

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

24 CFR Parts 5, 207, 266, 880, 881, 882, 883, 884, 886, 891, 965, and 983

[Docket No. FR-4280-F-03]

RIN 2501-AC45

**Uniform Physical Condition Standards and Physical Inspection Requirements for Certain HUD Housing**

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Final rule.

**SUMMARY:** This rule makes final a June 30, 1998 proposed rule that proposed to establish for housing insured and/or assisted under certain HUD programs uniform physical condition standards. These standards are intended to ensure that such housing is decent, safe, sanitary and in good repair. To the extent possible, HUD believes that its Section 8 housing, public housing, HUD-insured multifamily housing, and other HUD assisted housing (collectively, HUD housing) should be subject to uniform physical standards. Additionally, to the extent feasible, HUD believes that the physical inspection procedures by which the standards will be assessed should be uniform in the covered programs. Therefore, this rule amends HUD's regulations to require that certain HUD housing, as defined in this rule, must meet uniform physical condition standards to ensure that the HUD housing is decent, safe, sanitary and in good repair. This rule also generally establishes new physical inspection procedures that will allow HUD to determine conformity with such standards. This rule does not change the requirement for annual physical inspections currently found in the covered HUD programs. Additionally, this rule does not affect the existing requirements in each covered HUD program regarding which entity is responsible for conducting the physical inspection. This rule takes into consideration public comment received on the June 30, 1998 proposed rule.

**EFFECTIVE DATE:** October 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact the Real Estate Assessment Center, Attention: William Thorson, Director of Physical Inspection Management, Department of Housing and Urban Development, 4900 L'Enfant Plaza East, SW, Room 8204, Washington, DC 20410; telephone (202) 755-0102. Persons with hearing and speech impairments may contact the Center via TTY by calling the Federal

Information Relay Service at (800) 877-8399.

**SUPPLEMENTARY INFORMATION:**

**I. The Proposed Rule**

On June 30, 1998 (63 FR 35650), HUD published a proposed rule that would establish for housing insured and/or assisted under certain HUD programs uniform physical condition standards. HUD proposed the standards in the June 30, 1998 proposed rule in an attempt to ensure that such housing is decent, safe, sanitary and in good repair. HUD's Section 8 housing, public housing, HUD-insured multifamily housing, and other HUD assisted housing (collectively, HUD housing) must meet certain standards and must undergo an annual physical inspection to determine that the housing qualifies as decent, safe, sanitary and in good repair. The description or components of what would constitute acceptable physical housing quality and the physical inspection procedures by which the standards are determined to be met, however, varied from HUD program to HUD program. To the extent possible, HUD believes that housing assisted under its programs should be subject to uniform physical standards, regardless of the source of the subsidy or assistance. Additionally, to the extent feasible, HUD believes that the physical inspection procedures by which the standards will be assessed should be uniform in the covered programs.

*Proposed Standards and Inspection Process*

HUD proposed that certain HUD housing, as defined in the rule, must meet uniform physical condition standards to ensure that the HUD housing is decent, safe, sanitary and in good repair. The proposed rule also generally described new physical inspection procedures that would allow HUD to determine conformity with such standards. HUD proposed the standards and inspection process to achieve three significant objectives:

- (1) Consistency in physical condition standards for HUD housing;
  - (2) Standardization of the inspection to be undertaken to determine compliance with the standards; and
  - (3) Implementation of an electronically-based inspection system to evaluate, rate, and rank the physical condition of HUD housing objectively.
- In proposing uniform physical condition standards, HUD did not propose to alter the statutory standard for maintaining HUD housing. Instead, the proposed rule, by using the statutory terminology, clearly acknowledged that the physical condition of the housing

that is to be met is one of "decent, safe, and sanitary." Furthermore, the rule did not propose to change the preexisting requirement for annual physical inspections currently found in the covered HUD programs, nor did it propose to affect the preexisting requirements in each covered HUD program regarding which entity is responsible for conducting the physical inspection.

*Covered Programs*

HUD proposed to apply the new physical condition standards to housing insured and/or assisted by HUD under the following programs:

1. Section 8 Project-Based and Other Assisted Housing
  - Section 8 Project-Based Assistance, including the Section 8 New Construction, Substantial Rehabilitation, Loan Management Set-Aside, Property Disposition, Moderate Rehabilitation (including the Single Room Occupancy program for homeless individuals), and project-based Certificate programs;
  - Section 202 Program of Supportive Housing for the Elderly;
  - Section 811 Program of Supportive Housing for Persons with Disabilities; and
  - Section 202 Program of Supportive Housing for the Elderly;
  - Section 811 Program of Supportive Housing for Persons with Disabilities; and
  - Section 202 Loan Program for Projects for the Elderly and Handicapped (including 202/8 projects and 202/162 projects).
2. Federal Housing Administration (FHA) Multifamily Housing
  - HUD also proposed to apply the standards to multifamily housing with mortgages insured or held by HUD, or housing that is receiving assistance from HUD, under the following authorities:
    - Section 207 of the National Housing Act (NHA) (12 U.S.C. 1701 *et seq.*) (Rental Housing Insurance);
    - Section 213 of the NHA (Cooperative Housing Insurance);
    - Section 220 of the NHA (Rehabilitation and Neighborhood Conservation Housing Insurance);
    - Section 221(d)(3) and (5) of the NHA (Housing for Moderate Income and Displaced Families);
    - Section 221(d)(4) of the NHA (Housing for Moderate Income and Displaced Families);
    - Section 231 of the NHA (Housing for Elderly Persons);
    - Section 232 of the NHA (Mortgage Insurance for Nursing Homes,

Intermediate Care Facilities, Board and Care Homes);

- Section 234(d) of the NHA (Rental (Mortgage Insurance for Condominiums);
- Section 236 of the NHA (Rental and Cooperative Housing for Lower Income Families);
- Section 241 of the NHA (Supplemental Loans for Multifamily Projects); and
- Section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) (Housing Finance Agency Risk Sharing Program).

### 3. Public Housing

- Housing receiving assistance under the U.S. Housing Act of 1937, other than under section 8 of the Act (e.g., housing receiving assistance under sections 5, 9, and 14 of the Act).

The proposed standards would address six major areas of the HUD housing:

- (1) Site;
- (2) Building exterior;
- (3) Building systems;
- (4) Dwelling units;
- (5) Common areas; and
- (6) Health and safety.

## II. Changes at the Final Rule Stage

HUD has made one change at the final rule stage in response to implementation concerns about the new inspection protocol. HUD will not require entities covered by this rule to conduct inspections in accordance with the uniform physical condition standards and procedures until HUD issues the final version of the inspection software and accompanying guidebook. When these two items have been issued, HUD will publish a notice in the **Federal Register** to inform the public when the software and guidebook are available. The notice will provide 30 days within which covered entities must prepare to conduct inspections in accordance with this rule. Until the date that is 30 days after HUD publishes the notice, any entity responsible for conducting a physical inspection of HUD housing, to determine compliance with the uniform physical condition standards in § 5.703 of this rule, must continue to comply with inspection requirements in effect immediately prior to that date. The standards in § 5.703 will become effective on the effective date of this final rule, however, so that owners and mortgagors of HUD housing will begin to bring such housing into compliance with those standards.

## III. Discussion of Public Comments

The initial deadline for the receipt of public comments on the proposed uniform physical condition standards and inspection requirements was July 30, 1998. HUD published a notice extending the deadline for public comments until August 13, 1998 (63 FR 41754). HUD received 77 comments on the proposed rule.

### A. Qualified Support

Many commenters expressed support for HUD's goals of ensuring the quality of housing, and streamlining and unifying its physical condition standards and physical inspection requirements. One commenter remarked that the new physical inspection system should help improve the image of housing authorities, and should help identify both the high performers and those in need of HUD intervention. The commenter also remarked favorably on the thoroughness of the inspections and the emphasis on safety. Another commenter remarked that the uniform physical condition standards would assist in promoting and strengthening a nationwide partnership of public and private institutions. That commenter also supported the electronic reporting of inspection information. The commenters who expressed support for the new standards, however, expressed certain reservations about the proposal, as discussed below.

### B. General Comments on the Proposed Rule

The Public Comment Period for the Rule Was Not Sufficient. Several commenters responded that a 30-day comment period for the proposed rule was insufficient. The commenters stated that 30 days is inadequate for a rule that addresses such critically important responsibilities of housing providers.

The public comment period for this rule was extended through August 13, 1998 in response to commenters' requests. Additionally, this rule does not impose new or significantly different requirements on the owners and managers of HUD housing with respect to the maintenance of HUD insured or assisted properties. This rule does not alter the statutory standard for the maintenance of HUD housing, nor the requirement to conduct annual property inspections. This rule more clearly describes that statutory standard and makes that definition consistent across HUD's applicable programs. The rule also sets forth an inspection protocol that will be more objective and effective in producing a higher quality assessment of the housing.

