no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL SD E5 Milbank, SD [Amended]

Milbank Municipal Airport, SD,
(Lat. 45°13′50″ N, long. 96°33′58″ W)

That airspace extending upward from 700 feet or more above the surface within a 6.4-mile radius of the Milbank Municipal Airport.

* * * * *

AGL SD E5 South Dakota, SD [Amended]

That airspace extending upward from 1,200 feet above the surface within the boundary of the State of South Dakota.

Issued in Fort Worth, Texas, on June 21, 2022.

Wayne L. Eckenrode,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2022–13507 Filed 6–24–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 880, 881, 883, 884, 886, and 891

[Docket No. FR–5654–F–03]

RIN 2502–AJ22

Streamlining Management and Occupancy Reviews for Section 8 Housing Assistance Programs

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner.

ACTION: Final rule.

SUMMARY: This final rule amends existing project-based Section 8 regulations related to Management and Occupancy Reviews (MORs) for the following seven project-based Section 8 programs administered by the Office of Multifamily Housing Programs: the Section 8 Housing Assistance Payments (HAP) Programs for New Construction, Substantial Rehabilitation, State Housing Agencies, New Construction financed under Section 515 of the Housing Act of 1949, the Loan Management Set-Aside Program, the HAP Program for the Disposition of HUD-Owned Projects, and the Section 202/8 Program. Under this final rule, MORs will be conducted in accordance with a performance-based schedule published in the **Federal Register**, following a notice and comment period. The first such schedule is being published concurrently with this final rule and can be found elsewhere in this issue of the **Federal Register**. HUD is making this move to a performance-based MOR schedule to establish a risk-based scheduling protocol, reduce the frequency of MORs for projects that consistently perform well, and provide consistency across programs with respect to MOR frequency. Additionally, HUD is correcting a regulatory citation in its regulations concerning the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects.

DATES: The effective date of this final rule is September 26, 2022.

FOR FURTHER INFORMATION CONTACT: Jennifer Lavorel, Director, Program Administration Office, Office of Multifamily Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410–7000; telephone number 202–402–2515 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

On January 14, 2015, HUD published for public comment a proposed rule (80 FR 1860) to amend the regulations that govern seven project-based Section 8 HAP programs administered by the Office of Multifamily Housing Programs: the HAP program for New Construction (24 CFR part 880) and the HAP program for Substantial Rehabilitation (24 CFR part 881), which provide rental assistance in connection with the development of newly constructed or substantially rehabilitated privately owned rental housing; the HAP Program for State Housing Agencies (24 CFR part 883), which applies to newly constructed or substantially rehabilitated housing financed by State agencies; the HAP program for New Construction financed under Section 515 of the Housing Act of 1949 (24 CFR part 884), which applies to U.S. Department of Agriculture rural rental housing projects; the Loan Management Set Aside Program (24 CFR part 886, subpart A), which provides rental subsidies to HUD-insured or HUD-held multifamily properties experiencing immediate or potential financial difficulties; the HAP for the Disposition of HUD-Owned Projects (24 CFR part 886, subpart C), which provides Section 8 assistance in connection with the sale of HUD-owned multifamily rental housing projects and the foreclosure of HUD-held mortgages on rental housing projects; and the Section 202/8 Program (24 CFR part 891, subpart E), which provides assistance for housing projects serving the elderly or households headed by persons with disabilities.

For the above-described programs, contract administrators (CAs) conduct Management and Occupancy Reviews (MORs) to assess project performance. MORs evaluate management, provide oversight of HUD-assisted projects, and assure owner compliance with HAP contract requirements. Under existing regulations, the frequency of MORs across programs is inconsistent. For example, some programs require CAs to perform MORs at least annually, while others require an MOR only as necessary. The proposed rule sought to provide for consistency across programs.

Existing regulations also fail to take into consideration project performance. In fact, many projects assisted under the above-described programs consistently receive high MOR scores. For example, in FY 2018, 90.4 percent of projects received a score of ''Satisfactory,'' ''Above Average,'' or ''Superior''; the number of projects receiving such scores

increased to 92.1 percent in FY 2019, 93.1 percent in FY 2020, and 94.1 percent in FY 2021.

