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**24 CFR Parts 5, 92, 93, 200, 574, 576, 578, 880, 882, 884, 886, 902, 982, 983, and 985.**

**[Docket No. FR-6086-P-01]**

**RIN: 2577-AD05**

**Economic Growth Regulatory Relief and Consumer Protection Act: Implementation of National Standards for the Physical Inspection of Real Estate (NSPIRE)**

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Office of the Assistant Secretary for Community Planning and Development, Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes a new approach to defining and assessing housing quality: The National Standards for the Physical Inspection of Real Estate (NSPIRE). This proposed rule is part of a broader effort across HUD to revise the way HUD-assisted housing is inspected and evaluated. The purpose of NSPIRE is to reduce regulatory burden and improve HUD oversight through the alignment and consolidation of the inspection regulations used to evaluate HUD housing across multiple programs, which are currently evaluating housing quality through differing standards, protocols, and frequencies. The goal of this alignment and consolidation is to create a unified assessment of housing quality. In advancement of HUD's mission to create quality affordable housing and strong, sustainable, and inclusive communities, this rule would establish the method HUD will use for the implementation of specific NSPIRE standards, scoring, and processes through **Federal Register** notices. Additionally, the proposed rule seeks to apply a “safe, habitable dwellings” standard; reduce the categories of current inspectable areas for physical condition standards for covered housing programs from five to three; implement a new annual self-inspection and reporting requirement for certain HUD housing; establish an administrative process for the treatment of health and safety deficiencies; and incorporate

provisions of the Economic Growth and Recovery, Regulatory Relief and Consumer Protection Act that will reduce administrative burden on small rural PHAs.

**DATES:** Comment Due Date: [Insert date 60 days from date of publication in the Federal Register]

**ADDRESSES:** Interested persons are invited to submit comments to the Office of the General Counsel, Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 10276, Washington, DC 20410-0001. Communications should refer to the above docket number and title and should contain the information specified in the “Request for Comments” section. There are two methods for submitting public comments.

*1. Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at all federal agencies, however, submission of comments by mail often results in delayed delivery. To ensure timely receipt of comments, HUD recommends that comments submitted by mail be submitted at least two weeks in advance of the public comment deadline.

*2. Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> web site can be viewed by other commenters and interested members of the public. Commenters should follow instructions provided on that site to submit comments electronically.

**Note:** To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

*No Facsimile Comments.* Facsimile (fax) comments are not acceptable.

*Public Inspection of Comments.* All comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). Copies of all comments submitted are available for inspection and downloading at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Timothy Weese and Samuel Franco, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th St SW, Suite 100, Washington, DC 20410-4000, telephone number 202-708-1112 (this is not a toll-free number). Individuals with hearing or speech impediments may access this number via TTY by calling the Federal Relay during working hours at 800-877-8339 (this is a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

There are currently two inspection models used across the majority of HUD housing programs: The Housing Quality Standards (HQS) developed in the 1970s, which are currently found at 24 CFR 982.401, and the Uniform Physical Condition Standards (UPCS) developed in the 1990s, which are currently found at 24 CFR 5.703. Both remain largely unchanged since their inception. The housing portfolio that was once dominated by government-owned properties has changed in the past two decades to become largely increasingly owned by private entities. This shift has caused Congress and HUD's evolving list of stakeholders to demand revisions to the physical inspection products and services that will both provide reliable evaluations of housing conditions and protect residents.

HUD analyzed the way inspections are conducted under both models to better understand how housing quality regulations needed to evolve. HUD found that both inspection models can

sometimes provide inaccurate and inconsistent results and can prevent HUD from effectively evaluating housing across programs. HUD determined that while the models are well-intentioned in design, neither model currently aligns with HUD's priorities, the state of the housing industry and improvements in technology. This is partly because neither model includes mechanisms for continual update. This analysis also identified a disproportionate emphasis around the appearance of items that are otherwise safe and functional and paid inadequate attention to the health and safety conditions within the built environment. HUD has concluded that existing housing standards need to focus on habitability and the residential use of the structures, and most importantly, the health and safety of residents.

To this end, HUD announced the implementation of NSPIRE through the publication of an August 21, 2019, notice,<sup>1</sup> which described the development of a new inspection model for HUD programs. HUD began building the updated standards, procedures, and scoring methodologies, which will be refined through a multistage NSPIRE demonstration. The demonstration will test and HUD will further refine the future state of HUD's physical inspection model to best serve residents. NSPIRE programmatic provisions will be published in the Federal Register and will provide an opportunity for public comment.<sup>2</sup> The improvements being refined through the NSPIRE demonstration are intended to occur in parallel to support and reinforce the changes being proposed by this rule.

### **Regulatory Consolidation and Alignment**

As noted above, the proposed rule would consolidate and align housing quality requirements and associated inspection standards across programs wherever possible. To achieve this, housing quality regulations across HUD programs would be consolidated into one location at 24 CFR part 5. HUD understands, however, that regulations must be flexible enough to accommodate each program's unique circumstances. Where differing statutory requirements or

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<sup>1</sup> 84 FR 162.

<sup>2</sup> <https://www.federalregister.gov/>

public policy considerations prevent alignment to 24 CFR part 5, those program-specific requirements would be maintained in their respective program regulations and would supersede or supplement 24 CFR part 5.

Current program regulations governing housing quality and inspections have a large regulatory footprint. Rather than being in a single location, they are located under 24 CFR part 5 and part 200 for programs governed by Uniform Physical Condition Standards (UPCS); 24 CFR § 982.401 for programs governed by HQS; and within each program's individual regulations in 24 CFR parts 92, 93, 200, 574, 576, 578, 880, 882, 884, 886, 902, 982, 983, and 985. This means that finding and understanding the requirements across programs—even those governed by the same standard—is often cumbersome. Instead, this rule would consolidate 14 dispersed sections which are spread across 24 CFR, into 7 consecutive sections.

Further, there are often minor, unnecessary discrepancies in language across regulations. The use of “decent, safe, and sanitary” is a good example. The physical condition standards applicable to Public Housing and HUD’s Multifamily Housing program outlines that housing must be “decent, safe, sanitary, and in good repair.”<sup>3</sup> The Housing Choice Voucher (HCV) and Project-Based Voucher (PBV) program regulations state housing must be “decent, safe, and sanitary rental housing of a modest (non-luxury) nature with suitable amenities.”<sup>4</sup> Meanwhile, regulations for the Home Investment Partnerships (HOME) program state housing be “decent, safe, sanitary and affordable.” HUD believes that all standards governing HUD housing are equivalent in that they mandate safe, habitable housing for residents. An alignment of these standards would create a single expectation of housing quality across these programs and remove these unnecessary discrepancies.

Finally, programmatic alignment and consolidation is increasingly important as HUD’s inspection portfolio has shifted to include greater numbers of mixed finance properties which are

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24 CFR § 5.703

24 CFR § 982.1(a)(1)

subject to multiple inspection standards by the nature of their financing. A similar challenge is faced by PHAs and owners whose portfolio includes multiple HUD program types or that convert from one funding stream to another, such as through the Rental Assistance Demonstration (RAD) program. HUD acknowledges that the challenges a PHA faces are not always the same challenges that owners face, but in both cases, the lack of aligned requirements unduly increases the complexity and uncertainty associated with participating in HUD's programs and may deter some owners from future involvement.

### **Programmatic and Statutory Limits on Alignment**

Part of this alignment will consolidate and align the regulations governing the physical condition of HUD housing to create a shared expectation of housing quality across a wide array of distinct programs. The remainder of the alignment centers around program administration: inspection protocols, processes, and procedures.

Regarding these inspection protocols, processes, and procedures, the majority of the alignment that HUD is proposing involves the program regulations for the public housing and multifamily programs. However, given the unique nature of some HUD programs and the limits posed by existing statutory requirements, it is not possible for HUD to align all program administration regulations across all programs under this proposed rule.

Within this proposed rule, the Housing Choice Voucher (HCV) program, comprised of the Project Based Voucher (PBV) and Tenant Based Voucher (TBV) programs, has been aligned with other HUD programs to the maximum extent possible, while also acknowledging that varying types of rental housing and unique geographic features conditions nationwide necessitate separate requirements in certain areas. HUD's approach for aligning these programs accounts for the:

- Unique statutory requirements related to the standards of individual units rather than the project as a whole;<sup>5</sup>

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<sup>5</sup> U.S.C. 1437f(o)(8)(C)

- Nature of the entity responsible for conducting inspections<sup>6</sup> (the PHA rather than HUD);
- Relationship of housing quality standards to State and local codes;<sup>7</sup>
- Pass/fail nature of inspections; and
- Frequency of inspections.<sup>8</sup>

All of these differ greatly from other HUD programs, particularly project-based assistance programs.<sup>9</sup>

Similarly, while the proposed rule aligns the Office of Community Planning and Development (CPD) programs whenever possible, CPD programs pose unique challenges to alignment, both across HUD and within CPD. CPD programs provide housing assistance, one-time or time-limited assistance (such as mediation with a property owner or a one-time payment of rental arrears to help a family avoid eviction from their existing housing, or payment of rental application fees to help a person in shelter get back into housing), and special housing needs programs. CPD programs also fund various services, such as legal assistance and mediation to prevent eviction and housing search and placement, for special needs populations. The variety of housing assistance and services offered through CPD programs required HUD to adopt, as proposed here, unique inspection frequencies and protocols that account for the needs of these different programs and assistance types. Furthermore, this alignment accounts for the fact that CPD programs are administered differently. For example, CPD's formula grant-based programs are provided to States, eligible units of local government, the District of Columbia, U.S. Territories and Tribal governments, which often follow local code requirements.

Through the rulemaking process, HUD invites recommendations on opportunities to further consolidate similar regulatory provisions.

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<sup>6</sup> U.S.C. 1437f(o)(8)(C)

<sup>7</sup> U.S.C 1437f(o)(8)(G)

<sup>8</sup> U.S.C 1437f(o)(8)(D)(i)

<sup>9</sup> Important to note that PBVs are part of the HCV program and PBV units under section 8(o)(13) are subject to the requirements under section 8(o)(8), thus, using the Housing Quality Standards similar to tenant-based voucher units. Thus, key elements of physical standard requirements for the PBVs align with the HCV program and by virtue of section 8(o)(8) will be distinct and separate from PBRA and public housing.

With regard to consolidation, HUD is requesting public comments on the following questions:

**Question for Comment #1:** The Economic Growth and Recovery Act mandates that for small public housing agencies, the same standards apply to small public housing agencies for the acceptable condition of public housing projects also apply to projects assisted under Section 8. Is there a preferable approach to implementing the statutory provision that requires the same standards for small rural Section 8 projects and PHA public housing projects? If so, how should the standards for and small rural PHA Section 8 projects and public housing projects differ from the standards employed for all other public housing and HCV units while ensuring that all HUD housing must be free of health and safety hazards?

### **Why HUD is Implementing NSPIRE Through Rulemaking**

As previously noted, the current regulatory footprint of all housing standards is sprawling. HUD believes that consolidating these standards—a total of 16 regulations containing many administrative and procedural differences—is required to reduce administrative burden and increase resident safety.

While some of the programmatic modifications made by this proposed rule could have been implemented without formal rulemaking, proceeding with this proposed rule provides a framework for continued stakeholder engagement and ensures transparency throughout the process.

During the NSPIRE implementation and in parallel to formal rulemaking, HUD plans to draft Federal Register notices that would outline the specific standards, scoring, and protocols under NSPIRE. All updated standards and scoring methodologies would be published—as required by this proposed rule—through a Federal Register Notice at least once every 3 years with the opportunity for public comment prior to implementation. This would provide opportunity for both industry stakeholders and the general public to examine the proposed

requirements and programmatic considerations, § 5.705 through § 5.713 in part 5 generally do not apply to Section 8(o) programs (HCV and PBV), Moderate Rehabilitation, or certain CPD programs (i.e., HOME and Housing Trust Fund (HTF)).

HUD proposes the following amendments and additions to 24 CFR Part 5:

a. Section 5.701 Applicability

The current regulations at § 5.701 state that the physical condition standards in 24 CFR part 5 apply to Public Housing and certain programs administered under HUD's Office of Multifamily Housing, including all project-based Section 8 programs and any housing with mortgages insured or held by HUD or receiving insurance from HUD.

Amended § 5.701 would extend this subpart to the HCV (part 982) and PBV programs (part 983). CPD programs would adopt these standards by reference in the applicable CPD regulations to include: the HOME Program (part 92); HTF (part 93); Housing Opportunities for Persons with Aids (HOPWA) (part 574); Emergency Solutions Grants (ESG) Program (part 576); and Continuum of Care (CoC) (part 578).

b. Section 5.703 National Standards for the Condition of HUD Housing

HUD's housing condition standards are located in two areas in the regulations today: existing § 5.703 applies to public housing, multifamily, and some CPD programs while existing § 982.401 applies to HCV and PBV, and to some other CPD programs via cross-reference. CPD programs do not apply any scoring, weighting, ranking or enforcement from Part 5. This is outlined in the CPD program rules (e.g., HOME rule at 24 CFR 92.251(f)(1)(i.)). CPD programs are fundamentally different than many of the programs subject to REAC inspections as they are programs administered by local governments subject to local decision making. CPD programs have their own means of enforcement specified in each program regulation. These functions are instead performed by HUD CPD staff, and can include requiring the participating jurisdiction or grantee repaying the full amount of subsidy provided to the project. Amended § 5.703(a) through (e) consolidates and replaces both § 5.703 and § 982.401. These provisions parallel the specific

directives at 42 U.S.C. 1437(f)(2) and 42 U.S.C. 1437(o)(8)(B) that require the Secretary to establish quality standards that ensure housing is safe and habitable. In these provisions, HUD proposes to define “safe, habitable dwellings” as those for which “the items and components located inside the building, outside the building, and within the units of HUD housing...[are] functionally adequate, operable, and free of health and safety hazards.” HUD believes the requirement of “functionally adequate, operable, and free of health and safety hazards” is generally equivalent to “decent, safe, and sanitary.” The intentional shift in language would serve as a uniting phrase across programs. Additionally, the shift would help the public differentiate between the old and the new regulatory frameworks. It would further allow HUD to establish clear, objective, and aligned property inspection standards (described later in this rule at § 5.705(a) and § 5.709) by creating identifiable limits that are comparable across housing programs. For example, the terms “functionally adequate” and “operable” may be defined based on universal habitability requirements and design specifications for an item or component. In contrast, “decent,” is a highly subjective term. Perceptions of decency vary from person to person and location to location. The terms “health” and “safety” can also be measured universally and quantitatively by using standard public health and safety metrics related to morbidity and mortality. “Health” as used here would be inclusive of “sanitary;” HUD believes that term “health” would be more useful for assessment of a broader range of impacts. HUD intends this new description to make clear that the built environment’s effect on the health and safety of residents is more important than any building damage that is strictly cosmetic in nature. The new definition would also simplify the way in which this rule names the inspectable areas of a property by reducing the number of areas from five to three. This change is intended to increase readability, streamline the inspection process, and emphasize to stakeholders the importance of resident units.

Section 5.703(a) would limit the ways in which the quality requirements apply to units occupied by HCV and PBV participants, as well as common areas and exterior areas which

either service or are associated with such units. This limitation is generally derived from the unique statutory requirements for these programs related to the application of housing quality standards to units (as opposed to projects). Other factors that make this limitation appropriate is the entity responsible for conducting the inspections (the PHA), the relationship of the housing quality standards to local codes, and the frequency of those inspections.

HUD also proposes to consolidate into § 5.703(d) several provisions currently found in one section of the regulations but implied in others. For example, the proposed rule would make it clear that certain unit features, like having a kitchen area, are minimum habitability requirements across programs. Most renters would expect to have the ability to store and prepare food in their home. While not new requirements, they reinforce the importance that this rule places on residents' units and the primarily residential nature of HUD housing. Similarly, amended § 5.703(d) would add the word "safe" to the current requirement that units have an adequate source of potable water. "Safe" in this context would be defined by HUD through future rulemaking after receiving public comments.

This portion of the rule would also incorporate requirements currently described more clearly by the HCV regulations for smoke detectors, including those for hearing impaired persons and the requirement for hot and cold running water, and would replace current paragraph (f) concerning health and safety concerns. So that all the habitability provisions are in one place, paragraph (e)(2) would maintain language found in the current regulation at § 5.703(f) regarding lead-based paint but would add information on applicability.

The remaining provisions in (f) through (h) discuss the relationship of local codes to HUD housing and identify when alternatives to § 5.703 would apply.

New paragraph (g) would clarify that § 5.703 may be replaced or supplemented by a state or local standard under the HCV and PBV program in line with the statutory exception for those programs found at 42 USC 1437f(o)(8)(B). Additionally, for special housing types, such as Single Room Occupancies or congregate housing, that may have incompatible design

requirements, like shared bathroom or kitchen facilities, paragraph (h) would clarify that the provisions in § 5.703 may be modified by program specific requirements which would continue to be found in the same program-specific sections of the regulations as they are today.

