

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 902

[Docket No. FR-4497-P-01]

RIN 2577-AC08

**Public Housing Assessment System
(PHAS) Amendments to the PHAS**

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, and Office of the Director of the Real Estate Assessment Center, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Public Housing Assessment System regulation at 24 CFR part 902 to provide additional information and revise certain procedures and establish others for the assessment of the physical condition, financial health, management operations and resident service and satisfaction in public housing, including the technical review of physical inspection results and appeals of PHAS scores. The rule would also implement certain recently enacted statutory amendments. The purpose of the Public Housing Assessment System is to function as a comprehensive management tool that effectively and fairly measures a PHA's performance based on standards that are objective, uniform and verifiable.

DATES: Comment Due Date: August 23, 1999.

ADDRESSES: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) responses are not acceptable. A copy of each response will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern Time at the above address).

FOR FURTHER INFORMATION CONTACT: For further information contact the Real Estate Assessment Center (REAC), Attention: Wanda Funk, U. S. Department of Housing and Urban Development, 1280 Maryland Avenue, SW, Suite 800, Washington DC, 20024; telephone Customer Service Center at (888)-245-4860 (this is a toll free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877-8339. Additional information is available from the REAC Internet Site,

<http://www.hud.gov/reac>. Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

On September 1, 1998 (63 FR 46596), HUD published a final rule, codified at 24 CFR part 902, that established a new system for the assessment of America's public housing. The new system, the Public Housing Assessment System (PHAS), is designed to enhance public trust by creating a comprehensive oversight tool that effectively and fairly measures a PHA based on standards that are objective and uniform. The PHAS becomes effective for all PHAs with fiscal years ending on and after September 30, 1999, and replaces the Public Housing Management Assessment Program (PHMAP). HUD's Real Estate Assessment Center (REAC) is charged with the responsibility for assessing and scoring the performance of PHAs under the PHAS.

Under the PHAS, HUD evaluates a PHA based on the following four indicators: (1) The physical condition of the PHA's public housing properties; (2) the PHA's financial condition; (3) the PHA's management operations; and (4) the residents' assessment (through a resident survey) of the PHA's performance. Each of the four PHAS indicators is assigned a maximum value as follows:

(1) Physical Condition—maximum 30 points: the PHA's score is based on the results of physical inspections of PHA properties performed by REAC contractors. The results are electronically transmitted to the REAC.

(2) Financial Condition—maximum 30 points: the PHA's score is initially based on unaudited financial information prepared in accordance with generally accepted accounting principles (GAAP) and electronically submitted by the PHA to the REAC. The PHA's submission is then audited by an Independent Public Accountant (IPA) and the audit results are electronically transmitted to the REAC, which reassesses the PHA's score based on the audit results. The financial condition of the PHA is assessed on its entire operations.

(3) Management Operations—maximum 30 points: the PHA's score is based on an electronic certification made by the PHA and verified by an IPA. This performance indicator uses six of the same indicators as the current Public Housing Management Assessment Program.

(4) Resident Service and Satisfaction—maximum 10 points: the PHA's score is based, in part, on responses to a resident survey managed by the PHA and collected by the REAC. The PHA's score is also based on the survey results, the PHA's level of implementation of the resident survey and the PHA's follow-up actions on survey results. Implementation and follow-up plans are in the form of an electronic certification made by the PHA. Follow-up plans may be verified by an IPA.

With respect to PHAS Indicators #2, #3 and #4, a PHA is required to electronically submit its year-end financial statements, and its management operations and resident service and satisfaction certifications, within two months after the end of its fiscal year. Information necessary to conduct the physical condition assessment will be obtained from HUD-contracted inspectors during the fiscal year being assessed and scored through electronic transmission of the data.

On the basis of these four indicators, HUD's REAC calculates a composite score for each PHA. The PHAS composite score represents a single score for a PHA's entire operation under the four indicators. The PHAS composite score will determine whether a PHA is performing well or is not performing well. The PHAS composite score is derived from the scores calculated for each of the four indicators. The composite PHAS score will be issued by the REAC for each PHA one month after the PHA submits its year-end financial data and certifications.

Adjustments to the PHAS score may be made after a PHA's audit report for the year being assessed is transmitted to the REAC. If material differences (as defined in GAAP guidance) are noted between the unaudited and audited results, a PHA's PHAS score will be adjusted in accordance with the audited results.

As provided in the PHAS final rule issued on September 1, 1998, a PHA will be scored with a corresponding designation of high performer, standard performer, or troubled performer, including troubled with respect to a PHA's performance under the modernization component under PHAS Indicator #3. (As discussed later in this preamble, the reference to modernization assistance is replaced with a reference to Capital Fund assistance.)

A PHA designated as troubled will be referred to the appropriate HUD office, including but not limited to, HUD's Office of Troubled Agency Recovery, for

oversight and remedial action. A PHA that does not correct identified deficiencies within a maximum of two years from the date that the PHA is designated as troubled will be referred to the Departmental Enforcement Center (DEC) for further action.

High performer PHAs will be eligible for various incentives. However, relief from any standard procedural requirement does not mean that a PHA is relieved from compliance with the provisions of Federal law and regulations and other handbook requirements.

This proposed rule would amend the PHAS regulation at 24 CFR part 902 to provide additional information, and revise certain procedures and establish others for the assessment of the physical condition, financial health, management operations and resident service and satisfaction indicators and for the technical review of physical inspection results, and appeals of PHAS scores.

II. Proposed Amendments to PHAS

Brief Overview

This rule would make the following amendments to the current PHAS rule at 24 CFR part 902:

(A) Revise the PHAS rule to reflect conforming changes made necessary by recently enacted statutory amendments.

(B) Reference a series of notices, published in the **Federal Register** on May 13, 1999, that describe the scoring process for each of the four PHAS Indicators, and describe the process for requesting and granting a technical review of physical inspection results, or appeal of an overall PHAS score.

(C) Add language, under PHAS Indicator #1, that would clarify that vacant units not under lease at the time of inspection will not be inspected.

(D) Modify the designation of "troubled" performer to provide a subdesignation or category that identifies the particular performance area (physical, financial, or management) in which a PHA is troubled.

A. Statutory Amendments Related to the PHAS

Sections 564 and 565 of the Quality Housing and Work Responsibility Act of 1998 (Pub.L. 105-276, 112 Stat. 2461, approved October 21, 1998) (Public Housing Reform Act) amend section 6(j) of the United States Housing Act of 1937 (1937 Act) (42 U.S.C. 1437d(j)), the statutory authority for assessment of public housing. This rule would revise the PHAS regulation at 24 CFR part 902 to incorporate these statutory amendments, as discussed in this Section III of the preamble.

Capital Fund Assistance Replaces Modernization Assistance. Section 564 makes conforming changes to the 6(j) references to modernization (mod) funding under section 14 of the 1937 Act by substituting "the Capital Fund under section 9(d)" for "section 14".

This rule makes the appropriate conforming changes in part 902 to replace the references to section 14 and modernization funding.

Utility Consumption Replaces Energy Consumption. The term "energy consumption" in the indicator at section 6(j)(1)(D) was statutorily changed to "utility consumption" and this rule amends part 902 to reflect this change.

Four New Indicators for Assessment of PHAs. Section 564 adds four new indicators for the evaluation of performance by public housing agencies.

(1) The first of these indicators requires an evaluation of the extent to which a public housing agency coordinates, promotes, or provides effective programs and activities to promote the economic self-sufficiency of public housing residents. This statutory amendment is addressed under PHAS Indicator #3, Management Operations, by including economic self-sufficiency grant goals in management sub-indicator #6, security and economic self-sufficiency. Economic self-sufficiency is assessed using comparable measurements as PHMAP Indicator #7, subcomponent (a) (see 24 CFR 901.40).

(2) The second new indicator requires an evaluation to the extent to which a public housing agency provides public housing residents with opportunities for involvement in the administration of public housing. The determination that residents are provided the opportunity for involvement in the administration of public housing is provided for under PHAS Indicator #4, Resident Service and Satisfaction. The resident survey includes questions that address the statutory amendment, including: (i) Involvement in a resident organization to determine the percentage of residents involved in a PHAS recognized resident organization, which is the primary vehicle of providing opportunities for involvement in the administration of public housing; (ii) issues communicated from a PHA to its resident population to determine whether a PHA communicates to its residents issues that are related to the administration of public housing; and (iii) the responsiveness of a PHA to resident input to determine whether a PHA acts upon the recommendations of residents regarding involvement in the administration of public housing after such communication has taken place. In

addition, a PHA's follow-up plan, if applicable, will specifically address a PHA's provision of opportunities for resident involvement in the administration of public housing.

(3) The third new indicator added by section 564 of the Public Housing Reform Act requires an assessment of the extent to which a public housing agency implements effective screening and eviction policies and other anticrime strategies; and coordinates with local government officials and residents in the project on implementation of such strategies. The effective policies and anticrime strategies portion of this statutory indicator has already been implemented on a discretionary basis in the security sub-indicator of PHAS Indicator #3, Management Operations. Component #1 of the security sub-indicator addresses this statutory requirement and provides for the maximum amount of points to a PHA that coordinates with local government officials and its residents on the implementation of anticrime strategies.

(4) The fourth indicator added by section 564 examines the extent to which the public housing agency is providing acceptable basic housing conditions. This indicator is given additional emphasis by a related requirement in the section 564 amendment to section 6(j) of the 1937 Act that provides that an agency "that fails on a widespread basis to provide acceptable basic housing conditions for its residents shall be designated as a troubled public housing." HUD construes "acceptable basic housing conditions" to be synonymous with the standards of decent, safe, sanitary and in good repair (DSS/GR). HUD also finds that the statutory amendment is consistent with HUD's existing PHAS regulation. Under PHAS, if an agency fails to receive a passing score under PHAS Indicator #1, Physical Condition, the agency is troubled.

Amendment to On-site, Independent Assessment Provision. Section 564 amends the 6(j) provision relating to on-site, independent assessments of PHAs by striking the narrow exception that such an assessment will not duplicate any "review conducted under section 14(p)" and replacing it with a broader exception that the assessment will not duplicate any "comparable and recent review". This amendment permits HUD to conduct these assessments through a greater variety of sources, including its HUBs and its Troubled Agency Recovery Centers (TARCs).

Review by Independent Auditor. The section 564 amendment provides in relevant part that:

To the extent that the Secretary determines such action to be necessary in order to ensure the accuracy of any certification made under this section, the Secretary shall require an independent auditor to review documentation or other information maintained by a public housing agency pursuant to this section to substantiate each certification submitted by the agency or corporation relating to the performance of that agency or corporation.

This section also provides that: "The Secretary may withhold, from assistance otherwise payable to the agency or corporation under section 9, amounts sufficient to pay for the reasonable costs of any review under this paragraph." Section 902.60 of the PHAS rule is amended to reference HUD's authority to require an independent auditor to review documentation or other information maintained by a PHA to substantiate a certification.

Resident Management Corporations. The final provision of section 564 addressed by this rule provides, that, "the Secretary shall apply the provisions of this subsection to resident management corporations in the same manner as applied to public housing agencies." This provision is already implemented in the PHAS, under which RMCs are scored for those functions which they contract to undertake.

Substantial Default. Section 565 of the Public Housing Reform Act makes extensive amendments to the substantial default provisions of section 6(j)(3) of the 1937 Act. These amendments, however, are consistent with the existing PHAS regulation, or provide additional options for HUD to take into account circumstances that constitute a substantial default, and require no further regulatory implementation by HUD. Section 565(d), titled "Implementation", specifically provides that, "The Secretary may administer the amendments made by subsection (a) as necessary to ensure the efficient and effective initial implementation of this section."