Before publication of the June 30, 1998 proposed rule, HUD sought and obtained the participation of its program participants, industry leaders, and industry experts with the development of: (1) physical condition standards that are appropriate, uniform, and consistent; and (2) an inspection protocol that is objective to the greatest degree possible. HUD received valuable input, suggestions, and recommendations from all these parties, as well as considerable support for replacing vague and inconsistent standards and inspection procedures with standards and a process that identifies housing deficiencies that make HUD housing substandard. HUD also involved some program participants in its testing of proposed inspection protocol. Given the importance of this mission—providing HUD housing that is decent, safe, and sanitary and in good repair—it is important for HUD and the Real Estate Assessment Center to move forward with this rulemaking with deliberate speed. While most housing developments that are assisted or insured by HUD are maintained in good physical condition, some developments are in deplorable condition and may even be unsafe or unhealthy. HUD must seek to ensure that all HUD housing is decent, safe, and sanitary as expeditiously as possible. Therefore, in light of the involvement of program participants, the degree of changes to the physical maintenance and inspection requirements, and the important benefits to be achieved in the implementation of the new inspection system, HUD believes that the comment period was adequate.

### The Rule Needs to Provide Additional Information About the Physical Inspection Standards and Protocol

Many commenters remarked that the proposed rule was too vague and uninformative. Specific areas about which commenters asked for additional details included how the inspection will be conducted; what due process procedures HUD will provide for disputing scores, correcting errors in reports, and enforcement; how scores will be calculated; and how HUD will determine a statistically valid sample of units.

The preamble to the proposed rule generally described the new inspection protocol and the procedures by which the inspection would be conducted. It has been HUD's practice to date, with the agreement and support of its program participants, and consistent with Administrative Procedure Act principles, that the lengthy details of an

inspection process, and the multiple examples of deficiencies (e.g., when the various types of electrical systems, heating systems, and ventilation systems may be found to be seriously defective or in disrepair) are provided through guidebooks, handbooks, and other supplementary materials. Unlike the Code of Federal Regulations, which is updated only annually, such guidance materials are easier for program participants and other interested parties to obtain, and can be easily and quickly supplemented as need may arise with charts and additional examples. HUD followed this practice of providing more detailed information through HUD handbooks with its Housing Quality Standards (HQS) and with its FHA multifamily housing program participants. (See, e.g., HUD Handbook 4350.5 and Form HUD-9602 for HQS/contract administrator inspections; HUD Handbook 7420.7 for PHA HQS inspections; HUD Handbook 4350.4 and Form HUD-9822 for FHA multifamily housing mortgagee inspections.) HUD will continue to follow this practice with the uniform physical condition standards. Handbooks and other supplementary materials are the best vehicles to provide its program participants with the materials that they need to serve as guidance for the standards and inspection protocols. The following, however, provides additional information on how HUD intends for the inspections to be conducted under this new protocol.

All inspectors must be trained and certified in the use of HUD's software. As an inspector prepares to inspect a property, the HUD-certified inspector will download property profile information from HUD databases. The inspector will arrive at the site to be inspected at the predetermined date and time. The inspector will meet with a representative of the owner/management agent or housing authority (HA), who must accompany the inspector throughout the inspection. As described in the proposed rule, the inspector will conduct the inspection using a portable computer and HUD software, which will prompt the inspector to make necessary observations regarding the condition of the property. The inspector will inspect a randomly selected, statistically valid sample of the units in the project. Neither the inspector nor the owner will know exactly which units will be inspected until the time of the inspection. The statistically valid sample is generated by the software based on a determination of the number and configuration of the dwelling units

on the property, with a high degree of confidence (95 percent) and a low margin for error (plus or minus approximately 2 or 3 percentage points).

If the inspection results in the identification of any life threatening health or safety deficiencies (e.g., electrical hazards, blocked emergency exits, inoperative or missing smoke detectors), the inspector will immediately note such deficiencies on a form, require the owner or HA representative to sign the form, and leave a copy of the form on site with the representative. The inspector will then immediately transmit the form to the Real Estate Assessment Center (REAC). All of the data obtained during the inspection will be electronically transferred to the REAC, which will perform quality assurance measures on the raw data (e.g., to ensure that the data transmission was complete, to verify certain information about the development, etc.). The REAC will then score the data and make an inspection report available electronically via a HUD Web page to the owner or HA, as well as to HUD's relevant field office. HUD expects that the inspection report will be made available very quickly—optimally within 48 hours of the inspection. HUD field offices will review the results and work with the owner to ensure the timely correction of any deficiencies.

HUD intends that all owners, housing authorities, mortgagees, or contract administrators will receive notification of the inspection results electronically via a HUD Web page. The entities' retrieval of the inspection results from the Web page will trigger an electronic receipt acknowledgement to HUD. However, HUD recognizes that not all entities currently have the capability to receive information in this manner. Therefore, for a limited interim period, if HUD does not receive an electronic acknowledgement for a particular inspection report after 10 business days, it will send the inspection report to the owner or housing authority via certified mail.

If the owner or housing authority detects a technical error in the inspection report, that entity is responsible for notifying HUD and for providing HUD with sufficient justifying information. If HUD determines that the owner or housing authority provided reasonable substantiation regarding the error, HUD will allow for a full reinspection, which would produce a whole new score.

As described in the proposed rule, the computer program will record observations for the major areas (the site, the building exterior, the building

systems, the dwelling units, the common areas, and health and safety factors) and their respective elements. The computer system will then create a composite score for the physical condition of the housing by calculating the component scores on a weighted average basis that is sensitive to the relative importance of the individual inspectable areas and the relative severity of the deficiencies observed. HUD expects to examine and improve the detailed scoring methodology continuously and to make improvements based on the cumulative results of inspections. The values may also be subject to change based on the extent to which a given property does not have a certain inspectable element. For example, a property may not have any common areas such as community rooms. The available weights for the other inspectable areas would then automatically and proportionately increase. HUD does not believe that it would be appropriate to include extensive details regarding the calculations of the weighted scores. By not revealing specific details of the calculations, property owners will be required to provide a comprehensive approach to property maintenance—to maintain their entire property in a decent, safe, and sanitary condition and in good repair, in accordance with the standards in this rule.

As described more fully in the rulemaking for the Public Housing Assessment System (PHAS), the scores generated by the computer-based inspection for public housing will allow HUD to rank the PHAs' public housing developments objectively according to physical condition. However, many owners and managers of multifamily HUD housing other than public housing expressed concern about the implications of the rule. HUD reminds such entities that this rule does not change the responsibilities of the owners to maintain the housing, nor does it change the responsibilities of the mortgagees to inspect the housing. This rule simply sets forth a description of the statutory and contractual standard with which the physical condition of the housing must always comply, and makes that definition consistent across HUD's applicable programs. The inspection protocol established in this rule is simply the mechanism for gathering and transmitting the physical inspection data to HUD more objectively and in a manner that will allow HUD to assess more effectively the physical condition of the housing. Similar to the new Public Housing Assessment System, HUD will use the data obtained

through the inspections and the calculated scores for internal monitoring purposes and as a way to determine how best to focus its resources where they are most needed.

HUD will make the inspection software and the guidebook available through the REAC Customer Service Center at no cost (besides the nominal cost of shipping) by calling (888) 245-4860 or by writing to the REAC at the following address: Real Estate Assessment Center, Department of Housing and Urban Development, 4900 L'Enfant Plaza East, SW, Washington, DC 20410.

Many commenters expressed concern with regard to inspections that may result in a referral to HUD's new Enforcement Center. The Enforcement Center is a fundamental programmatic reform measure that will help restore public trust in HUD's fulfillment of its mission to provide decent, safe, and sanitary housing for lower and moderate income households. The Enforcement Center is intended to be the central Departmental focus for taking aggressive action against owners of HUD's troubled assisted housing and public housing portfolios. The Enforcement Center will be responsible for correcting long-standing noncompliance issues and will take action against owners who do not cooperate with HUD during any recovery process or who may have put housing developments in jeopardy by engaging in waste, fraud, or abuse. Owners that do not maintain properties in decent, safe, and sanitary condition and in good repair will be referred to the Enforcement Center. However, this rule does not provide the Enforcement Center with additional enforcement authority; the Enforcement Center will use existing HUD authorities and procedures for enforcing owners' responsibilities to maintain housing that is decent, safe, sanitary and in good repair. These existing procedures provide entities with all requisite due process. Each case may be different and requires analysis to determine the most appropriate course of action.

#### Implementation Requires Additional Time

Several commenters objected to the implementation schedule and suggested that HUD provide additional consideration, demonstration, and transition time. In comparing this rulemaking with the rulemaking for the new Public Housing Assessment System (PHAS), several commenters objected that housing authorities will have at least a year before the new physical condition requirements become effective for public housing, while

lenders must begin complying much sooner.