With regard to standards, HUD is requesting public comments on the following questions:

**Question for Comment #2:** HUD has the following questions regarding water safety:

- (a) How can HUD best define what is meant by safe or potable water?
- (b) Should “safe” mean water provided by a public water system that is in compliance with the Safe Drinking Water Act (42 U.S.C. 300f et seq.) as implemented by the EPA?
- (c) How should HUD monitor whether water is safe?
- (d) What elements should be reviewed during the physical inspection to determine water safety?
- (e) Should inspectors verify that a municipal water supply authority is in compliance with EPA’s Safe Drinking Water Act? How would they best do this?

**Question for Comment #3:** HUD is specifically seeking comment on whether the site and neighborhood standards as found in 24 CFR 982.401(l), should be included in the regulation or only in the inspection standards? HUD also seeks comments on whether all of the explicit standards should be included or if there are certain site and neighborhood standards that HUD should consider changing?

**Question for Comment #4:** The proposed rule would establish a subset of minimum NSPIRE standards to apply to rehabilitation of rental and owner-occupied or homebuyer housing and homebuyer acquisition of standard housing (i.e., down payment assistance) assisted with HOME or HTF at §§ 92.251(b) and (c)(3) and §§ 93.301(b) and (c)(3), and to HOME- and HTF-assisted rental projects throughout the affordability period at § 92.251(f) and § 93.301(e), and for units occupied by tenants receiving HOME Tenant-based rental assistance (TBRA) in accordance with § 92.251(f). What minimum housing

condition standards should HUD apply to HOME- and HTF-assisted rehabilitation activities for rental or owner-occupied housing and what minimum condition standard should apply to HOME-assisted homebuyer acquisition activities at completion to ensure that the housing is decent, safe, sanitary and in good repair? In addition, what minimum housing condition standards should HUD apply throughout the affordability period to HOME- and HTF-assisted rental projects and units occupied by tenants receiving HOME TBRA to ensure that the housing remains decent, safe, sanitary and in good repair?

**Question for Comment #5:** How do the NSPIRE standards in this proposed rule compare to minimum deficiencies that must be corrected in HOME- and HTF- assisted rehabilitation projects at § 92.251(b) and § 93.301(b) or which must be corrected prior to HOME- and HTF-assisted homebuyer acquisition of standard housing (i.e. down payment assistance) to ensure that upon completion the housing is decent, safe, sanitary and in good repair?

**Question for Comment #6:** Should HUD establish different minimum deficiencies that must be corrected in HOME- or HTF assisted rental housing and homebuyer or owner-occupied housing rehabilitation projects at § 92.251(b) and § 93.301(b)? If so, what should HUD consider when establishing minimum standards for the rehabilitation of rental housing, homebuyer housing, or owner-occupied housing?

**Question for Comment #7:** Should HUD establish different minimum deficiencies that must be corrected in large and small HOME- or HTF-assisted rehabilitation projects at § 92.251(b) and § 93.301(b)? If so, what should HUD consider when establishing minimum standards and what should HUD define as a large housing project?

**Question for Comment #8:** Should HUD establish different minimum deficiencies that must be corrected for HOME or HTF-assisted rehabilitation and homebuyer or owner-occupied acquisition of standard housing (i.e. down payment assistance) projects at §

92.251(c)(3) and § 93.301(c)(3)? If so, what should HUD consider when establishing minimum standards for rehabilitation projects and homebuyer acquisition projects?

**Question for Comment #9:** Should HUD establish minimum written property standards requirements for housing occupied by tenants receiving HOME TBRA at § 92.251(f) that exceed or are different than minimum requirements for the ongoing condition of HOME-assisted rental housing? Should HUD establish a list of minimum deficiencies that must be corrected if found during an onsite physical inspection of HTF-assisted rental housing? If so, what elements should be required in the written property standards?

**Question for Comment #10:** Alternatively, should HUD apply the NSPIRE standards established in accordance with this proposed rule (not to include the inspection procedures, administrative processes for scoring and ranking, or the enforcement requirements of NPSIRE) to housing occupied by tenants assisted receiving HOME TBRA at § 92.251(f)? HUD could require inspection of the assisted unit; the items and components within the primary and secondary means of egress from the unit's entry door(s) to the public way; the common features related to the residential use of the building (e.g., the laundry room, community room, mail room); and, the systems equipment that directly services the unit similar to the exceptions that are included in the proposed rule for HCV and PBV. Is there another national housing quality or condition standard that HUD should apply to housing occupied by tenants assisted with HOME TBRA?

**Question for Comment #11:** Should HUD establish a list of minimum deficiencies that must be corrected if found during an onsite physical inspection of HOME or HTF-assisted rental housing or housing occupied by a tenant receiving HOME TBRA at § 92.251(f)? If so, should HUD establish separate lists for HOME and HTF-assisted rental housing and housing occupied by a tenant receiving HOME TBRA? What should HUD consider in the development of such lists of deficiencies?

**Question for Comment #12:** Section 5.703(h) of the proposed rule identifies unique standards to special types of housing - single room occupancy (SRO) housing; congregate housing; group home; shared housing; manufactured home; cooperative housing; and homeownership - but applies this section only to the HCV, PBV, and Moderate Rehabilitation Programs. Should any of these unique standards - specifically SRO, congregate housing, shared housing, and manufactured homes - apply to the CoC, ESG, and HOPWA programs?

**Question for Comment #13:** HUD is considering adding certain affirmative requirements at the final rule stage. Currently under consideration are related to ground-fault circuit interrupter (GFCI), an arc-fault circuit interrupter (AFCI); Heating, ventilation, and air conditioning (HVAC); Guardrail; and Lighting-Interior. In alignment with HUD's prioritization of resident safety, HUD welcomes public comment on all issues, but is specifically seeking feedback regarding implementing the following:

- a. Electrical Outlet and Switch – HUD is considering adding a deficiency under the Electrical Outlet and Switch Standard regarding an inadequate number of outlets (i.e., either 2 working outlets or 1 working outlet and a permanent light) within all habitable rooms due to potential safety hazards, usability barriers, and inadequate illumination.
- b. GFCI & AFCI – HUD is considering adding a deficiency under the GFCI & AFCI Standard regarding the lack of GFCI protection where required (e.g., within 6 feet of sinks, tubs, showers; or exterior, garage, or unfinished basement areas) due to potential safety hazards, such as shock or electrocution.
- c. HVAC – HUD is considering adding a deficiency under the HVAC Standard regarding the lack of a permanently installed heating source due to potential health safety hazards, such as fire or carbon monoxide exposure.
- d. Guardrail – HUD is considering adding a deficiency under the Guardrail Standard to require a guardrail when there is an elevated walking surface with a drop off of 30 inches or greater measured vertically.
- e. Lighting – Interior – HUD is considering adding a deficiency under the Lighting - Interior Standard regarding the absence of a permanently mounted light fixture in the kitchen or bathroom due to potential safety hazards and inadequate illumination.

c. Section 5.705 Inspection Requirements

The current § 5.705 states that entities must inspect covered HUD housing programs annually in accordance with HUD-prescribed physical condition standards unless program regulations or HUD provide otherwise. Amended and expanded § 5.705 would align inspection standards (including provisions pertaining to frequency), would identify entities responsible for conducting inspections, would outline timing of inspections and reinspection fees, and would mandate access to properties. Centralizing these standards would provide greater clarity and ease of access for stakeholders and oversight authorities.

Section 5.705(a)(1) continues to require that any entity responsible for conducting an inspection of HUD housing determine compliance with this subpart. However, (a)(1) would require that entities must inspect such HUD housing in accordance with the standards and procedures set out by the Secretary and published in the Federal Register as described in § 5.711, and would allow HUD to establish aligned inspection standards across HUD programs.

New paragraph (b)(1) would incorporate existing provisions from § 200.855 describing the entity responsible for inspecting HUD housing. New paragraph (b)(2) would provide an exception for the HCV, PBV and Mod rehab programs in cases where the PHA is required to conduct the inspection.

New subparagraph § 5.705 (c)(1) would pull elements from existing regulations which outline that a property must be inspected before the property is approved for participation in any of the HUD housing programs under this part unless the property is already a participant in another HUD program under this part. It would also continue to require that an entity responsible for conducting an inspection of HUD housing must determine compliance with this subpart and must inspect such housing annually, unless otherwise specified below.

Current inspection requirements for public housing and multifamily programs are risk-based with frequencies ranging from annually to once every three years. The proposed rule would maintain risk-based annual inspection requirements. The proposed rule would expand this

time period to between 2 and 5 years. The criteria under which a PHA or owner/agent may qualify for a longer inspection cycle would be described in a future Federal Register Notice and will be based on a risk assessment. This change in inspection frequency would further incentivize performance without any anticipated degradation in housing quality as it would not obviate the expectation of continuous compliance with housing quality requirements. Further, since proposed § 5.707 would require properties to conduct an annual self-inspection and submit results to HUD, the Agency believes that submission of self-inspection results and status of repair would mitigate risk associated with longer inspection frequencies. In all cases, HUD housing would be required to remain in compliance with all applicable laws and regulations, including the quality standards in § 5.703, regardless of the date of the next inspection.

Due to different statutory and programmatic requirements, requirements surrounding inspections frequencies for some programs would continue to be governed by current applicable regulations, including HCV, PBV, and Moderate Rehabilitation. Further, small rural PHAs would be exempted from the annual inspection requirement and would instead follow provisions of the Economic Growth and Recovery Act outlined later in this notice. Finally, HUD may exempt assisted-living facilities, board and care facilities, and intermediate care facilities, and any other Section 232 facilities if they meet certain criteria as outlined in the regulation.

New paragraph (d) would incorporate and align existing language regarding reinspection costs from the public housing and multifamily regulations. The proposed rule would allow, but not require, the responsible entity (as identified in proposed § 5.705(a)(1)) to charge a property owner (including PHAs) a reasonable reinspection fee when an owner notifies the responsible entity that a repair has been made, or the allotted time for repairs has elapsed, and a reinspection reveals the deficiency was not corrected.

New paragraph (a)(3) would outline variants in inspection standards for the HCV and PBV programs by incorporating existing regulations at § 982.401(a)(ii). As required by statute, the proposed rule would continue to give PHAs the ability to consider variations in local laws

and practices and provide appropriate flexibility to facilitate the efficient provision of assistance.<sup>10</sup>

With regard to inspection, HUD is requesting public comments on the following questions:

**Question for Comment #14:** HUD is soliciting comment on the risk-based annual inspection requirement expansion from 2 to 5 years. Is a different range merited? If so, what should HUD consider in setting and adjusting the ranges?

**Question for Comment #15:** HUD is soliciting comment on how to involve tenants in helping REAC identify poor performing properties. For example, could tenants provide a “1-5 rating” of their units with “1” being “poor” and “5” being “excellent?” Could tenants recommend their units for inspection separate from the statistical sample for scoring purposes to inform HUD’s risk analysis of the property?

#### d. Section 5.707 Uniform Self-inspection Requirement and Report

While 42 U.S.C. 1437(d)(f)(3) requires that each PHA inspect all public housing projects annually, current regulations governing other covered HUD housing programs, such as those for Multifamily Housing, do not explicitly require an annual self-inspection of all units. The proposed rule would add a new regulation at § 5.707 which would explicitly require annual self-inspections of all units in a project and would add a new electronic reporting requirement. The results of the electronic reporting requirement would be an integral part of HUD’s real estate inspection process. With advances in technology, HUD believes it is now possible and practical to collect this type of property data electronically. The procedures for this reporting would be outlined in a future Federal Register Notice with an opportunity for public comment.

By making regular, comprehensive self-inspections and reporting a part of each covered property’s physical assessment regimen, HUD would once again signal a focus on identifying and mitigating risks to resident health and safety. Self-inspections are a key component of

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<sup>10</sup> 42 U.S.C. 1437(f)(o)(8)(g)

ensuring properties are maintained year-round and encourage regular, preventative maintenance rather than “just in time” repairs ahead of HUD-conducted inspections.

It should be noted that due to the unique statutory requirements of the HCV, PBV, and CPD programs, they would be exempted from this electronic reporting requirement. Additionally, Moderate Rehabilitation would continue to follow program requirements described in the current regulations.

With regard to self-inspection, HUD is requesting public comments on the following questions:

**Question for Comment #16:** HUD is soliciting comment on how the clarification to self-inspect all HUD housing units in certain programs to ensure that units are being maintained in accordance with HUD housing quality standards will impact the operations of PHAs, owners and agents? What advantages and disadvantages would arise from extending this self-inspection requirement to the programs that do not explicitly require an annual self-inspection of all units (such as HCV, PBV, Moderate Rehabilitation, and CPD programs)?

**Question for Comment #17:** Is there an alternative to the self-inspection protocol (§ 5.707 Uniform self-inspection requirement and report) that would allow HUD to achieve the objective that families live in safe and habitable units, and what are the risks and benefits of that alternative?

e. Section 5.709 Administrative Process for Defining and Revising Inspection Criteria

The proposed rule would add § 5.709 which would require HUD to establish an administrative process for regularly receiving public comments on scoring and ranking criteria through Federal Register notices.

New paragraph (a)(1) would establish a timeframe for revisions of standards of every 3 years, or every 3 years after the most recent revision, whichever is later. The inclusion of this regulation would allow HUD to respond to the changing needs of an evolving housing portfolio

and technological changes that may impact the inspections process. This proposed rule would mandate that the Agency update the scoring and ranking criteria regularly and would further demonstrate HUD's commitment to ensure scoring is reasonable, responsive, and current.

New paragraph (a)(2) would allow HUD to publish a notice without 30 days of public comment in the case of an emergency. For § 5.709, an emergency would be defined as a significant health hazard, a new safety concern due to changing construction technology, or another event as determined by the Secretary. This section would further highlight the Secretary's commitment to being responsive to the needs and safety of residents.

**Question for Comment #18:** In alignment with HUD's desire to increase clarity and decrease ambiguity, HUD is considering definitions for kitchens and sanitary facilities. HUD seeks public input on the following:

- a. Should HUD define what constitutes a kitchen and its related components required for functional adequacy (e.g., cooking appliance, means of refrigeration, food preparation and storage)?
- b. Should HUD define what constitutes a sanitary facility and its related components required for functional adequacy (e.g., bathtub or shower, toilet, ventilation, sink)?

f. Section 5.711 Scoring, Ranking Criteria, and Appeals

The proposed rule would add a new regulation at § 5.711 which would incorporate and streamline existing regulations governing the scoring and ranking of covered properties, chiefly multifamily and public housing properties. Further, it would include the responsibilities of PHAs and owner/agents after an inspection and outline the process for appealing inspection results. Proposed § 5.711 would also incorporate and replace the current scoring and ranking process under § 200.857 as well as the prior appeals process for physical inspections under the Public Housing Assessment System (PHAS) at §§ 902.22, 902.24, 902.26, and 902.68. By aligning similar language across programs, HUD believes the proposed rule will increase clarity and ease of compliance while creating a standardized set of expectations.

New paragraph (a) would exempt the HCV and PBV programs which would continue to be assessed under the Section Eight Management Assessment Program (SEMAP) as well as small rural PHAs which would be assessed under new subpart D of 985. As part of the streamlining in the proposed rule, new paragraph (b) moves the existing regulation at § 200.857(a)(1) to part 5.

New paragraph (b)(2) would clarify that Public Housing projects would continue to be scored and ranked under the Public Housing Assessment System (PHAS) outlined in part 902. New paragraph (c)(1) would introduce the category of severe health or safety (SHS) deficiencies which are the most serious types of conditions that can be cited as violations of § 5.703 and replaces the current exigent health and safety (EH&S) category of deficiencies found in § 902.22. Similar to the use of new language in § 5.703, the change in terminology would serve as a visual marker to help a reader differentiate between the existing and proposed regulations. It would also help to minimize confusion across the aligned programs. The term “exigent health and safety” has been associated with more than one definition in the past and has been confused with the term “life-threatening.” For example, HUD’s notice at 76 FR 10055 employed EH&S and life threatening synonymously despite the different meanings.<sup>11</sup>

While generally equivalent in purpose to the way EH&S is being used today, the new phrase, “severe health or safety” would provide a clear expression of the seriousness of these types of issues which would also be reflected in the proposed default timeframe of repair of 24 hours. HUD acknowledges that current regulations are inconsistent in describing how soon an EH&S deficiency must be corrected, establishing a singular provision at § 5.711(c)(1) for the correction of SHS deficiencies for most programs would address these inconsistencies.

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<sup>11</sup> “The UPSC physical inspection emphasizes health and safety (H&S) deficiencies because of their crucial impact on the well-being of residents. A subset of H&S deficiencies is exigent health and safety (EHS) deficiencies. These are life threatening (LT) and require immediate action or remedy. EHS deficiencies can substantially reduce the overall project score.” See, 76 FR 10055 <https://www.federalregister.gov/documents/2011/02/23/2011-2633/changes-to-the-public-housing-assessment-system-phas-physical-condition-scoring-notice>

Additionally, the Housing Opportunity Through Modernization Act of 2016 (HOTMA) limited HUD's flexibility in defining the timeframes for repair of deficiencies in the HCV or PBV programs. That act requires that life threatening conditions be addressed in 24 hours and all other deficiencies within 30 days. In order to accommodate that statutory constraint, HUD would identify in the notice described in § 5.709 which of the SHS deficiencies are life threatening and which ones are non-life threatening. Section 5.711 would also require the correction of non-SHS health or safety deficiencies within 30 days, for all programs.

