirement of this subpart may subject a PHA to sanctions provided under the Annual Contribution Contract or to enforcement by other means authorized by law.

[51 FR 27789, Aug. 1, 1986. Redesignated at 53 FR 20803, June 6, 1988]

### **Subpart I—Fire Safety**

SOURCE: 57 FR 33853, July 30, 1992, unless otherwise noted.

#### **§ 965.800 Applicability.**

This subpart applies to all PHA-owned or -leased housing housing, including Mutual Help and Turnkey III.

#### **§ 965.805 Smoke detectors.**

(a) *Performance requirement.* (1) After October 30, 1992, each unit covered by this subpart must be equipped with at least one battery-operated or hard-wired smoke detector, or such greater number as may be required by state or local codes, in working condition, on each level of the unit. In units occupied by hearing-impaired residents, smoke detectors must be hard-wired.

(2) After October 30, 1992, the public areas of all housing covered by this subpart must be equipped with a sufficient number, but not less than one for each area, of battery-operated or hard-wired smoke detectors to serve as adequate warning of fire. Public areas include, but are not limited to, laundry rooms, community rooms, day care centers, hallways, stairwells, and other common areas.

(b) *Acceptability criteria.* (1) The smoke detector for each individual unit must be located, to the extent practicable, in a hallway adjacent to the bedroom or bedrooms. In units occupied by hearing-impaired residents, hard-wired smoke detectors must be connected to an alarm system designed for hearing-impaired persons and installed in the bedroom or bedrooms occupied by the hearing-impaired residents. Individual units that are jointly occupied by both hearing and hearing-impaired residents must be equipped with both audible and visual types of alarm devices.

(2) If needed, battery-operated smoke detectors, except in units occupied by hearing-impaired residents, may be installed as a temporary measure where no detectors are present in a unit. Temporary battery-operated smoke detectors must be replaced with hard-wired electric smoke detectors in the normal course of a PHA's planned CIAP or CGP program to meet the required HUD Modernization Standards or state or local codes, whichever standard is stricter. Smoke detectors for units occupied by hearing-impaired residents must be installed in accordance with the acceptability criteria in paragraph (b)(1) of this section.

(c) *Funding.* PHAs shall use operating funds to provide battery-operated smoke detectors in units that do not have any smoke detector in place. If operating funds or reserves are insufficient to accomplish this, PHAs may apply for emergency CIAP funding. The PHAs may apply for CIAP or CGP funds to replace battery-operated smoke detectors with hard-wired smoke detectors in the normal course of a planned modernization program.

## PART 966—LEASE AND GRIEVANCE PROCEDURES

### Subpart A—Dwelling Leases, Procedures and Requirements

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- 966.2 [Reserved]
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- 966.4 Lease requirements.
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AUTHORITY: 42 U.S.C. 1437a, 1437d note, and 3535(d).

## Subpart A—Dwelling Leases, Procedures and Requirements

SOURCE: 40 FR 33402, Aug. 7, 1975, unless otherwise noted. Redesignated at 49 FR 6714, Feb. 23, 1984.

### § 966.1 Purpose and scope.

The purpose of this subpart is to prescribe the provisions that shall be incorporated in leases by public housing agencies (PHAs) for dwelling units assisted under the U.S. Housing Act of 1937 in projects owned by or leased to PHAs and leased or subleased by PHAs to the tenants. This subpart is applicable to all such dwelling leases entered into directly by PHAs with tenants, and is not applicable to Section 23 and Section 10(c) leased housing projects, the Section 23 Housing Assistance Payments Program, and the Section 8 Housing Assistance Payments Program, where the owners enter into leases directly with the tenants. This subpart is not applicable to the Low-Rent Housing Homeownership Opportunities Program (Turnkey III) or to Indian Housing Authorities.

[40 FR 33402, Aug. 7, 1975, as amended at 42 FR 5573, Jan. 28, 1977. Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 56 FR 922, Jan. 9, 1991]

### § 966.2 [Reserved]

### § 966.3 Tenants' opportunity for comment.

Each PHA shall provide at least 30 days notice to tenants and resident organizations setting forth proposed changes in the lease form used by the PHA, and providing an opportunity to present written comments. Subject to requirements of this rule, comments submitted shall be considered by the PHA before formal adoption of any new lease form.

[56 FR 51576, Oct. 11, 1991]

### § 966.4 Lease requirements.

A lease shall be entered into between the PHA and each tenant of a dwelling unit which shall contain the provisions described hereinafter.

(a) *Identification of parties and dwelling unit.* The names of the parties to the lease and the identification of the