HUD's relationship with such private entities that own or manage HUD-assisted or HUD-insured housing is necessarily different than HUD's relationship with public housing authorities. This rule does not alter the statutory standard for maintaining HUD housing, nor does it change the requirement for annual inspections currently found in the covered HUD programs or the requirements in each covered HUD program regarding which entity is responsible for conducting the physical inspection. Owners who are currently maintaining their housing in decent, safe, and sanitary condition and in good repair should have no problem in meeting the standard. Any experienced and qualified residential property inspector should easily be able to complete the training and conduct inspections using the new inspection protocol. Since it is essential for HUD and the Real Estate Assessment Center to move forward with this rulemaking with deliberate speed in order to ensure that deplorable and life threatening housing conditions are remedied as quickly as possible, HUD has determined that it is justifiable and necessary to proceed to effectuate this rulemaking.

However, HUD understands that owners and managers of multifamily housing that are not subject to PHAS may also require additional time to gain the capability to conduct inspections in accordance with this rule. Therefore, for all entities, besides housing authorities with public housing that are subject to PHAS, HUD will not require such entities to conduct inspections in accordance with this rule until HUD issues the final version of the inspection software and accompanying guidebook. HUD will publish a notice in the **Federal Register** to inform the public when the software and guidebook are available. The notice will provide 30 days within which such entities must prepare to conduct inspections in accordance with this rule. Until the date that is 30 days after HUD publishes such notice, any entity responsible for conducting a physical inspection of HUD housing, to determine compliance with this subpart, must continue to comply with inspection requirements in effect immediately prior to that date. The standards in § 5.703 will become effective on the effective date of this rule, however, so that owners and mortgagors of HUD housing will begin to bring such housing into compliance with those standards.

#### HUD Should Focus on Correcting Problem Developments; Developments in Good Condition Should Not Be Subject to Annual Inspections

Several commenters remarked that the uniform physical standards will result in the expenditure of an inordinate amount of time, energy, and money on the great majority of properties that are not "a problem." Some commenters asserted that HUD has, in the past, effectively ignored lenders' recommendations regarding physically troubled properties. Some commenters suggested that for entities or properties that receive a favorable inspection report, those entities or properties should only be inspected every 2, 3, or 4 years. HUD agrees that most housing developments that are assisted or insured by HUD are maintained in good physical condition. However, HUD is not at this time relaxing the long-standing requirement for an annual inspection. The greatest breach of the public trust at HUD is the waste, fraud, and abuse in HUD's existing portfolio of millions of housing units. Such abuse often includes or results in unacceptable living conditions for the lower and moderate income families that rely upon HUD assistance. HUD assures the commenters that HUD will not ignore such abuse in the future.

#### Limited Funds Allocated for Improving Physical Condition of Housing

Several commenters remarked that housing authorities do not always have adequate Federal funding for improving the physical condition of housing. Some of these commenters suggested that the housing authority should not be adversely scored for those items identified in their Five-Year Plan that are not yet completed, since these items do not reflect housing authority malfeasance or neglect.

The intent of this rule is to ensure that HUD housing is decent, safe, and sanitary and in good repair, and to establish a uniform standard and means of assessing the condition of HUD housing. It is important that HUD housing is assessed accurately and objectively. After the condition of the property is accurately assessed, the analysis of the needed corrective actions can commence. That analysis can take into account past, present, or future funding (e.g., the Comprehensive Grant Five-Year Plan), the allocation of existing resources, or other factors.

#### Rule Contravenes National Housing Act

Some commenters asserted that this rule contravenes section 203(e) of the National Housing Act (12 U.S.C.

1709(e)). The commenters asserted that the statute clearly conditions the existence and validity of a contract for insurance between HUD and a lender solely on HUD's execution of the contract (in the absence of fraud by the lender). The commenters objected to this rule's implication that lenders' participation could be conditioned upon additional, material terms such as the physical condition of the property.

Section 203(e) of the National Housing Act prevents HUD from contesting the contract of mortgage insurance in the absence of lender fraud or material misrepresentation. It does not, however, prevent HUD from defining or otherwise delineating the parameters of acceptable physical condition of properties with insured mortgages, as necessary to ensure residents of decent, safe, and sanitary housing and to protect the insurance fund, which are the purposes of this rulemaking.

#### Proposed Rule Adversely Affects Contract Rights

Several commenters asserted that HUD may not amend its regulations in a way that would adversely affect the interests of a mortgagee or lender under the contract of insurance on any mortgage or loan already insured. The commenters pointed to § 207.260 (as it existed prior to streamlining amendments on April 1, 1996), which required the mortgagee to ascertain the general physical condition of the property and to furnish HUD with its inspection report, along with recommendations for necessary action. The commenters concluded that HUD is prohibited from implementing this rule in a way that would alter that regulatory provision in a manner adverse to lenders. These commenters asserted, therefore, that HUD could only apply the new physical condition standards and inspection requirements to new insurance contracts.

The mortgage insurance contract requires the mortgagee to perform an annual inspection. However, the contract of insurance does not "lock in" any particular inspection protocol. HUD previously established the parameters for an acceptable inspection through guidance in a handbook (HUD Handbook 4350.4). HUD has the legal authority and responsibility to change these parameters to meet changing conditions. HUD has determined that it is necessary to implement a more uniform, objective, and effective inspection protocol in order to assess its insured portfolio more accurately.

#### Rule Should Not Apply to Healthcare Facilities

Two commenters suggested that the uniform physical condition standards and physical inspection requirements in this rule should not apply to facilities with mortgages insured under section 232 of the National Housing Act (nursing homes, intermediate care facilities, and board and care homes). These commenters urged HUD to recognize the unique characteristics of such housing, particularly the fact that it may otherwise be subject to detailed and comprehensive Federal and State regulation. These commenters stated that since there is already sufficient government oversight of such housing, the requirements of this rule would be unduly duplicative and burdensome.

While HUD recognizes that healthcare facilities may be covered by other regulatory requirements, HUD believes that the other requirements focus on the medical aspects of such facilities, such as the delivery of medical services and the proper maintenance of medical equipment. HUD's focus is to ensure that the residents of such facilities, which may vary widely in the level of healthcare services that are provided, are living in decent, safe, and sanitary housing. Furthermore, HUD (as an insurer) has an interest in the preservation of the housing asset, and HUD is responsible for determining compliance with statutory, regulatory, and contractual requirements. HUD believes that its new physical inspection system will work well to assess the building's compliance with the physical condition standards. Therefore, HUD has decided that this rule will apply to facilities insured under section 232 of the National Housing Act.

#### C. Comments on the Uniform Physical Condition Standards

##### Physical Conditions Beyond Owner's Control

Several commenters questioned how the inspection system would treat conditions that are beyond the control of the owner, such as resident neglect (e.g., poor housekeeping) or intentional damage. Other commenters stated that housing authorities should not be penalized for conditions over which they have no control, or about which they could not reasonably have known. Other commenters remarked on the fact that the local governments are usually responsible for maintaining roads and drainage systems, and that other entities are often responsible for maintaining playground equipment. The commenters remarked that the

inspection system should take this into account.

The new physical inspection system is objective and does not distinguish those defects that are the fault of the resident, nor does the system in itself recognize good faith efforts of the owner. The system is simply a tool for observing and transmitting data regarding the physical condition of the property. As HUD has stated previously, the owner of HUD housing is, as always, statutorily and contractually responsible for maintaining the physical condition of the property. HUD anticipates that such owners, like all landlords, would rely on lease provisions regarding the resident maintenance or destruction of the unit, and HUD would encourage them to do so in furtherance of compliance with the physical condition standards. Good property management, which includes regular housekeeping and preventative maintenance inspections throughout the year, coupled with strict lease enforcement, will result in well-maintained housing that meets the standard.

However, the physical condition standards and inspection requirements in this rule only apply to aspects of the housing that are within the ownership of the owner. For instance, an owner of HUD housing is not responsible for maintaining roads if the owner does not own the roads. However, the owner will be responsible for maintaining roads that are legally part of the property.

##### Physical Condition Standards Are Too Vague

Several commenters remarked that the physical condition standards in the rule are too vague. Other commenters stated that such vague standards are difficult for inspectors to interpret and difficult for owners to achieve. The commenters stated that the standards must be more clearly defined if HUD intends to initiate enforcement actions against owners or managers.

The inspectors must meet minimum qualifications and will be trained and certified, and they will be guided in their observations by the inspection software and the guidebook. The software and the guidebook will be made available through the REAC Customer Service Center at no cost (besides the nominal cost of shipping) by calling (888) 245-4860 or by writing to the REAC at the following address: Real Estate Assessment Center, Department of Housing and Urban Development, 4900 L'Enfant Plaza East, SW, Washington, DC 20410. However, with regard to the vagueness of the standards, the physical condition standards are intentionally broad,

defined with terms such as "in proper operating condition," "adequately functional," and "free of health and safety hazards." Given the differences in construction and design of HUD housing, and the different types of electrical and utility systems that an inspector will encounter, the rule itself cannot define or describe every type of housing or system. The standards in the rule describe the inspectable areas and items and require that they are all maintained in a condition that is decent, safe, sanitary, and in good repair. Although time and experience with standards may reveal the need for modifications to the regulations at some point in the future, HUD believes that the standards in this rule are sufficiently specific for purposes of compliance and indeed provide a great deal more detail than previous regulations for many of HUD's programs.