Further, proposed § 5.711 would incorporate and condense the administrative review and enforcement action provisions found at § 200.857(h) and § 200.857(i) to align with HUD's current procedures and eliminate inconsistencies with Section 219, Title II, Division H of the Consolidated Appropriations Act, 2020, Public Law 116-94, December 20, 2019. As previously noted, CPD programs do not apply any scoring, weighting, ranking or enforcement from Part 5. This is outlined in the HOME rule at 24CFR 92.251(f)(1)(i). CPD programs are fundamentally different than many of the programs subject to REAC inspections as they are programs administered by local governments subject to local decision making. CPD programs have their own means of enforcement specified in each program regulation. These functions are instead performed by HUD CPD staff, and can include requiring the participating jurisdiction or grantee repaying the full amount of subsidy provided to the project. New paragraph (d)(2) would consolidate current regulations governing the process for technical reviews into one section with an aligned set of procedures applicable to properties inspected by HUD.

With regard to tenant-induced damage, HUD is requesting public comments on the following questions:

**Question for Comment #19:** HUD is soliciting comment on how to fairly approach tenant-induced damage to units and properties in such a way that it will have a positive impact on HUD-assisted properties. What could be used as incentives or disincentives to discourage tenant-induced damage?

**Question for Comment #20:** HUD seeks input on the scoring threshold that should be used to refer a property to the Departmental Enforcement Center (DEC): what factors should be considered by HUD in setting the threshold, and whether should this be a stationary threshold or one that is updated periodically?

g. Section 5.713 Second- and Third-Party Rights

The proposed rule would add new § 5.713, which would incorporate and modify existing language at § 982.407 on enforcement of inspection requirements. The new regulation would mirror existing regulations in place for the HCV and PBV programs---which in no way create any right to assert any claim against HUD or the PHA for damages, injunction, or other relief for alleged failure to enforce inspection standards, and would expand it to other programs under NSPIRE.

**B: Addition of Part 902, Subpart H and Part 985, Subpart D Regarding Small rural PHAs**

Small rural PHAs generally operate in a very different financial environment and rental housing market than larger PHAs in major metropolitan areas. These PHAs often have less access to private capital and their small size typically means that they operate with fewer staff and outside consulting services. Accordingly, regulatory burden often falls more heavily on small rural PHAs, reducing their ability to serve low-income families.

On May 24, 2018, President Trump signed the Economic Growth and Recovery, Regulatory Relief and Consumer Protection Act (“Economic Growth Act”) into law. Section 209 of the Act added section 38 to the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) and made several amendments pertaining to small rural PHAs. Certain statutory amendments made by section 209 became effective 60 days after enactment, and HUD published a notice in the Federal Register on February 14, 2019,<sup>12</sup> which, read together with the statutory language, was intended to aid HUD program participants and the public in understanding the reasons for deferred action with respect to specific statutory provisions. HUD published a notice in the

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<sup>12</sup> 84 FR 4097, February 14, 2019.

Federal Register on February 27, 2020,<sup>13</sup> explaining how HUD designates small rural PHAs and described which 209 provisions were being implemented. The notice also stated that HUD would undertake future rulemaking for full implementation of other provisions, including defining small rural PHAs in the regulations. This proposed rule would implement this definition of small rural PHA as well as a new assessment system for their public housing and HCV programs. HUD believes that the Economic Growth Act's focus on inspections and the directive to follow the same standards for small, rural public housing as that for projects assisted under Section 8 make the inclusion of the act's provisions in this rule a logical fit.

The proposed rule would create new Subpart H under the current 902 regulations for the Public Housing Assessment System (PHAS). Section 209(a)(2) of the Economic Growth Act defined “small public housing agency” and directed HUD to use the existing definition of “rural area” contained in the regulations governing the Consumer Financial Protection Bureau (CFPB) at 12 CFR § 1026.35(b)(2)(iv)(A). In the February 27, 2020 notice, HUD further refined this definition by defining PHAs that “predominantly operate in a rural area” and clarifying that these PHAs would be referred to as “small rural PHAs” to avoid confusion with other small PHA designations employed by HUD. The proposed rule would fully implement these definitions through § 902.101. A small rural PHA would be defined as a PHA that administers 550 or fewer combined public housing and Section 8 voucher units and either has a primary administrative building with a physical address in a rural area or more than 50 percent of its combined public housing units and voucher units in rural areas. The methodology for identifying a small rural PHA was identified in the February 27, 2020 notice and § 902.101(b) would require that HUD make this determination once every three years. PHAs would have the ability to appeal this determination in accordance with § 902.101(c).

The proposed rule would amend the current regulations for the Public Housing Assessment System (PHAS) to exempt small rural PHAs and would instead implement an

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<sup>13</sup> 85 FR 11381, February 27, 2020.

alternate performance indicator and rating system. Under proposed § 902.103, small rural PHAs would be assessed based on the physical condition of their public housing properties. Proposed § 902.103(b) would establish an assessment frequency of no more than once every three years, as required under Section 209(c)(1)(A) of the Economic Growth Act, except that a troubled small rural PHA would be subject to an annual assessment.

A small rural PHA's public housing program would be designated as troubled under § 902.105 if:

- The weighted average score of all property inspections is below 70 percent of the total available points; or
- If a the PHA has a weighted average score of between 70 and 80 percent of the total available points and has at least one property that receives fewer than 70 percent of the total available points.

Troubled small rural PHAs would be referred to their local field office or other designated HUD office(s) for remedial action, oversight, and monitoring. HUD would negotiate and develop a Corrective Action Agreement (CAA) as described in § 902.105(c) within 30 days of the PHA's notification of their designation as troubled. Section 902.105(c) through (i) would outline the requirements and process for the CAA. Proposed § 902.107 would describe the situation under which HUD may withhold, deny, or rescind a troubled designation. Conditions for appealing troubled designations are outlined in proposed § 902.109. Sanctions for small rural PHAs that remain troubled as well as incentives for small rural PHAs that are high performers would remain the same as those currently described in the PHAS regulations.

The Economic Growth Act provides that HUD may designate a small rural PHA as a troubled PHA with respect to its HCV program if HUD determines the agency has failed to comply with HCV inspection requirements, HUD is proposing to add a new subpart D to 24 CFR part 985, Section 8 Management Assessment Program (SEMAP).

Under proposed § 985.201, PHAs that meet the definition of small rural under § 902.101 would no longer be subject to SEMAP requirements but would instead be assessed on the basis of the performance indicators and rating system under subpart D. In assessing whether a small rural PHA's HCV program is a high performer, standard performer, or troubled, HUD would take four indicators into consideration, all of which are related to the small rural PHA's compliance with the inspection requirements. Each indicator would be scored on a pass/fail basis. The inspection indicators described in the proposed § 985.203 include:

- *Inspection standards* which would confirm the PHA is applying the applicable NSPIRE standards to HCV or PBV-assisted units or a HUD-approved variation under § 5.703. The PHA would pass the indicator if all HCV and PBV units were inspected using the correct standards;
- *Initial unit inspections* which would validate the PHA is conducting initial inspections within the appropriate timeframes. The PHA would pass the indicator if at least 98 percent of newly leased units passed inspection prior to the beginning of assistance;
- *Frequency of HQS inspections* which would verify the PHA inspects tenant-based units under HAP contract and the required sample of PBV units at least once during the three-year period from the last PHA inspection. The PHA would pass the indicator if at least 98 percent of the units were inspected; and
- *Unit condition enforcement* would confirm the PHA is taking corrective action as required in cases where the owner fails to correct an identified unit deficiency in accordance with HUD requirements. The PHA would pass the indicator if 98 percent of inspections with identified life-threatening or other deficiencies were corrected within the required timeframe.

In order for the small rural PHA to be designated as a high performer, additional requirements related to funding would also apply. Proposed § 985.205(a) would state that for a PHA to be designated as a high performer, the PHA must:

- Either utilize at least 98 percent of its HCV budget authority for the most recent calendar year or the percent of HCV units leased by renters or occupied by homeowners for the most recent calendar year must be at least 98 percent;
- Not end the calendar year with excess HAP reserves; and
- Not end the calendar year in a funding shortfall or receive shortfall prevention funding from HUD.

If the small rural PHA passes all four inspection indicators and meets the funding criteria listed above, the PHA is designated as a high performer. If a PHA passes all four inspection indicators but does not meet the funding criteria listed above, the PHA will be designated as a standard performer. If the small rural PHA fails any one of the four inspection indicators, regardless of whether or not it meets the funding requirements, the PHA is designated as troubled.

In accordance with statutory requirements contained in the Economic Growth Act, proposed § 985.207 would establish an assessment frequency of no more than once every three years, except that a troubled small rural PHA would be subject to an annual assessment in accordance with § 985.204.

Proposed § 985.209 would cover requirements that apply to small rural PHAs designated as troubled, including the statutorily mandated appeals process and the required corrective action agreement.

Proposed § 985.211 would state that HUD would maintain small rural PHAs' assessment files, including designations, appeals, and agreements, for at least 3 years.

With regard to small rural PHAs, HUD is requesting public comments on the following questions:

**Question for comment #21:** HUD is considering establishing the threshold for troubled PHAs under the small rural assessment as a PHA that either has a weighted average of less than 70 percent of all available points on physical inspections, or a PHA that has a

weighted average of between 70 and 80 percent of all available points and that also has at least one property that received a score of less than 70 percent of available points. HUD is seeking comment on how this threshold will impact PHAs and residents, and what alternative thresholds HUD should use to define a troubled PHA?

**Question for comment #22:** HUD is specifically seeking comment on the four indicators proposed to determine if the PHA is failing to fulfill its responsibilities for unit inspections under the HCV program and the method by which HUD is proposing to determine if the PHA has passed or failed the indicator. Are the indicators proposed to make such determination appropriate? If not, are there better alternatives?

**Question for comment #23:** HUD is specifically seeking comment on the criteria it is proposing to determine if the PHA is a high performer or a standard performer. Are the conditions related to funding utilization appropriate? If not, are there better alternatives? Should HUD be considering other criteria besides utilization to designate a PHA a high performer as opposed to a standard performer? If so, what other performance measures should be taken into account? How would HUD verify the PHA's performance on any suggested additional or alternative performance criteria, keeping in mind HUD's preference to move away from reliance on self-certifications wherever possible and to not require PHAs to report or submit data for PHA assessments that is not already collected as part of normal HCV PHA operations and HUD oversight?

**Question for comment #24:** What specifically should be required in the corrective action agreement?

## C: Other Regulatory Changes

As discussed above, § 5.701 would expand the scope of part 5, subpart G. Therefore, this proposed rule would amend regulations for the HCV (part 982), PBV (part 983), HOME (part 92), HTF (part 93), HOPWA (part 574), ESG (part 576), and CoC (part 578).

The proposed rule would align HOME property standards requirements for housing with the requirements for ongoing property condition standards of rental housing at § 92.251(f).

Participating jurisdictions would be required to establish written property standards for housing occupied by tenants that meet minimum requirements at § 92.251(f) including compliance with State and local codes and ordinances, health and safety, and lead-based paint requirements.

While most participating jurisdictions are subject to State and local building or rehabilitation codes, many are not subject to comprehensive property condition or habitability codes. The program regulations at § 92.251(f) do not provide a uniform standard for housing that is decent, safe, and sanitary and in good repair where State and local codes are absent. HUD is proposing a uniform standard for what must be inspected during, and corrected as the result of, an ongoing physical inspection of HOME-assisted rental housing during the period of affordability or an annual inspection of housing occupied by a resident.

Also under the proposed rule, the Housing Trust Fund (HTF) program regulations would be revised to make conforming changes to the HTF property standards requirements at § 93.301(b)(1)(viii), (c)(3), and (e)(i). The specific deficiencies will be a subset of the deficiencies defined for NSPIRE and published in the Federal Register in accordance with § 5.705.

The proposed rule would also make conforming changes to apply § 5.703 to the Housing Opportunities for Persons with AIDS (HOPWA), Continuum of Care (CoC), and Emergency Solutions Grants (ESG) programs. The rule proposes to amend the HOPWA regulations at § 574.310; the CoC regulations at § 578.75; and the ESG regulations at § 576.403 to cite to § 5.703. The CoC regulations at § 578.75(b) regarding lead-based paint requirements would be amended only to apply § 5.703 where § 982.401 currently applies; this proposed rule makes no substantive changes to the lead-based paint requirements. The ESG regulations would be amended to include § 5.703 in the minimum standards for permanent housing but not emergency shelters.

These amendments are intended to replace program-specific standards with references to part 5. Further, § 5.711 would incorporate and condense the administrative review and enforcement action provisions at §§ 200.857(h) and 200.857(i) to align with HUD’s current procedures and to eliminate inconsistencies with Section 219, Title II, Division H of the Consolidated Appropriations Act, 2020, Public Law 116-94, December 20, 2019.

HUD is also proposing technical changes for HAP contracts at §§ 880.612, 884.217, 886.123 and 886.323 to require annual compliance with the expanded part 5, subpart G.

Under this proposed rule, the Moderate Rehabilitation program regulations at § 882.516(b) would be revised to clarify that PHAs must inspect (or cause to be inspected) units at least annually and at other times as necessary in accordance with the NSPIRE standards established under § 5.703. HUD would continue to conduct the inspections in accordance with the NSPIRE standards for mod rehab projects that are managed by the PHA as provided under § 882.516(d). In addition, the proposed rule would change the title of § 882.516(c) from “Units not decent, safe, and sanitary” to “Units with health and safety hazards” and add a title to § 882.516(e) for clarity.

#### **D. Other Rulemakings**

HUD notes that there is some overlap in the proposed changes with HUD’s Housing Opportunity Through Modernization Act of 2016: Implementation of Sections 102, 103, and 104 proposed rule (84 FR 48820). HUD further notes that HUD intends to publish a proposed rule concerning the implementation of requirements to install carbon monoxide detectors in HUD-assisted and -Insured Housing, which would also overlap with this proposed rule. At the final rule stage, HUD will make any changes necessary to address any conflicts between these rules.

### **III. NSPIRE Improvements Beyond this Rule**

In addition to the regulatory changes being proposed by this rule, HUD is making other improvements to its physical inspection program. HUD is committed to extending the same

principles reflected in this rule to other aspects of the NSPIRE effort. HUD has continued to move forward with the “top-to-bottom review” of its inspection process directed by the Secretary to ensure taxpayer-supported housing is healthy, safe, and habitable for the millions of families HUD serves. The regulation will signal to the public HUD’s clear intent to change its business approach. HUD is proactively aligning Public Housing, HCV, and other programs, through establishing an approach to revise and publish inspection standards, testing and validating a new inspection scoring model, and continuously engaging with the public in HUD’s improvement efforts.

To ensure stakeholders can provide input on all aspects of NSPIRE, HUD launched listening sessions about making improving HUD’s inspections better. That approach of early and often feedback has continued. For example, in the development of the physical inspection standards, HUD published drafts on the NSPIRE website for public input.<sup>14</sup> For reference, these are the standards which will apply to all inspections (see § 5.705(a)) and will be published formally for public comment prior to implementation (see § 5.709). HUD has received hundreds of suggestions on the draft NSPIRE standards and has closely reviewed all the comments. The majority were successfully incorporated into revisions. HUD’s analysis, supported by stakeholder feedback, has identified that the current Uniform Physical Condition Standards (UPCS) and Housing Quality Standards (HQS) specifications do not always clearly identify or explain the particular harm or hazard that HUD is trying to avoid. To address this concern, HUD applied best practices from risk analysis frameworks that feature predominantly in the public health discipline to help all stakeholders understand the “why” or the “rationale” for each deficiency. A “rationale” is a plainly written risk-based assessment that describes the harm or negative result that could occur if that issue were to be present at a property. It justifies why that

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<sup>14</sup> U.S. Department of Housing and Urban Development. (2019). National Standards for Physical Inspection of Real Estate (NSPIRE) Standards. Retrieved from: [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/reac/nspire/standards](https://www.hud.gov/program_offices/public_indian_housing/reac/nspire/standards)

issue is critical to housing quality. By taking this approach, HUD can ground each standard in a clear and defensible explanation based in sound science.

Given the approach described above—and because it is important to ensure the standards remain up to date—HUD is working to establish an “infrastructure of partnerships” to provide continuous technical input and scientific guidance for standards development. HUD started this effort by collaborating with partners across the public and private sectors—including other Federal agencies—and academic and non-profit organizations. HUD anticipates that the continued expansion of these relationships will help to provide the input into the three-year updates to which HUD commits in this rule.

