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

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

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

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

Response: HUD is authorized to provide assistance for existing housing units and to determine FMRs for such units. Newly constructed units—units built within the past 2 years—are excluded from the FMR calculations. An objective of the Section 8 Housing Assistance Payments program is to serve

as many low-income families as possible by making available standard quality rental housing units of modest (nonluxury) quality. Newly constructed units generally have much higher initial rent levels than other units. HUD. therefore, considers that such units should be deleted from the data base used to calculate the Existing Housing FMRs. Deletion of new units from the data base does not significantly affect the number of units that would pass HQS. HUD also calculates the FMRs by deleting substandard units from the Census distributions of rental housing and making an additional adjustment to factor out the affects of substandard housing on rents using the more refined housing quality data available in the American Housing Survey distributions.

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

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

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

actual day to day experience of a local housing authority.

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

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

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

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

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