[Federal Register: September 1, 1998 (Volume 63, Number 169)]

[Rules and **Regulations**]

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Part VII

Department of Housing and Urban Development

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24 CFR Parts 5, et al.

Uniform Physical Condition Standards and Physical Inspection

Requirements for Certain HUD Housing; Final Rule

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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.

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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,

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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 Sec. 5.703 of this rule, must continue

to comply with inspection requirements in effect immediately prior to

that date. The standards in Sec. 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

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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

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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

Sec. 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.

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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 Sec. 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,

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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.

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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.

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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 Sec. 5.705 of the proposed rule,

which

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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 Sec. 207.260, which provides that for FHA-

insured multifamily properties, the mortgagor 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 mortgagor

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 Sec. 266.507 to provide that the mortgagor

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 Sec. 266.505(b)(6) regarding the maintenance

requirements of the Regulatory Agreement between the HFA and the

mortgagor, since the maintenance requirements will be in the new

Sec. 266.507. This rule also amends Sec. 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 Sec. 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 Sec. 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 Sec. 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 Sec. 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 Sec. 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 Sec. 882.102, since

those standards are replaced by the new uniform physical condition

standards in this rule.

This rule then amends Sec. 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 Sec. 882.803(b) for the SRO program by

replacing references to the Housing Quality Standards with references

to Sec. 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,

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

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

This rule amends Sec. 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 Sec. 883.302, and paragraphs (a)(1) and (b)(1)

of Sec. 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 Sec. 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 Sec. 884.102, and paragraph (b)(1) of

Sec. 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 Secs. 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

Secs. 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 Secs. 886.113 and 886.307.

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

Disabilities

This rule adds a new Sec. 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 Sec. 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 Sec. 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,

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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.

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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

Sec. 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 Sec. 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.

Sec. 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 Sec. 5.701(a), mortgagors of housing

described in Sec. 5.701(b), and PHAs and other entities approved by HUD

owning housing described in Sec. 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,

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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.

Sec. 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 Sec. 207.260 is added, immediately after Sec. 207.259a, to

read as follows:

Sec. 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).

Sec. 266.505 [Amended]

6. Section 266.505 is amended by removing and reserving paragraph

(b)(6).

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

Sec. 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 Sec. 266.510, paragraph (a) is revised to read as follows:

Sec. 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:

Sec. 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.

\* \* \* \* \*

Sec. 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:

Sec. 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.

\* \* \* \* \*

Sec. 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 Sec. 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:

Sec. 882.102 Definitions.

\* \* \* \* \*

(b) \* \* \*

Decent, safe, and sanitary. Housing is decent, safe, and sanitary

if it meets the

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

\* \* \* \* \*

17. Section 882.404 is revised to read as follows:

Sec. 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

Sec. 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 Sec. 982.401(j). For purposes of the

SRO program, however, see Sec. 882.803(b).

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

as follows:

Sec. 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

Sec. 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:

Sec. 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.

\* \* \* \* \*

Sec. 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:

Sec. 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 Sec. 884.110, paragraph (b) is revised to read as follows:

Sec. 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:

Sec. 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:

Sec. 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.

\* \* \* \* \*

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(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:

Sec. 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:

Sec. 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 Sec. 891.180 is added, to read

as follows:

Sec. 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 Sec. 965.601, is

added, to read as follows:

Subpart F--Physical Condition Standards and Physical Inspection

Requirements

Sec. 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:

Sec. 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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