#### Odor and Ventilation

Section 5.703(f) of the rule requires that, as a matter of health and safety, the dwelling units and common areas must have proper ventilation and be free of mold, odor, or other observable deficiencies. Several commenters objected that odor and ventilation (often affected by resident cooking, preference for closed windows, or personal hygiene) are subjective and are not otherwise matters of decent, safe, and sanitary housing. These commenters remarked that these factors should not be included in the physical condition standards.

HUD recognizes that this requirement in the physical condition standards could have caused confusion. For purposes of health and safety, the inspectors will be prompted to observe whether there are strong propane, natural gas, and/or methane gas odors that could pose risk of explosion or fire, or a risk to health if inhaled. Such odors are indeed a matter of decent, safe, and sanitary housing, and therefore HUD has retained the requirement in this rule.

#### Physical Condition Standards Should Apply to Section 8 Certificate and Voucher Program

Several commenters objected that the rule does not apply to housing with tenants assisted by Section 8 Certificates and Vouchers. The commenters stated that this exemption undermines the uniformity position presented by HUD in the proposed rule. The housing quality standards (HQS) in HUD's regulations were originally established by the Secretary for the purpose of Section 8 tenant-based housing assistance (the Rental Certificate and Rental Voucher programs). As HUD

explained in the proposed rule, unlike Section 8 project-based assistance, HUD is continuously reviewing and approving new units into the Section 8 tenant-based assistance programs, and HUD has found that HQS is appropriate for that purpose. HUD will continue considering the application of the new uniform standards to housing with Section 8 tenant-based housing in the future, although it is not prepared to do so in this rule. However, since this rule does not alter the standard with which owners must comply, but merely describes the standard in clear terms, there should be no conflicting results from the continuing existence of HQS for the Certificate and Voucher program.

#### Physical Standards Should Not Apply to PHA-Owned or Leased Projects

One commenter reviewed the conforming amendments in the proposed rule, and objected to the amendments to 24 CFR part 965 (PHA-Owned or Leased Projects), which would require that housing that is owned or leased by a housing authority must be maintained in accordance with the physical condition standards in this rule. The commenter remarked that it is inappropriate for HUD to include housing that is owned by a housing authority but that is not in any way funded through a HUD program within the scope of its new standards or inspection requirements.

HUD agrees that such an application of the standards would be inappropriate, and HUD had no intention of applying them in that manner. If a housing authority owns or leases housing that is not in any way supported by HUD funds, the regulations in 24 CFR part 965 would not apply, nor would the provisions of this rule.

#### Uniform Physical Condition Standards Are Higher Than "Good Repair" Standard

Several commenters asserted that the physical condition standards in the rule are different and more strict than the insured mortgage standard of "good repair." A few of these commenters asserted that "good repair" requires only that the project's original improvements be maintained. The commenters asserted that "good repair" is merely a general assessment of the overall physical condition of the property, used to determine whether the property is at least worth the balance due on the mortgage.

HUD maintains that the physical condition standards in this rule are not significantly different than the standards to which all HUD housing has

previously been subject. As HUD explained in the proposed rule, all HUD-assisted housing is statutorily subject to a standard of decent, safe, and sanitary. In HUD-insured multifamily housing, the mortgagors are required by contract to maintain the housing in good repair and condition. Although HUD's regulations for its multifamily programs did not specifically define "good repair and condition," HUD Handbook 4350.1 REV-1, Multifamily Asset Management and Project Servicing, provides that in determining the level of management review HUD should perform on site, it should review the mortgagee's annual physical inspection "to determine if the condition of the property is consistent with the provision of "decent, safe, and sanitary housing." Regardless of whether the standard is labelled "decent, safe, and sanitary," "good repair," or both (as in this rule), owners and managers of HUD housing have always been required to maintain the housing and to ensure that it is free from health and safety hazards. This rule simply sets forth a uniform set of standards for HUD housing and combines the familiar labels of "decent, safe, and sanitary" and "in good repair."

#### Physical Condition Standards Should Allow Adjustments for Age and Neighborhood Environment

Several commenters noticed that the proposed rule for the new Public Housing Assessment System for public housing allowed for adjustments for public housing based on the age of the development and on neighborhood environment. Although the commenters recognized that the public housing statute requires such allowance, the commenters suggested that the physical condition standards should make similar allowances for all housing.

As the commenters recognized, HUD is required by section 6(j)(1)(I)(2) of the U.S. Housing Act of 1937 (42 U.S.C. 1437d(j)(1)(I)(2)) to permit an adjustment to a housing authority's assessment score based upon negative conditions related to the age of the development or to the surrounding neighborhood. However, HUD has determined that such an adjustment is not otherwise appropriate in assessing the physical condition of property. As HUD mentioned above, the new physical inspection system is objective; regardless of the age of the development or the surrounding neighborhood, the housing must be maintained for the residents in decent, safe, and sanitary condition.

#### *D. Comments on the Uniform Physical Inspection Requirements*

##### **Rule Needs To Clarify Whether PHAs, Owners, and/or Mortgagees Would Have Access to Inspection Report**

Several commenters objected that the proposed rule was unclear about when and how the owner (and the mortgagee, if applicable) would be informed of the results of the inspection. With the direct electronic submission described in the proposed rule, some of these commenters expressed concern that an adverse inspection could lead to a referral to the Enforcement Center without the mortgagee or owner becoming aware of the findings in the inspection report. The commenters remarked that it is essential for the owner and its site staff to receive a copy of the inspection report immediately, which would be easy and would result in the quick resolution of gross errors. The commenters further stated that the inspection report is otherwise important for asset management purposes and for presenting to third-party investors upon request.

As HUD described above, the REAC will make an inspection report available electronically via a HUD Web page to the owner, mortgagee, or HA, as well as to HUD's relevant field office. HUD expects that the inspection report will be provided to the owner or housing authority very quickly—optimally within 48 hours of the inspection.

##### **Mandatory Use of the Inspection Procedures**

Several commenters objected to lenders being singled out for adverse treatment, since housing authorities are not required to use the inspection system to inspect public housing. These commenters remarked that since other entities such as contract administrators and mortgagees also have existing physical inspection systems in place, HUD's argument for exempting public housing would also apply to them. The commenters stated that those entities should also be allowed maximum latitude for determining how best to assess compliance with the new physical condition standards. These commenters stated that such different treatment belies HUD's efforts toward uniformity.

HUD's relationship with such private entities that own or manage HUD-assisted or HUD-insured housing is necessarily different than HUD's relationship with public housing agencies in their operation of public housing. Public housing agencies are basically governmental entities that are government-funded under the U.S.

Housing Act of 1937 for the purpose of providing public housing to low income households. Public housing agencies (PHAs) are subject to a statutory requirement to inspect 100 percent of their units to determine maintenance and modernization needs. Private entities are not subject to this same requirement of 100 percent unit inspection. Additionally, for private entities that own or manage HUD housing, participation in HUD programs is voluntary. As the preamble to the June 30, 1998 proposed rule on the new Public Housing Assessment System noted, HUD will be conducting independent inspections of public housing units in accordance with this new inspection protocol. The preamble also noted that HUD is considering requiring PHAs at some future point to inspect their units in accordance with the new inspection protocol. However, given the statutory requirement to inspect all units, HUD decided not to impose mandatory use of the new inspection protocol on PHAs in the first year or first few years of implementation of the new protocol.

The consistent assessment and evaluation of HUD housing that is the mission of the REAC depends upon the consistent, nationwide use of a standardized analytical and risk evaluation tool for each property. Therefore, HUD has determined that it is important to rely upon the physical inspection system in this rule to the greatest extent feasible. As HUD has stated previously, HUD is making the software available to owners/agents and housing authorities at no cost (besides shipping). Furthermore, HUD is not requiring the use of specific hardware; the inspection software can be run on any portable computer with certain minimum capacity (e.g., Pentium/100MHz processor or equivalent; 320MB hard drive; 16MB RAM; battery life of 3.5 hours). Therefore, required use of the inspection system should not be a significant burden.

##### **Objections Regarding the Number of Units to be Inspected**

Several commenters objected that under HUD's current handbook guidance for lenders with HUD-insured mortgages, lenders are only required to conduct inspections for two vacant and two occupied units. Several commenters objected that while the rule provides that a statistically valid number of public housing units will be inspected, it does not appear to limit the number of units that lenders must inspect, and it could be read to require that all units must be inspected.

To be accurate, under HUD's handbook guidance for lenders with HUD-insured mortgages that was used prior to this rulemaking, lenders were required to conduct an inspection "of sufficiently high quality to permit an accurate evaluation of the condition of the property." (HUD Handbook 4350.4 CHG-7, Ch. 2, Sec. 5, 2-20) The guidance provided that inspectors should randomly select at least two vacant units, and if time and resources permit, select two additional vacant units—one just after move-out and one ready for occupancy. In addition, the guidance provided that the inspectors should randomly select several occupied units for inspection.