Along with the efforts already described, HUD has launched two demonstrations: (1) the Demonstration to Assess the National Standards for the Physical Inspection of Real Estate (84 FR 43536) and (2) the Demonstration to Test Proposed New Method of Assessing the Physical Conditions of Voucher-Assisted Housing (81 FR 26759). These demonstrations are among the first steps in implementing an aligned inspection protocol for public housing, multifamily housing, and voucher programs. More information about those demonstrations can be found on the NSPIRE<sup>15</sup> and ISDV<sup>16</sup> websites.

Strategically, the demonstration programs give HUD and properties an opportunity to “stress test” processes in a real-world setting to ensure they are stable and ready to scale out to the full population of Property Owner Agent (POA). In addition to being reasonable, HUD wants to ensure that its inspection standards are *performable* across a wide variety of inspectors. The demonstrations allow HUD the ability to make sure its administrative processes that support physical inspections are efficient and responsive. HUD is also leveraging technology to eliminate manual processes and to realize the benefits of having aligned programs.

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<sup>15</sup> U.S. Department of Housing and Urban Development. (2019). The Demonstration to Assess the National Standards for the Physical Inspection of Real Estate Retrieved from:

[https://www.hud.gov/program\\_offices/public\\_indian\\_housing/reac/nspire/demonstration](https://www.hud.gov/program_offices/public_indian_housing/reac/nspire/demonstration)

<sup>16</sup>U.S. Department of Housing and Urban Development. (2019). The Demonstration to Test Proposed New Method of Assessing the Physical Conditions of Voucher-Assisted Housing. Retrieved from:  
<https://www.hud.gov/sites/dfiles/PIH/documents/upcsvdemoparticipation.pdf>

The information coming out of both demonstrations also informs the development and refinement of property scoring approaches. HUD has worked diligently to identify the most appropriate scoring models to improve the accuracy, objectivity, and consistency of assessment across different property configurations. Along with modifications to the current model, HUD is currently exploring alternative scoring models based instead on data-driven methodologies, including those based on probabilistic approaches.

Finally, aligning HUD’s oversight to property risk will benefit both HUD and the POAs. For example, HUD has proposed in this rule that a risk model inform the extension of the frequency of inspections up to 5 years in some programs. Taking a risk-based oversight approach allows high-performing properties to continue to do those things that make them successful while ensuring struggling properties are able to get the attention needed. While HUD will maintain a “pass/fail” result for HCV and PBV inspections as required by statute, moving to NSPIRE with consistent inspection standards allows large volumes of inspection and housing quality data to be compared across programs for the first time. HUD believes that better data will lead to the development of more refined risk models and also allow rigorous assessment of the impacts of deficiencies, individually and in combination, on residents.

#### **IV. Findings and Certifications**

##### *Regulatory Review – Executive Orders 12866 and 13563*

Pursuant to Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and therefore subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and

consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

HUD believes that this proposed rule, by consolidating physical condition inspection standards into a streamlined format and utilizing improved technology and methods will aid all parties—PHAs, property owners, agents, and inspectors—in complying with HUD’s physical condition standards creating a smaller burden while maintaining or increasing the effectiveness of HUD’s physical condition requirements. The proposed rule has been determined to be a “significant regulatory action,” as defined in section 3(f) of the Order, but not economically significant under section 3(f)(1) of the Order. The docket file is available for public inspection online at [www.regulations.gov](http://www.regulations.gov).

*Executive Order 13771, Regulatory Costs*

Executive Order 13771, entitled “Reducing Regulation and Controlling Regulatory Costs,” was issued on January 30, 2017. This proposed rule is expected to be an Executive Order 13771 deregulatory action. The requirements this proposed rule would place on the public are comparable to pre-existing requirements. This rule would also provide relief to small rural PHAs and certain qualifying properties and would provide relief by removing inconsistencies across HUD’s programs, reducing compliance costs.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. There are 2,297 small PHAs all of which will be affected; however, the economic impact will not be significant.

The economic impact will not be significant because the proposed rule would not change the substantive requirement that HUD program participants are required to maintain the physical condition of HUD housing. The proposed rule would also, in most cases, maintain the same level

of review for compliance in the form of physical inspections. Regulatory flexibility would be increased by allowing HUD to require less frequent inspections for high-performing PHAs under PHAS. Regulatory relief would also be provided to small rural PHAs, which would only be subject to triennial inspections under PHAS. Accordingly, the undersigned certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in the preamble to this rule.

*Environmental Impact*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–0500. The FONSI is also available through the Federal eRulemaking Portal at <http://www.regulations.gov>.

*Executive Order 13132, Federalism*

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either: (i) imposes substantial direct compliance costs on State and local governments and is not required by statute, or (ii) preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule would merely revise existing Federal standards in a way which would not increase or decrease compliance costs on State or local governments and therefore does not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This proposed rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

*Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid Office of Management and Budget (OMB) control number. Except for the self-inspection report requirements, the information collection requirements contained in this proposed rule have been approved by OMB under the Paperwork Reduction Act and assigned OMB control numbers 2502-0369 (Uniform Physical Standards and Physical Inspection Requirements), 2577-0241 (Exigent Health and Safety Deficiency Correction Certification), 2577-0257 (Public Housing Assessment System (PHAS) Appeals, Technical Reviews and Database Adjustments), 2577-0289 (National Standards for the Physical Inspection of Real Estate (NSPIRE)), and 2577-0169 (HCV Program and Tribal HUD-VASH). The collection requirements will be amended to reflect the altered burden contained in this proposed rule. The current PRA “HCV Program and Tribal HUD-VASH” (OMB 2577-0169) authorizes collection of unit inspection data from PHAs as part of their participation in the HCV and PBV programs. This proposed rule will not require a modification to this approved collection.

The current PRA package “National Standards for the Physical Inspection of Real Estate (NSPIRE)” (OMB 2577-02890) authorizes collection of self-inspection data from properties participating in HUD’s NSPIRE Demonstration. As NSPIRE moves from demonstration to

implementation, the number of responses will increase to accommodate the full portfolio of properties required to submit self-inspection results to HUD.

The current PRA package “Administrative Process for Scoring, Ranking, and Appeals” (OMB 2577-0257) authorizes the collection of data associated with data base adjustments, technical reviews, and appeals (Public Housing only) for Multifamily and Public Housing properties. HUD anticipates this number to remain constant upon implementation of NSPIRE.

The current PRA package “Uniform Physical Standards and Physical Inspection Requirements” (OMB 2502-0369) authorizes the collection of data associated with inspections of HUD-insured mortgages. HUD expects this number to increase slightly due to higher unit sampling as part of the NSPIRE protocol.

The current PRA package “Other Reporting Requirements” (OMB 2577-0241) only authorizes the collection of electronic certifications by PHAs for corrected/mitigated Exigent Health and Safety (EH&S) deficiencies. The new number of responses and burden reflect the inclusion of all programs, beyond Public Housing, that will now be required to submit electronic closeout of all health and safety deficiencies, not just EH&S deficiencies.

The burden of the information collections in this proposed rule is estimated as follows:

| Information Collection                                                          | Number of Responses |           | Burden Hours Per Response |     | Hourly Cost* | Total Annual Cost |                 |
|---------------------------------------------------------------------------------|---------------------|-----------|---------------------------|-----|--------------|-------------------|-----------------|
|                                                                                 | Current             | New       | Current                   | New |              | Current           | New             |
| Inspection Reporting (HCV) (OMB 2577-0169)                                      | 3,680,527           | 3,680,527 | .44                       | .44 | \$34         | \$55,060,684.00   | \$55,060,684.00 |
| Self-inspection Reporting (OMB 2577-0289)                                       | 4,500               | 38,000    | 2.7                       | 2.7 | \$34         | \$413,100.00      | \$2,335,176.00  |
| Administrative Process for Scoring, Ranking, and Appeals (OMB 2577-0257)        | 1,510               | 1,510     | 7.7                       | 7.7 | \$34         | \$51,366.00       | \$51,366.00     |
| Uniform Physical Standards and Physical Inspection Requirements (OMB 2502-0369) | 12,100              | 12,100    | 6.0                       | 8.0 | \$34         | \$2,468,400.00    | \$3,291,200.00  |
| Other Reporting Requirements (OMB 2577-0241)                                    | 971                 | 16,000    | .28                       | 1.0 | \$34         | \$9,244.00        | \$544,000.00    |
| Totals                                                                          | 3,699,608           | 3,748,137 |                           |     |              | \$58,002,794.00   | \$61,282,426.00 |

\* Estimates assume a blended hourly rate that is equivalent to a GS-12, Step 5, Federal Government Employee.

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning the information collection requirements in the proposed rule regarding:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Whether the proposed collection of information enhances the quality, utility, and clarity of the information to be collected; and

(4) Whether the proposed information collection minimizes the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after the publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of the publication. This time frame does not affect the deadline for comments to the agency on the proposed rule, however.

Comments must refer to the proposed rule by name and docket number (FR-6123) and must be sent to:

HUD Desk Officer  
Office of Management and Budget  
New Executive Office Building  
Washington, DC 20503  
Fax number: 202-395-6947

and

Colette Pollard  
HUD Reports Liaison Officer  
Department of Housing and Urban Development,  
451 7th Street, SW, Room 2204,  
Washington, DC 20410

Interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at

<http://www.regulations.gov>. HUD strongly encourages commenters to submit comments

electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

#### **List of Subjects in 24 CFR part 5**

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs-housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs-housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, and Wages.

#### **List of Subjects in 24 CFR part 92**

Administrative practice and procedure, Low and moderate income housing, Manufactured homes, Rent subsidies, and Reporting and recordkeeping requirements.

#### **List of Subjects in 24 CFR part 93**

Administrative practice and procedure, Grant programs-housing and community development, Low and moderate income housing, Manufactured homes, Rent subsidies, and Reporting and recordkeeping requirements.

#### **List of Subjects in 24 CFR part 200**

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Lead poisoning, Loan programs-housing and community development, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, and Wages.

### **List of Subjects in 24 CFR part 574**

Community facilities, Grant programs-housing and community development, Grant programs-social programs, HIV/AIDS, Low and moderate income housing, and Reporting and recordkeeping requirements.

### **List of Subjects in 24 CFR part 576**

Community facilities, Grant programs-housing and community development, Grant programs-social programs, Homeless, and Reporting and recordkeeping requirements.

### **List of Subjects in 24 CFR part 578**

Community development, Community facilities, Grant programs-housing and community development, Grant programs-social programs, Homeless, and Reporting and recordkeeping requirements.

### **List of Subjects in 24 CFR part 880**

Grant programs-housing and community development, Rent subsidies, and Reporting and recordkeeping requirements.

### **List of Subjects in 24 CFR part 882**

Grant programs-housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, and Reporting and recordkeeping requirements.

### **List of Subjects in 24 CFR part 884**

Grant programs-housing and community development, Rent subsidies, Reporting and recordkeeping requirements, and Rural areas.

### **List of Subjects in 24 CFR part 886**

Grant programs-housing and community development, Lead poisoning, Rent subsidies, and Reporting and recordkeeping requirements.

### **List of Subjects in 24 CFR part 902**

Administrative practice and procedure, Public housing, and Reporting and recordkeeping requirements.

### **List of Subjects in 24 CFR part 982**

Grant programs-housing and community development, Grant programs-Indians, Indians, Public housing, Rent subsidies, and Reporting and recordkeeping requirements.

### **List of Subjects in 24 CFR part 983**

Grant programs-housing and community development, Low and moderate income housing, Rent subsidies, and Reporting and recordkeeping requirements.

### **List of Subjects in 24 CFR part 985**

Grant programs-housing and community development, Public housing, Rent subsidies, and Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, HUD proposes to amend 24 CFR parts 5, 92, 93, 200, 574, 576, 578, 880, 882, 883, 884, 886, 902, 982, 983 and 985 as follows:

## **PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS**

1. The authority for 24 CFR part 5 continues to read as follows:

**Authority:** 12 U.S.C. 1701x; 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d); Sec. 327, Pub. L. 109-115, 119 Stat. 2936; Sec. 607, Pub. L. 109-162, 119 Stat. 3051 (42 U.S.C. 14043e et seq.); E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273.

2. Revise subpart G to read as follows:

### **Subpart G – Physical Inspection of Real Estate**

Sec.

5.701 Applicability.

5.703 National Standards for the Condition of HUD Housing.

5.705 Inspection Requirements.

5.707 Uniform self-inspection requirement and report.

5.709 Administrative Process for Defining and Revising Inspection Criteria..

5.711 Scoring, Ranking Criteria, and Appeals

5.713 Second- and Third-Party Rights

**§ 5.701 Applicability.**

(a) *Scope.* This subpart applies the national standards for the physical inspection of real estate standards to the following HUD programs:

(1) All Public Housing programs (programs for housing assisted under the U.S. Housing Act of 1937 other than section 8 of the Act);

(2) The Housing Choice Voucher program under section 8(o) of the U.S. Housing Act of 1937, part 982 of this title and the Project-Based Voucher program under section 8(o)(13) of the Act and the regulations at part 983 of this title (referred to in this part as the HCV and PBV programs, or HCV and PBV housing);

(3) All project-based Section 8 programs;

(4) Section 202 Program of Supportive Housing for the Elderly (Capital Advances);

(5) Section 811 Program of Supportive Housing for Persons with Disabilities (Capital Advances);

(6) Section 202 loan program for projects for the elderly and handicapped (including 202/8 projects and 202/162 projects); and

(7) Housing with mortgages insured or held by HUD, or housing that is receiving assistance from HUD, under the following authorities:

(i) Section 207 of the National Housing Act (NHA) (12 U.S.C. 1701et seq.) (Rental Housing Insurance);

(ii) Section 213 of the NHA (Cooperative Housing Insurance);

(iii) Section 220 of the NHA (Rehabilitation and Neighborhood Conservation Housing Insurance);

(iv) Section 221(d)(3) of the NHA (Market Interest Rate (MIR) Program);

- (v) Section 221(d)(3) and (5) of the NHA (Below Market Interest Rate (BMIR) Program);
- (vi) Section 221(d)(4) of the NHA (Housing for Moderate Income and Displaced Families);
- (vii) Section 231 of the NHA (Housing for Elderly Persons);
- (viii) Section 232 of the NHA (Mortgage Insurance for Nursing Homes, Intermediate Care Facilities, Assisted Living Facilities, Board and Care Homes);
- (ix) Section 234(d) of the NHA (Rental) (Mortgage Insurance for Condominiums);
- (x) Section 236 of the NHA (Rental and Cooperative Housing for Lower Income Families);
- (xi) Section 241 of the NHA (Supplemental Loans for Multifamily Projects). (Where, however, the primary mortgage of a Section 241 property is insured or assisted by HUD under a program covered in this part, the coverage by two HUD programs does not trigger two inspections); and
- (xii) Section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) (Housing Finance Agency Risk Sharing Program).

(b) *Conflicts.* The regulations in this subpart may be supplemented by the specific regulations for the HUD-assisted programs listed in paragraph (a). The program-specific regulations may address the frequency of inspections, who performs the inspections and whether alternative inspections are available given the statutory and regulatory framework for the program. When there is conflict between the regulations of this subpart and the program-specific regulations, the program-specific regulations govern.

(c) *HUD housing.* For purposes of this subpart, the term “HUD housing” means the types of housing listed in paragraph (a) of this section.

**§ 5.703 National Standards for the Condition of HUD housing.**

(a) *General.* To ensure that all residents live in safe, habitable dwellings, the items and components located inside the building, outside the building, and within the units of HUD housing must be functionally adequate, operable, and free of health and safety hazards. The standards under this section apply to all HUD housing. HUD housing under the HCV and PBV programs shall be subject to these standards only for:

(1) The subsidized unit itself; and

(2) Items and components within the primary and secondary means of egress from a unit's entry door(s) to the public way, those common features related to the residential use of the building (e.g., the laundry room, community room, mail room), and the systems equipment that directly services the voucher unit.

(b) *Inside.* Inside of HUD housing refers to the common areas and building systems that can be generally found within the building interior and are not inside a unit. Examples of "inside" common areas may include, basements, interior or attached garages, enclosed carports, restrooms, closets, utility rooms, mechanical rooms, community rooms, day care rooms, halls, corridors, stairs, shared kitchens, laundry rooms, offices, enclosed porches, enclosed patios, enclosed balconies, and trash collection areas. Examples of building systems include those components that provide domestic water, electricity, elevators, emergency power, fire protection, HVAC, and sanitary services.

(c) *Outside.* Outside of HUD housing (or "outside areas") refers to the building site, building exterior components, and any building systems located outside of the building or unit. Examples of "outside" components may include fencing, retaining walls, grounds, lighting, mailboxes, project signs, parking lots, detached garage or carport, driveways, play areas and equipment, refuse disposal, roads, storm drainage, non-dwelling buildings, and walkways. Components found on the exterior of the building are also considered outside areas, and examples may include doors, attached porches, attached patios, balconies, car ports, fire escapes, foundations, lighting, roofs, walls, and windows.

