

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

**Office of the Assistant Secretary for
Public and Indian Housing**

24 CFR Part 965

[Docket No. FR-3928-F-02]

RIN 2577-AB55

**Streamlining Public Housing
Maintenance and Operation Rules**

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

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations in 24 CFR part 965 on public housing maintenance and operations to streamline and simplify necessary requirements and to eliminate unnecessary requirements. This final rule takes into consideration comments received on the September 25, 1995 proposed rule.

EFFECTIVE DATE: April 29, 1996.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

In accordance with President Clinton's regulatory reinvention efforts and Executive Order 12866 (Regulatory Planning and Review) issued by President Clinton on September 30, 1993, HUD commenced a comprehensive review of all of its regulations to determine which regulations could be eliminated and streamlined. One such review was with respect to 24 CFR 965, PHA-Owned or Leased Projects-Maintenance and Operation.

HUD published a proposed rule on September 25, 1995 (60 FR 49480) announcing its intention to (1) eliminate one subpart F—Modernization of Oil Fired Heating Plants, (2) simplify and revise subpart C—Energy Audits and Energy Conservation Measures, subpart

D—Individual Metering of Utilities for Existing PHA-Owned Projects, and subpart E—Tenant Allowances for Utilities, (3) consolidate two subparts, subpart A—Preemption of State Prevailing Wage Requirements With Respect to Maintenance and Operation and subpart H—Lead-Based Paint Poisoning Prevention, applicable to other housing programs in a new "general" part that will be applicable to all programs, (4) revise subpart I—Fire Safety at a later date to reflect new statutory requirements and (5) make only a minor technical change to subpart B—Required Insurance Coverage.

II. Differences Between This Final Rule and September 25, 1995 Proposed Rule

Intervening events have changed the need for some of these changes. Subpart F was removed by another rulemaking that eliminated obsolete provisions, 61 FR 47263. Subpart A is being amended by a pending rulemaking that focuses primarily on streamlining public and Indian housing modernization regulations. Therefore, this final rule focuses on making the changes to simplify subparts C, D, and E.

Four changes were made at this final rule stage to the revisions proposed in the rule published on September 25, 1995.

1. The Department has revised § 965.407 to require that PHAs with mastermeter systems must reevaluate these systems by making a cost-benefit analysis at least every 5 years. The final rule changes the period from 36 months to 5 years to be consistent with the energy audit and the Comprehensive Grant Program five year plan.

2. The Department has revised § 965.503 to streamline the paragraph by eliminating the unnecessary language in the last sentence which goes beyond the basic requirement.

3. The Department has revised § 965.504(b) to streamline the paragraph by eliminating unnecessary descriptive language beyond the basic requirement.

4. The Department has revised § 965.507(b) to clarify that increases in utility allowances due to rate changes are not subject to the 60-day notice requirement in § 965.502(c).

III. Discussion of Public Comments on Proposed Rule

The Department received public comments from ten organizations (seven public housing agencies (PHAs), one PHA trade organization and two labor organizations) in response to the September 25, 1995 proposed rule. One PHA commended HUD's efforts in simplifying part 965, recommending no

revisions. The following discussion summarizes the remaining comments and provides HUD's responses to those comments.

Subpart A—Preemption of State Prevailing Wage Requirements With Respect to Maintenance and Operation of Projects

Comment: While two PHAs concurred with the decision to retain this subpart, two labor organizations strongly objected. Both organizations cited their opposition to the rule when it was originally issued in 1988. They contended that lower rates do not equate to lower project costs and that the capacity of the U.S. Department of Labor to produce timely and accurate wage reports is questionable because of budget cuts. One organization also suggested that the rule creates an unfunded mandate upon the States.

Response: The Department appreciates the positions of the two labor organizations. However, the Department points out that this issue was the subject of considerable debate at the time the proposed and final rules were issued in 1987/1988. It was also, as one of the organizations correctly pointed out, challenged in the courts. The court found in favor of the Department. The Department continues to believe that the rule is in the best interest of the program and declines to eliminate this subpart.