This rule will not require lenders to inspect all units. The inspection system established under this rule requires the inspection of a statistically valid number of units. As described above, immediately prior to the inspection, the HUD-certified inspector will download relevant property profile information from HUD databases. The inspector will determine a statistically valid sample of the units based on the number and configuration of the dwelling units on the property. In statistical validity tables, there is a point at which it serves no useful purpose to inspect additional units. HUD recognizes that the requirement to inspect a statistically valid sample of units may pose an additional requirement on some mortgagees that were previously inspecting fewer units. However, HUD's goal and mission is to ensure that residents of HUD housing are provided decent, safe, and sanitary housing, which obviously requires an accurate assessment of the physical condition of such housing. In order to obtain an accurate assessment of such housing, it is necessary to obtain inspection data from a statistically valid number of units, and to put an end to lax inspections.

##### **Double Inspection**

Several commenters asserted that under subsidy contracts (generally Housing Assistance Payments contracts), HUD already requires contract administrators, such as housing authorities and housing finance agencies, to perform project inspections. These commenters objected that the rule does not eliminate those duplicative inspections. HUD's goal is to require a single inspection for such properties. HUD is exploring ways to implement the new inspection system in a way that will eliminate any duplicative inspections.

### Accompanying Inspectors During Inspection

Three commenters asked whether owners would be allowed to accompany inspectors. Other commenters objected to the increased administrative burden of assigning staff to such a task. As noted earlier in this rule, the new inspection system requires that a representative of the owner/management agent accompany inspectors during these inspections. This is necessary in order to gain access to units, utilities, and other areas of the property. It is also important for the owner's representative to observe and discover any significant deficiencies, including health and safety deficiencies, so that corrective action can be taken at the earliest possible time. It is customary in the inspection industry for owner representatives to accompany third-party inspectors during inspections. As such, HUD does not believe that this is an undue requirement, but rather, as some of the commenters remarked, an important and necessary feature.

### Notice to Owners and Residents of Units to be Inspected

Two commenters asked how much advance notice the owner would receive regarding the specific units to be inspected. Other commenters objected to a potential administrative burden of notifying "thousands" of residents, especially with regard to the additional notices required for the confirmatory inspections of public housing. With respect to inspectors under contract to HUD, contractors are to attempt to communicate, preferably by telephone, with the owners to arrange for an inspection date. They are to confirm the inspection date in writing. The owner is to have a minimum of 5 calendar days advance written notice to provide time for notification to the residents. Typically, owners will have more than 5 calendar days based on the original telephone call from the inspector. HUD would expect mortgagees and contract administrators to follow a similar procedure. While there is a burden of notifying residents, such a burden is inherent when the owner participates in HUD programs and is unavoidable.

### Qualification of Inspectors and Fairness of the Inspection

Several commenters asked about the quantity and type of training the inspectors would receive. Two commenters specifically asked whether the inspectors would be qualified to inspect all the various forms of housing (highrise buildings to single family homes), and all state-of-the-art systems

(which otherwise the commenters asserted require specifically trained technicians). Three commenters asked what quality control measures HUD intends to use to ensure inspectors are fair and accurate. These commenters expressed concern that the qualifications of the inspectors are critical, and remarked that HUD must set parameters for qualifications and training well above simply a general familiarity with real estate of the type to be inspected, as provided in the proposed rule.

HUD has developed a training curriculum and certification test that all inspectors must take to conduct inspections using HUD inspection software. The course is approximately 40 hours long, and the certification test involves downloading property profile information from HUD data bases, using HUD software to conduct inspections, and uploading the completed inspection results to HUD. HUD has established specific qualifications and criteria for inspectors who will be conducting these inspections; such qualifications include but are not limited to, at least 3 years of experience that demonstrates sufficient knowledge of multifamily and public housing. HUD believes that it has set a reasonable and sufficient level of qualifications for inspectors to conduct inspections of this nature. Further, HUD will monitor the inspectors with its own quality assurance staff to assure that the inspectors are using the protocol as intended and that inspection reports are valid.

### Increased Costs of Inspection Under This Rule

Many commenters asserted that HUD's original estimate of the costs of an inspection is several times higher than the current industry average and would significantly exceed the servicers' average annual income on loans. The commenters concluded that the increase in servicing costs will result either in higher rents, increased mortgage rates, higher rates of FHA claims, fewer lenders willing to service FHA mortgages, fewer owners and investors interested in HUD housing, and/or reduced availability of affordable financing.

HUD now estimates that the costs for the inspection will be substantially lower than it originally projected, and HUD is exploring possible ways of lowering the costs to program participants. HUD is determined, however, to obtain accurate assessments of its housing portfolio in an effort to ensure that residents are not living in substandard HUD housing. HUD can no longer tolerate shoddy inspections. If lenders have been performing adequate

inspections, HUD believes that the new inspection procedures should not substantially increase their costs. HUD reiterates, however, that the software will be provided, and HUD is not requiring that inspectors use a particular type of hand-held computer.

Furthermore, HUD believes that the commenters' claims regarding the adverse effects of increased servicing costs will not inevitably result from improved inspections. In fact, HUD believes that such inspections may have a beneficial impact on the industry. The overall image of the industry will be enhanced, because the public will perceive that HUD and its program partners care about the quality of the affordable housing they are offering.

### Rule Affects the Liability of the Mortgagee

Several commenters objected to the rule due to their claims that it affects the liability of the mortgagee. These commenters stated that if HUD is requiring lenders to be responsible for inspections on HUD's behalf, and HUD intends to make determinations about enforcement actions based upon those inspections, HUD should somehow indemnify lenders in the event of lawsuits regarding inspections. The commenters explained that such indemnification could be of the conventional sort, or could take the form of a declaration that the inspectors are acting as HUD's agents and HUD is liable for their conduct. Some of these commenters stated that the new physical inspection system may create a conflict of fiduciary responsibilities for the servicing lender—its responsibilities to its investor(s) and its responsibilities to HUD under this rule.

This rule does not alter the lenders' responsibilities with respect to the inspection of HUD housing. Therefore, this rule does not impose additional liability upon lenders, and HUD does not have plans to indemnify lenders or to accept undue liability for their conduct. HUD is establishing this inspection system as an objective and accurate means of fulfilling HUD's assessment and monitoring responsibilities, and of providing HUD an accurate basis for determining where to focus its monitoring and enforcement resources. Any enforcement action taken by the Enforcement Center will be within HUD's existing authority and fully in accordance with due process procedures.

### Frequency of Inspections

Several commenters commented on § 5.705 of the proposed rule, which

provided that responsible entities must conduct inspections annually "(unless otherwise specifically notified by HUD)." These commenters objected that this would allow HUD to require more frequent inspections solely upon notification, without notice and comment rulemaking.

HUD included this language in the rule in order to provide it with flexibility in the event that poor-performing owners need follow-up reinspection in some circumstances. It is necessary for HUD to have the flexibility to meet the needs of the individual situation.

#### IV. Regulatory Amendments

##### *New Subpart for Physical Condition Standards and Inspection Requirements*

This rule creates a new subpart G in 24 CFR part 5. The regulations in part 5 represent HUD's general program requirements, as well as requirements that cut across one or more HUD programs. This new subpart G consists of three sections. Section 5.701 provides the lists of the types of HUD housing to which the uniform physical condition standards and inspection requirements apply. This section also describes the unique applicability of the requirements to the Public Housing program.

Section 5.703 contains the physical condition standards for HUD housing that is decent, safe, sanitary and in good repair. These are the standards to which HUD housing must be maintained. Section 5.705 simply provides that any entity responsible for conducting a physical inspection of HUD housing must inspect such housing annually (unless HUD provides notice to the contrary), in accordance with HUD-prescribed physical inspection procedures. This rule does not affect the existing requirements under each covered HUD program regarding which entity is responsible for conducting the physical inspection.

##### *Conforming Amendments in Program Regulations*

In accordance with the physical condition standards and inspection requirements, this rule also makes several conforming amendments to HUD's program regulations.

##### 1. 24 CFR Part 207; Multifamily Housing Mortgage Insurance

This rule adds a new § 207.260, which provides that for FHA-insured multifamily properties, the mortgagee must maintain the insured project in accordance with the physical condition standards in the new subpart G of part 5. This section also requires the

mortgagee to inspect the project in accordance with the requirements in subpart G of part 5. As described above, however, the requirements for the mortgagee to maintain the property in a condition that is decent, safe, sanitary and in good repair (and for the mortgagee to inspect the property) are not new. This rule provides a clear set of physical condition standards and inspection requirements to help ensure that these properties are maintained in accordance with such obligations.

##### 2. 24 CFR Part 266; Housing Finance Agency (HFA) Risk-Sharing

This rule adds a new § 266.507 to provide that the mortgagee must maintain the project in accordance with the new physical condition standards in subpart G of part 5. This new section applies the new standards to all projects insured previously or in the future. This rule also removes § 266.505(b)(6) regarding the maintenance requirements of the Regulatory Agreement between the HFA and the mortgagee, since the maintenance requirements will be in the new § 266.507. This rule also amends § 266.510(a) to require HFAs to perform their inspections in accordance with the inspection requirements in subpart G of part 5.