(d) *Units.* A unit (or “dwelling unit”) of HUD housing refers to the interior components of an individual unit. Examples of components included in the interior of a unit may include the bathroom, call-for-aid (if applicable), ceiling, doors, electrical systems, floors, water heater, HVAC (where individual units are provided), kitchen, lighting, outlets, switches, smoke detectors, stairs, walls, and windows. The unit must also meet the following affirmative requirements:

- (1) The unit must have hot and cold running water, including an adequate source of safe and potable water;
- (2) The unit must include its own sanitary facility, it must be in proper operating condition, usable in privacy, and adequate for personal hygiene and the disposal of human waste;
- (3) The unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit installed as specified in National Fire Protection Association Standard (NFPA) 72 or successor standards. If the unit is occupied by any hearing-impaired person, smoke detectors must have an alarm system, designed for hearing-impaired persons;
- (4) The unit must have a living room and a kitchen area;
- (5) For units assisted under the HCV or PBV program, the unit must have at least one bedroom or living/sleeping room for each two persons. Children of opposite sex, other than very young children, may not be required to occupy the same bedroom or living/sleeping room.

(e) *Health and safety concerns--(1) General.* The inside, outside and unit must be free of health and safety hazards that pose a danger to residents. Types of health and safety concerns include, but are not limited to carbon monoxide, mold, flammable materials or other fire hazards, electrical hazards, garbage and debris, handrail hazards, infestation, and lead-based paint.

(2) *Lead-Based Paint.* HUD housing must comply with all requirements related to the evaluation and control of lead-based paint hazards and have available proper documentation of such (see part 35 of this title). The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-

4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and the applicable regulations at part 35 of this title apply.

(f) *Compliance with State and local codes.* (1) The standards for the condition of HUD housing in this section do not supersede State and local housing codes (such as fire, mechanical, plumbing, property maintenance, or residential code requirements).

(2) All HUD housing other than units assisted under the HCV and PBV programs must comply with State or local housing code in order to comply with this subpart.

(3) State and local code compliance is not part of the determination whether a unit passes the standards for the condition of HUD housing under this section for the HCV and PBV programs (except in accordance with § 5.705(a)(3)).

(g) *Use of an alternative or additional standard for HCV and PBV programs.* A PHA is not subject to the standards set by this section when the PHA is approved by HUD to use an alternative standard in accordance with § 982.406 of this title. PHAs may also elect to establish additional requirements for quality, architecture, or design of PBV housing, and any such additional requirements must be specified in the Agreement to Enter into a HAP Contract (“Agreement”) as provided in § 983.152(d)(2) of this title.

(h) *Special housing types in the HCV, PBV, and Moderate Rehabilitation programs.* part 982, subpart M of this title identifies special housing types which require standards unique to special types of housing. Unless modified by program-specific regulations, NSPIRE Standards will apply for these special housing types.

## **§ 5.705 Inspection requirements.**

(a) *Procedures--(1) General.* Any entity responsible for conducting an inspection of HUD housing, to determine compliance with this subpart, must inspect such HUD housing in accordance with the standards and procedures for identifying safe, habitable housing set out by the Secretary and published in the **Federal Register** as described in § 5.711.

(2) *Inspection Scope.* The inspection requirement for HUD housing generally requires the inside, outside and unit to be inspected, in accordance with § 5.703. The inspection requirement for the tenant-based HCV program and the unit inspection for the PBV program only applies to units occupied or to be occupied by HCV and PBV participants, and common areas and exterior areas which either service or are associated with such units.

(3) *HCV and PBV Variant inspection standards.* (i) HUD may approve inspection criteria variations for the following purposes:

- (A) Variations which apply standards in local housing codes or other codes adopted by the PHA; or
  - (B) Variations because of local climatic or geographic conditions.
- (ii) Acceptability criteria variations may only be approved by HUD pursuant to paragraph (a)(3)(i) if such variations either:
- (A) Meet or exceed the performance requirements; or
  - (B) Significantly expand affordable housing opportunities for families assisted under the program.
- (iii) HUD will not approve any inspection criteria variation if HUD believes that such variation is likely to adversely affect the health or safety of participant families, or severely restrict housing choice.

(b) *Entity Conducting Inspections.* HUD housing must be inspected by the appropriate entity as described in paragraph (b)(1) of this section, except as described in paragraph (b)(2) of this section.

(1) *General.* The owner, lender, contract administrator, or HUD is the entity responsible for performing inspections of HUD housing as provided in this title, or a regulatory agreement or contract. For properties with more than one HUD-insured loan, only the first mortgage lender is required to conduct the inspection. The second mortgage lender will be provided a copy of the physical inspection report by the first mortgage lender.

(2) *Exception.* Under the HCV and PBV programs, the Public Housing Agency is responsible for inspecting HUD housing under those programs, unless another entity is assigned the inspection by the program regulations governing the housing, regulatory agreements or contracts. A PHA-owned unit receiving assistance under section 8(o) of the 1937 act must be inspected by an independent entity as specified in § 982.352(b)(iv) of this title. Under the Moderate Rehabilitation Program, the PHA is responsible for inspecting the HUD housing unless the PHA is managing units on which it is also administering the HAP Contract in accordance with § 882.412, in which case HUD is responsible for the inspections in accordance with § 882.516(d) of this title.

(c) *Timing of inspections*--(1) *Generally.* A property must be inspected before the property is approved for participation in any of the HUD housing programs under this part unless the property is already a participant in another of the HUD programs under this part. An entity responsible for conducting an inspection of HUD housing to determine compliance with this subpart must inspect such housing annually unless specified otherwise below. An inspection shall be conducted no earlier than 3 months before and no later than 3 months after the date marking the anniversary of the previous inspection in the year that the inspection is due; however, an inspection must be completed before the end of the calendar year that the inspection is due.

(2) *Extended Inspection cycle.* HUD housing other than HCV, PBV, and Moderate Rehabilitation housing shall be subject to annual inspection as described in paragraph (c)(1) of this section, except that the Secretary, based on appropriate evaluation of risk, may extend the inspection cycles of certain qualifying properties for a period between two and five years, through publication in the Federal Register, following notice and the opportunity to comment.

(3) *Triennial cycle for small rural PHAs.* Small rural PHAs as defined in § 902.101 of this title shall be assessed in accordance with part 902, subpart H of this title.

(4) *Housing Choice Vouchers*. PHAs must inspect units subject to part 982 of this title in accordance with the frequency described in § 982.405 of this title.

(5) *Project Based Vouchers*. PHAs must inspect units subject to part 983 of this title in accordance with the frequency described in § 983.103 of this title.

(6) *FHA insured mortgages section 232 facilities*. HUD may exempt assisted-living facilities, board and care facilities, and intermediate care facilities from physical inspections under this part if HUD determines that the State or local government has a reliable and adequate inspection system in place, with the results of the inspection being readily and timely available to HUD. For any other Section 232 facilities, the inspection will be conducted only when and if HUD determines, on the basis of information received, such as through a complaint, site inspection, or referral by a State agency, on a case-by-case basis, that inspection of a particular facility is needed to assure protection of the residents or the adequate preservation of the project.

(d) *Inspection Costs*. The cost of an inspection shall be the responsibility of the entity responsible for the inspection as identified in paragraph (a) of this section, except that a reasonable fee may be required of the owner of a property for a reinspection if an owner notifies the entity responsible for the inspection that a repair has been made or the allotted time for repairs has elapsed and a reinspection reveals that any deficiency cited in the previous inspection that the owner is responsible for repairing was not corrected. No fee may be passed along to the household residing in the unit or units.

(e) *Access to property for inspection--(1) HUD Inspections*. Nothing in this subpart shall restrict the right of HUD, or an entity contracted by HUD, to inspect HUD housing.

(2) *Public housing projects*. All PHAs are required to provide HUD or its representative with full and free access to all facilities in its projects. All PHAs are required to provide HUD or its representative with access to its projects and to all units and appurtenances in order to permit physical inspections, monitoring reviews, and quality assurance reviews under this part. Access to the units shall be provided whether or not the resident is home or has installed additional locks

for which the PHA did not obtain keys. In the event that the PHA fails to provide access as required by HUD or its representative, the PHA shall be given a physical condition score of zero for the project or projects involved. This score of zero shall be used to calculate the physical condition indicator score and the overall assessment score for that PHA.

#### **§ 5.707 Uniform self-inspection requirement and report.**

All owners of HUD housing, other than owners participating in the HCV, PBV, and Moderate Rehabilitation Programs, are required to annually inspect their properties, including all units, to ensure the units are maintained in accordance with the standards in § 5.703 and electronically report results to HUD, in accordance with the procedures set out by the Secretary and published in the **Federal Register**, following notice and the opportunity to comment. This self-inspection is independent of other HUD inspections discussed in § 5.705.

#### **§ 5.709 Administrative Process for Defining and Revising Inspection Criteria.**

(a) *Inspection standards and scoring methodology.* The Secretary will publish in the **Federal Register**, following notice and the opportunity to comment, a list of deficiencies and methodologies to use for scoring and ranking HUD housing. The **Federal Register** notice will include the factors for determining if an HCV unit passes or fails the inspection in addition to the scoring and ranking of other HUD housing. After considering the public comments received on the **Federal Register** notice, HUD will publish a notice announcing the new inspections procedures, and the date on which the new procedures becomes effective.

(1) *Revisions.* HUD will issue a notice in the **Federal Register** published for 30 days of public comment making any revisions to the inspection procedures HUD deems necessary, every three years, or three years after the most recent revision, whichever is later.

(2) *Emergency Revisions.* The Secretary may publish a final notice without 30 days of public comment in the case of an emergency to protect Federal financial resources or the health or safety of residents of public housing projects, after HUD makes a documented determination that such action is warranted due to:

- (i) A Severe Health or Safety deficiencies and other significant risks to safety as outlined in § 5.703;
- (ii) A new safety concern due to changing construction technology; or
- (iii) Other events as determined by the Secretary.

### **§ 5.711 Scoring, Ranking Criteria, and Appeals.**

(a) *Applicability.* Administrative process for scoring and ranking the physical condition of HUD housing properties under this section does not apply to the HCV or PBV program. PHAs administering HCV and PBV programs will be assessed under the Section 8 Management Assessment Program (“SEMAP”) or the small rural PHA assessment in accordance part 985 of this title.

(b) *Scoring and ranking of HUD housing--(1) General.* HUD's Real Estate Assessment Center (REAC), or the appropriate entity either as described in § 5.705(b), or as identified in the regulator agreement or contract for the property as described in § 5.705(b)(1), will score and rank the physical condition of HUD housing properties in accordance with the procedures set out by the Secretary in § 5.709.

(2) *Public Housing programs.* PHAs operating Public Housing will be scored and ranked under the Public Housing Assessment System (“PHAS”) outlined in part 902 of this title.

(c) *Inspection report requirements--(1) Severe health or safety deficiencies.* Upon completion of an inspection, or at the end of each day on a multiple-day inspection, REAC, or the appropriate party as described in § 5.705(b), will provide the owner or PHA or owner's representative, a notice of any items classified as Severe Health or Safety (SHS) deficiencies. All SHS items must be mitigated within 24 contiguous hours of receipt of notice of these items, and the owner or PHA or owner's representative must electronically certify and provide supporting evidence within 3 business days after the end of the inspection that the SHS items have been resolved or sufficiently abated such that they no longer pose a severe health or safety risk to

residents of the property. SHS deficiencies (together with other types of deficiencies) will be fully described in a future **Federal Register** notice.

(2) *Post-report inspection.* The owner or PHA must carefully review the inspection report and is responsible for conducting its own survey of the total property based on the inspecting entity's inspection findings. Non-severe health or safety deficiencies must be corrected expeditiously, and electronic evidence provided of correction.

(3) *Identification of material errors or adverse conditions.* If, after reviewing the inspection results, the owner or PHA reasonably believes that either an objectively verifiable and material error occurred in the inspection or that adverse conditions beyond the owner's or PHA's control negatively impacted the score, and that the error or adverse condition, if corrected or accounted for, would result in a significant improvement in the property's overall score, the owner or PHA may electronically submit a request for a technical review.

(d) *Technical review of inspection results--(1) Timing.* A request for a technical review of inspection results must be submitted electronically and must be received by the inspecting entity no later than the 45th calendar day following the release of the inspection report.

(2) *Request for technical review.* The request must be accompanied by the owner's or PHA's relevant evidence that an objectively verifiable and material error occurred or adverse conditions beyond the owner or PHA's control occurred, which if corrected will result in a significant improvement in the overall score of the owner's property. A technical review of the inspection results will not be conducted based on conditions that were corrected subsequent to the inspection. Upon receipt of this request from the owner or PHA, the REAC will review the inspection and the evidence. If the REAC review determines that an objectively verifiable and material error (or errors) or adverse condition(s) beyond the owner or PHA's control has been documented and that it is likely to result in a significant improvement in the property's overall score, the REAC will take one or a combination of the following actions:

- (i) Undertake a new inspection;

- (ii) Correct the original inspection; or
- (iii) Issue a new physical condition score.

(3) *Burden of proof that error or adverse conditions occurred rests with owner.* The burden of proof rests with the owner to demonstrate that an objectively verifiable and material error (or errors) or adverse conditions occurred in the REAC's inspection through submission of evidence, which if corrected will result in a significant improvement in the property's overall score. The REAC will apply a rebuttable presumption that the inspection was conducted accurately. To support its request for a technical review of the physical inspection results, the owner may submit photographic evidence, written material from an objective source with subject matter expertise that pertains to the item being reviewed such as a local fire marshal, building code official, registered architect, or professional engineer, or other similar evidence.

(4) *Basis for Technical Review.* There are four sources of error that are associated with an inspection score. After review of each type of error, the property's score may be adjusted or other action taken.

(i) *Material errors.* An objectively verifiable material error must be present to allow for a technical review of inspection results. Material errors are those that were not due to the fault of the owner and exhibit specific characteristics and meet specific thresholds. The three types of material errors are as follows.

(ii) *Building data error.* A building data error occurs if the inspector inspected the wrong building or a building that was not owned by the property, including common or site areas that were not a part of the property. Incorrect data due to the failure of an owner to ensure HUD's systems of records are updated cannot form the basis of a review. Incorrect building data that does not affect the score, such as the address, building name, year built, etc., would not be considered material.

(iii) *Unit count error.* A unit count error occurs if the total number of units considered in scoring is incorrect due to the fault of HUD. Since scoring uses total units, REAC will examine

instances where the participant can provide evidence that the total units used was incorrect and that the results were not representative of the condition of the property.

(iv) *A non-existent deficiency error.* A non-existent deficiency error occurs if the inspection records an observed deficiency that does not satisfy or does not meet a reasonable interpretation of the definition of that deficiency as defined by inspection procedures.

(5) *Significant improvement.* Significant improvement in the project's overall score refers to an increase in a score for the owner or PHA such that the new score crosses an administratively significant threshold.

(6) *Reinspection.* If HUD determines that a reinspection is appropriate, it will arrange for a complete reinspection of the project(s) in question, not just the deficiencies previously identified. The reinspection will constitute the final inspection for the project, and HUD will issue a new inspection report (the final inspection report).

(7) *Deficiencies.* If any of the previously identified SHS deficiencies that the owner certified were corrected, remedied, or acted upon to abate are found during the reinspection not to have been corrected, remedied, or acted upon to abate, the score in the final inspection report will reflect a point deduction of triple the value of the original deduction, up to the maximum possible points for the unit or area, and the owner must reimburse HUD for the cost of the reinspection.

(e) *Independent HUD review.* Under certain circumstances, HUD may find it appropriate absent a PHA request for technical review to review the results of an inspection which are anomalous or have an incorrect result due to facts and circumstances affecting the inspected property which are not reflected in the inspection or reflected inappropriately in the inspection. These circumstances include, but are not necessarily limited to, inconsistencies between local code requirements and the inspection standards in paragraph (a); conditions which are permitted by variance or license or which are preexisting physical features non-conformities and are inconsistent with the inspection standards in paragraph (a); or cases where the owner has been

scored for elements (e.g., roads, sidewalks, mail boxes, resident owned appliances, etc.) that it does not own and is not responsible for maintaining.

(f) *Responsibility for the cost of a new inspection.* If a new inspection is undertaken by the inspecting party and the new inspection score results in a significant improvement in the property's overall score, then the entity responsible for the inspection shall bear the expense of the new inspection. If no significant improvement occurs, then the owner or PHA responsible for the property must bear the expense of the new inspection. The inspection cost of a new inspection, if paid by the owner, is not a valid project operating expense. The new inspection score will be considered the final score.

(g) *Issuance of final score and publication of score.* (1) The score of the property is the final score if the owner or PHA files no request for technical review, as provided in paragraph (d) of this section, or for other adjustment of the physical condition score, as provided in paragraph (c) of this section. If the owner or PHA files a request for technical review or score adjustments in accordance with paragraphs (c) and (d) of this section, the final inspection score is the score issued by HUD after any adjustments are determined necessary and made by HUD at the conclusion of these processes.

(2) HUD will make public the final scores of the owners through posting on HUD's internet site, or other appropriate means.

(h) *Responsibility to notify residents of inspection; and availability of documents to residents--*(1) *Notification to residents.* An owner must notify its residents of any planned inspections of their units or the housing development generally.