B. PHAS Scoring Process, Technical Review of Physical Inspection Results and PHAS Appeals

This proposed rule, as noted earlier, in this preamble, includes information about the PHAS scoring process for each of the four PHAS Indicators, and provides the procedures for requesting and granting a technical review of physical inspection results and PHAS appeals, generally. This information already was provided by HUD in notices published on May 13, 1999 (64 FR 26160; 64 FR 26166; 64 FR 26218; 64 FR 26222; 64 FR 26232; and 64 FR 26236). Four of these notices discussed in detail

the scoring process for each of the four PHAS Indicators, and the process for requesting and granting a technical review of physical inspection results and PHAS appeals.

This preamble does not repeat the information provided in these notices. They will be republished in the **Federal Register** of June 23, 1999. Any changes or clarifications to the May 13, 1999, notices will be identified in the individual notices published in that issue. The proposed regulatory text covers the technical review and appeal processes discussed in the May 13, 1999 notice.

C. No Inspection for Vacant Units Not Under Lease

This proposed rule clarifies that vacant units not under lease at the time of inspection will not be inspected under the PHAS. The categories of vacant units not under lease are as follows:

(1) Units undergoing vacant unit turnaround—vacant units that are in the routine process of turn over; i.e., the period between which one resident has vacated a unit and a new lease takes effect;

(2) Units undergoing rehabilitation—vacant units that have substantial rehabilitation needs already identified, and there is an approved implementation plan to address the identified rehabilitation needs and the plan is fully funded;

(3) Off-line units—vacant units that have repair requirements such that the units cannot be occupied in a normal period of time (considered to be between 5 and 7 days) and which are not included under an approved rehabilitation plan.

D. Identification of a PHA's Performance Problems

The proposed rule modifies the designation of "troubled" performer to identify the particular performance area (physical, financial, or management) in which a PHA is troubled. The proposed rule provides that a PHA that achieves less than 60 percent of the points under any one of three main PHAS Indicators (Indicator #1—Physical Condition; Indicator #2—Financial Condition; or Indicator #3—Management Operations) will be categorized as substandard physical, substandard financial, or substandard management performer.

III. Section-by-Section Overview of PHAS Amendments

For the convenience of the reader, the entire PHAS regulation is being published in this proposed rule, although not every section of the current

PHAS regulation is being amended. The publication of the entire rule allows the reader to see how the proposed amendments would appear in the codified regulation. HUD is seeking comment on the sections of the rule that are proposed to be amended. To assist the reader in identifying those sections of the existing PHAS regulations that are revised and the new sections that are being added, the following provides section-by-section overview of the amendments being proposed by this rule. If the section is not listed below, then this means that no changes are proposed to be made by HUD to the section.

Subpart A—General Provisions

Section 902.3 (Scope). Only a minor editorial change is made to this section. The last sentence which awkwardly begins with the words "PHAS' adherence" is changed to read "A PHA's adherence."

Section 902.7 (Definitions). This section is amended to revise the following definitions: *deficiency*, *improvement plan* and *work order deferred for modernization*. The following definitions are added to this section: *days* and *property*. The definition of "improvement plan" is revised to change "indicator" to "sub-indicator" and define the acronym "MOA." The definition of "work order deferred for modernization" is revised to replace the word "modernization" with "Capital Fund." Additionally, in this section, the references to numbers are spelled out (for example "3" becomes "three").

Subpart B—PHAS Indicator #1: Physical Condition

Section 902.20 (Physical Condition Assessment). This section is amended to include the section 564 language pertaining to "acceptable basic housing conditions" (paragraph a) and to clarify that this phrase is synonymous with HUD's physical condition standards of decent, safe, sanitary and in good repair. This section also is revised to exclude from physical condition assessment, vacant units not under lease at the time of physical inspection (paragraph b).

Section 902.23 (Physical Condition Standards for Public Housing—Decent, Safe, Sanitary and in Good Repair (DSS/GR)). This section is amended by dividing existing paragraph (a) into two paragraphs. New paragraph (b) lists the major inspectable areas of public housing. Existing paragraph (b) which references Appendix A to part 902 (Areas and Items to be Inspected) is removed. The areas and items to be

inspected are part of the Item Weights and Criticality Levels document, which is referenced in this part. Former paragraph (a)(6) which addresses health and safety concerns becomes new paragraph (c).

Section 902.24 (Physical Inspection of Properties). This new section is added.

Section 902.25 (Physical Condition Scoring and Thresholds). This section is amended to reference the scoring process described in the PHAS Notice on the Physical Condition Scoring Process. A new paragraph (c) is added to this section to define the overall PHA Physical Condition Indicator score. Former paragraph (c) on Thresholds becomes paragraph (d) and adds language that provides that if a PHA's physical condition score falls below a minimum threshold of 60 percent of the available points, the PHA shall be identified as a substandard physical agency. (As noted below, similar changes are made to §§ 902.33 and 902.45).

Section 902.26 (Physical Inspection Report). This new section is added.

Subpart C—PHAS Indicator #2: Financial Condition

Section 902.30 (Financial Condition Assessment). Paragraph (b) of this section is amended to cross-reference to the components of the PHAS Financial Indicator listed in § 902.33.

Section 902.33 (Financial Reporting Requirements). Paragraph (a) of this section is amended to reference the Financial Data Schedule (FDS). Paragraph (b) of this section is amended to provide that a PHA must submit its unaudited financial information to HUD two months after the end of the PHA's fiscal year. The PHA's audited financial information must be submitted within nine months of the end of the PHA's fiscal year. Additionally, the time periods designated in days were converted to months.

Section 902.35 (Financial Condition Scoring and Thresholds). Paragraph (a) of this section is amended to reference the scoring process described in the PHAS Notice of the Financial Condition Scoring Process. A new paragraph (b) is added to list the components of PHAS Indicator #2, which are currently listed in paragraph (a) of the existing regulation, and with the following revisions: "utility consumption" replaces "energy consumption"; and under the "Occupancy Loss" component, the phrase "non-occupancy of dwelling units" replaces "vacancy". Existing paragraph (b) on Thresholds becomes paragraph (c), and adds language concerning substandard financial agency.

Subpart D—PHAS Indicator #3: Management Operations

Section 902.40 (Management Operations Assessment). Paragraph (b) of this section is amended to remove the reference to inclusion of a non-statutory indicator (security). This indicator is now statutory.

Section 902.43 (Management Operations Performance Standards). Paragraph (a) of this section is amended to note that the components and grades for each sub-indicator of the Management Operations Indicator are the same as those for the corresponding indicator under PHMAP, unless otherwise noted in this section. The term "indicator" used throughout this section is replaced by "sub-indicator." Paragraph (a)(2) is amended to replace reference to modernization assistance with the Capital Fund. Paragraph (a)(6) is amended to reflect the new statutory indicators added by the Public Housing Reform Act.

Paragraph (b) of this section is amended to clarify that the reporting required under PHAS Indicator #3 is to be electronically submitted to HUD.

Section 902.45 (Management Operations Scoring and Thresholds). This section is revised to reference the PHAS Notice on the Management Operations Scoring Process. Paragraph (b) on Thresholds is revised to add the language concerning substandard management agency.

Subpart E—PHAS Indicator #4: Resident Service and Satisfaction

Section 902.50 (Resident Service and Satisfaction). The heading of paragraph (b) of this section is amended. A new paragraph (c) is added to clarify that the reporting required under PHAS Indicator #4 is to be electronically submitted to HUD.

Section 902.51 (Updating of Resident Information). This new section is added.

Section 902.52 (Distribution of Survey to Residents). This new section is added.

Section 902.53 (Resident Service and Satisfaction Scoring and Thresholds). Paragraph (a) is revised to organize the existing information in a more logical fashion. Additionally, a new paragraph (a)(2) is added to reference the PHAS Notice on the Resident Service and Satisfaction Scoring Process.

Subpart F—PHAS Scoring

Section 902.60 (Data Collection). This section is amended to change the references to days in this section to months (e.g. 60 days is changed to two months). In paragraph (e) of this section the reference to mod-troubled is

replaced by reference to troubled with respect to Capital Fund assistance. Paragraph (f) is amended to reflect HUD's authority to require an independent auditor to review documentation or other information maintained by a PHA to substantiate a certification.

Section 902.63 (PHAS Scoring). Paragraph (a) is revised to provide that a PHAS score will be issued for each PHA one month after a PHA submits its year-end financial data certifications, which replaces an issuance date of 60 to 90 days after the end of the PHA's fiscal year. Paragraph (d) of this section is revised to reference RMCs and AMEs.

Section 902.67 (Score and Designation Status). Paragraph (c) of this section is amended to include language concerning identification of the particular area in which a PHA is troubled (e.g., substandard physical, substandard financial, substandard management). A new paragraph (d) is added to provide that designations may be withheld under certain circumstances.

Section 902.68 (Technical Review of Results of PHAS Indicators #1 or #4). This new section is added.

Section 902.69 (PHA Right of Petition and Appeal). Paragraph (a) is revised to remove subparagraph (a)(2). A new paragraph (b) is added, and existing paragraphs (c) and (d) become part of paragraph (b).

Subpart G—PHAS Incentives and Remedies

Section 902.71 (Incentives for High Performers). Existing paragraph (a)(1) is subdivided into two paragraphs. Subparagraph (a)(1)(A) contains the information currently found in existing paragraph (a)(1). Subparagraph (a)(1)(B) provides relief for annual physical inspections for high scoring PHAs.

Section 902.73 (Referral to an Area HUB/Program Center). In paragraph (g) of this section, reference to remedies for substantial default is added.

Section 902.75 (Referral to a TARC). The introductory paragraph of this section is revised to provide that remedial action may include a determination of priority of needs and referral the HUD/Program Center. Paragraph (a) is revised to reflect that within 30 days of notification to a PHA of troubled designation, HUD, not necessarily the TARC, will take appropriate action. In paragraph (c)(6) the reference to mod-troubled is removed and replaced with reference to the new Capital Fund. Paragraph (d) is revised to reflect the new statutory language.

IV. Request for Comment

In addition to requesting public comment on this proposed rule, HUD is specifically requesting comment on the following:

(1) HUD seeks comment on the four scoring process notices (the Physical, Financial, Management and Resident Services and Satisfaction scoring process scoring notices) published elsewhere in this issue of the **Federal Register**;

(2) Although HUD proposes to inspect only occupied units, HUD is concerned that PHAs make appropriate efforts to have as many units on line and occupied as possible. For example, PHAs should be keeping units unoccupied for modernization or unit turnover for the minimum possible time. The rule addresses this concern to an extent in the PHAS finance and management indicators. HUD requests comments whether this concern should be addressed further, and seeks suggestions and recommendations on ways to do address this matter in the PHAS rule or elsewhere (e.g., other regulations).

(3) Although HUD has not proposed to penalize PHAs in the PHAS score for missing or inoperable smoke detectors because of the extent to which this may not be within a PHA's control, HUD is very concerned about this issue in view of the critical importance of fire prevention. Because of the safety risk presented by missing or inoperable smoke detectors, HUD is considering whether the PHAS rule should provide, at the final rule stage, some consequence to PHAs for missing or inoperable smoke detectors (particularly if the number is high), including possibly a reduction in a PHA's physical inspection score. HUD requests comments on this option, and solicits suggestions how the availability of working smoke detectors can be encouraged further, either in the PHAS rule or elsewhere.

(4) HUD requests comments on ways of improving the economic self-sufficiency sub-indicator so that it may be implemented more effectively, and specifically seeks comments on whether the sub-indicator is properly weighted and appropriately placed in the rule as part of management sub-indicator #6 (see § 902.43(a)(6)).

(5) HUD seeks comments on the consequences to PHAs of withholding designation as provided in new paragraph (d)(2) of § 902.67.

(6) HUD also requests comments on how PHAs should be assessed with respect to their responsibility to submit occupancy data to the Multifamily

Tenant Characteristics System (MTCS) in an accurate, complete and timely manner.

V. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements for the PHAS regulation at 24 CFR part 902 were approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2535-0106. This rule adds no new information collection requirements to that rule. 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 valid control number.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410-0500.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule will not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Review

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW, Washington, DC 20410.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule is not anticipated to have a significant economic impact on a substantial number of small entities. This rule revises HUD's existing regulations for the assessment of public housing at 24 CFR part 902, PHAS, to provide additional information on the PHAS scoring process and to revise certain procedures and establish others in accordance with recently enacted statutory requirements. The additional information and the revision of certain procedures impose no significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant economic 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 this preamble.

Federalism

The General Counsel, as the Designated Official under Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule is intended to promote good management practices by including, in HUD's relationship with PHAs, continuing review of PHAs' compliance with already existing requirements. The rule will not create any new significant requirements. As a result, the rule is not subject to review under the Order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for Public Housing is 14.850.

List of Subjects in 24 CFR Part 902

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

Accordingly, HUD proposes to revise part 902 of title 24 of the Code of Federal Regulations to read as follows:

PART 902—PUBLIC HOUSING ASSESSMENT SYSTEM

Subpart A—General Provisions

- Sec.
 902.1 Purpose and general description.
 902.3 Scope.
 902.5 Applicability.
 902.7 Definitions.

Subpart B—PHAS Indicator #1: Physical Condition

- 902.20 Physical condition assessment.
 902.23 Physical condition standards for public housing—decent, safe, sanitary and in good repair (DSS/GR).
 902.24 Physical inspection of PHA properties.
 902.25 Physical condition scoring and thresholds.
 902.26 Physical Inspection Report.
 902.27 Physical condition portion of total PHAS points.

Subpart C—PHAS Indicator #2: Financial Condition

- 902.30 Financial condition assessment.
 902.33 Financial reporting requirements.
 902.35 Financial condition scoring and thresholds.
 902.37 Financial condition portion of total PHAS points.

Subpart D—PHAS Indicator #3: Management Operations

- 902.40 Management operations assessment.
 902.43 Management operations performance standards.
 902.45 Management operations scoring and thresholds.
 902.47 Management operations portion of total PHAS points.

Subpart E—PHAS Indicator #4: Resident Service and Satisfaction

- 902.50 Resident service and satisfaction assessment.
 902.51 Updating of resident information.
 902.52 Distribution of survey to residents.
 902.53 Resident service and satisfaction scoring and thresholds.
 902.55 Resident service and satisfaction portion of total PHAS points.

Subpart F—PHAS Scoring

- 902.60 Data collection.
 902.63 PHAS scoring.
 902.67 Score and designation status.
 902.68 Technical review of results of PHAS Indicators #1 or #4.
 902.69 PHA right of petition and appeal.

Subpart G—PHAS Incentives and Remedies

- 902.71 Incentives for high performers.
 902.73 Referral to an Area HUB/Program Center.
 902.75 Referral to a TARC.
 902.77 Referral to the Departmental Enforcement Center.
 902.79 Substantial default.
 902.83 Interventions.
 902.85 Resident petitions for remedial action.

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

Subpart A—General Provisions

§ 902.1 Purpose and general description.

(a) *Purpose.* The purpose of the Public Housing Assessment System (PHAS) is to enhance trust in the public housing system among public housing agencies (PHAs), public housing residents, HUD and the general public by providing a comprehensive management tool for effectively and fairly measuring the performance of a public housing agency in essential housing operations, including rewards for high performers and consequences for poor performers.

(b) *Responsible office for PHAS assessments.* The Real Estate Assessment Center (REAC) is responsible for assessing and scoring the performance of PHAs.

(c) *PHAS indicators of a PHA's performance.* REAC will assess and score a PHA's performance based on the following four indicators:

(1) PHAS Indicator #1—the physical condition of a PHA's properties (addressed in subpart B of this part);

(2) PHAS Indicator #2—the financial condition of a PHA (addressed in subpart C of this part);

(3) PHAS Indicator #3—the management operations of a PHA (addressed in subpart D of this part); and

(4) PHAS Indicator #4—the resident service and satisfaction feedback on a PHA's operations (addressed in subpart E of this part).

(d) *Assessment tools.* REAC will make use of uniform and objective protocols for the physical inspection of properties and the financial assessment of the PHA, and will gather relevant data from the PHA on the Management Operations Indicator and the Resident Service and Satisfaction Indicator. On the basis of this data, REAC will assess and score the results, advise PHAs of their scores and identify low scoring and failing PHAs so that these PHAs will receive the appropriate attention and assistance.

(e) *Limitation of change of PHA's fiscal year.* To allow for a period of consistent assessment of the PHAS indicators, a PHA is not permitted to change its fiscal year for the first three full fiscal years following October 1, 1998.

§ 902.3 Scope.

The PHAS is a strategic measure of a PHA's essential housing operations. The PHAS, however, does not evaluate a PHA's compliance with or response to every Department-wide or program specific requirement or objective. Although not specifically referenced in this part, PHAs remain responsible for complying with such requirements as

fair housing and equal opportunity requirements, requirements under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and requirements of programs under which the PHA is receiving assistance. A PHA's adherence to these requirements will be monitored in accordance with the applicable program regulations and the PHA's annual contributions contract.

§ 902.5 Applicability.

(a) *PHAs, RMCs, AMEs.* (1) This part applies to PHAs, Resident Management Corporations (RMCs) and Alternate Management Entities (AMEs). The management assessment of an RMC/AME differs from that of a PHA. Because an RMC/AME enters into a contract with a PHA to perform specific management functions on a development-by-development or program basis, and because the scope of the management that is undertaken varies, not every indicator that applies to a PHA would be applicable to each RMC/AME.

(2) This part is applicable beginning October 1, 1999.

(b) *PHA ultimate responsible entity under ACC.* Due to the fact that the PHA and not the RMC/AME is ultimately responsible to HUD under the Annual Contributions Contract (ACC), the PHAS score of a PHA will be based on all of the developments covered by the ACC, including those with management operations assumed by an RMC or AME (pursuant to a court ordered receivership agreement, if applicable).

(c) *Assumption of management operations by AME.* When a PHA's management operations have been assumed by an AME:

(1) If the AME assumes only a portion of the PHA's management operations, the provisions of this part that apply to RMCs apply to the AME (pursuant to a court ordered receivership agreement, if applicable); or

(2) If the AME assumes all, or substantially all, of the PHA's management functions, the provisions of this part that apply to PHAs apply to the AME (pursuant to a court ordered receivership agreement, if applicable).

§ 902.7 Definitions.

As used in this part:
Adjustment for physical condition (project age) and neighborhood environment is a total of three additional points added to PHAS Indicator #1 (Physical Condition). The three additional points, however, shall not result in a total point value over the total points available for PHAS Indicator #1 (established in subpart B of this part).

Alternative management entity (AME) is a receiver, private contractor, private manager, or any other entity that is under contract with a PHA, or that is otherwise duly appointed or contracted (for example, by court order or agency action), to manage all or part of a PHA's operations. Depending upon the scope of PHA management functions assumed by the AME, in accordance with § 902.5(c), the AME is treated as a PHA or an RMC for purposes of this part and, as appropriate, the terms PHA and RMC include AME.

Assessed fiscal year is the PHA fiscal year that has been assessed under the PHAS.

Average number of days nonemergency work orders were active is calculated:

- (1) By dividing the total of—
 - (i) The number of days in the assessed fiscal year it takes to close active nonemergency work orders carried over from the previous fiscal year;
 - (ii) The number of days it takes to complete nonemergency work orders issued and closed during the assessed fiscal year; and
 - (iii) The number of days all active nonemergency work orders are open in the assessed fiscal year, but not completed;
- (2) By the total number of nonemergency work orders used in the calculation of paragraphs (1)(i), (ii) and (iii) of this definition.

Days in this part, unless otherwise specified refer to calendar days.

Days Receivable Outstanding is Tenant Receivables divided by Daily Tenant Revenue.

Deficiency means any PHAS score below 60 percent of the available points in any indicator, sub-indicator or component. (In the context of physical problem condition and physical inspection, deficiency refers to a physical condition and is defined for purposes of subpart B of this part in § 902.24)

Improvement plan is a document developed by a PHA, specifying the actions to be taken, including timetables, that shall be required to correct deficiencies identified under any of the sub-indicators and components within the indicator(s), identified as a result of the PHAS assessment when a Memorandum of Agreement (MOA) is not required.

Property is a project/development with a separate identifying project number.

Reduced actual vacancy rate within the previous three years is a comparison of the vacancy rate in the PHAS assessed fiscal year (the immediate past fiscal year) to the vacancy rate of that

fiscal year two years prior to the assessed fiscal year. It is calculated by subtracting the vacancy rate in the assessed fiscal year from the vacancy rate in the earlier year. If a PHA elects to certify to the reduction of the vacancy rate within the previous three years, the PHA shall retain justifying documentation to support its certification for HUD post review.

Reduced the average time nonemergency work orders were active during the previous three years is a comparison of the average time nonemergency work orders were active in the PHAS assessment year (the immediate past fiscal year) to the average time nonemergency work orders were active in that fiscal year two years prior to the assessment year. It is calculated by subtracting the average time nonemergency work orders were active in the PHAS assessment year from the average time nonemergency work orders were active in the earlier year. If a PHA elects to certify to the reduction of the average time nonemergency work orders were active during the previous three years, the PHA shall retain justifying documentation to support its certification for HUD post review.

Vacancy loss is vacant unit potential rent divided by gross potential rent.

Work order deferred to the Capital Fund Program is any work order that is combined with similar work items and completed within the current PHAS assessment year, or will be completed in the following year when there are less than three months remaining before the end of the PHA fiscal year from the time the work order was generated, under the PHA's Capital Fund program or other PHA capital improvements program.

Subpart B—PHAS Indicator #1: Physical Condition

§ 902.20 Physical condition assessment.

(a) *Objective.* The objective of the Physical Condition Indicator is to determine whether a PHA is meeting the standard of decent, safe, sanitary, and in good repair (DSS/GR), as this standard is defined in § 902.23 (a standard that provides acceptable basic housing conditions) and the level to which the PHA is maintaining its public housing in accordance with this standard.

(b) *Physical inspection under PHAS Indicator #1.* To achieve the objective of paragraph (a) of this section, REAC will provide for an independent physical inspection of a PHA's property or properties that includes, at minimum, a statistically valid sample of the units in the PHA's public housing portfolio to determine the extent of compliance with

the DSS/GR standard. All occupied units will be inspected. However, any vacant units not under lease at the time of the inspection will not be inspected. The categories of vacant units not under lease are as follows:

(1) Units undergoing vacant unit turnaround—vacant units that are in the routine process of turn over; i.e., the period between which one resident have vacated a unit and a new lease takes effect;

(2) Units undergoing rehabilitation—vacant units that have substantial rehabilitation needs already identified, and there is an approved implementation plan to address the identified rehabilitation needs and the plan is fully funded;

(3) Off-line units—vacant units that have repair requirements such that the units cannot be occupied in a normal period of time (considered to be between 5 and 7 days) and which are not included under an approved rehabilitation plan.

(c) *PHA physical inspection requirement.* The HUD-conducted physical inspections required by this part do not relieve the PHA of the responsibility to inspect public housing units as provided in section 6(j)(1) of the U.S. Housing Act of 1937 (42 U.S.C. 1437d(j)(1)), and § 902.43(a)(5).

(d) *Compliance with State and local codes.* The physical condition standards in this subpart do not supersede or preempt State and local building and maintenance codes with which the PHA's public housing must comply. PHAs must continue to adhere to these codes.

§ 902.23 Physical condition standards for public housing—decent, safe, and sanitary housing in good repair (DSS/GR).

(a) *General.* Public housing must be maintained in a manner that meets the physical condition standards set forth in this part in order to be considered decent, safe, sanitary and in good repair (standards that constitute acceptable basic housing conditions). These standards measure a PHA's performance in maintaining the major physical areas of public housing (paragraph (b) of this section). These standards also identify health and safety deficiencies that require correction (paragraph (c) of this section).