Subpart C—Energy Audits and Energy Conservation Measures

Comment: One PHA and a PHA trade organization suggested that HUD should not require all PHAs, regardless of size or performance, to conduct energy audits and undertake energy conservation measures. The commenter suggested that standard and high performing PHAs and PHAs with fewer than 250 units should be exempt unless there is evidence that intervention by HUD is required on energy conservation issues. Alternatively, it was recommended that if HUD requires all PHAs to conduct the described activities, it should guarantee funding. Another PHA raised similar concerns about funding of audits.

Response: First, it should be noted that HUD pays operating subsidies through the Performance Funding System (PFS) (24 CFR part 990) for HAS that are not able to cover all operating costs, including utilities, through rents charged to residents. Currently, the utility component of the operating subsidy now exceeds \$1 billion annually. The appropriation for operating subsidy for Fiscal Years 1994 and 1995 was only sufficient to fund

PHAs at 95 and 96 percent, respectively, of their eligibility level. It is not guaranteed that future appropriations will result in a higher percentage funding. Hence, the Department must ensure that PHAs conduct audits as one means of holding down operating costs, including the cost of utilities, and ensuring that the limited funds available for operations are used as efficiently as possible.

It is erroneous to assume that a designation as a standard or high performer under the Public Housing Management Assessment Program automatically equates to having a good energy management program. HUD's Office of Inspector General (OIG) recently completed an Audit Report entitled "Review of Opportunities To Reduce Utility Costs At Public Housing Authorities." The OIG report was based on visits to approximately 63 PHAs, which manage 41 percent of the 1.3 million public housing units nationally. The OIG indicated that despite past efforts:

Opportunities for reducing utility costs continue to exist and are cost effective in many instances due to ongoing improvements in technology. Housing authority managers need to be aware of, evaluate, and give maximum consideration to these ongoing and new opportunities when managing their utility costs. Because of improvements in technology, managing utilities is a continuous process that requires an ongoing energy management program.

The purpose of an energy audit is to identify the types and costs of energy use in order to understand how energy is being used and to identify and analyze alternatives that could substantially reduce costs. PHAs that are effectively managing their utility consumption are going through a dynamic process—evaluating current usage, implementing recommendations for energy cost savings, and monitoring the results. A good energy audit process can provide a PHA with many benefits and insights and does not have to be very complex. In fact, some utility companies do energy audits for free.

The Department views a regularly scheduled audit to be an essential tool in reducing operating costs for PHAs and the Federal government. Since the Federal government is paying the cost of operations, including the utility costs, and the technology is constantly evolving, it is reasonable and cost effective to require periodic energy audits by all PHAs, regardless of size or performance. The Department considers five year intervals to be the maximum time between regularly scheduled audits, given the continuous changes

that are occurring in the energy industry.

It should be further noted that the requirement to perform an audit is not new. It has been in the existing regulation for more than a decade. The existing regulation required an audit within 36 months from the effective date of the regulation (which was published in 1980) and prior to a PHA's application for Comprehensive Modernization. The proposed rule simply updates the existing requirement for the audit to establish regular intervals when audits must be done.

HUD has eliminated most of the process-oriented requirements (e.g., most of the requirements in the current §§ 965.303 and 965.304) in favor of a results-oriented requirement (e.g., an audit performed in accordance with State requirements). HUD also has eliminated the provision in § 965.302 of the proposed rule involving HUD approval of energy audit standards.

A PHA can, as one commenter recommended, do the energy audit in conjunction with its five-year action plan which is required for the Comprehensive Grant Program. The modernization regulations are being amended to require the incorporation of the energy conservation measures resulting from an audit performed under this subpart.