(2) *Availability of documents for review.* (i) Once a final score has been issued the owner must make the physical inspection report and all related documents available to residents during regular business hours upon reasonable request for review and copying. Related documents include the owner's survey plan, plan of correction, certification, and related correspondence.

(ii) Once the owner's final inspection score is issued and published, the owner must make any additional information, such as the results of any reinspection, appeal requests, available for review and copying by its residents upon reasonable request during regular business hours.

(iii) The owner must maintain the documents related to the inspection of the property, as described paragraphs (i) and (ii) above, for review by residents for a period of 60 days from the date of submission to the owner of the inspection score for the property in which the residents reside.

(3) The owner must post a notice to the residents in the owner's management office and on any bulletin boards in all common areas that advises residents of the availability of the materials described in this section. The notice should include, where applicable, the name, address, and telephone number of the HUD Project Manager.

(4) Residents are encouraged to comment on this information provided by the owner and submit any comments directly to the applicable HUD Field Office or responsible entity. Should residents discover the owner provided HUD with a false certification during the review they are encouraged to notify the applicable HUD Field Office where appropriate inquiry and action will be taken.

(i) *Administrative review of properties.* The file of a property that receives a score of 30 points or less on its inspection will be referred to HUD's Departmental Enforcement Center (DEC) for evaluation.

(1) *Notification to owner of submission of property file to the DEC.* The Department will provide for notification to the owner that the file on the owner's property is being submitted to the DEC for evaluation. The notification will be provided at the time the REAC issues the inspection report to the owner or at such other time as a referral occurs.

(2) *Evaluation of the property.* During the evaluation period, the DEC will perform an analysis of the property, which may include input from tenants, HUD officials, elected officials, and others as may be appropriate. Although program offices will assist with the evaluation, the

DEC will have primary responsibility for the conclusion of the evaluation of the property after taking into consideration the input of interested parties as described in this paragraph (h)(2). The DEC's evaluation may include a site visit to the owner's property.

(3) *Continuing responsibilities of Housing Program Offices and Mortgagee.* During the period of DEC evaluation, HUD's Housing offices continue to be responsible for routine asset management tasks on properties and all servicing actions (*e.g.*, rent increase decisions, releases from reserve account approvals). In addition, during this period of evaluation, the mortgagee shall continue to carry out its duties and responsibilities with respect to the mortgage.

(4) *Enforcement action.* Except as otherwise provided by statute, if, based on the DEC's evaluation and in consultation with Housing, the DEC determines that enforcement actions are appropriate, it may take those actions for which the DEC has delegated authority and/or make recommendations to Housing with respect to resolving identified physical deficiencies and owner noncompliance.

(j) *No limitation on existing enforcement authority.* The administrative process provided in this section does not prohibit HUD, to take whatever action may be necessary when necessary (notwithstanding the commencement of this process), as authorized under existing statutes, regulations, contracts or other documents, to protect HUD's financial interests in HUD housing properties and to protect the residents of these properties.

#### **§ 5.713 Second- and Third-Party Rights.**

Nothing in this subpart is intended to create any right of the family residing in HUD Housing or any party, other than HUD or a Public Housing Authority, to require enforcement of the standards required by this subpart or to assert any claim against HUD or the Public Housing Authority for damages, injunction, or other relief for alleged failure to enforce the standards.

## **PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM**

3. The authority for 24 CFR part 92 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d), 12 U.S.C. 1701x and 4568.

**§ 92.2 [Amended]**

4. Amend § 92.2 by removing the definition of “Uniform Physical Condition Standards”.

5. In § 92.209, revise paragraph (i) to read as follows:

**§ 92.209 Tenant-based rental assistance: Eligible costs and requirements.**

\* \* \* \*

(i) *Housing quality standards.* Housing occupied by a family receiving tenant-based assistance under this section must meet the participating jurisdiction’s property standards under § 92.251. The participating jurisdiction must inspect the housing initially and re-inspect it annually.

\* \* \* \*

6. Revise § 92.251 by:

- a. Revising paragraphs (b)(1)(viii) and (c)(3);
- b. Removing and reserving paragraph (d); and
- c. Revising paragraph (f)(1) introductory text, and paragraph (f)(1)(i).

The revisions read as follows:

**§ 92.251 Property standards.**

\*\*\*\*\*

(b) \* \* \*

(1) \* \* \*

(viii) *HUD housing standards.* The standards of the participating jurisdiction must be such that, upon completion, the HOME-assisted project and units will be decent, safe, sanitary, as referenced in 24 CFR 5.703. The requirements of 24 CFR 5.705-5.713 do not apply. At minimum, the specific deficiencies proscribed by HUD and published in the **Federal Register** must be corrected under the participating jurisdiction’s rehabilitation standards. HUD will establish the minimum deficiencies based on the applicable standards for the condition of HUD

housing set out by the Secretary and published in the **Federal Register** pursuant to 24 CFR

5.705.

\* \* \* \*

(c) \*

(3) Existing housing that is acquired for homeownership (e.g., downpayment assistance) must be decent, safe, sanitary, and in good repair as referenced in 24 CFR 5.703. The participating jurisdiction must establish standards to determine that the housing is decent, safe, sanitary, and in good repair. At minimum, the standards must provide that the housing meets all applicable State and local housing quality standards and code requirements and the housing does not contain the specific deficiencies proscribed by HUD and published in the **Federal Register**. HUD will establish the minimum deficiencies based on the applicable standards for the condition of HUD housing (National Standards for the Physical Inspection of Real Estate (NSPIRE)) set out by the Secretary and published in the **Federal Register** pursuant to 24 CFR 5.705. The participating jurisdiction must inspect the housing and document this compliance based upon an inspection that is conducted no earlier than 90 days before the commitment of HOME assistance. If the housing does not meet these standards, the housing must be rehabilitated to meet the standards of this paragraph (c)(3) or it cannot be acquired with HOME funds.

\* \* \* \*

(f) *Ongoing property condition standards: Rental housing and housing occupied by tenants receiving HOME tenant-based rental assistance--(1) Ongoing property standards.* The participating jurisdiction must establish property standards for rental housing (including manufactured housing) that apply throughout the affordability period and for housing occupied by tenants receiving HOME tenant-based rental assistance. The standards must ensure that owners maintain the housing as decent, safe, and sanitary housing in good repair. The participating jurisdiction's description of its property standards must be in sufficient detail to establish the basis for a uniform inspection of HOME rental projects and housing occupied by

tenants receiving HOME tenant-based rental assistance. The participating jurisdiction's ongoing property standards must address each of the following:

(i) *Compliance with State and local codes, ordinances, and requirements.* The participating jurisdiction's standards must require the housing to meet all applicable State and local code requirements and ordinances. In the absence of existing applicable State or local code requirements and ordinances, at a minimum, the participating jurisdiction's ongoing property standards must provide that the property does not contain the specific minimum deficiencies proscribed by HUD and published in the **Federal Register** for rental housing (including manufactured housing) and housing occupied by tenants receiving HOME tenant-based rental assistance. HUD will establish the minimum deficiencies based on the applicable standards for the condition of HUD housing set out by the Secretary and published in the **Federal Register** pursuant to 24 CFR 5.705. The participating jurisdiction's property standards are not required to use any inspection procedures, including scoring, item weight, or level of criticality required in 24 CFR 5.705-5.713.

\* \* \* \*

7. In § 92.504, revise paragraph (d)(1)(iii) to read as follows:

**§ 92.504 Participating jurisdiction responsibilities; written agreements; on-site inspections.**

\* \* \* \*

(d) \* \* \*

(1) \* \* \*

(iii) *Annual inspections.* Tenant- based rental assistance (TBRA). All housing occupied by tenants receiving HOME tenant-based rental assistance must meet the property standards of § 92.251. The participating jurisdiction must perform annual on-site inspections of rental housing occupied by tenants receiving HOME-assisted TBRA to determine compliance with these standards.

\* \* \* \*

## PART 93—HOUSING TRUST FUND

8. The authority for 24 CFR part 93 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d), 12 U.S.C. 4568.

9. In § 93.301, revise paragraphs (b)(1)(viii), (c)(3), and (e)(1)(i) to read as follows:

### § 93.301 Property standards.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(viii) *HUD housing standards.* The standards of the grantee must be such that, upon completion, the HTF-assisted project and units will be decent, safe, sanitary, and in good repair and meet the standards in 24 CFR 5.703. The requirements of 24 CFR 5.705-5.713 do not apply. At minimum, the specific deficiencies proscribed by HUD and published in the **Federal Register** must be corrected under the grantee's rehabilitation standards. HUD will establish the minimum deficiencies based on the applicable standards for the condition of HUD housing set out by the Secretary and published in the **Federal Register** pursuant to 24 CFR 5.705.

\* \* \* \* \*

(c) \* \* \*

(3) Existing housing that is acquired for homeownership (*e.g.*, down payment assistance) must be decent, safe, sanitary, and in good repair. The grantee must establish standards to determine that the housing is decent, safe, sanitary, and in good repair. At minimum, the standards must provide that the housing meets all applicable State and local standards and code requirements, and the housing does not contain the specific deficiencies proscribed by HUD and published in the **Federal Register**. HUD will establish the minimum deficiencies based on the applicable standards for the condition of HUD housing set out by the Secretary and published in the **Federal Register** pursuant to 24 CFR 5.705. The grantee must inspect the housing and

document this compliance based upon an inspection that is conducted no earlier than 90 calendar days before the date of commitment of HTF assistance. If the housing does not meet these standards, the housing must be rehabilitated to meet the standards of this paragraph or it cannot be assisted with HTF funds.

\* \* \* \*

(e) \* \*

(1) \* \*

(i) At a minimum, the grantee's ongoing property standards must provide that the property does not contain the specific minimum deficiencies proscribed by HUD and published in the **Federal Register**. HUD will establish the minimum deficiencies based on the applicable standards for the condition of HUD housing set out by the Secretary and published in the **Federal Register** pursuant to § 5.705 of this title. The grantee's property standards are not required to use any inspection procedures, including scoring, item weight, or level of criticality required in §§ 5.705-5.713 of this title.

\* \* \* \*

## **PART 200—INTRODUCTION TO FHA PROGRAMS**

10. The authority for 24 CFR part 200 continues to read as follows:

**Authority:** 12 U.S.C. 1702-1715z-21; 42 U.S.C. 3535(d).

11. Revise § 200.850 to read as follows:

### **§ 200.850 Physical condition standards and physical inspection requirements.**

The requirements in part 5, subpart G of this title are applicable to the multifamily properties assisted or insured that are listed in § 5.701 of this title.

### **§§ 200.853, 200.855, and 200.857 [Removed and Reserved]**

12. Remove and reserve §§ 200.853, 200.855, and 200.857.

## **PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS, SUBPART D—**

### **USES OF GRANT FUNDS**

13. The authority for 24 CFR part 574 continues to read as follows:

**Authority:** 12 U.S.C. 1701x, 1701 x-1; 42 U.S.C. 3535(d) and 5301-5320.

14. In § 574.310, revise paragraph (b) introductory text and paragraph (b)(2), and add paragraph (b)(3) to read as follows:

#### **§ 574.310 General standards for eligible housing activities.**

\* \* \* \*

(b) \*. The following standards apply for all housing for which HOPWA funds that are used under § 574.300(b)(3), (4), (5), and (8), and when HOPWA funds are used under § 574.300(b)(7) to pay an eligible person's security deposit, utility hookup and processing costs, or other move-in costs, except rental application and credit check fees.

\*\*\*\*\*

(2) *HUD housing standards.* Except for such variations as are proposed by the grantee and approved by HUD, the housing must meet the standards for HUD housing in 24 CFR 5.703, except that:

(i) As applied to HOPWA, “HUD housing” in 24 CFR 5.703 means the units eligible persons occupy or will occupy, systems equipment that directly services those units, items and components within the primary and secondary means of egress from those units’ doors to the public way, and common features related to the residential use of the building (e.g., the laundry room, community room, mail room).

(ii) Housing that continues to meet the HOPWA housing quality standards that applied when the eligible person(s) moved into that housing shall not be required to meet new or different standards under 24 CFR 5.703.

(3) The requirements of 24 CFR 5.705-5.713 do not apply.

\* \* \* \*

## **PART 576—EMERGENCY SOLUTIONS GRANTS PROGRAM**

15. The authority for 24 CFR part 576 continues to read as follows:

**Authority:** 12 U.S.C. 1701x, 1701 x-1; 42 U.S.C. 11371 et seq., 42 U.S.C. 3535(d).

### **SUBPART E—PROGRAM REQUIREMENTS**

16. In § 576.403, revise paragraph (c) and add paragraphs (d) through (f) to read as follows:

#### **§ 576.403 Shelter and housing standards.**

\* \* \* \*

(c) *Minimum standards for permanent housing.* When ESG funds are used for permanent housing under 24 CFR 576.105 or 576.106, the minimum standards in 24 CFR 5.703 apply to the program participant’s unit, systems equipment that directly services those units, items and components within the primary and secondary means of egress from those units’ doors to the public way, and common features related to the program participant’s use of the building (e.g., the laundry room, community room, mail room). The recipient may also add standards that exceed these minimum standards. The requirements in 24 CFR 5.705 – 5.713 do not apply.

(d) *Housing inspections.* For the first 30 days in which a program participant receives homelessness prevention assistance, the recipient or subrecipient may provide services under 576.105(b) to help the program participant remain in their unit without inspecting the unit or determining it meets the requirement in this section. Before otherwise using ESG funds under 24 CFR 576.105 or 576.106 to help a program participant remain in or move into specific housing, however, the recipient or subrecipient must inspect that housing to confirm that it meets the requirements in this section. In addition, recipient or subrecipient must inspect the housing at least once every 12 months during the period of assistance to confirm the housing continues to meet the minimum standards in paragraph (c) of this section.

(e) *Correction of deficiencies.* If an inspection reveals one or more deficiencies that prevent the housing from meeting the requirements in this section, ESG funds must not be used

under 24 CFR 576.105 or 576.106 with respect to that housing unless the owner corrects the deficiencies within 30 days from the date of the initial inspection and the recipient or subrecipient verifies that all deficiencies have been corrected.

(f) *Rental arrears*. Housing for which rental arrears are paid is only subject to the requirements in this section, if a program participant is seeking to stay in that housing.

## **PART 578 —PROGRAM REQUIREMENTS**

17. The authority for 24 CFR part 578 continues to read as follows:

**Authority:** 12 U.S.C. 1701x, 1701 x-1; 42 U.S.C. 11381 et seq., 42 U.S.C. 3535(d).

18. In § 578.75, revise paragraph (b) to read as follows:

### **§ 578.75 General operations.**

\* \* \* \*

(b) *Housing standards*. Housing leased with Continuum of Care program funds, or for which rental assistance payments are made with Continuum of Care program funds, must meet the applicable standards under 5.703 of this title. For housing that is occupied by program participants receiving tenant-based rental assistance, 24 CFR part 35, subparts A, B, M, and R apply. For housing rehabilitated with funds under this part, the lead-based paint requirements in 24 CFR part 35, subparts A, B, J, and R apply. For housing that receives project-based or sponsor-based rental assistance, 24 CFR part 35, subparts A, B, H, and R apply. For residential property for which funds under this part are used for acquisition, leasing, services, or operating costs, 24 CFR part 35, subparts A, B, K, and R apply. Additionally, for tenant-based rental assistance, for leasing of individual units, and for sponsor based rental assistance where not all units in a structure are or will be assisted, the standards apply only to the unit itself, and to the means of ingress and egress from the unit to the public way and to the building's common areas.

(1) Before any assistance will be provided on behalf of a program participant, the recipient, or subrecipient, must physically inspect each unit to assure that the unit meets 24 CFR 5.703. Assistance will not be provided for units that fail to meet 24 CFR 5.703, unless the owner

corrects any deficiencies within 30 days from the date of the initial inspection and the recipient or subrecipient verifies that all deficiencies have been corrected.

(2) Recipients or subrecipients must inspect all units at least annually during the grant period to ensure that the units continue to meet 24 CFR 5.703.

(3) The requirements in 24 CFR 5.705 – 5.713 do not apply.

\* \* \* \*

## **PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION**

19. The authority for 24 CFR part 880 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611-13619.

20. In § 880.612, revise paragraph (a) to read as follows:

### **§ 880.612 Reviews during management period.**

(a) After the effective date of the Contract, the contract administrator will inspect the project and review its operation at least annually to determine whether the owner is in compliance with the Contract and the assisted units comply with the standards under part 5, subpart G of this title.

\* \* \* \*

## **Part 882— SECTION 8 MODERATE REHABILITATION PROGRAMS**

21. The authority for 24 CFR part 882 continues to read as follows:

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

### **§ 882.404 [Amended]**

22. In § 882.404, remove paragraph (d).

23. In § 882.516, revise paragraphs (b), (c) and (e) to read as follows:

### **§ 882.516 Maintenance, operation and inspections.**

\* \* \* \*

(b) *Periodic inspection.* In addition to the inspections required prior to execution of the Contract, the PHA must inspect or cause to be inspected each unit under Contract in accordance with the standards under part 5, subpart G of this title at least annually and at such other times as may be necessary to assure that the Owner is meeting the obligations to maintain the units so they are compliant with part 5, subpart G of this title, and to provide the agreed upon utilities and other services. The PHA must take into account complaints and any other information coming to its attention in scheduling inspections.