(b) *Major Inspectable Areas.* The five major inspectable areas of public housing are the following:

(1) *Site.* The site components, such as fencing and retaining walls, grounds, lighting, mailboxes/project signs, parking lots/driveways, play areas and equipment, refuse disposal, roads, storm drainage and walkways must be free of

health and safety hazards and be in good repair. The site must not be subject to material adverse conditions, such as abandoned vehicles, dangerous walks or steps, poor drainage, septic tank back-ups, sewer hazards, excess accumulations of trash, vermin or rodent infestation or fire hazards.

(2) *Building exterior.* Each building on the site must be structurally sound, secure, habitable, and in good repair. Each building's doors, fire escapes, foundations, lighting, roofs, walls, and windows, where applicable, must be free of health and safety hazards, operable, and in good repair.

(3) *Building systems.* Each building's domestic water, electrical system, elevators, emergency power, fire protection, HVAC, and sanitary system must be free of health and safety hazards, functionally adequate, operable, and in good repair.

(4) *Dwelling units.* (i) Each dwelling unit within a building must be structurally sound, habitable, and in good repair. All areas and aspects of the dwelling unit (for example, the unit's bathroom, call-for-aid, ceiling, doors, electrical systems, floors, hot water heater, HVAC (where individual units are provided), kitchen, lighting, outlets/switches, patio/porch/balcony, smoke detectors, stairs, walls, and windows) must be free of health and safety hazards, functionally adequate, operable, and in good repair.

(ii) Where applicable, the dwelling unit must have hot and cold running water, including an adequate source of potable water.

(iii) If the dwelling unit includes 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.

(iv) The dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit.

(5) *Common areas.* The common areas must be structurally sound, secure, and functionally adequate for the purposes intended. The basement/garage/carport, restrooms, closets, utility, mechanical, community rooms, day care, halls/corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony, and trash collection areas, if applicable, must be free of health and safety hazards, operable, and in good repair. All common area ceilings, doors, floors, HVAC, lighting, outlets/switches, smoke detectors, stairs, walls, and windows, to the extent applicable, must be free of health and safety hazards, operable, and in good repair.

(c) *Health and safety concerns.* All areas and components of the housing must be free of health and safety hazards. These areas include, but are not limited to, air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation, and lead-based paint. For example, the buildings must have fire exits that are not blocked and have hand rails that are undamaged and have no other observable deficiencies. The housing must have no evidence of infestation by rats, mice, or other vermin, or of garbage and debris. The housing must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold, odor (e.g., propane, natural gas, methane gas), or other observable deficiencies. The housing must comply with all regulations and requirements related to the ownership of pets, and the evaluation and reduction of lead-based paint hazards and have available proper certifications of such (see 24 CFR part 35).

§ 902.24 Physical inspection of PHA properties.

(a) *The inspection, generally.* The score for PHAS Indicator 11 is based upon an independent physical inspection of a PHA's properties provided by REAC and using HUD's uniform physical inspection protocols.

(1) During the physical inspection of a property, an inspector looks for deficiencies for each inspectable item within the inspectable areas, such as holes (deficiencies) in the walls (item) of a dwelling unit (area). The dwelling units inspected in a property are a randomly selected, statistically valid sample of the units in the property, excluding vacant units not under lease at the time of the physical inspection.

(2) To ensure prompt correction of health and safety deficiencies before leaving the site, the inspector gives the property representative the list of every observed exigent/fire safety health and safety deficiency that calls for immediate attention or remedy. The property representative acknowledges receipt of the deficiency report by signature.

(3) After the inspection is completed, the inspector transmits the results to REAC where the results are verified for accuracy and then scored in accordance with the procedures in this subpart.

(b) *Definitions.* The following definitions apply to the physical condition scoring process in this subpart:

Criticality means one of five levels that reflect the relative importance of the deficiencies for an inspectable item. (1) Based on the importance of the deficiency, reflected in its criticality value, points are deducted from the score for an inspectable area.

Criticality	Level
Critical	5
Very important	4
Important	3
Contributes	2
Slight contribution	1

(2) The Item Weights and Criticality Levels document lists all deficiencies with their designated levels, which vary from 1 to 5, with 5 as the most critical, and the point values assigned to them.

Deficiencies means the specific problems, comparable to Housing Quality Standards (HQS), such as a hole in a wall or a damaged refrigerator in the kitchen, that can be recorded for inspectable items.

Dictionary of Deficiency Definitions refers to the Dictionary of Deficiency Definitions document published as an appendix to the PHAS Notice on the Physical Condition Scoring Process that contains specific definitions of each severity level for deficiencies under this subpart. HUD will publish any significant proposed amendments to this document for comment. After comments have been considered HUD will publish a notice adopting the final Dictionary of Deficiency Definitions document or the amendments to the document.

Inspectable area (or area) means any of the five major components of the property that are inspected, which are: site; building exteriors; building systems; common areas; and dwelling units.

Inspectable item means the individual parts, such as walls, kitchens, bathrooms, and other things, to be inspected in an inspectable area. The number of inspectable items varies for each area. Weights are assigned to each item as shown in the Item Weights and Criticality Levels document.

Item Weights and Criticality Levels Document refers to the Item Weights and Criticality Levels document published as an appendix to the PHAS Notice on the Physical Condition Scoring Process that contains a listing of the inspectable items, item weights, observable deficiencies, criticality levels and values, and severity levels and values that apply to this subpart. HUD will publish any significant proposed amendments to this document for comment. After comments have been

considered HUD will publish a notice adopting the final Item Weights and Criticality Levels document or the amendments to the document.

Normalized weights mean weights adjusted to reflect the inspectable items or areas that are present to be inspected.

Score means a number on a scale of 0 to 100 that reflects the physical condition of a property, inspectable area, or sub-area. To record a health or safety deficiency, a specific designation (such as a letter—a, b, or c) is added to the property score that highlights that a health or safety deficiency (or deficiencies) exists. To note that smoke detectors are inoperable or missing, another designation (such as an asterisk (*)) is added to the property score. Although noted, inoperable or missing smoke detectors do not reduce the score.

Severity means one of three levels, severe, major or minor, that reflect the extent of the damage or problem associated with each deficiency. The Item Weights and Criticality Levels document shows the severity levels for each deficiency. Based on the severity of each deficiency, the score is reduced. Points deducted are calculated as the product of the item weight and the values for criticality and severity. For specific definitions of each severity level, see the REAC's "Dictionary of Deficiency Definitions".

Sub-area means an inspectable area for one building. For example, if a property has more than one building, each inspectable area for each building in the property is treated as a sub-area.

(c) *Compliance with Civil Rights/Nondiscrimination Requirements.* HUD will review certain elements during the physical inspection to determine possible indications of noncompliance with the Fair Housing Act (42 U.S.C. 3601–19) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). A PHA will not be scored on those elements. Any indication of possible noncompliance will be referred to HUD's Office of Fair Housing and Equal Opportunity.

(d) *HUD Access to PHA properties.* PHAs are required by the Annual Contributions Contract to provide the government with full and free access to all facilities contained in the project. PHAs are required to provide HUD or its representative with access to the project, all units and appurtenances thereto in order to permit physical inspections under this part. Access to the units must 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 will be given

"0" points for the project or projects involved which will be reflected in the physical condition and overall PHAS score.

§ 902.25 Physical condition scoring and thresholds.

(a) *Scoring.* Under PHAS Indicator #1, REAC will calculate a score for the overall condition of a PHA's public housing portfolio following the procedures described in the PHAS Notice on the Physical Condition Scoring Process, issued on [insert date of final rule]. HUD will publish any significant proposed amendments to this notice for comment. After comments have been considered, HUD will publish a notice adopting a final notice or amendment.

(b) *Adjustment for physical condition (property age) and neighborhood environment.* In accordance with section 6(j)(1)(I)(2) of the 1937 Act (42 U.S.C. 1437d(j)(1)(I)(2)), the overall physical score for a property will be upwardly adjusted to the extent that negative conditions are caused by situations outside the control of the PHA. These situations are related to the poor physical condition of the property or the overall depressed condition of the immediately surrounding neighborhood. The intent of this adjustment is to not unfairly penalize the PHA through appropriate application of the adjustment.

(1) *Adjustments in three areas.* Adjustments to the PHA physical property score will be made in three factually observed and assessed areas (inspectable areas):

- (i) Physical condition of the site;
- (ii) Physical condition of the common areas on the property; and
- (iii) Physical condition of the building exteriors.

(2) *Definitions.* Definitions and application of physical condition and neighborhood environment factors are:

- (i) Physical condition applies to properties over 10 years old and that have not received substantial rehabilitation in the last 10 years.
- (ii) Neighborhood environment applies to properties located where the immediate surrounding neighborhood (that is a majority of the population that resides in the census tracts or census block groups on all sides of the development) has at least 51 percent of families with incomes below the poverty rate as documented by the latest census data.

(3) Adjustment is for physical condition (property age) and neighborhood environment. HUD will adjust the physical score of a PHA's property subject to both the physical

condition (property age) and neighborhood environment conditions. The adjustments will be made to the scores assigned to the applicable inspectable areas so as to reflect the difficulty in managing. In each instance where the actual physical condition of the inspectable area (site, common areas, building exterior) is rated below the maximum score for that area, 1 point will be added, but not to exceed the maximum number of points available to that inspectable area.

(i) These extra points will be added to the score of the specific inspectable area, by property, to which these conditions may apply. A PHA is required to certify on form HUD-50072, PHAS Certification, the extent to which the conditions apply, and to the inspectable area the extra scoring point should be added.

(ii) A PHA that receives the maximum potential weighted points on the inspectable areas may not claim any additional adjustments for physical condition and/or neighborhood environments for the respective inspectable area(s). In no circumstance shall a PHA's score for the inspectable area, after any adjustment(s) for physical condition and/or neighborhood environments, exceed the maximum potential weighted points assigned to the respective inspectable area(s).

(4) *Scattered site properties.* The Date of Full Availability (DOFA) shall apply to scattered site properties, where the age of units and buildings vary, to determine whether the properties have received substantial rehabilitation within the past 10 years and are eligible for an adjusted score for the Physical Condition Indicator.

(5) *Maintenance of supporting documentation.* PHAs shall maintain supporting documentation to show how they arrived at the determination that the property's score is subject to adjustment under this section.

(i) If the basis was neighborhood environments, the PHA shall have on file the appropriate maps showing the census block groups surrounding the development(s) in question with supporting census data showing the level of poverty. Properties that fall into this category but which have already been removed from consideration for other reasons (permitted exemptions and modifications and/or exclusions) shall not be counted in this calculation.

(ii) For the physical condition factor, a PHA would have to maintain documentation showing the age and condition of the properties and the record of capital improvements, evidencing that these particular

properties have not received capital funds.

(iii) PHAs shall also document that in all cases, properties that were exempted for other reasons were not included in the calculation.

(c) *Overall PHA Physical Condition Indicator score.* The overall physical inspection score for a PHA is the weighted average of the PHA's individual property physical inspection scores, where the weights are the number of units in each property divided by the total number of units in all properties for the PHA.

(d) *Thresholds.* (1) The physical inspection score is reduced to a 30 point basis for the PHAS Physical Condition Indicator.

(2) In order to receive a passing score under the Physical Condition Indicator, the PHA's score must fall above a minimum threshold of 18 points or 60 percent of the available points under this indicator. If the PHA fails to receive a passing score on the Physical Condition Indicator, the PHA shall be categorized as a substandard physical agency.

§ 902.26 Physical Inspection Report.

(a) Following the physical inspection and computation of the score under this subpart, each PHA receives a Physical Inspection Report, which allows the PHA to see the magnitude of the points lost by inspectable area, and the impact on the score of the health and safety (H&S) deficiencies.

(b) The following items are listed in the Physical Inspection Report:

(1) Normalized weights as the "possible points" by area;

(2) The area scores, taking into account the points deducted for observed deficiencies;

(3) The H&S deductions for site, buildings and units, with H&S deductions for buildings combined for exteriors, systems and common areas; a listing of all observed smoke detector deficiencies; and a projection of the total number of H&S problems that the inspector potentially would see in an inspection of all buildings and all units; and

(4) The overall property score.

