# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

#### 24 CFR Parts 813 and 885

[Docket No. R-94-1364; FR-1761-F-02]

RIN: 2502-AC03

# Management Rules for Existing Projects for the Elderly

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the provisions of 24 CFR part 885 which govern projects that received direct loans under section 202 of the Housing Act of 1959 and housing assistance under section 8 of the United States Housing Act of 1937. The rule adds regulatory provisions to govern the housing assistance payments contract, project operations and project management.

**EFFECTIVE DATE:** February 9, 1995. FOR FURTHER INFORMATION CONTACT: With respect to Section 202 issues contact: Margaret Milner, Acting Director, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6130, Washington, DC 20410; telephone (202) 708-4542. With respect to Section 8 issues contact: Barbara Hunter, Acting Director, Planning and Procedures Division, Office of Multifamily Housing Management, Room 6182, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410; telephone (202) 426–3970. Hearing or speech impaired individuals may call HUD's TDD number (202) 708-4594. (These are not toll-free numbers.)

#### SUPPLEMENTARY INFORMATION:

## I. Paperwork Burden

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2502–0371.

### II. Background

HUD's regulations at 24 CFR part 885, subpart B govern projects that received direct loans under section 202 of the Housing Act of 1959 and housing assistance payments under section 8 of the United States Housing Act of 1937

(section 202/8 program). This subpart contains provisions governing the development of section 202/8 projects including the loan fund allocation process, application procedures, and loan financing procedures. There are no regulatory provisions governing the housing assistance payments contract (HAP contract) (except § 885.425 on HAP contract execution) or governing the management and operation of section 202/8 projects (except for preference rules published on July 18, 1994 at 59 FR 36616). On December 9, 1987 (52 FR 46614), HUD published a proposed rule adding such provisions. In response to the proposed rule, HUD received six comments. The comments and HUD's responses are discussed below.

On June 20, 1989 (54 FR 25960), HUD published a final rule adding a new subpart C to part 885. That subpart, which implemented amendments to the section 202 program contained in section 162 of the Housing and Community Development Act of 1987, governs section 202 housing for nonelderly handicapped families and individuals. Such housing does not receive assistance under section 8, but receives a new type of project assistance. On June 12, 1991, HUD published two interim rules (56 FR 27104, 56 FR 27070) providing for the continued applicability of part 885 to projects for which section 202 loan reservations were made in FY 1990 and prior years. These interim rules also added new parts 889 and 890 to establish the Supportive Housing for the **Elderly Program and Supportive** Housing for Persons with Disabilities Program and to enable FY 1991 funding of projects under those programs. Requirements relating to capital advances and project rental assistance contracts (these new projects do not receive section 8 rental assistance) were published August 12, 1992 at 57 FR 36338 and 57 FR 36330, and management rules for these new programs will be published shortly.

### Public Comments

Part 813. A commenter requested that HUD provide further information regarding the relationship between part 813 and part 885. The commenter also requested clarification concerning which part will govern if there are inconsistencies between the parts.

Section 813.1, which was not proposed for amendment in the proposed rule, currently provides the definitions, policies, and procedures related to income limits, and the determination of eligibility, income and rent for applicants and tenants in

housing assisted under section 8 including section 8 projects for which loans are made under section 202 of the Housing Act of 1959. HUD is unaware of any inconsistencies between part 813 and part 885, other than differences between the definitions of elderly and handicapped families. These differences reflect statutory definitions applicable to the section 8 and section 202 programs (see the definition of "families" and "elderly family" in section 3(b)(3) of the United States Housing Act of 1937, and the definition of "elderly or handicapped families" in section 202(d)(4)). To the extent of these or any other inconsistencies, the part that more specifically addresses the program (i.e., part 885) will govern. References have been added for part 889 (Supportive Housing for the Elderly) and part 890 (Supportive Housing for Persons with Disabilities).

Definitions (§ 885.5). A new definition of handicapped person or individual was added to part 885 in the final rule published June 20, 1989 implementing section 162 of the Housing and Community Development Act of 1987. In that rule, HUD proposed the same definition of handicapped person or individual that was contained in the proposed rule for the section 202/8 program. (Both proposed rules included a revised definition of handicapped person or individual that contained specific definitions of developmentally disabled and chronically mentally ill. Alcoholism and drug addiction were specifically excluded from the definition of chronically mentally ill unless the individual has a disabling condition required for eligibility.)

Commenters to both proposed rules made substantially the same comments on the proposed definition. Some commenters argued that the exclusion of alcoholism and drug addiction was contrary to section 504 of the Rehabilitation Act of 1973 which specifically extends coverage to alcoholics and drug addicts. Other commenters supported the exclusion of such persons.

In the June 20, 1989 final rule, HUD responded to these objections and substituted new language that provided that a person whose sole impairment is alcoholism or drug addiction (i.e., who does not have a developmental disability, chronic mental illness or physical disability which is the disabling condition required for eligibility in a particular project) will not be considered to be handicapped for the purposes of the section 202 program. The discussion of these changes can be found at that rule at 54 FR 25962, and is adopted without change for the