(c) *Units with health and safety hazards.* If the PHA notifies the Owner that the unit(s) under Contract are not being maintained in compliance with the standards under part 5, subpart G of this title and the Owner fails to take corrective action (including corrective action with respect to the Family where the condition of the unit is the fault of the Family) within the time prescribed in the notice, the PHA may exercise any of its rights or remedies under the Contract, including abatement of housing assistance payments (even if the Family continues in occupancy), termination of the Contract on the affected unit(s) and assistance to the Family in accordance with § 882.514(e).

\* \* \* \*

(e) *Periodic reviews.* Periodic PHA audits must be conducted as required by HUD, in accordance with 2 CFR part 200, subpart F.

## **Part 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS**

24. The authority for 24 CFR part 884 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611-13619.

25. Revise § 884.217 to read as follows:

### **§ 884.217 Maintenance, operation and inspections.**

(a) *Maintenance and operation.* The Owner shall maintain and operate the project consistent with part 5, subpart G of this title, and shall provide all the services, maintenance and utilities which the Owner agrees to provide under the Contract, subject to abatement of housing assistance payments or other applicable remedies if he fails to meet these obligations.

(b) *Inspection prior to occupancy.* Prior to occupancy of any unit by a Family, the Owner and the Family shall inspect the unit and both shall certify, on forms prescribed by HUD, that they have inspected the unit and have determined it to be compliant with part 5, subpart G of this title and the criteria provided in the prescribed forms. Copies of these reports shall be kept on file by the Owner for at least 3 years, and may be required to be electronically submitted to HUD.

(c) *Periodic inspections.* HUD (or the PHA, as appropriate) will inspect or cause to be inspected each Contract unit and related facilities in accordance with the physical inspection requirements in part 5, subpart G of this title, and at such other times (including prior to initial occupancy and renting of any unit) as HUD (or the PHA) may determine to be necessary to assure that the Owner is meeting his obligation to maintain the units in accordance with part 5, subpart G of this title and to provide the agreed upon utilities and other services.

(d) *Units with health and safety hazards.* If HUD (or the PHA, as appropriate) notifies the Owner that the Owner has failed to maintain a unit that in accordance with part 5, subpart G of this title and the Owner fails to take corrective action within the time prescribed by notice, HUD (or the PHA) may exercise any of its rights or remedies under the Contract, including abatement of housing assistance payments, even if the Family continues to occupy the unit. If, however, the Family wishes to be rehoused in another unit with Section 8 assistance and HUD (or the PHA) does not have other Section 8 funds for such purposes, HUD (or the PHA) may use the abated housing assistance payments for the purpose of rehousing the Family in another unit. Where this is done, the Owner shall be notified that the Owner will be entitled to resumption of housing assistance payments for the vacated unit if:

- (1) The unit is restored to in accordance with part 5, subpart G of this title;

- (2) The Family is willing to and does move back to the restored dwelling unit; and
- (3) A deduction is made for the expenses incurred by the Family for both moves.

## **Part 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL**

### **ALLOCATIONS**

26. The authority for 24 CFR part 886 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611-13619.

#### **§ 886.113 [Amended]**

27. In § 886.113, remove and reserve paragraphs (b) and (i).

28. Revise § 886.123 to read as follows:

#### **§ 886.123 Maintenance, operation, and inspections.**

(a) *Maintenance and operation.* The Owner shall maintain and operate the project so as to provide housing that is compliant with part 5, subpart G of this title, and the Owner shall provide all the services, maintenance and utilities which the Owner agrees to provide under the Contract, subject to abatement of housing assistance payments or other applicable remedies if the Owner fails to meet these obligations.

(b) *Inspection prior to occupancy.* Prior to occupancy of any unit by a Family, the Owner and the Family shall inspect the unit and both shall certify, on forms prescribed by HUD that they have inspected the unit and have determined it to be compliant with part 5, subpart G of this title and with the criteria provided in the prescribed forms. Copies of these reports shall be kept on file by the Owner for at least three years.

(c) *Periodic inspections.* HUD will inspect or cause to be inspected a reasonable sample of contract units according to the requirements in part 5, subpart G of this title and at such other times as may be necessary to assure that the owner is meeting contractual obligations.

(d) *Units not free of health and safety hazards.* If HUD notifies the Owner that the Owner has failed to maintain a unit that is compliant with the requirements in part 5, subpart G of this

title and the Owner fails to take corrective action within the time prescribed by notice, HUD may exercise any of its rights or remedies under the Contract, including abatement of housing assistance payments, even if the Family continues to occupy the unit.

**§ 886.307 [Amended].**

29. In § 886.307, remove and reserve paragraphs (b), (i), and (m).

30. Revise § 886.323 to read as follows:

**§ 886.323 Maintenance, operation, and inspections.**

(a) *Maintain housing free of health and safety hazards.* The owner shall maintain and operate the project so as to be compliant with part 5, subpart G of this title, and the owner shall provide all the services, maintenance, and utilities which the Owner agrees to provide under the contract and the lease. Failure to do so shall be considered a material default under the contract and Regulatory Agreement, if any.

(b) *HUD inspection.* Prior to execution of the contract, HUD shall inspect (or cause to be inspected) each proposed contract unit and related facilities to ensure that they comply with the requirements at part 5, subpart G of this title.

(c) *Owner and family inspection.* Prior to occupancy of any vacant unit by a family, the owner and the family shall inspect the unit, and both shall certify that they have inspected the unit and have determined it to be compliant with part 5, subpart G of this title. Copies of these reports shall be kept on file by the owner for at least 3 years.

(d) *Periodic inspections.* HUD will inspect the project (or cause it to be inspected) in accordance with the requirements in part 5, subpart G of this title and at such other times as HUD may determine to be necessary to assure that the owner is meeting the Owner's obligation to maintain the units and the related facilities in accordance with part 5, subpart G of this title and to provide the agreed-upon utilities and other services.

(e) *Failure to maintain housing.* If HUD notifies the owner that he/she has failed to maintain a unit that is compliant with part 5, subpart G of this title, and the owner fails to take

corrective action within the time prescribed in the notice, HUD may exercise any of its rights or remedies under the contract, or Regulatory Agreement, if any, including abatement of housing assistance payments (even if the family continues to occupy the unit) and rescission of the sale. If the family wishes to be rehoused in another unit, HUD shall provide assistance in finding such a unit for the family.

## **Part 902 - PUBLIC HOUSING ASSESSMENT SYSTEM**

31. The authority for 24 CFR part 902 is revised to read as follows:

**Authority:** 42 U.S.C. 1437d(j), 42 U.S.C. 3535(d), 1437z-10.

32. Amend § 902.3 by:

- a. Removing the definition of “Criticality”;
- b. Revising the definitions of “Dictionary of Deficiency Definitions” and “Inspectable areas (or area)”;
- c. Removing the definitions of “Item Weights and Criticality Levels document”, “Normalized weights”, “Score”, “Severity”, “Statistically valid sample”, and “Unit-weighted average”.

The revisions read as follows:

### **§ 902.3 Definitions.**

\* \* \* \*

*Dictionary of Deficiency Definitions* means the document published in the **Federal Register** that contains the inspection standards and scoring values pursuant to part 5, subpart G of this title.

\* \* \* \*

*Inspectable areas* (or area) mean any of the three major components of public housing that are inspected, which are: inside, outside, unit.

\* \* \* \*

### **§ 902.20 [Removed and Reserved]**

33. Remove and reserve § 902.20.

34. Revise § 902.21 to read as follows:

**§ 902.21 Physical condition standards for public housing.**

Public housing must be maintained in a manner that meets the physical condition standards set forth in part 5, subpart G of this title.

35. Revise § 902.22 to read as follows:

**§ 902.22 Inspection of PHA projects.**

The PHA's score for the physical condition indicator is based on an independent inspection of a PHA's project(s) provided by HUD and using the requirements and timelines laid out in part 5, subpart G of this title, to ensure projects meet acceptable basic housing conditions. Mixed-finance projects will be subject to the physical condition inspections.

**§§ 902.24, 902.26, and 902.68 [REMOVED AND RESERVED]**

36. Remove and reserve §§ 902.24, 902.26, and 902.68.

37. Add subpart H to read as follows:

**Subpart H – Assessment of small rural Public Housing Agencies**

Sec.

902.101 Definitions of small rural PHAs.

902.103 Public Housing assessment of small rural PHAs

902.105 Troubled Small rural PHAs

902.107 Withholding, denying, and rescinding troubled designation.

902.109 Right to petition and appeal troubled designation.

902.111 Sanctions for troubled small rural PHAs.

902.113 Incentives for small rural PHAs high-performers.

Authority: 42 U.S.C. 1437d(j), 42 U.S.C. 3535(d), 1437z-10.

## **§ 902.101 Definition of small rural PHAs.**

- (a) *Definition.* A PHA is a small rural PHA if it administers 550 or fewer combined public housing units and vouchers under section 8(o), and either:
- (1) Has a primary administrative building as determined with a physical address in a rural area as described in 12 CFR § 1026.35(b)(2)(iv)(A); or
  - (2) More than 50 percent of its combined public housing units and voucher units under section 8(o) are in rural areas as described in 12 CFR § 1026.35(b)(2)(iv)(A).
- (b) *Determination.* (1) HUD will make the initial determination of PHAs that qualify as small rural as defined in § 902.101 of this title no later than [insert 120 days after the effective date of the final rule].
- (2) HUD will determine if a PHA qualifies as a small rural PHA under paragraph (a) every 3 years.
- (c) *Appeals.* A PHA may challenge HUD's determination concerning whether the PHA qualifies as small rural PHA by presenting an objectively verifiable material error which resulted in the incorrect determination, or by presenting information showing that the status of the PHA has changed to justify a redetermination.

## **§ 902.103 Public housing assessment of small rural PHAs.**

- (a) *Small rural Public Housing Assessment.* The public housing program of small rural PHAs as defined in § 902.101 shall be assessed and scored based only on the physical condition of their public housing properties in accordance with part 5, subpart G of this title. Such agencies shall not be subject to PHAS except as noted below.
- (b) *Triennial assessment.* Public Housing programs operated by small rural Public Housing Authorities will be assessed no more than once every three years, except that a small rural Public Housing Authority shall be subject to annual inspection if it is designated by the Secretary as troubled as defined in § 902.105.

(c) *Initial Public Housing assessment.* (1) For PHAs subject to small PHA deregulation, the first assessment and inspections will be determined based on the PHA's next scheduled PHAS assessment (e.g., a higher performing PHA would receive the first inspection 3 years after the most recent PHAS assessment, a standard or substandard performer would receive the first inspection 2 years after the most recent PHAS assessment, etc.).

(2) For PHAs not subject to small PHA deregulation, the first inspection is based on the PHA's overall weighted project PASS score (e.g., a PHA with a PASS score of 90 or greater would receive the first inspection three years after most recent PHAS assessment, a PHA with a PASS score of 80-89 would receive the first inspection two years after most recent PHAS assessment, etc.).

#### **§ 902.105 Troubled small rural PHAs.**

(a) *Definition of Troubled Small rural PHA.* A small rural PHA will be determined to be troubled under the public housing program if the weighted average score of all property inspections is below 70 percent of the total available points, or if a small rural PHA has a weighted average score of between 70 and 80 percent of the total available points, and has at least one property that receives fewer than 70 percent of the total available points.

(b) *Referral to the Local Field Office.* Upon a PHA's designation as a troubled performer HUD must notify the PHA and shall refer the troubled performer PHA to the PHA's field office, or other designated office(s) at HUD, for remedial action, oversight, and monitoring. The actions to be taken by HUD and the PHA will include statutorily required actions, and such other actions as may be determined appropriate by HUD.

(c) *Corrective Action Agreement (CAA).* Within 30 days of notification of a PHA's designation as a troubled performer, HUD will initiate activities to negotiate and develop an CAA. A CAA is required for a troubled performer. The final CAA is a binding contractual agreement between HUD and a PHA. The scope of the CAA may vary depending upon the extent of the problems present in the PHA. The term of the CAA will not exceed one year, and is

subject to renewal at the discretion of HUD if HUD determines that the circumstances requiring the CAA still exist at the expiration of the term of the CAA based on the annual assessment frequency as included in § 902.103. It shall include, but not be limited to:

- (1) Baseline data, which should be data without adjustments or weighting but may be the PHA's score identified as a deficiency;
- (2) Performance targets for such periods specified by HUD (e.g., annual, semiannual, quarterly, monthly), which may be the attainment of a higher score or the description of a goal to be achieved; however, safety, health, and environmental performance targets and deadlines otherwise specified by regulation, including the lead safety regulations at 24 CFR 35, are not superseded by the CAA performance targets;
- (3) Strategies to be used by the PHA in achieving the performance targets within the time period of the CAA, including the identification of the party responsible for the completion of each task and for reporting progress;
- (4) Technical assistance to the PHA provided or facilitated by HUD;
- (5) The PHA's commitment to take all actions within its control to achieve the targets;
- (6) The consequences of failing to meet the targets; and
- (7) A description of the involvement of local public and private entities, including PHA resident leaders, in carrying out the agreement and rectifying the PHA's problems. A PHA shall have primary responsibility for obtaining active local public and private entity participation, including the involvement of public housing resident leaders, in assisting PHA improvement efforts. Local public and private entity participation should be premised upon the participant's knowledge of the PHA, ability to contribute technical expertise with regard to the PHA's specific problem areas, and authority to make preliminary commitments of support, financial or otherwise.

(d) *PHA review of the CAA.* The PHA will have 10 days to review the CAA. During this 10-day period, the PHA shall resolve any claimed discrepancies in the CAA with HUD, and

discuss any recommended changes and target dates for improvement to be incorporated in the final CAA. Unless the time period is extended by HUD, the CAA is to be executed 30 days following issuance of the draft CAA.

(e) *Maximum recovery period.* (1) Upon the expiration of the one-year period that started on the date on which the PHA receives initial notice of a troubled performer designation, the PHA shall improve its performance in order to no longer be considered troubled under the assessment.

(2) [Reserved].

(f) *Parties to the CAA.* A CAA shall be executed by:

- (1) The PHA Board Chairperson (supported by a Board resolution), or a receiver (pursuant to a court-ordered receivership agreement, if applicable) or other AME acting in lieu of the PHA Board;
- (2) The PHA Executive Director, or a designated receiver (pursuant to a court-ordered receivership agreement, if applicable), or other AME-designated Chief Executive Officer; and
- (3) The field office.

(g) *Involvement of resident leadership in the CAA.* HUD encourages the inclusion of the resident leadership in the execution of the CAA.

(h) *Failure to execute CAA or make substantial improvement under CAA.* (1) If a troubled performer PHA fails or refuses to execute an CAA within the period provided in paragraph (d) of this section, or a troubled performer PHA operating under an executed CAA does not achieve a passing physical inspection score, as provided in paragraph (e) of this section, the field office shall refer the PHA to the Assistant Secretary to determine such remedial actions, consistent with the provisions of the ACC and other HUD regulations, including, but not limited to, remedies available for substantial default.

(i) Continuation of services to residents. To the extent feasible, while a PHA is in a troubled performer status, all services to residents will continue uninterrupted.

**§ 902.107 Withholding, denying, and rescinding troubled designation.**

(a) *Withholding designation.* In exceptional circumstances, even though a PHA has satisfied the requirements for high performer or non-troubled designations, HUD may conduct any review as it may determine necessary, and may deny or rescind incentives or high performer designation or non-troubled performer designation, in the case of a PHA that:

- (1) Is operating under a special agreement with HUD (*e.g.*, a civil rights compliance agreement);
- (2) Is involved in litigation that bears directly upon the physical performance of a PHA;
- (3) Is operating under a court order;
- (4) Demonstrates substantial evidence of fraud or misconduct, including evidence that the PHA's certifications, submitted in accordance with this part, are not supported by the facts, as evidenced by such sources as a HUD review, routine reports, an Office of Inspector General investigation/audit, an independent auditor's audit, or an investigation by any appropriate legal authority; or
- (5) Demonstrates substantial noncompliance in one or more areas of a PHA's required compliance with applicable laws and regulations, including areas not assessed under the small rural assessment. Areas of substantial noncompliance include, but are not limited to, noncompliance with civil rights, nondiscrimination and fair housing laws and regulations, or the ACC. Substantial noncompliance casts doubt on the capacity of a PHA to preserve and protect its public housing projects and operate them consistent with federal laws and regulations.

(b) *High performer and standard designations.* If a high performer designation is denied or rescinded, the PHA shall be designated either a non-troubled performer, or troubled performer, depending on the nature and seriousness of the matter or matters constituting the basis for HUD's action. If a non-troubled performer designation is denied or rescinded, the PHA shall be designated as a troubled performer.

(c) *Effect on score.* The denial or rescission of a designation of high performer or non-troubled performer shall not affect the PHA's numerical small rural assessment score, except where the denial or rescission is under paragraph (a)(4) of this section.