§ 902.27 Physical condition portion of total PHAS points.

Of the total 100 points available for a PHAS score, a PHA may receive up to 30 points based on the Physical Condition Indicator.

Subpart C—PHAS Indicator #2: Financial Condition

§ 902.30 Financial condition assessment.

(a) *Objective.* The objective of the Financial Condition Indicator is to measure the financial condition of a PHA for the purpose of evaluating whether it has sufficient financial resources and is capable of managing those financial resources effectively to support the provision of housing that is decent, safe, sanitary and in good repair.

(b) *Financial reporting standards.* A PHA's financial condition will be assessed under this indicator by measuring the PHA's entity-wide performance in each of the components listed in § 902.35, on the basis of the annual financial report provided in accordance with § 902.33.

§ 902.33 Financial reporting requirements.

(a) *Annual financial reports.* PHAs must submit their unaudited and audited financial data to HUD on an annual basis. The financial information must be:

(1) Prepared in accordance with Generally Accepted Accounting Principles (GAAP) as further defined by HUD in supplementary guidance; and

(2) Submitted electronically in the electronic format using the Financial Data Schedule (FDS).

(b) *Annual financial report filing dates.* The unaudited financial information to be submitted to HUD in accordance with paragraph (a) of this section, must be submitted to HUD annually, no later than two months after the end of the PHA's fiscal year for the reporting period. A PHA must submit its audited data using the FDS within nine months of the fiscal year end.

(c) *Reporting compliance dates.* The requirement for compliance with the financial reporting requirements of this section begins with PHAs with fiscal years ending September 30, 1999 and thereafter. Unaudited financial statements will be required two months after the PHA's fiscal year end, and audited financial statements will be required no later than 9 months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A-133 (see 24 CFR 84.26). A PHA with a fiscal year ending September 30, 1999 that elects to submit its unaudited report earlier than the due date of November 30, 1999 must submit its financial report as required in this section. On or after September 30, 1998, but prior to November 30, 1999 (except for a PHA with its fiscal year ending September 30, 1999), PHAs may submit their financial reports in accordance with this section.

§ 902.35 Financial condition scoring and thresholds.

(a) *Scoring.* Under PHAS Indicator #2, REAC will calculate a score based on the point values of financial condition components, as well as audit and internal control flags. Each financial condition component has several levels of performance, with different point values for each level. A PHA's score for a financial condition component depends upon both the level of the PHA's performance under a component, and the PHA's size, based on the number of public housing and section 8 units and other units the PHA operates. Under PHAS Indicator #2, the REAC will calculate a score following the procedures described in the PHAS Notice on the Financial Condition Scoring Process, issued on [insert date of final rule]. HUD will publish any significant proposed amendments to this notice for comment. After comments have been considered, HUD will publish a notice adopting a final notice or amendment.

(b) *Components of PHAS Indicator #2.* The components of PHAS Indicator #2 are:

(1) *Current Ratio* is current assets divided by current liabilities.

(2) *Number of Months Expendable Fund Balance* is the number of months a PHA can operate on the Expendable Fund Balance without additional resources. The Expendable Fund Balance is the portion of the fund balance representing expendable available financial resources, that is, the unreserved and undesignated fund balance.

(3) *Days Receivable Outstanding* is the average number of days tenant receivables are outstanding.

(4) *Occupancy Loss* is the loss of potential rent due to non-occupancy of dwelling units.

(5) *Net Income or Loss divided by the Expendable Fund Balance* measures how the year's operations have affected the PHA's viability.

(6) *Expense Management/Utility Consumption* is the expense per unit for key expenses, including utility consumption, and other expenses such as maintenance and security.

(c) *Thresholds.* (1) In order to receive a passing score under the Financial Condition Indicator, the PHA's score must fall above a minimum threshold of 18 points or 60 percent of the available points under this indicator. If the PHA fails to receive a passing score on the Financial Condition Indicator, the PHA shall be categorized as a substandard financial agency.

§ 902.37 Financial condition portion of total PHAS points.

Of the total 100 points available for a PHAS score, a PHA may receive up to 30 points based on the Financial Condition Indicator.

Subpart D—PHAS Indicator #3: Management Operations**§ 902.40 Management operations assessment.**

(a) *Objective.* The objective of the Management Operations Indicator is to measure certain key management operations and responsibilities of a PHA for the purpose of assessing the PHA's management operations capabilities.

(b) *Management assessment.* PHAS Indicator #3 pertaining to Management Operations incorporates the majority of the statutory indicators of section 6(j) of the U.S. Housing Act of 1937, as provided in § 902.43.

§ 902.43 Management operations performance standards.

(a) *Management operations sub-indicators.* The following sub-indicators listed in this section will be used to assess a PHA's management operations. The components and grades for each sub-indicator are the same as those for the corresponding indicator under the Public Housing Management Assessment Program (PHMAP) at 24 CFR part 901, except as may be otherwise noted in this subpart.

(1) *Management sub-indicator #—vacancy rate and unit turnaround time.* This management sub-indicator examines the vacancy rate, a PHA's progress in reducing vacancies, and unit turnaround time. Implicit in this management sub-indicator is the adequacy of the PHA's system to track the duration of vacancies and unit turnaround, including down time, make ready time, and lease up time.

(2) *Management sub-indicator #2—Capital Fund.* This management sub-indicator examines the amount and percentage of funds provided to the PHA from the Capital Fund under section 9(d) of the 1937 Act, which remain unobligated by the PHA after three years, the timeliness of fund obligation, the adequacy of contract administration, the quality of the physical work, and the adequacy of budget controls. For funding under the HOPE VI Program and the Vacancy Reduction Program, only components #3, #4, and #5 of this sub-indicator are applicable. This management sub-indicator is automatically excluded if the PHA does not have 9(d) capital funding.

(3) *Management sub-indicator #3—rents uncollected.* This management

sub-indicator examines the PHA's ability to collect dwelling rents owed by residents in possession during the immediate past fiscal year by measuring the balance of dwelling rents uncollected as a percentage of total dwelling rents to be collected.

(4) *Management sub-indicator #4—work orders.* This management sub-indicator examines the time it takes to complete or abate emergency work orders, the average number of days nonemergency work orders were active, and any progress a PHA has made during the preceding three years to reduce the period of time nonemergency maintenance work orders were active. Implicit in this management sub-indicator is the adequacy of the PHA's work order system in terms of how a PHA accounts for and controls its work orders, and its timeliness in preparing/issuing work orders.

(5) *Management sub-indicator #5—PHA annual inspection of units and systems.* This management sub-indicator examines the percentage of units that a PHA inspects on an annual basis in order to determine short-term maintenance needs and long-term Capital Fund needs. This management sub-indicator requires a PHA's inspection to utilize the HUD uniform physical condition standards set forth in subpart B of this part. All occupied units are required to be inspected.

(6) *Management sub-indicator #6—Security and Economic Self-Sufficiency.* (i) This management sub-indicator evaluates the PHA's performance in tracking crime related problems in their developments; reporting incidence of crime to local law enforcement agencies; the adoption and implementation, consistent with section 9 of the Housing Opportunity Program Extension Act of 1996 (One-Strike and You're Out) (42 U.S.C. 1437d(r)), of applicant screening and resident eviction policies and procedures, and other anticrime strategies; coordination with local government officials and residents in the project on implementation of such strategies; and as applicable, PHA performance under any HUD drug prevention/crime reduction/economic self-sufficiency grants.

(ii) Paragraph (a) of this section provides that the components and grades for each sub-indicator are the same as those for the corresponding indicator under PHMAP except as may be otherwise noted. Instead of using the Grade A description in Component #1, Tracking and Reporting Crime Related Problems, of PHMAP Indicator #8, Security, the following will be used to describe a Grade of A: The PHA Board, by resolution, has adopted policies and

the PHA has implemented procedures and can document that it:

(A) Tracks crime and crime-related problems in at least 90 percent of its developments;

(B) Has a cooperative system for tracking and reporting incidents of crime to local police authorities to improve law enforcement and crime prevention; and

(C) Coordinates with local government officials and its residents on the implementation of anticrime strategies.

(iii) The economic self-sufficiency sub-indicator measures the PHA's efforts to coordinate, promote or provide effective programs and activities to promote the economic self-sufficiency of residents. For this sub-indicator, PHAs will be assessed for all the programs that the PHA has HUD funding to implement. Also, PHAs will get credit for implementation of programs through partnerships with non-PHA providers, even if the programs are not funded by HUD or the PHA.

(b) *Reporting on performance under the Management Operations Indicator.* A PHA is required to electronically submit a certification of its performance under each of the management operations sub-indicators.

(1) If a PHA does not have this capability in-house, the PHA should consider utilizing local resources, such as the library or another local government entity that has internet access. In the event local resources are not available, a PHA may go to the nearest HUD Public and Indian Housing program office and assistance will be given to the PHA to transmit its management operations certification.

(2) If circumstances preclude a PHA from reporting electronically, HUD will consider granting approval to allow a PHA to submit its management operations certification manually. A PHA that seeks approval to submit its certification manually must ensure that the REAC receives a request for manual submission in writing 60 calendar days prior to the submission due date of its Management Operations certification. The written request must include the reasons why the PHA cannot submit its certification electronically. The REAC will respond to such a request and will manually forward its determination in writing to the PHA.

§ 902.45 Management operations scoring and thresholds.

(a) *Scoring.* The Management Operations Indicator score provides an assessment of each PHA's management effectiveness. Under PHAS Indicator #3,

REAC will calculate a score of the overall management operations of a PHA that reflects weights based on the relative importance of the individual management sub-indicators. Under PHAS Indicator #3, the REAC will calculate a score following the procedures described in the PHAS Notice on the Management Operations Scoring Process, issued on [insert date of final rule]. HUD will publish any significant proposed amendments to this notice for comment. After comments have been considered, HUD will publish a notice adopting a final notice or amendment.

(b) *Thresholds.* (1) In order to receive a passing score under the Management Operations Indicator, the PHA's score must fall above a minimum threshold of 18 points or 60 percent of the available points under this PHAS Indicator #3. If the PHA fails to receive a passing score on the Management Operations Indicator, the PHA shall be categorized as a substandard management agency.

§ 902.47 Management operations portion of total PHAS points.

Of the total 100 points available for a PHAS score, a PHA may receive up to 30 points based on the Management Operations Indicator.

Subpart E—PHAS Indicator #4: Resident Service and Satisfaction

§ 902.50 Resident service and satisfaction assessment.

(a) *Objective.* The objective of the Resident Service and Satisfaction Indicator is to measure the level of resident satisfaction with living conditions at the PHA.

(b) *Method of assessment, generally.* The assessment required under PHAS Indicator #4 will be performed through the use of a resident service and satisfaction survey. The survey process will be managed by the PHA in accordance with a methodology prescribed by HUD. The PHA will be responsible for developing a follow-up plan, if applicable, to address issues resulting from the survey, subject to independent audit.

(c) *PHA certification of completion of resident survey process.* At the completion of the resident survey process as described in this subpart, a PHA must certify that the resident survey process has been managed as directed by HUD. PHAs are required to electronically submit their resident service and satisfaction certification.

(1) If a PHA does not have this capability in-house, the PHA should consider utilizing local resources, such as the library or another local

government entity that has internet access.

(2) In the event local resources are not available, the PHA may go to the nearest HUD PIH program office and assistance will be given to the PHA to transmit its resident service and satisfaction certification.

(3) If circumstances preclude the PHA from reporting electronically, HUD will consider granting approval to allow a PHA to submit its resident service and satisfaction certification manually. A PHA that seeks approval to submit the certification manually must ensure that the REAC receives the PHA's written request for manual submission 60 calendar days before the submission due date of its resident service and satisfaction certification. The written request must include the reasons why the PHA cannot submit the certification electronically. The REAC will respond to the PHA's request and will manually forward its determination in writing to the PHA.