With regard to the funding of energy audits, the Department believes that a sound energy management program is fundamental to good property management and that energy audits are a cost of doing business that should be included as a part of an agency's operating budget. For that reason, the final rule, in keeping with the existing rule, provides that the audit is to be paid out of operating funds to the extent feasible, and, where operating funds are insufficient, the cost of the audit is an eligible cost for inclusion in a modernization program. The Department disagrees that this existing requirement represents an unfunded mandate.

The Department recommends that PHAs give serious consideration to §§ 965.305(b) and 965.308 of this rule. These sections, and the applicable sections of part 990, provide incentives for PHAs to undertake energy improvements through energy performance contracts using non-HUD financing. Under this arrangement, a PHA may contract with an energy service company to do an audit of its properties and submit a proposal for the installation of energy conservation measures using non-HUD financing. If the proposal is approved by HUD, HUD will freeze the three year rolling base in

the utility component of the PFS for the utilities involved. The PHA must use at least 50 percent of the consumption savings to pay debt service on the non-HUD financing, retaining any balance.

The PHA benefits three ways from such an arrangement: (1) It generates additional income from the savings not used for debt service payments; (2) energy improvements are shifted from the PHA's modernization program to non-HUD financing, thus, enabling the PHA to do more work with its limited modernization funds; and (3) the PHA is able to provide a better environment for its residents. As pointed out in the OIG report, "energy efficiency can become a competitive advantage for housing authorities who want to attract residents through increased resident comfort and decreased operating costs." Effective energy use becomes a more critical issue as the public housing community faces drastic changes in the nature of how they are funded and operate. More information regarding energy performance contracting and incentives to reduce utility costs is contained in HUD Notice PIH 95-26, issued April 28, 1995.

Comment: The PHA trade organization suggested that if HUD continues to require energy audits of all PHAs, it should not require that HUD review and pre-approve all energy performance contracts, especially for standard and high-performing PHAs. Instead, the organization suggests that the review of such contracts should be part of the independent public accountant (IPA) process, as the Department proposes for the calculation of resident utility allowances.

Response: Energy performance contracting is relatively new in the public housing community and involves a more sophisticated two-step procurement process that most PHAs have not used and are not familiar with. Further, HUD must agree that the proposed savings will materialize and be sufficient to amortize the debt service in order to commit the Department to freezing the utility component of the PFS for periods of up to 12 years. This represents a significant financial investment on the part of the government. For these reasons, the Department is retaining the pre-approval of energy performance contracts.

Comment: One PHA recommended that HUD should develop criteria to determine which housing authorities are in need of an energy audit. HUD should evaluate a housing authority's energy performance by comparing consumption and cost to a standard. This evaluation would determine which housing

authorities need to conduct an energy audit. The PHA contends that PHAs send in so many reports and information to HUD that the energy performance of a housing authority could be determined by HUD.

Response: As noted above, energy audits are an essential part of an ongoing energy management system. Technology is constantly changing, and it is necessary to have properties reevaluated on a regular basis. The recommendation is to rely on HUD to make a determination after the PHA has been determined to be energy inefficient. The Department does not believe that this is an effective management approach, particularly given dwindling resources for PHAs and HUD.

Further, the Department does receive consumption information for PHAs in conjunction with the PFS. The information reflects gross consumption and is not broken down by individual projects or buildings, both of which can vary significantly. HUD also requests utility information in conjunction with its routine monitoring. Such monitoring is done only on a limited basis. As noted above, the Department does not believe that it is a good management practice for PHAs to wait for HUD to determine energy efficiency. Given the cost to the Department for operations, including utilities, it will retain the audit requirement which has been in effect since 1980.

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

Comment: One PHA indicated that residents should be required to pay for utilities and that the PHA should charge a modest rent based on the number of bedrooms in the unit.

Response: The Department agrees that individual metering is an important component of a complete energy management system for property managers. However, conversions should only be mandatory if they are cost effective, and this subpart is written accordingly. The payment of rent by public housing residents is, by law, based on income and is not addressed by this rule.