**§ 902.109 Right to petition and appeal troubled designation.**

- (a) *Appeal of troubled performer designation and petition for removal of troubled performer designation.* A PHA may take any of the following actions:
- (1) Appeal its troubled performer designation;
  - (2) Petition for removal of troubled performer designation; and
  - (3) Appeal any refusal of a petition to remove troubled performer designation.
- (b) *Appeal of small rural Assessment score.* (1) If a PHA believes that an objectively verifiable and material error(s) exists in its small rural assessment score, which, if corrected, will result in a significant change in the PHA's score and its designation, the PHA may appeal its score in accordance with the procedures of paragraphs (c), (d), and (e) of this section. A significant change in a score is a change that would cause the PHA's score to increase, resulting in a higher designation for the PHA (i.e., from troubled performer to non-troubled performer, or from non-troubled to high performer).
- (2) A PHA may not appeal its score or designation based on the subsequent correction of deficiencies identified as a result of a project's physical inspection.
- (c) *Appeal and petition procedures.*
- (1) To appeal a troubled performer designation or petition for the removal of a troubled performer designation, a PHA must submit a request in writing to the Deputy Assistant Secretary of the Real Estate Assessment Center, which must be received by HUD no later than 30 days following the issuance of the score to the PHA.
  - (2) To appeal the denial of a petition to remove a troubled performer designation, a PHA must submit a written request to the Deputy Assistant Secretary of the Real Estate Assessment

Center, which must be received by HUD no later than 30 days after HUD's decision to refuse to remove the PHA's troubled performer designation.

(3) An appeal of a troubled performer designation or an appeal of the denial of a petition for removal of a troubled performer designation must include the PHA's supporting documentation and reasons for the appeal or petition. An appeal of an assessment score must be accompanied by the PHA's evidence that a material error occurred. An appeal or petition submitted to HUD without supporting documentation will not be considered and will be returned to the PHA.

(d) *Denial, withholding, or rescission.* A PHA that disagrees with the basis for denial, withholding, or rescission of its designation under § 902.66 may make a written request for reinstatement within 30 days of notification by HUD of the denial or rescission of the designation to the Assistant Secretary, and the request shall include reasons for the reinstatement.

(e) *Consideration of petitions and appeals.* (1) Consideration of a petition or the appeal of a final overall assessment score, of a troubled performer designation, or of a petition to remove troubled performer designation. Upon receipt of such an appeal or a petition from a PHA, HUD will evaluate the appeal and its merits for purposes of determining whether a reassessment of the PHA is warranted. HUD will review the PHA's file and the evidence submitted by the PHA to determine whether an error occurred.

(2) Consideration of an appeal of refusal to remove a troubled performer designation. Upon receipt of an appeal of refusal to remove a troubled performer designation, HUD will evaluate the appeal and its merits for the purposes of determining whether a reassessment of the PHA is warranted. The HUD staff initially evaluating an appeal of refusal to remove a troubled performer designation will not be the same HUD staff who evaluated the PHA's petition to remove the troubled performer designation. The Assistant Secretary will render the final determination of such an appeal.

(f) *Notice and finality of decisions.* (1) If HUD determines that one or more objectively verifiable and material error has occurred, HUD will undertake a new inspection of the project, adjust the PHA's score, or perform other reexamination of information, as appropriate in light of the nature of the error that occurred. A new score will be issued and an appropriate performance designation made by HUD. HUD's decision on appeal of an assessment score, issuance of a troubled performer designation, or refusal to remove a troubled performer designation will be final agency action. No reconsideration will be given by HUD of such decisions.

(2) HUD will issue a written decision on all appeals and petitions made under this section.

**§ 902.111 Sanctions for troubled small rural PHAs.**

The sanctions for small rural PHAs with troubled public housing programs that remain troubled as required by § 902.108 will be the same as those sanctions for PHAs assessed under PHAs as described in § 902.83.

**§ 902.113 Incentives for small rural PHAs high performers.**

(a) *High performer.* PHAs with a weighted average score for all inspections of at least 90 percent of all available points will be considered high performers and will be eligible for benefits as described in § 902.110(b) and § 905.400(l) of this title.

(b) *Incentives.* High performer small rural PHAs under the public housing program will be eligible for the same incentives as high performer PHAs under PHAS as described in § 902.71.

**PART 982 - SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE  
VOUCHER PROGRAM**

38. The authority for 24 CFR part 982 continues to read as follows:

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

39. In § 982.4, amend paragraph (b) by revising the definition of “Housing quality standards (HQS)” to read as follows:

**§ 982.4 Definitions.**

\* \* \* \*

(b) \* \* \*

*Housing quality standards (HQS).* “The minimum quality standards developed by HUD in accordance with § 5.703 of this title for the PBV program or the HUD approved alternative standard for the PHA under § 5.703(g) of this title.”

\* \* \* \*

40. In § 982.352, revise paragraph (b)(1)(iv)(A)(3) to read as follows:

**§ 982.352 Eligible housing.**

\* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iv) \* \* \*

(A) \* \* \*

(3) To inspect the unit for compliance with the HQS in accordance with § 982.305(a) and § 982.405. The independent agency shall communicate the results of each such inspection to the family and the PHA.

\* \* \* \*

41. Revise § 982.401 to read as follows:

**§ 982.401 Housing quality standards.**

As defined in § 982.4, housing quality standards (HQS) refers to the minimum quality standards developed by HUD in accordance with § 5.703 of this title for housing assisted under the HCV program or a HUD approved alternative standard for the PHA under § 5.703(g).

42. In § 982.405, revise paragraph (a) to read as follows:

**§ 982.405 PHA initial and periodic unit inspection.**

(a)(1) *General Requirements.* The PHA must inspect the unit leased to a family prior to the initial term of the lease, at least biennially during assisted occupancy, and at other times as needed, to determine if the unit meets the HQS. (See § 982.305(b)(2) concerning timing of initial inspection by the PHA.)

(2) *Small rural PHAs.* Instead of biennially, a small rural PHA as defined in § 902.101 of this chapter must inspect a unit during occupancy at least once every three years.

\* \* \* \*

**PART 983 - PROJECT-BASED VOUCHER (PBV) PROGRAM**

43. The authority for 24 CFR part 983 continues to read as follows:

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

44. In § 983.3, amend paragraph (b) by revising the definition of “Housing Quality Standards (HQS)” to read as follows:

**§ 983.3 PBV definitions.**

\* \* \* \*

(b) \* \* \*

*Housing quality standards (HQS).* “The minimum quality standards developed by HUD in accordance with § 5.703 of this title for the PBV program or the HUD approved alternative standard for the PHA under § 5.703(g) of this title.”

\* \* \* \*

45. In § 983.10, revise paragraph (b)(2)(ii) to read as follows:

**§ 983.10 Project-based certificate (PBC) program.**

\* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) *Lead-based paint requirements.* The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, H, and R of this title, apply to the PBC program.

\* \* \* \*

46. Revise § 983.101 to read as follows:

**§ 983.101 Housing quality standards.**

As defined in § 983.3, housing quality standards (HQS) refers to the minimum quality standards developed by HUD in accordance with § 5.703 of this title for housing assisted under the HCV program or a HUD approved alternative standard for the PHA under § 5.703(g) of this title.

47. In § 983.103, revise the heading of paragraph (d) and add paragraph (d)(4) to read as follows:

**§ 983.103 Inspecting units.**

\* \* \* \*

**(d) Periodic inspections. \***

(4) Instead of biennially, a small rural PHA as defined in § 902.101 of this title must inspect the random sample of units in accordance with paragraph (d)(1) at least once every three years.

\* \* \* \*

**PART 985—SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP) AND  
SMALL RURAL PHA ASSESSMENTS**

48. The authority citation for 24 CFR part 985 is revised to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 1437z-10, and 3535(d).

49. Revise the heading of Part 985 to read as set forth above.

50. In § 985.1, revise paragraph (b) and add paragraph (c) to read as follows:

**§ 985.1 Purpose and applicability.**

\* \* \* \*

(b) *Applicability.* This rule applies to PHA administration of the tenant-based Section 8 rental program (part 982 of this title), the project-based voucher program (part 983 of this title) to the extent that PBV family and unit data are reported and measured under the stated HUD verification method, and enrollment levels and contributions to escrow accounts for Section 8 participants under the family self-sufficiency program (FSS) (part 984 of this title).

(c) *Small rural PHA assessments.* Subpart D covers the HCV and PBV assessment for a small rural PHA as defined in § 902.101 of this title. Section 985.3 and subparts B and C of this part do not apply to small rural PHAs.

51. Add subpart D to read as follows:

#### **Subpart D – Small rural PHA Assessment**

Sec.

985.201 Applicability.

985.203 Assessment indicators and HUD verification methods.

985.205 Determination of assessment rating.

985.207 Frequency of assessments.

985.209 Troubled small rural PHAs.

985.211 Small rural PHAs assessment records.

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 1437z-10, and 3535(d).

##### **§ 985.201 Applicability.**

(a) This subpart applies to small rural PHAs as defined in § 902.101 of this title.

(b) Small rural PHAs shall be assessed and rated on the indicators and methodology of this subpart and shall not be subject to the SEMAP requirements.

##### **§ 985.203 Assessment indicators and HUD verification methods.**

(a) This section describes the performance indicators used to assess a PHA's designation as troubled resulting from the small rural PHA assessment. HUD will use the verification method identified for each indicator. The four indicators are determined on a pass or fail basis.

(b)(1) *Inspection standards*. This indicator shows whether the PHA applies the correct inspection standards to HCV and PBV unit inspections

(2) *HUD verification method*. The PHA's assessment certification and on-site HUD review when applicable.

(3) *Rating*. The PHA passes the indicator if it applied the correct inspection standards for all unit HCV and PBV unit inspections conducted during the assessment period. If the PHA applied the incorrect inspection standards for any HCV or PBV unit inspection during the assessment period, the PHA fails the indicator.

(c)(1) *Initial unit inspections*. This indicator determines if the PHA conducted the initial HQS inspections within the required time period.

(2) *HUD verification method*. HUD systems show percent of newly leased units where the beginning date of the assistance contract is before the date the unit passed the initial unit inspection or, if the PHA employed the PHA initial inspection option for non-life threatening deficiencies or alternative inspections, the timing requirements for the applicable PHA initial inspection option.

(3) *Rating*. The PHA passes the indicator if at least 98 percent of units placed under HAP contract during the assessment period passed the initial PHA HQS inspection within the required time period. If fewer than 98 percent of units placed under HAP contract during the assessment period passed the HQS inspection within the required time periods, the PHA fails the indicator.

(d)(1) *Frequency of HQS inspections*. This indicator determines, for units that have been under HAP contract for at least three years, whether the PHA re-inspected tenant-based units under HAP contract and the required sample of PBV units at least once during the three year period from the last PHA inspection.

(2) *HUD verification method.* HUD systems show that the percentage of units above that have been re-inspected within the required three-year period from the last inspection.

(3) *Rating.* The PHA passes the indicator if at least 98 percent of the units described above have been re-inspected within the required three-year period from the last inspection. The PHA fails the indicator if fewer than 98 percent of the units described above have been re-inspected within the required three-year period.

(e)(1) *Unit condition enforcement.* This indicator shows whether, following the inspection of a unit under contract where the unit fails to meet the required standards, any cited life-threatening and non-life threatening deficiencies are corrected within the required cure period in accordance with §§ 982.404 and 983.103 of this title. In addition, if HQS deficiencies are not corrected timely, the indicator shows whether the PHA stops (abates) housing assistance payments beginning no later than the first of the month following the specified correction period or terminates the HAP contract or, for family-caused defects, takes prompt and vigorous action to enforce the family obligations. (§ 982.404 of this title)

(2) *HUD verification method.* The PHA certification and on-site HUD review (if performed), and HUD system data.

(3) *Rating.* In order to pass the indicator, the applicable verification method, which may include sampling, determines that the PHA took corrective action within the required timeframes for at least 98% of inspections with identified life-threatening or other HQS deficiencies.

(f)(1) *PHA submission of certifications.* The PHA must submit its certifications for the applicable indicators within the designated timeframe required by HUD, and in the form and manner as required by HUD. HUD will issue instructions on the submission of PHA certifications by **Federal Register** notice, which will be subject to public comment.

(2) *Failure to submit.* Failure of the PHA to submit any certification in accordance with this paragraph will result in the PHA failing the indicator and the PHA will be designated as troubled under the small rural PHA assessment.

## **§ 985.205 Determination of assessment rating.**

(a) *High performer designation.* (1) A PHA is designated a high performer under the small rural PHA assessment if the PHA has passed all four indicators identified in § 985.203 and the PHA has:

- (i) Utilized at least 98 percent of its HCV budget authority based on the most recent calendar year data or the percent of HCV units leased by renters or occupied by homeowners for the most recent calendar year was at least 98 percent;
- (ii) Did not end that calendar year with excess HAP reserves; and
- (iii) Did not end that calendar year in a funding shortfall or receive shortfall prevention funding from HUD.

(2) HUD shall publish the calculation for determining excess HAP reserve in the Federal Register, and such notice shall provide for public comment before becoming effective.

(b) *Standard performer designation.* A PHA that passed all four indicators but did not meet the funding utilization criteria for a high performer designation in paragraph (a) is designated as a standard performer.

(c) *Troubled PHA designation.* A PHA that failed any of the four indicators under § 985.201 is designated as troubled PHA under the small rural PHA assessment.

## **§ 985.207 Frequency of assessments.**

(a) *Frequency of small rural PHA assessments.* (1) *Initial Assessment.* The initial small rural PHA assessment will be effective when the PHA's next SEMAP assessment would have been applied. For PHAs that under SEMAP qualify for biennial review as a small PHA (less than 250 assisted units), the transition to the small rural PHA assessment will occur when the PHA's next biennial SEMAP assessment is required.

(2) *Triennial assessments.* HUD shall assess small rural PHAs no more than once every three years, except that a troubled small rural PHA shall be subject to an annual assessment in accordance with § 985.204.

**§ 985.209 Troubled small rural PHAs.**

(a) *Appeals*--(1) *HUD action*. HUD must review, consider, and provide a final written determination to a small rural PHA that appeals its designation as a troubled PHA.

(2) *Deciding HUD official*. The HUD decision on the PHA appeal shall be made by a HUD official who has not been involved in and is not subordinate to any person who has been involved in the original determination to designate the PHA as a troubled PHA under the small rural PHA assessment.

(b) *Corrective action agreement*. No later than 60 days after the date on which the PHA is designated a troubled PHA, the PHA and HUD will enter into a corrective action agreement (CAA) under which the PHA shall take actions to correct the deficiencies upon which the troubled PHA designation is based. The PHA must comply with HUD requirements for the submission of the CAA, including but not limited to the date by which the CAA must be submitted to HUD. The CAA must:

- (1) Have a term of one year, and shall be renewable at the option of HUD;
- (2) Specify goals to be achieved;
- (3) Identify obstacles to goal achievement and ways to eliminate or avoid them;
- (4) Identify resources that will be used or sought to achieve goals;
- (5) Provide, where feasible, for technical assistance to assist the PHA in curing its deficiencies;
- (6) Identify an PHA staff person with lead responsibility for completing each goal;
- (7) Identify key tasks to reach each goal;
- (8) Specify time frames for achievement of each goal, including intermediate time frames to complete each key task;
- (9) Provide for regular evaluation of progress toward improvement;

(10) Provide for the reconsideration of the PHA's designation as a troubled PHA no less than annually, and provide for the termination of the agreement when HUD determines the PHA is no longer troubled;

(11) Provide that in the event of substantial noncompliance by the PHA under the agreement, HUD may (i) contract with another PHA or a private entity to administer the HCV program; and (ii) withhold funds otherwise distributable to the troubled PHA;

(12) Be signed by the PHA board of commissioners chairperson and by the PHA executive director. If the PHA is a unit of local government or a state, the corrective action plan must be signed by the Section 8 program director and by the chief executive officer of the unit of government or his or her designee.

(c) *Monitoring*. The PHA and HUD must monitor the PHA's implementation of its CAA to ensure performance targets are met.

(d) *Annual small rural assessment*. A troubled PHA shall be subject to the small rural assessment on an annual basis.

(e) *Use of administrative fee reserve prohibited*. Any PHA assigned designated troubled may not use any part of the administrative fee reserve for other housing purposes (see § 982.155(b) of this title).

(f) *Upgrading poor performance rating*. HUD shall change an PHA's overall performance rating from troubled to standard or high performer if HUD determines that a change in the rating is warranted because of improved PHA performance and a standard or high designation on a subsequent small rural PHA assessment.

(g) *Default under the Annual Contributions Contract (ACC)*. HUD may determine that a PHA's failure to correct identified deficiencies resulting from its small rural PHA assessment or to execute and implement a corrective action agreement as required by HUD constitutes a default under the ACC.

## **§ 985.211 Small rural PHA assessment records.**

HUD shall maintain small rural PHA assessment files, including designations, notifications, appeals, corrective action agreements, and related correspondence for at least 3 years.

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Brian D. Montgomery  
Deputy Secretary

**[Billing Code: 4210-67]**

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