§ 902.51 Updating of resident information.

(a) *Electronic updating.* The scoring process for the Resident Service and Satisfaction Indicator is dependent upon electronic updating, submission and certification of resident and unit information by PHAs.

(b) *Unit address update and verification.* The scoring process for PHAS Indicator #4 begins with ensuring accurate information about the PHA's units.

(1) PHAs will be required to electronically update unit address information initially obtained by the REAC from the recently revised form HUD 50058, Family Report. The REAC will supply a list of current units (listed by development) to PHAs via the internet. PHAs will be asked to make additions, deletions and corrections to their unit address list.

(2) After updating the list, PHAs must verify that the list of unit addresses under their jurisdiction is complete. Any incorrect or obsolete address information will have a detrimental impact on the survey results. A statistically valid number of residents cannot be selected to participate in the survey if the unit addresses are incorrect or obsolete. If a PHA does not verify the address information within 30 calendar days of submission of the list of current units to the PHA by the REAC, and the address information is not valid, the REAC will not be able to conduct the survey at that PHA. Under those conditions, the PHA would not receive any points for the PHAS Resident Service and Satisfaction Indicator.

(c) *Electronic updating of the address list.* The preferred method for updating a unit address list is electronic updating.

(1) If a PHA does not have this capability in-house, the PHA should consider utilizing local resources, such as the library or another local government entity that has internet access.

(2) In the event local resources are not available, the PHA may go to the nearest HUD Public and Indian Housing (PIH) program office and assistance will be given to transmit the unit address information. The PIH office will assist the PHA in electronically updating and transmitting its unit address list to the REAC.

(3) If circumstances preclude a PHA from updating and submitting its unit address list electronically, HUD will consider granting approval to allow a PHA to submit the updated unit address list information manually. A PHA that seeks approval to update its unit address list manually must ensure that the REAC receives the PHA's written request for manual submission 30 calendar days before the submission due date. The written request must include the reasons why the PHA cannot update the list electronically. The REAC will respond to the PHA's request within 15 calendar days of receipt of the request.

§ 902.52 Distribution of survey to residents.

(a) *Sampling.* A statistically valid number of residents will be chosen to receive the Resident Service and Satisfaction survey. These residents will be randomly selected based on the total number of occupied and vacant units of the PHA. The Resident Service and Satisfaction assessment takes into account the different properties managed by a PHA by organizing the resident sampling based on the resident representation of each development in relation to the size of the entire PHA resident population.

(b) *Survey distribution by third party organization.* The Resident Service and Satisfaction survey will be distributed to the randomly selected sample of residents of each PHA by a third party organization designated by HUD. The third party organization will also be responsible for:

(1) Collecting, scanning and aggregating results of the survey;

(2) Transmitting the survey result to HUD for analysis and scoring; and

(3) Keeping individual responses to the survey confidential.

§ 902.53 Resident service and satisfaction scoring and thresholds.

(a) *Scoring.* (1) Under the PHAS Indicator #4, REAC will calculate a score based upon two components that receive points and a third component that is a threshold requirement.

(i) One component will be the point score of the survey results. The survey content will focus on resident evaluation of the overall living conditions, to include basic constructs such as:

(A) Maintenance and repair (i.e., work order response);

(B) Communications (i.e., perceived effectiveness);

(C) Safety (i.e., perception of personal security);

(D) Services (i.e., recreation and personal programs); and

(E) Neighborhood appearance.

(ii) The second component will be a point score based on the level of implementation and follow-up or corrective actions based on the results of the survey.

(iii) The final component, which is not scored for points, but which is a threshold requirement, is verification that the survey process was managed in a manner consistent with guidance provided by HUD.

(2) Under PHAS Indicator #4, the REAC will calculate a score following the procedures described in the PHAS Notice on the Resident Service and Satisfaction Scoring Process, issued on [insert date of final rule]. HUD will publish any significant proposed amendments to this notice for comment. After comments have been considered, HUD will publish a notice adopting a final notice or amendment.

(b) *Thresholds.* A PHA will not receive any points under PHAS Indicator #4 if the survey process is not managed as directed by HUD or the survey results are determined to be altered. A PHA will receive a passing score on the Resident Service and Satisfaction Indicator if the PHA receives at least 6 points, or 60 percent of the available points under this PHAS Indicator #4.

§ 902.55 Resident service and satisfaction portion of total PHAS points.

Of the total 100 points available for a PHAS score, a PHA may receive up to 10 points based on the Resident Service and Satisfaction Indicator.

Subpart F—PHAS Scoring**§ 902.60 Data collection.**

(a) *Fiscal Year Reporting Period—limitation on changes after PHAS effectiveness.* An assessed fiscal year for

purposes of the PHAS corresponds to a PHA's fiscal year. To allow for a period of consistent assessments to refine and make necessary adjustments to the PHAS, a PHA is not permitted to change its fiscal year for the first three full fiscal years following the effective date of this part (see § 902.1(e)).

(b) *Physical Condition information.* Information necessary to conduct the physical condition assessment under subpart B of this part will be obtained from HUD inspectors during the fiscal year being scored through electronic transmission of the data.

(c) *Financial Condition information.* Year-end financial information to conduct the assessment under subpart C, Financial Condition, of this part will be submitted by a PHA through electronic transmission of the data to HUD not later than two months after the end of the PHA's fiscal year. An audited report of the year-end financial information is due not later than 9 months after the end of the PHA's fiscal year.

(d) *Management Operations and Resident Service and Satisfaction Information.* A PHA shall provide certification to HUD as to data required under subpart D, Management Operations, of this part and subpart E, Resident Service and Satisfaction, of this part not later than two months after the end of the PHA's fiscal year.

(1) The certification shall be approved by PHA Board resolution, and signed and attested to by the Executive Director.

(2) PHAs shall maintain documentation for three years verifying all certified indicators for HUD on-site review.

(e) *Failure to submit data by due date.* If a PHA without a finding of good cause by HUD does not submit its certifications or year-end financial information, required by this part, or submits its certifications or year-end financial information more than 15 days past the due date, appropriate sanctions may be imposed, including a reduction of 1 point in the total PHAS score for each 15-day period past the due date. If all certifications or year-end financial information are not received within three months past the due date, the PHA will receive a presumptive rating of failure in all of the PHAS indicators, sub-indicators and components certified to, which shall result in a troubled designation or identification as troubled with respect to the program for assistance from the Capital Fund under section 9(d).

(f) *Verification of information submitted.* (1) A PHA's certifications, year-end financial information and any

supporting documentation are subject to verification by HUD at any time, including review by an independent auditor as authorized by 42 U.S.C. 1437(d)(j)(6). Appropriate sanctions for intentional false certification will be imposed, including civil penalties, suspension or debarment of the signatories, the loss of high performer designation, a lower score under individual PHAS indicators and a lower overall PHAS score.

(2) A PHA that cannot provide justifying documentation to REAC, or to the PHA's independent auditor for the assessment under any indicator(s), sub-indicator(s) and/or component(s) shall receive a score of 0 for the relevant indicator(s), sub-indicator(s) and/or component(s), and its overall PHAS score shall be lowered.

(3) A PHA's PHAS score under individual indicators, sub-indicators or components, or its overall PHAS score, may be changed by HUD pursuant to the data included in the independent audit report, or obtained through such sources as HUD on-site review, investigations by HUD's Office of Fair Housing and Equal Opportunity, or reinspection by REAC, as applicable.

(g) *Management operations assumed by an RMC.* For those developments of a PHA where management operations have been assumed by an RMC, the PHA's certification shall identify the development and the management functions assumed by the RMC. The PHA shall obtain a certified questionnaire from the RMC as to the management functions undertaken by the RMC. Following verification of the RMC's certification, the PHA shall submit the RMC's certified questionnaire along with its own. The RMC's certification shall be approved by its Executive Director or Chief Executive Officer or responsible party.

§ 902.63 PHAS scoring.

(a) *Issuance of score by HUD.* An overall PHAS score will be issued by REAC for each PHA one month after a PHA submits its year-end financial data and certifications.

(b) *Computing the PHAS score.* Each of the four PHAS indicators in this part will be scored individually, and then will be used to determine an overall score for the PHA. Components within each of the four PHAS indicators will be scored individually, and the scores for the components will be used to determine a single score for each of the PHAS indicators.

(c) *Adjustments to the PHAS score.* Adjustments to the score may be made after a PHA's audit report for the year being assessed is transmitted to HUD. If

significant differences (as defined in GAAP guidance materials provided to PHAs) are noted between unaudited and audited results, a PHA's PHAS score will be raised or lowered, as applicable, in accordance with the audited results.

(d) *Posting and publication of PHAS scores.* Each PHA (or RMC or AME as the case may be) shall post a notice of its final PHAS score and status in appropriate conspicuous and accessible locations in its offices within two weeks of receipt of its final score and status. In addition, HUD will publish every PHA's score and status in the **Federal Register**.

§ 902.67 Score and designation status.

Designation status corresponding to score. A PHA will be scored with a corresponding designation of status as follows:

(a) *High Performer.* A PHA that achieves a score of at least 60 percent of the points available under each of the four PHAS Indicators (addressed in subparts B through E of this part) and achieves an overall PHAS score of 90 percent or greater shall be designated a high performer. A PHA shall not be designated a high performer if it scores below the threshold established for any indicator. High performers will be afforded incentives that include relief from reporting and other requirements, as described in § 902.71.

(b) *Standard Performer.* A PHA that is not a high performer but achieves a total PHAS score of not less than 60 percent shall be designated a standard performer. All standard performers must correct reported deficiencies. A PHA that achieves a total PHAS score of less than 70 percent, but not less than 60 percent, is required by the HUB/Program Center to submit an Improvement Plan to correct identified deficiencies.

(c) *Troubled Performer.* (1) *Overall troubled PHAs.* A PHA that achieves an overall PHAS score of less than 60 percent or achieves less than 60 percent of the total points available under more than one of the following indicators, PHAS Indicators #1, #2, or #3, shall be designated as troubled (overall), and referred to the TARC as described in § 902.75.

(2) *Troubled in one area.* A PHA that achieves less than 60 percent of the total points available under one of the following indicators, PHAS Indicators #1, #2, or #3, shall be categorized as substandard physical, substandard financial, or substandard management performer, and referred to the TARC as described in § 902.75.

(d) *Withholding designation.* (1) In *exceptional circumstances*, even though a PHA has satisfied all of the PHAS

Indicators for high or standard performer designation, HUD may conduct any review as it may determine necessary, and may deny or rescind incentives or high or standard performer designation, in the case of a PHA that:

(i) Is operating under a special agreement with HUD;

(ii) Is involved in litigation that bears directly upon the physical, financial or management performance of a PHA;

(iii) Is operating under a court order;

(iv) 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

(v) 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 PHAS. Areas of substantial noncompliance include, but are not limited to, noncompliance with civil rights, nondiscrimination and fair housing laws and regulations, or the Annual Contributions Contract. Substantial noncompliance casts doubt on the capacity of a PHA to preserve and protect its public housing developments and operate them consistent with Federal laws and regulations.

(2) If high performer designation is denied or rescinded, the PHA shall be designated a standard performer. If standard performer designation is denied or rescinded, the PHA shall be designated troubled.

§ 902.68 Technical review of results of PHAS Indicator #1 or #4.

(a) *Request for technical reviews.* This section describes the process for requesting and granting technical reviews of physical inspection results and resident survey results.

(1) For both reviews, the burden of proof is on the PHA to show that an error occurred.

(2) For both reviews, a request for technical review must be submitted in writing to the Director of the Real Estate Assessment Center and must be received by REAC no later than 15 days following the issuance of the applicable results to the PHA (either the physical inspection results or the resident survey results). The request must be accompanied by the PHA's reasonable evidence that an error occurred.