##### 3. 24 CFR Part 880; Section 8 New Construction

This rule amends § 880.201 to revise the definition of the term "Decent, safe, and sanitary." This rule provides that decent, safe, and sanitary housing is housing that meets the requirements of subpart G of part 5. This rule also removes paragraph (a) of § 880.207 regarding HUD's minimum property standards, since compliance with the new subpart G of part 5 replaces the requirement to comply with these standards.

##### 4. 24 CFR Part 881; Section 8 Substantial Rehabilitation

This rule amends § 881.201 to revise the definition of the term "Decent, safe, and sanitary." This rule provides that decent, safe, and sanitary housing is housing that meets the requirements of subpart G of part 5. This rule also removes paragraph (a) of § 881.207 regarding HUD's minimum design standards, since compliance with the new subpart G of part 5 replaces the requirement to comply with these standards.

##### 5. 24 CFR Part 882; Section 8 (Project-Based) Moderate Rehabilitation (Including the Single Room Occupancy Program for Homeless Individuals)

HUD recently amended its regulations in part 882 to remove the regulatory provisions on certificates. These provisions are now in part 982. (Please see the Section 8 Certificate and Voucher Programs Conforming Rule, published in the **Federal Register** on April 30, 1998, 63 FR 23826.) The only regulatory provisions remaining in part 882 are for two Section 8 project-based programs—Moderate Rehabilitation and Single Room Occupancy for homeless individuals.

This rule amends part 882 further to recognize the new uniform physical condition standards. This rule amends § 882.102 to revise the definition of the term "Decent, safe, and sanitary." This rule provides that decent, safe, and sanitary housing is housing that meets the requirements of subpart G of part 5. This rule also removes the definition of "Housing Quality Standards" from § 882.102, since those standards are replaced by the new uniform physical condition standards in this rule.

This rule then amends § 882.404 by replacing the Housing Quality Standards with references to the new physical condition standards in subpart G of part 5. This rule retains, however, the lead-based paint requirements that were otherwise embedded in the Housing Quality Standards. (HUD is developing consolidated final regulations to implement portions of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C 4851 *et seq.*). These final regulations will be based upon a proposed rule published on June 7, 1996 (61 FR 29170), and will be codified in 24 CFR part 35.) This rule does not affect the applicability of HUD's lead-based paint requirements. This rule also retains the requirements for special housing types. Single room occupancy, congregate housing, and group homes have particular requirements since the individual dwelling units or sleeping areas do not contain kitchen and/or bathroom facilities; such facilities are provided in common areas.

This rule also amends § 882.803(b) for the SRO program by replacing references to the Housing Quality Standards with references to § 882.404. This rule retains the requirements for the adequacy of the location of the site (e.g., site must be suitable from the standpoint of further fair housing laws); the new physical standards in part 5 would relate to the condition of the site,

rather than the initial adequacy of the location of the site.

6. 24 CFR Part 883; Section 8 State Housing Agencies

This rule amends § 883.302 to add a definition of the term "Decent, safe, and sanitary." This rule provides that decent, safe, and sanitary housing is housing that meets the requirements of subpart G of part 5. This rule also removes the definition of "MPS (Minimum Property Standards)" in § 883.302, and paragraphs (a)(1) and (b)(1) of § 883.310 regarding HUD's minimum property and design standards, since compliance with the new subpart G of part 5 replaces any requirement to comply with these standards.

7. 24 CFR Part 884; Section 8 New Construction Set-Aside for Rural Rental Housing

This rule amends § 884.102 to revise the definition of the term "Decent, safe, and sanitary." This rule provides that decent, safe, and sanitary housing is housing that meets the requirements of subpart G of part 5. This rule also removes the definition of "Minimum property standards" in § 884.102, and paragraph (b)(1) of § 884.110 regarding HUD's minimum property standards, since compliance with the new subpart G of part 5 replaces any requirement to comply with those standards.

8. 24 CFR Part 886; Section 8 Special Allocations (Loan Management Set-Aside (LMSA) and Property Disposition (PD))

This rule amends §§ 886.102 (LMSA) and 886.302 (PD) to revise the definition of the term "Decent, safe, and sanitary." This rule provides that decent, safe, and sanitary housing is housing that meets the requirements of subpart G of part 5. This rule also amends §§ 886.113 (LMSA) and 886.307 (PD) by replacing the Housing Quality Standards with references to the new physical condition standards in subpart G of part 5. This rule retains, however, the specific occupancy requirements (i.e., the number of residents per dwelling unit); such requirements are not addressed by the new uniform physical condition standards. This rule also retains the lead-based paint requirements that are otherwise embedded in the Housing Quality Standards. This rule does not affect the applicability of HUD's lead-based paint requirements (although please see the reference above to the separate regulations that are under development for lead-based paint). This rule also retains the special requirements for congregate housing

and/or independent group residences in §§ 886.113 and 886.307.

9. 24 CFR Part 891; Supportive Housing for the Elderly and Persons With Disabilities

This rule adds a new § 891.180 to provide that housing assisted under these supportive housing programs must be maintained and inspected in accordance with the physical condition standards and inspection requirements in subpart G of part 5.

10. 24 CFR Part 965; PHA-Owned or Leased Projects—General Provisions

This rule adds a new subpart F (consisting of § 965.601) to part 965. Section 965.601 requires that housing that is owned or leased by a PHA must be maintained in accordance with the new uniform physical condition standards. Section 965.601 also provides that for each PHA, HUD intends to perform independent inspections to confirm that Public Housing is being maintained in accordance with the new uniform physical condition standards using the new inspection system, based upon a statistically valid sample of Public Housing units for each PHA.

11. 24 CFR Part 983; Section 8 Project-Based Certificate Program

This rule amends § 983.5 by replacing the Housing Quality Standards with references to the new physical condition standards in subpart G of part 5. This rule retains, however, the specific occupancy requirements, since these requirements are not addressed by the new uniform physical condition standards. This rule also retains the lead-based paint requirements that were otherwise embedded in the Housing Quality Standards. This rule does not affect the applicability of HUD's lead-based paint requirements (although please see the reference above to the separate regulations that are under development for lead-based paint).

## V. Findings and Certifications

### *Executive Order 12866*

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*, issued by the President on September 30, 1993. OMB determined that this rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to this rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection

between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

### *Environmental Impact*

During the development of the June 30, 1998 proposed rule, 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). That Finding continues to apply to this final rule, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

### *Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule is not anticipated to have a significant economic impact on a substantial number of small entities. All HUD housing is currently subject to physical condition standards and a physical inspection requirement. There are statutory directives to maintain HUD housing in a condition that is decent, safe, and sanitary. Accordingly, this rule does not alter that requirement, nor does the rule shift responsibility with respect to who conducts the physical inspection of the property. The entities and individuals previously responsible for the inspection of HUD subsidized properties remain responsible. The rule, however, provides for uniform physical inspection standards for the majority of HUD programs. These standards are not significantly different from those standards to which HUD housing is currently subject. The previous applicable standards are similar, but there were some variations from HUD program to program. Making these standards uniform and consistent for the HUD programs covered by this rule should ease the administrative burden for participants in the covered HUD programs, including and particularly small entities. As with the implementation of any new or modified program requirement, HUD intends to provide guidance to the covered entities, particularly small entities, to assist them in understanding the changes being made. As stated earlier in this preamble, HUD will be providing the inspection software and guidebook,

and HUD is not requiring the use of specific hardware (so long as it meets certain minimum capacity requirements). Therefore, HUD is anticipating that the cost for the inspections will be substantially lower than initial estimates. Entities that have been conducting adequate inspections as previously required should not experience a significant increase in costs. HUD is also providing additional time for entities that are not subject to the new Public Housing Assessment System to gain the capability to conduct inspections. Therefore, HUD has considered the effects of this rule on small entities. Since this rule does not impose additional responsibilities on HUD's program partners, and since HUD estimates that the cost differences will not be substantial, this rule is not anticipated to have a significant economic impact on a substantial number of small entities.

#### *Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of 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 provides a uniform set of physical condition standards and physical inspection requirements for HUD housing, which make HUD's requirements clearer and more objective. As a result, this rule is not subject to review under the Order.

#### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. Several commenters asserted that this rule would violate the Unfunded Mandates Reform Act, arguing that HUD failed to assess the costs of the inspections on private sector lenders, failed to estimate the disproportionate effects of the rule on the private sector, and failed to consider and select the least costly, most cost-effective, or least burdensome alternative for the private sector. Section 201 of the UMRA requires agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector. HUD has assessed the effects of this rule on housing

authorities and other owners and managers of HUD housing. While this rule provides a uniform set of physical condition standards for HUD housing, these standards are not significantly different from the standards with which program participants already have had to comply. While this rule establishes a new physical inspection system, it does not change the requirements in HUD's programs for annual physical inspections. HUD has determined that the quality of the inspections to be performed under this rule are necessary to replace the lax inspections that may have been conducted in the past. The uniform standards and the inspection system established in this rule are necessary in order to bring consistency, objectivity, accuracy, and efficiency to the assessment of the physical condition of HUD housing.