Comment: One PHA indicated that it agrees that individual metering is advisable, but that PHAs are capable of implementing these steps independent of HUD regulation. The PHA questions the change in the requirement in the existing rule which advises the PHA to consult with residents, whereas the proposed rule makes such consultation mandatory.

Response: The Department agrees that many PHAs are capable of implementing the provisions contained in the rule. However, it is also true that many PHAs are reluctant to do so to avoid confrontational situations with the residents and the possibility of litigation which has accompanied such conversions in the past. Also, HUD pays the utility costs in these cases and needs to ensure that the conversions are accomplished where it is cost effective to do so. Because of the cost to the Federal government, the Department is retaining this requirement. With regard to consultation, residents are both the PHA's and the Department's ultimate customer. The Department believes the conversion to individual metering, while a good management practice, will nevertheless significantly impact the residents and, therefore, they must be consulted.

Comment: One PHA noted the requirement in § 965.407 for PHAs with mastermeter systems to reevaluate these systems by making a cost-benefit analysis at least every 36 months. The PHA recommends a five-year cycle to be consistent with the energy audit and the Comprehensive Grant Program five year plan.

Response: The Department agrees with this recommendation and has made the revision in the final rule.

Subpart E—Resident Allowances for Utilities

Comment: One PHA noted that a HUD Field Office did a Utility Review and made a finding because it was not surcharging residents for water for a washing machine. The PHA indicates that it felt that it had a right to determine what appliances required surcharges but notes that the regulation does not specifically mention washing machines. The PHA also recommended that we specifically exempt elderly high rises in the South from the requirement to charge residents for the energy to use a PHA-furnished air conditioner. In the instant case, the individual units had heat pumps for each unit which provide heat and air conditioning. The PHA did not think it was possible to establish fair surcharges because some run the air conditioning all the time while others only run the air conditioning occasionally.

Response: The Department agrees that if laundromats are not available, washing machines in units are reasonable, but not without limitation. As has been described above, the amount of operating subsidies is limited. It is, therefore, essential that PHAs undertake measures to conserve energy. One such way is to establish an

allowance "which reflects a reasonable consumption of utilities by an energy-conservative household of modest circumstances * * *." If the utility is paid by the PHA and the resident exceeds the allowance, the resident must be surcharged for the excess consumption. The regulation provides PHAs with considerable latitude in the development of allowances, within the basic framework described above. The Department plans to issue a guidebook in the near future to assist PHAs in developing utility allowances.

There is considerable debate as to the extent to which air conditioning should be considered an essential component. As noted earlier, the cost of utilities is in excess of \$1 billion annually. Appropriations for the last two years have been, and for the foreseeable future, will be, insufficient to fund PHAs at 100 percent of their eligibility under the PFS. Including air conditioning in utility allowances beyond what is already specifically authorized would seriously and adversely impact the level of funding for other critical services such as maintenance. This will affect all PHAs around the nation, since it will reduce the overall amount of operating subsidy which is fixed. The Department's approach to this difficult issue is to allow the capital costs to be an eligible expense while requiring the resident to pay the costs of the energy associated with its use. The Department is retaining the language in § 965.505(e) as described in the proposed rule.

Comment: Two PHAs indicate that HUD's criteria for establishing utility allowances as required in § 965.505(d)(1) through (9) should be simplified. One PHA indicated that the nine factors that must be taken into account have intimidated many PHAs into commissioning expensive engineering studies in an effort to comply. The PHA suggests that the language be simplified to allow for the use of previous consumption histories. Another PHA suggested that the factors be advisory.

Response: As noted in § 965.505(c), the Department leaves the complexity and elaborateness of the methods for establishing utility allowances to the discretion of the PHA. HUD believes that the choice in methodology is best handled at the local level where the PHA can use a procedure suitable to available data and local experience. As such, the rule does not intend to require only the use of the engineering method to establish allowances. While the Department believes that the engineering method will more closely approximate the objective stated in

§ 965.505(a), the consumption method is acceptable and may be appropriate for some PHAs. The Department believes that the "factors" cited, which have been in effect for more than a decade, are reasonable and necessary to be "considered" regardless of the methodology used in order to meet the objective in § 965.505(a).