(b) *Technical review of physical inspection results.* (1) For each property inspected, the REAC will provide the results of the physical inspection and a score for that property to the PHA. If the PHA believes that an objectively verifiable and material error (or errors) occurred in the inspection of an individual property, the PHA may request a technical review of the inspection results for that property.

(2) For a technical review of physical inspection results, the PHA's request must be accompanied by the PHA's evidence that an objectively verifiable and material error has occurred. The documentation submitted by the PHA may be photographic evidence, written material from an objective source, such as a local fire marshal or building code official, or other similar evidence. The evidence must be more than a disagreement with the inspector's observations, or the inspector's finding regarding the severity of the deficiency.

(3) A technical review of a property's physical inspection will not be conducted based on conditions that were corrected subsequent to the inspection, nor will the REAC consider a request for a technical review that is based on a challenge to the inspector's findings as to the severity of the deficiency (i.e., minor, major or severe).

(4) Upon receipt of a PHA's request for technical review of a property's inspection results, the REAC will review the PHA's file and any objectively verifiable evidence produced by the PHA. If the REAC's review determines that an objectively verifiable and material error (or errors) has been documented, then the REAC may take one or a combination of the following actions:

(i) Undertake a new inspection;

(ii) Correct the physical inspection report;

(iii) Issue a corrected physical condition score;

(iv) Issue a corrected PHAS score.

(5) In determining whether a new inspection of the property is warranted and a new PHAS score must be issued, the REAC will review the PHA's file and evidence submitted to determine whether the evidence supports that there may have been a significant contractor error in the inspection which results in a significant change from the property's original physical condition score and the PHAS designation assigned to the PHA (i.e., high performer, standard performer, or troubled). If the REAC determines that a new inspection is warranted, and the new inspection results in a significant change from the original physical condition score, and the PHA's PHAS

score and PHAS designation, the REAC shall issue a new PHAS score to the PHA.

(6) Material errors are the only grounds for technical review of physical inspection results. Material errors are those that exhibit specific characteristics and meet specific thresholds. The three types of material errors are:

(i) *Building data error.* A building data error occurs if the inspection includes 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 building data that does not affect the score, such as the address, building name, year built, etc., would not be considered material, but is of great interest to HUD and will be corrected upon notice to the REAC.

(ii) *Unit count error.* A unit count error occurs if the total number of units considered in scoring is incorrect. Since scoring uses total units, the REAC will examine instances where the participant can provide evidence that the total units used is incorrect.

(iii) *Non-existent deficiency error.* A non-existent deficiency error occurs if the inspection cites a deficiency that does not exist.

(7) A PHA's subsequent correction of deficiencies identified as a result of a property's physical inspection cannot serve as the basis for an appeal of the PHA's physical condition score.

(c) *Technical review of resident survey results.* The REAC will consider conducting a technical review of a PHA's resident survey results in cases where the contracted third party organization can be shown by the PHA to be in error.

(1) The burden of proof rests with the PHA to provide objectively verifiable evidence that a technical error occurred. Examples include, but are not limited to, incorrect material being mailed to residents; or the PHA's units addresses were incorrect due to the third party organization's error, such as unit numbers being omitted from the addresses. A PHA that does not update its unit address list as described, above, will not be eligible for a technical review based on incorrect addresses.

(2) Upon receipt of a PHA's request for technical review of a resident survey results, the REAC will review the PHA's file and evidence submitted by the PHA. If the REAC's review determines that an error has been documented, the REAC may take one or a combination of the following actions:

(i) Undertake a new survey;

(ii) Correct the resident survey results report;

(iii) Issue a corrected resident services and satisfaction score;

(iv) Issue a corrected PHAS score.

§ 902.69 PHA right of petition and appeal.

(a) *Petition for removal of troubled designation and appeal of refusal to remove troubled designation.* A PHA may:

(1) Petition for removal of troubled designation; and

(2) Appeal any refusal to remove such designation.

(b) *Appeal of PHAS score.* (1) If a PHA believes that an objectively verifiable and material error (or errors) exists in any of the scores for its PHAS Indicators, which, if corrected, will result in a significant change in the PHA's PHAS score and its designation (i.e., as troubled, standard, or high performer), the PHA may appeal its PHAS score. A significant change in a PHAS score is a change that would cause the PHA's PHAS score to increase, resulting in a higher PHAS designation for the PHA (i.e., from troubled performer to standard performer, or from standard performer to high performer).

(2) To request an appeal of its PHAS score, a PHA must submit its request in writing to the Director of the Real Estate Assessment Center and must be received by the REAC no later than 30 calendar days following the issuance of the PHAS score to the PHA. The request for appeal must be accompanied by the PHA's reasonable evidence that an objectively verifiable and material error occurred. The REAC will review the PHA's file and the evidence submitted by the PHA to support that an error occurred. If the REAC determines that an objectively verifiable and material error has been documented by the PHA, the REAC may undertake a new inspection of the property, and/or a reexamination of the financial information, management information, or resident information (the components of the PHAS score), depending upon which PHAS Indicator the PHA believes was scored erroneously and the type of evidence submitted by the PHA to support its position that an error occurred. An appeal submitted to the REAC without appropriate documentation will not be considered and will be returned to the PHA.

(3) *Consideration of appeal by REAC.* Upon receipt of an appeal from a PHA, the REAC will convene a Board of Review (the Board) to evaluate the appeal and its merits for the purpose of determining whether a reassessment of the PHA is warranted. Board membership will be comprised of a representative from REAC, the Office of

Public and Indian Housing, and such other office or representative as the Secretary may designate (excluding, however, representation from the Troubled Agency Recovery Center). For purposes of reassessment, the REAC will schedule a reinspection and/or acquire audit services, as determined by the Board, and a new score will be issued, if appropriate.

(4) *Final appeal decisions.* HUD will make final decisions of appeals within 30 days of receipt of an appeal, and may extend this period an additional 30 days if further inquiry is necessary. Failure by a PHA to submit requested information within the 30-day period or any additional period granted by HUD is grounds for denial of an appeal.

Subpart G—PHAS Incentives and Remedies

§ 902.71 Incentives for high performers.

(a) *Incentives for high-performer PHAs.* A PHA that is designated a high performer will be eligible for the following incentives:

(1) *Relief from specific HUD requirements.* (i) A PHA that is designated high performer will be relieved of specific HUD requirements (for example, fewer reviews and less monitoring), effective upon notification of high performer designation.

(ii) A PHA's project(s) that receives a physical inspection score of 90 percent or greater shall be subject to a physical inspection of that project(s) every other year rather than annually. For example, project A received a physical inspection score of 94 percent and project B received a physical inspection score of 78 percent. Project A will receive a physical inspection every other year and project B will receive a physical inspection annually.

(2) *Public recognition.* High-performer PHAs and RMCs that receive a score of at least 60 percent of the points available under each of the four PHAS Indicators and achieve an overall PHAS score of 90, will receive a Certificate of Commendation from HUD as well as special public recognition, as provided by the HUB/Program Center.

(3) *Bonus points in funding competitions.* A high-performer PHA will be eligible for bonus points in HUD's funding competitions, where such bonus points are not restricted by statute or regulation governing the funding program.

(b) *Compliance with applicable Federal laws and regulations.* Relief from any standard procedural requirement that may be provided under this section, does not mean that a PHA is relieved from compliance with the

provisions of Federal law and regulations or other handbook requirements. For example, although a high performer or standard performer may be relieved of requirements for prior HUD approval for certain types of contracts for services, the PHA must still comply with all other Federal and State requirements that remain in effect, such as those for competitive bidding or competitive negotiation (see 24 CFR 85.36).

(c) *Audits and reviews not relieved by designation.* A PHA designated as a high performer or standard performer remains subject to:

(1) Regular independent auditor (IA) audits.

(2) Office of Inspector General (OIG) audits or investigations will continue to be conducted as circumstances may warrant.

§ 902.73 Referral to an Area HUB/Program Center.

(a) Standard performers will be referred to the HUB/Program Center for appropriate action. A standard performer that receives a total score of less than 70 percent but not less than 60 percent shall be required to submit an Improvement Plan to eliminate deficiencies in the PHA's performance. A standard performer that receives a score of not less than 70 percent may be required, at the discretion of the appropriate area HUB/Program Center, to submit an Improvement Plan to address specific deficiencies.

(b) *Submission of an Improvement Plan.* (1) Within 30 days after a PHAS score is issued, a standard performer with a score less than 70 percent is required to submit an Improvement Plan, which includes the information stated in paragraph (d) of this section and determined acceptable by the HUB/Program Center, for each indicator, sub-indicator and/or component identified as deficient as well as other performance and/or compliance deficiencies as may be identified as a result of an on-site review of the PHA's operations. An RMC that is required to submit an Improvement Plan must develop the plan in consultation with its PHA and submit the Plan to the HUB/Program Center through its PHA.

(2) The HUB/Program Center may require, on a risk management basis, a standard performer with a score of not less than 70 percent to submit within 30 days after receipt of its PHAS score an Improvement Plan, which includes the information stated in paragraph (d) of this section, for each indicator, sub-indicator and/or component of a PHAS indicator identified as deficient.

(c) *Correction of deficiencies.* (1) *Time period for correction.* After a PHA's receipt of its PHAS score and designation as a standard performer or, in the case of an RMC, notification of its score from a PHA, a PHA or RMC shall correct any deficiency indicated in its assessment within 90 days, or within such period as provided in the HUD approved Improvement Plan if an Improvement Plan is required.

(2) *Notification and report to HUB/Program Center.* A PHA shall notify the HUB/Program Center of its action to correct a deficiency. A PHA shall also forward to the HUB/Program Center an RMC's report of its action to correct a deficiency.

(d) *Improvement Plan.* An Improvement Plan shall:

(1) Identify baseline data, which should be raw data but may be the PHA's score under each individual PHAS indicator, sub-indicator and/or component that was identified as a deficiency;

(2) Describe the procedures that will be followed to correct each deficiency;

(3) Provide a timetable for the correction of each deficiency; and

(4) Provide for or facilitate technical assistance to the PHA.

(e) *Determination of acceptability of Improvement Plan.* (1) The HUB/Program Center will approve or deny a PHA's (or RMC's) Improvement Plan submitted to the HUB/Program Center through the RMC's PHA, and notify the PHA of its decision. A PHA that submits an RMC's Improvement Plan must notify the RMC in writing, immediately upon receipt of the HUB/Program Center notification, of the HUB/Program Center approval or denial of the RMC's Improvement Plan.

(2) An Improvement Plan that is not approved will be returned to the PHA with recommendations from the HUB/Program Center for revising the Improvement Plan to obtain approval.

(f) *Submission of revised Improvement Plan.* A revised Improvement Plan shall be resubmitted by the PHA within 30 calendar days of its receipt of the HUB/Program Center recommendations.

(g) *Failure to submit acceptable Improvement Plan.* If a PHA fails to submit an acceptable Improvement Plan, or to correct deficiencies within the time specified in an Improvement Plan or such extensions as may be granted by HUD, the HUB/Program Center will notify the PHA of its noncompliance. The PHA (or the RMC through the PHA) will provide the HUB/Program Center its reasons for lack of progress in submitting or carrying out the Improvement Plan within 30

calendar days of its receipt of the noncompliance notification. HUD will advise the PHA as to the acceptability of its reasons for lack of progress and, if unacceptable, will notify the PHA that it will be referred to the area Troubled Agency Recovery Center (TARC) for remedial actions or such actions as the TARC may determine appropriate in accordance with the provisions of the ACC, this part and other HUD regulations, including the remedies available for substantial default. In the case of a PHA's failure to correct deficiencies within the time specified in an Improvement Plan or such extensions as may be granted by HUD, if the TARC determines that it is appropriate to refer the PHA to the Departmental Enforcement Center (DEC), it will only do so after the PHA has had one year since the issuance of the PHAS score (or, in the case of an RMC, notification of its score from a PHA) to correct its deficiencies.