This rule would not impose a Federal mandate within the definitions provided in section 101 of the UMRA, because this rule merely provides standards relating to duties that arise from participation in a voluntary Federal program, for which funds are provided through budget authority that is not entitlement authority. Since HUD has assessed the effects of this rule on State, local, and tribal governments, and on the private sector, and since this rule does not include a Federal mandate, HUD has complied with the Unfunded Mandates Reform Act of 1995.

#### *Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance numbers for the programs that are affected by this rule are:

- 14.126—Mortgage Insurance—Cooperative Projects (Section 213)
- 14.129—Mortgage Insurance—Nursing Homes, Intermediate Care Facilities, Board and Care Homes and Assisted Living Facilities (Section 232)
- 14.134—Mortgage Insurance—Rental Housing (Section 207)
- 14.135—Mortgage Insurance—Rental and Cooperative Housing for Moderate Income Families and Elderly, Market Rate Interest (Sections 221(d) (3) and (4))
- 14.138—Mortgage Insurance—Rental Housing for Elderly (Section 231)
- 14.139—Mortgage Insurance—Rental Housing in Urban Areas (Section 220 Multifamily)
- 14.157—Supportive Housing for the Elderly (Section 202)
- 14.181—Supportive Housing for Persons with Disabilities (Section 811)
- 14.188—Housing Finance Agency (HFA) Risk Sharing Pilot Program (Section 542(c))
- 14.850—Public Housing
- 14.851—Low Income Housing—Homeownership Opportunities for Low Income Families (Turnkey III)
- 14.852—Public Housing—Comprehensive Improvement Assistance Program

- 14.856—Lower Income Housing Assistance Program—Section 8 Moderate Rehabilitation
- 14.859—Public Housing—Comprehensive Grant Program

#### **List of Subjects**

##### *24 CFR Part 5*

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low- and moderate-income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

##### *24 CFR Part 207*

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

##### *24 CFR Part 266*

Aged, Fair housing, Intergovernmental relations, Mortgage insurance, Low and moderate income housing, Reporting and recordkeeping requirements.

##### *24 CFR Part 880*

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

##### *24 CFR Part 881*

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

##### *24 CFR Part 882*

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

##### *24 CFR Part 883*

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

##### *24 CFR Part 884*

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

##### *24 CFR Part 886*

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

**24 CFR Part 891**

Aged, Capital advance programs, Civil rights, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low- and moderate-income housing, Mental health programs, Rent subsidies, Reporting and recordkeeping requirements.

**24 CFR Part 965**

Energy conservation, Government procurement, Grant programs—housing and community development, Lead poisoning, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements, Utilities.

**24 CFR Part 983**

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

Accordingly, for the reasons stated in the preamble, title 24 of the CFR is amended as follows:

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

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

**Authority:** 42 U.S.C. 3535(d), unless otherwise noted.

2. A new subpart G is added to part 5 to read as follows:

**Subpart G—Physical Condition Standards and Inspection Requirements**

Sec.

5.701 Applicability.

5.703 Physical condition standards for HUD housing that is decent, safe, sanitary and in good repair (DSS/GR).

5.705 Uniform physical inspection requirements.

**Subpart G—Physical Condition Standards and Inspection Requirements****§ 5.701 Applicability.**

(a) This subpart applies to housing assisted by HUD under the following programs:

(1) All Section 8 project-based assistance. "Project-based assistance" means Section 8 assistance that is attached to the structure (see § 982.1(b)(1) of this title regarding the distinction between "project-based" and "tenant-based" assistance);

(2) Section 202 Program of Supportive Housing for the Elderly;

(3) Section 811 Program of Supportive Housing for Persons with Disabilities;

(4) Section 202 loan program for projects for the elderly and handicapped

(including 202/8 projects and 202/162 projects).

(b) This subpart also applies to housing with mortgages insured or held by HUD, or housing that is receiving assistance from HUD, under the following authorities:

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

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

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

(4) Section 221(d)(3) and (5) of the NHA (Housing for Moderate Income and Displaced Families);

(5) Section 221(d)(4) of the NHA (Housing for Moderate Income and Displaced Families);

(6) Section 231 of the NHA (Housing for Elderly Persons);

(7) Section 232 of the NHA (Mortgage Insurance for Nursing Homes, Intermediate Care Facilities, Board and Care Homes);

(8) Section 234(d) of the NHA (Rental) (Mortgage Insurance for Condominiums);

(9) Section 236 of the NHA (Rental and Cooperative Housing for Lower Income Families);

(10) Section 241 of the NHA (Supplemental Loans for Multifamily Projects); and

(11) Section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) (Housing Finance Agency Risk Sharing Program).

(c) This subpart also applies to Public Housing (housing receiving assistance under the U.S. Housing Act of 1937, other than under section 8 of the Act).

(d) For purposes of this subpart, the term "HUD housing" means the types of housing listed in paragraphs (a), (b), and (c) of this section.

**§ 5.703 Physical condition standards for HUD housing that is decent, safe, sanitary and in good repair (DSS/GR).**

HUD housing must be decent, safe, sanitary and in good repair. Owners of housing described in § 5.701(a), mortgagors of housing described in § 5.701(b), and PHAs and other entities approved by HUD owning housing described in § 5.701(c), must maintain such housing in a manner that meets the physical condition standards set forth in this section in order to be considered decent, safe, sanitary and in good repair. These standards address the major areas of the HUD housing: the site; the building exterior; the building systems; the dwelling units; the common areas; and health and safety considerations.

(a) *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.

(b) *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.

(c) *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.

(d) *Dwelling units.* (1) 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 (if applicable), 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.

(2) Where applicable, the dwelling unit must have hot and cold running water, including an adequate source of potable water (note for example that single room occupancy units need not contain water facilities).

(3) 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.

(4) 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.

(e) *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. These standards for common areas apply, to a varying extent, to all HUD housing, but will be particularly relevant to congregate housing, independent group homes/residences, and single room occupancy units, in which the individual dwelling units (sleeping areas) do not contain kitchen and/or bathroom facilities.

(f) *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 requirements related to the evaluation and reduction of lead-based paint hazards and have available proper certifications of such (see 24 CFR part 35).

(g) *Compliance with State and local codes.* The physical condition standards in this section do not supersede or preempt State and local codes for building and maintenance with which HUD housing must comply. HUD housing must continue to adhere to these codes.

**§ 5.705 Uniform physical inspection requirements.**

(a) Any entity responsible for conducting a physical inspection of HUD housing, to determine compliance with this subpart, must inspect such HUD housing annually (unless otherwise specifically notified by HUD), in accordance with HUD-prescribed physical inspection procedures. For Public Housing, PHAs have the option to inspect Public Housing units using the procedures prescribed in accordance with this section.

(b) Inspections in accordance with the physical inspection procedures identified in paragraph (a) of this section shall not be required until HUD has issued the inspection software and

accompanying guidebook. When the software and guidebook have been issued, HUD will publish a notice in the **Federal Register** to inform the public when the software and guidebook are available. The notice will provide 30 days within which covered entities must prepare to conduct inspections in accordance with this subpart. Until the date that is 30 days after HUD publishes such notice, any entity responsible for conducting a physical inspection of HUD housing, to determine compliance with this subpart, must continue to comply with inspection requirements in effect immediately prior to that date.

**PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE**

3. The authority citation for 24 CFR part 207 continues to read as follows:

**Authority:** 12 U.S.C. 1701z–11(e), 1713, and 1715b; 42 U.S.C. 3535(d).

4. A new § 207.260 is added, immediately after § 207.259a, to read as follows:

**§ 207.260 Maintenance and inspection of property.**

As long as the mortgage is insured or held by the Commissioner, the mortgagor must maintain the insured project in accordance with the physical condition requirements in 24 CFR part 5, subpart G; and the mortgagee must inspect the project in accordance with the physical inspection requirements in 24 CFR part 5, subpart G.

**PART 266—HOUSING FINANCE AGENCY RISK-SHARING PROGRAM FOR INSURED AFFORDABLE MULTIFAMILY PROJECT LOANS**

5. The authority citation for 24 CFR part 266 continues to read as follows:

**Authority:** 12 U.S.C. 1707; 42 U.S.C. 3535(d).

**§ 266.505 [Amended]**

6. Section 266.505 is amended by removing and reserving paragraph (b)(6).

7. A new § 266.507 is added, to read as follows:

**§ 266.507 Maintenance requirements.**

The mortgagor must maintain the project in accordance with the physical condition standards in 24 CFR part 5, subpart G.

8. In § 266.510, paragraph (a) is revised to read as follows:

**§ 266.510 HFA responsibilities.**

(a) *Inspections.* The HFA must perform inspections in accordance with

the physical inspection procedures in 24 CFR part 5, subpart G.

