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

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

III. Other Matters

Executive Order 12866, Regulatory Planning and Review

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

Environmental Assessment

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

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this document before publication and by approving it certifies that the proposed rule would

not have a significant economic impact on a substantial number of small entities, because FMRs reflect the rents for similar quality units in the area. Therefore, FMRs do not change the rent from that which would be charged if the unit were not in the Section 8 program.

Executive Order 12606, The Family

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

Executive Order 12611, Federalism

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

Semiannual Regulatory Agenda

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

Catalog of Federal Domestic Assistance

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

List of Subjects in 24 CFR Part 888

Grant programs—housing and community development, Rent subsidies.

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

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

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

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

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

§ 888.111 Fair market rents for existing housing: Applicability.

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

3. Section 888.113 is revised to read as follows:

§ 888.113 Fair market rents for existing housing: Methodology.

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

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