§ 902.75 Referral to a Troubled Agency Recovery Center (TARC).

Upon a PHA's designation of troubled (including PHAs categorized as substandard), in accordance with the requirements of section 6(j)(2)(B) of the 1937 Act and in accordance with this part, the REAC shall refer each troubled PHA to the PHA's area TARC for remedial action, which may include a determination of priority of needs and referral to the HUB/Program Center. The actions to be taken by HUD and the PHA will include actions statutorily required, and such other actions as may be determined by HUD:

(a) *Recovery Plan and Memorandum of Agreement (MOA).* Within 30 days of notification of the designation of a troubled PHA, HUD will take action to develop a Recovery Plan or MOA. The Recovery Plan shall include recommendations for improvements to correct or eliminate deficiencies that resulted in a failing PHAS score and designation as troubled. The Recovery Plan will incorporate a MOA as described in paragraph (c) of this section.

(b) *PHA review of Recovery Plan and MOA.* The PHA will have 10 days to review the Recovery Plan and the MOA. During this 10-day period, the PHA shall resolve any claimed discrepancies in the Plan with HUD, and discuss any recommended changes and target dates for improvement to be incorporated in the final MOA. Unless the time period is extended by HUD, the MOA is to be executed 15 days following issuance of the preliminary MOA.

(c) *Memorandum of Agreement.* The final MOA is a binding contractual

agreement between HUD and a PHA. The scope of the MOA may vary depending upon the extent of the problems present in the PHA, but shall include:

(1) Baseline data, which should be raw data but may be the PHA's score in each of the PHAS indicators, sub-indicators or components identified as a deficiency;

(2) Annual and quarterly performance targets, which may be the attainment of a higher score within an indicator, sub-indicator or component that is a problem, or the description of a goal to be achieved;

(3) Strategies to be used by the PHA in achieving the performance targets within the time period of the MOA;

(4) Technical assistance to the PHA provided or facilitated by HUD, for example, the training of PHA employees in specific management areas or assistance in the resolution of outstanding HUD monitoring findings;

(5) The PHA's commitment to take all actions within its control to achieve the targets;

(6) Incentives for meeting such targets, such as the removal of troubled designation or troubled with respect to the program for assistance from the Capital Fund under section 9(d) and Departmental recognition for the most improved PHAs;

(7) The consequences of failing to meet the targets, including, but not limited to, such sanctions as the imposition of budget and management controls by HUD, declaration of substantial default and subsequent actions, including referral to the DEC for judicial appointment of a receiver, limited denial of participation, suspension, debarment, or other actions deemed appropriate by the DEC; and

(8) 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/tentative commitments of support, financial or otherwise.

(d) *Maximum recovery period.* (1) Upon the expiration of the one-year period beginning on the date on which the PHA receives initial notice of troubled designation or substandard

status, or October 21, 1998, whichever is later, the PHA shall improve its performance, as measured by the PHAS Indicators, by at least 50 percent of the difference between the most recent performance measurement and the measurement necessary to remove the PHA's designation as troubled or substandard status.

(2) Upon the expiration of the two-year period beginning on the later of the date on which the PHA receives initial notice of troubled or substandard status, or October 21, 1998, the PHA shall improve its performance and achieve an overall PHAS score of at least 60 percent, and/or achieve a score of at least 60 percent of the total points available under each PHAS Indicator.

(e) *Parties to the MOA.* An MOA 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;

(3) The Director of the area TARC; and

(4) The appointing authorities of the Board of Commissioners, unless exempted by the HUB/Program Center.

(f) *Involvement of resident leadership in the MOA.* HUD encourages the inclusion of the resident leadership in the execution of the MOA.

(g) *Failure to execute MOA or make substantial improvement under MOA.*

(1) If a troubled PHA does not execute a MOA within the period provided in paragraph (b) of this section, or the TARC determines that the PHA does not show a substantial improvement toward a passing PHAS score following the issuance of the failing PHAS score by the REAC, the TARC shall refer the PHA to the DEC, which shall initiate proceedings for judicial appointment of a receiver, and other sanctions as may be appropriate. For purposes of this paragraph (g), *substantial improvement* is defined as an increase of at least 50 percent of the points needed to achieve a passing PHAS score. The maximum period of time for remaining in troubled status before being referred to the DEC is two years.

(2) The following example illustrates the provisions of paragraph (g)(1) of this section:

Example: A PHA receives a score of 50 percent; 60 percent is a passing score. The PHA is referred to the TARC. Within one year after the score is issued to the PHA, the PHA must achieve a five-point increase to

continue recovery efforts in the TARC. If the PHA fails to achieve the five-point increase, the PHA will be referred to the DEC. The maximum period of time for remaining in troubled status before being referred to the DEC is two years.

(h) To the extent feasible, while a PHA is under a referral to a TARC, all services to residents will continue uninterrupted.

§ 902.77 Referral to the Departmental Enforcement Center.

(a) Failure of a troubled PHA to execute or meet the requirements of a memorandum of agreement in accordance with § 902.75 constitutes a substantial default in accordance with § 902.79 and shall result in referral to the DEC. The DEC is officially responsible for recommending to the Assistant Secretary for Public and Indian Housing that a troubled performer PHA be declared in substantial default. The DEC shall initiate the judicial appointment of a receiver or the interventions provided in § 902.83; and may initiate limited denial of participation, suspension, debarment, the imposition of other sanctions available to the DEC including referral to the appropriate Federal government agencies or offices for the imposition of civil or criminal sanctions.

(b) To the extent feasible, while a PHA is under a referral to the DEC, all services to residents will continue uninterrupted.

§ 902.79 Substantial default.

(a) *Events or conditions that constitute substantial default.* The following events or conditions shall constitute substantial default.

(1) HUD may determine that events have occurred or that conditions exist that constitute a substantial default if a PHA is determined to be in violation of Federal statutes, including but not limited to, the 1937 Act, or in violation of regulations implementing such statutory requirements, whether or not such violations would constitute a substantial breach or default under provisions of the relevant ACC.

(2) HUD may determine that a PHA's failure to satisfy the terms of a memorandum of agreement entered into in accordance with § 902.75, or to make reasonable progress to execute or meet requirements included in a memorandum of agreement, are events or conditions that constitute a substantial default.

(3) HUD shall determine that a PHA that has been designated as troubled and does not show substantial improvement, as defined in § 902.75(g), in its PHAS score in 1 year following issuance of the failed score is in substantial default.

(4) HUD may declare a substantial breach or default under the ACC, in accordance with its terms and conditions.

(5) HUD may determine that the events or conditions constituting a substantial default are limited to a portion of a PHA's public housing operations, designated either by program, by operational area, or by development(s).

(b) *Notification of substantial default and response.* If information from an annual assessment or audit, or any other credible source (including but not limited to the Office of Fair Housing Enforcement, the Office of the Inspector General, a judicial referral or a referral from a mayor or other official) indicates that there may exist events or conditions constituting a substantial breach or default, HUD shall advise a PHA of such information. HUD is authorized to protect the confidentiality of the source(s) of such information in appropriate cases. Before taking further action, except in cases of apparent fraud or criminality, and/or in cases where emergency conditions exist posing an imminent threat to the life, health, or safety of residents, HUD shall afford the PHA a timely opportunity to initiate corrective action, including the remedies and procedures available to PHAs designated as troubled PHAs, or to demonstrate that the information is incorrect.

(1) *Form of notification.* Upon a determination or finding that events have occurred or that conditions exist that constitute a substantial default, the Assistant Secretary shall provide written notification of such determination or finding to the affected PHA. Written notification shall be transmitted to the Executive Director, the Chairperson of the Board, and the appointing authority(ies) of the Board, and shall include, but is not limited to:

- (i) Identification of the specific covenants, conditions, and/or agreements under which the PHA is determined to be in noncompliance;
- (ii) Identification of the specific events, occurrences, or conditions that constitute the determined noncompliance;
- (iii) Citation of the communications and opportunities to effect remedies afforded pursuant to paragraph (a) of this section;
- (iv) Notification to the PHA of a specific time period, to be not less than 10 calendar days, except in cases of apparent fraud or other criminal behavior, and/or under emergency conditions as described in paragraph (a) of this section, nor more than 30 calendar days, during which the PHA

shall be required to demonstrate that the determination or finding is not substantively accurate; and

(v) Notification to the PHA that, absent a satisfactory response in accordance with paragraph (b) of this section, HUD will refer the PHA to the Enforcement Center, using any or all of the interventions specified in § 902.83, and determined to be appropriate to remedy the noncompliance, citing § 902.83, and any additional authority for such action.

(2) *Receipt of notification.* Upon receipt of the notification described in paragraph (b)(1) of this section, the PHA must demonstrate, within the time period permitted in the notification, factual error in HUD's description of events, occurrences, or conditions, or show that the events, occurrences, or conditions do not constitute noncompliance with the statute, regulation, or covenants or conditions to which the PHA is cited in the notification.

(3) *Waiver of notification.* A PHA may waive, in writing, receipt of explicit notice from HUD as to a finding of substantial default, and voluntarily consent to a determination of substantial default. The PHA must concur on the existence of substantial default conditions which can be remedied by technical assistance, and the PHA shall provide HUD with written assurances that all deficiencies will be addressed by the PHA. HUD will then immediately proceed with interventions as provided in § 902.83.

(4) *Emergency situations.* In any situation determined to be an emergency, or in any case where the events or conditions precipitating the intervention are determined to be the result of criminal or fraudulent activity, the Secretary or the Secretary's designee is authorized to intercede to protect the residents' and HUD's interests by causing the proposed interventions to be implemented without further appeals or delays.

§ 902.83 Interventions.

(a) Interventions under this part (including an assumption of operating responsibilities) may be limited to one or more of a PHA's specific operational areas (e.g., maintenance, modernization, occupancy, or financial management) or to a single development or a group of developments. Under this limited intervention procedure, HUD could select, or participate in the selection of, an AME to assume management responsibility for a specific development, a group of developments in a geographical area, or a specific operational area, while permitting the

PHA to retain responsibility for all programs, operational areas, and developments not so designated.

(b) Upon determining that a substantial default exists under this part, HUD may initiate any interventions deemed necessary to maintain decent, safe, and sanitary dwellings for residents. Such intervention may include:

- (1) Providing technical assistance for existing PHA management staff;
- (2) Selecting or participating in the selection of an AME to provide technical assistance or other services up to and including contract management of all or any part of the public housing developments administered by a PHA;
- (3) Assuming possession and operational responsibility for all or any part of the public housing administered by a PHA;
- (4) Entering into agreements, arrangements, and/or contracts for or on behalf of a PHA, or acting as the PHA, and expending or authorizing the expenditure of PHA funds, irrespective of the source of such funds, to remedy the events or conditions constituting the substantial default;
- (5) The provision of intervention and assistance necessary to remedy emergency conditions;
- (6) After the solicitation of competitive proposals, select an administrative receiver to manage and operate all or part of the PHA's housing; and
- (7) Petition for the appointment of a receiver to any District Court of the United States or any court of the State in which real property of the PHA is located.

(c) The receiver is to conduct the affairs of the PHA in a manner consistent with statutory, regulatory, and contractual obligations of the PHA and in accordance with such additional terms and conditions that the court may provide.

(d) The appointment of a receiver pursuant to this section may be terminated upon the petition of any party, when the court determines that all defaults have been cured or the public housing agency is capable again of discharging its duties.

(e) HUD may take the actions described in this part sequentially or simultaneously in any combination.

§ 902.85 Resident petitions for remedial action.

The total number of residents that petition HUD to take remedial action pursuant to sections 6(j)(3)(A)(i) through (iv) of the 1937 Act must equal at least 20 percent of the residents, or the petition must be from an organization or

organizations of residents whose membership must equal at least 20 percent of the PHA's residents.

Dated: June 15, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

Donald J. LaVoy,

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[FR Doc. 99-15735 Filed 6-21-99; 8:45 am]

BILLING CODE 4210-33-P