\* \* \* \* \*

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

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

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

10. Section 880.201 is amended by revising the definition of “*Decent, safe and sanitary*”, to read as follows:

**§ 880.201 Definitions.**

\* \* \* \* \*

*Decent, safe, and sanitary.* Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

\* \* \* \* \*

**§ 880.207 [Amended]**

11. Section 880.207 is amended by removing and reserving paragraph (a).

**PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION**

12. The authority citation for 24 CFR part 881 continues to read as follows:

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

13. Section 881.201 is amended by revising the definition of “*Decent, safe and sanitary*”, to read as follows:

**§ 881.201 Definitions.**

\* \* \* \* \*

*Decent, safe, and sanitary.* Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

\* \* \* \* \*

**§ 881.207 [Amended]**

14. Section 881.207 is amended by removing and reserving paragraph (a).

**PART 882—SECTION 8 MODERATE REHABILITATION PROGRAMS**

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

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

16. In § 882.102, paragraph (b) is amended by revising the definition of “*Decent, safe, and sanitary*”; and by removing the definition of “*Housing quality standards (HQS)*”; to read as follows:

**§ 882.102 Definitions.**

\* \* \* \* \*

(b) \* \* \*

*Decent, safe, and sanitary.* Housing is decent, safe, and sanitary if it meets the

physical condition standards in 24 CFR part 5, subpart G.

\* \* \* \* \*

17. Section 882.404 is revised to read as follows:

**§ 882.404 Physical condition standards; physical inspection requirements.**

(a) *Compliance with physical condition standards.* Housing in this program must be maintained and inspected in accordance with the requirements in 24 CFR part 5, subpart G.

(b) *Space and security.* In addition to the standards in 24 CFR part 5, subpart G, a dwelling unit used in the Section 8 moderate rehabilitation program that is not SRO housing must have a living room, a kitchen area, and a bathroom. Such a dwelling unit must have at least one bedroom or living/sleeping room for each two persons.

(c) *Special housing types.* The following provisions in 24 CFR part 982, subpart M (Special Housing Types) apply to the Section 8 moderate rehabilitation program:

(1) 24 CFR 982.605(b) (for SRO housing). For the Section 8 moderate rehabilitation SRO program under subpart H of this part 882, see also § 882.803(b).

(2) 24 CFR 982.609(b) (for congregate housing).

(3) 24 CFR 982.614(c) (for group homes).

(d) *Compliance with lead-based paint requirements.* Housing used in the Section 8 moderate rehabilitation program must comply with the lead-based paint requirements in § 982.401(j). For purposes of the SRO program, however, see § 882.803(b).

18. Section 882.803 is amended by revising paragraph (b), to read as follows:

**§ 882.803 Project eligibility and other requirements.**

\* \* \* \* \*

(b)(1) *Physical condition standards.* Section 882.404 applies to this program; however, the lead-based paint requirements in § 982.401(j) of this title do not apply to this program, since these SRO units will not house children.

(2) *Site standards.* (i) The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed; adequate utilities and streets must be available to service the site. (The existence of a private disposal system and private sanitary water supply for the site, approved in accordance with local law, may be considered adequate utilities.)

(ii) The site must be suitable from the standpoint of facilitating and furthering

full compliance with the applicable provisions of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4), title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601-19), E.O. 11063 (as amended by E.O. 12259; 3 CFR, 1959-1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307), and HUD regulations issued pursuant thereto.

(iii) The site must be accessible to social, recreational, educational, commercial, and health facilities, and other appropriate municipal facilities and services.

\* \* \* \* \*

**PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES**

19. The authority citation for 24 CFR part 883 continues to read as follows:

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

20. Section 883.302 is amended by adding a definition of “*Decent, safe, and sanitary*”, in alphabetical order; and by removing the definition of “*MPS (Minimum Property Standards)*”; to read as follows:

**§ 883.302 Definitions.**

\* \* \* \* \*

*Decent, safe, and sanitary.* Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

\* \* \* \* \*

**§ 883.310 [Amended]**

21. Section 883.310 is amended by removing and reserving paragraphs (a)(1) and (b)(1).

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

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

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

23. Section 884.102 is amended by revising the definition of “*Decent, safe, and sanitary*”; and by removing the definition of “*Minimum property standards*”; to read as follows:

**§ 884.102 Definitions.**

\* \* \* \* \*

*Decent, safe, and sanitary.* Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

\* \* \* \* \*

24. In § 884.110, paragraph (b) is revised to read as follows:

**§ 884.110 Types of housing and property standards.**

\* \* \* \* \*

(b) Participation in this program requires compliance with:

(1) [Reserved]

(2) In the case of congregate housing, the appropriate HUD guidelines and standards;

(3) HUD requirements pursuant to section 209 of the HCD Act for projects for the elderly, disabled, or handicapped;

(4) HUD requirements pertaining to noise abatement and control; and

(5) Applicable State and local laws, codes, ordinances, and regulations.

\* \* \* \* \*

**PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS**

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

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

26. Section 886.102 is amended by revising the definition of “*Decent, Safe and Sanitary*”, to read as follows:

**§ 886.102 Definitions.**

\* \* \* \* \*

*Decent, Safe, and Sanitary.* Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

\* \* \* \* \*

27. Section 886.113 is amended by revising the heading; by removing the introductory text; by revising paragraphs (a) and (b); by removing and reserving paragraphs (c) through (h); by removing and reserving paragraphs (j) through (m); and by revising the introductory text of paragraph (n); to read as follows:

**§ 886.113 Physical condition standards; physical inspection requirements.**

(a) *General.* Housing used in this program must be maintained and inspected in accordance with the requirements in 24 CFR part 5, subpart G.

(b) *Space and security.* In addition to the standards in 24 CFR part 5, subpart G, the dwelling unit must have a living room, a kitchen area, and a bathroom. The dwelling unit must have at least one bedroom or living/sleeping room for each two persons.

\* \* \* \* \*

(n) *Congregate housing*. In addition to the foregoing standards, the following standards apply to congregate housing:

\* \* \* \* \*

28. Section 886.302 is amended by revising the definition of “*Decent, safe, and sanitary*”, to read as follows:

**§ 886.302 Definitions.**

\* \* \* \* \*

*Decent, safe, and sanitary*. Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

\* \* \* \* \*

29. Section 886.307 is amended by revising the heading; by removing the introductory text; by revising paragraphs (a) and (b); by removing and reserving paragraphs (c) through (h); by removing and reserving paragraphs (j) through (l); by revising the introductory text of paragraphs (m) and (n); and by removing paragraphs (o) and (p); to read as follows:

**§ 886.307 Physical condition standards; physical inspection requirements.**

(a) *General*. Housing assisted under this part must be maintained and inspected in accordance with the requirements in 24 CFR part 5, subpart G.

(b) *Space and security*. In addition to the standards in 24 CFR part 5, subpart G, the dwelling unit must have a living room, a kitchen area, and a bathroom. The dwelling unit must have at least one bedroom or living/sleeping room for each two persons.

\* \* \* \* \*

(m) *Congregate housing*. In addition to the foregoing standards, the following standards apply to congregate housing:

\* \* \* \* \*

(n) *Independent group residence*. In addition to the foregoing standards, the standards in 24 CFR 887.467 (a) through (g) apply to independent group residences.

**PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES**

30. The authority citation for 24 CFR part 891 continues to read as follows:

**Authority:** 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

31. In subpart A of part 891, a new § 891.180 is added, to read as follows:

**§ 891.180 Physical condition standards; physical inspection requirements.**

Housing assisted under this part must be maintained and inspected in accordance with the requirements in 24 CFR part 5, subpart G.

**PART 965—PHA-OWNED OR LEASED PROJECTS—GENERAL PROVISIONS**

32. The authority citation for 24 CFR part 965 continues to read as follows:

**Authority:** 2 U.S.C. 1437, 1437a, 1437d, 1437g, and 3535(d). Subpart H is also issued under 42 U.S.C. 4821–4846.

33. In part 965, a new subpart F, consisting of § 965.601, is added, to read as follows:

**Subpart F—Physical Condition Standards and Physical Inspection Requirements**

**§ 965.601 Physical condition standards; physical inspection requirements.**

Housing owned or leased by a PHA, and public housing owned by another entity approved by HUD, must be maintained in accordance with the

physical condition standards in 24 CFR part 5, subpart G. For each PHA, HUD will perform an independent physical inspection of a statistically valid sample of such housing based upon the physical condition standards in 24 CFR part 5, subpart G.

**PART 983—SECTION 8 PROJECT-BASED CERTIFICATE PROGRAM**

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

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

35. Section 983.5 is revised to read as follows:

**§ 983.5 Physical condition standards; physical inspection requirements.**

(a) *General*. Housing used in this program must be maintained and inspected in accordance with the requirements in 24 CFR part 5, subpart G.

(b) *Space and security*. In addition to the standards in 24 CFR part 5, subpart G, the dwelling unit must have a living room, a kitchen area, and a bathroom. The dwelling unit must have at least one bedroom or living/sleeping room for each two persons.

(c) *Lead-based paint*. 24 CFR 982.401(j) applies to assistance under this part.

Dated: August 26, 1998.

**Andrew Cuomo,**  
*Secretary.*

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