Comment: One PHA indicated that § 965.507 states that utility allowances must be revised if the rate changes more than 10 percent between annual reviews. Utility rates can be volatile, particularly if a housing authority purchases a utility, such as natural gas, directly from the well-head. This could necessitate changing utility allowances several times during a twelve month period. The PHA recommends revision only on an annual basis. This PHA, along with others, indicated that if HUD wants PHAs to be competitive in the housing market, air conditioning must be considered a legitimate cost and should be included in the utility allowances.

Response: To the extent that the market is volatile, any savings/cost should be passed along to the resident. The Department previously discussed the financial impact of including air conditioning in utility allowances. No changes are being made to this section.

Comment: One PHA noted an apparent inconsistency. Specifically, § 965.502(c) requires residents to receive a 60-day notice of any change to the utility allowances. Section 965.507(b), on the other hand, requires that in cases of increases in utility allowances due to rate changes, adjustments shall be effective the first day of the month following the month in which the last rate change taken into account in such revision became effective. The PHA suggested that it appears that increases due to rate changes are not subject to the 60-day notice requirement contained in § 965.502(c).

Response: The PHA is correct that revisions due to rate changes pursuant to § 965.507(b) are not subject to the 60 day notice requirement. The Department has added clarifying language.

Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment for this rule was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact remains applicable to this final rule and is available for public

inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities because the rule reduces and streamlines existing requirements. PHAs will have fewer mandatory requirements. No new additional requirements are being imposed by this rule.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule does not have "federalism implications" because it does not have substantial direct effect on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that the rule will not have a significant impact on family formation, maintenance, and well being, and, therefore, is not subject to review under the order. No significant changes in existing HUD policies or programs will result from promulgation of this rule as those policies and programs relate to family concerns.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Program number assigned to this program is 14.850.

List of Subjects in 24 CFR Part 965

Energy conservation, Government procurement, Grant programs—housing and community development, Lead poisoning, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements, Utilities.

Accordingly, 24 CFR part 965 is amended as follows:

PART 965—PHA-OWNED OR LEASED PROJECTS—MAINTENANCE AND OPERATION

1. The authority citation for part 965 continues to read as follows:

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

§ 965.205 [Amended]

2. In subpart B, in § 965.205, paragraph (a) is amended by removing the parenthetical phrase "(in section 305 of the ACC)" from the first sentence that immediately follows the paragraph heading.

3. Subpart C is revised to read as follows:

Subpart C—Energy Audits and Energy Conservation Measures

Sec.

965.301	Purpose and applicability.
965.302	Requirements for energy audits.
965.303	[Reserved].
965.304	Order of funding.
965.305	Funding.
965.306	Energy conservation equipment and practices.
965.307	Compliance schedule.
965.308	Energy performance contracts.

Subpart C—Energy Audits and Energy Conservation Measures

§ 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 pay-back 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.

4. Subpart D is revised to read as follows:

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

Sec.

- 965.401 Individually metered utilities.
- 965.402 Benefit/cost analysis.
- 965.403 Funding.
- 965.404 Order of conversion.
- 965.405 Actions affecting residents.
- 965.406 Benefit/cost analysis for similar projects.
- 965.407 Reevaluations of mastermeter systems.

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

5. Subpart E is revised to read as follows:

Subpart E—Resident Allowances for Utilities

Sec.

965.501 Applicability.

965.502 Establishment of utility allowances by PHAs.

965.503 Categories for establishment of allowances.

965.504 Period for which allowances are established.

965.505 Standards for allowances for utilities.

965.506 Surcharges for excess consumption of PHA-furnished utilities.

965.507 Review and revision of allowances.

965.508 Individual relief.

Subpart E—Resident Allowances for Utilities

§ 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 checkmeters, 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.

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Indian Housing.*

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