CAs are required to visit each project as part of the MOR, expending staff time and resources to prepare for and conduct each review. In order to devote relatively fewer resources to higher-performing projects, the proposed rule called for the adoption by **Federal Register** Notice, subject to public comment, of an MOR schedule that takes project performance into account. The first such performance-based MOR proposed schedule [1] was published concurrently with the proposed rule.

As proposed, the performance-based MOR schedule also takes HUD's risk-rating of each project into account. Under HUD's risk-rating system, each project is rated as ''Not Troubled,'' ''Potentially Troubled,'' or ''Troubled.'' This risk-rating system is discussed in more detail in paragraph III.D, below. The proposed performance-based MOR schedule considers both a project's risk-rating and its MOR score to establish whether the project's next MOR will be scheduled within 12, 24, or 36 months of the previous MOR.

The proposed rule also sought to amend the permitted duration of vacancy payments to owners of the above-described projects and of projects assisted under the Section 162 Project Assistance Contract program. Lastly, the proposed rule included a technical correction to § 886.309, replacing a citation to § 886.327 with a citation to § 886.328.

Members of the public interested in more detail about the proposed rule or the proposed MOR schedule may refer to the January 14, 2015, edition of the **Federal Register**.

II. This Final Rule

This final rule follows publication of the January 14, 2015, proposed rule as well as the proposed performance-based MOR schedule and takes into consideration public comments received on both documents. HUD has decided to adopt without substantive change the portion of the proposed rule that provides for an MOR schedule to be established via **Federal Register** Notice, subject to public comment. Likewise, HUD is adopting without change its proposed methodology for MOR scheduling, basing project schedules on both the project's risk rating and its MOR score. HUD has adopted the following changes based on public comments:

(1) HUD has decided against proceeding with the proposed changes regarding the permitted duration of vacancy payments;

(2) HUD's proposed rule provided that HUD could inspect a project at any time. HUD at the final rule stage requires that an MOR be performed within 6 months following a change in ownership or management irrespective of a project's performance-based MOR schedule. HUD believes adding an inspection at a change in ownership or management is appropriate to ensure that the MOR is based on the current management at the time;

(3) HUD is requiring that the CA review all tenant files for each sampled file going back to the previous MOR. In other words, if an MOR is taking place 36 months from the previous MOR, the CA must assess the current year's tenant files and tenant files going back to the previous MOR, for each sampled file; and

(4) HUD is making changes to the final MOR schedule, which is published elsewhere in this issue of the **Federal Register**.

The effective date of this rule is 90 days after the date of publication, which means that CAs will not begin conducting reviews pursuant to the performance-based MOR schedule until 90 days from the date of publication in the **Federal Register**.

III. Discussion of Public Comments

HUD received 23 public comments on the proposed rule and 16 public comments on the proposed MOR schedule from management associations, public housing authorities, homebuilders' associations, residents of public housing, and other interested parties. A number of comments on the proposed rule were identical to comments received on the proposed performance-based MOR schedule; other comments on the proposed rule addressed both documents. HUD is therefore responding to the comments received on both documents in this preamble to the final rule.

In general, many commenters expressed support for both the proposed rule and the proposed performance-based MOR schedule. These commenters supported basing MOR frequency on project performance, noting the associated reduction in burden, improvements in efficiency, and targeting of resources. Some commenters expressed opposition to both the proposed rule and the proposed performance-based MOR schedule, citing concerns about potential decreases in rates of compliance and other issues that are discussed in more detail below.

A. Compliance Concerns

Comment: Reducing the frequency of MORs could affect compliance. Commenters stated that a reduction in the frequency of MORs could result in increased improper payments. These comments took two general views.

One view focused on the potential for payments where a project had fallen out of compliance. For example, commenters wrote that a property can deteriorate quickly as a result of on-site staff issues or changes in ownership or management, or due to an owner relaxing upkeep and housing maintenance standards. One commenter stated that the reduced frequency of MORs may ultimately result in additional HUD time and resources being expended later to revise the MOR schedule once again to reverse the effects of the change to a performance-based MOR schedule.

Another view focused on the role of the MOR in discovering erroneous assistance payments that result from either a tenant, property owner, or management agent making an error. One commenter stated that errors in day-to-day certifications and recertifications have an immediate impact, resulting in the over- or underpayment of HAP. With respect to such errors, one commenter stated that, each year, new interpretations of the HUD Occupancy Handbook are emphasized, and the process of qualifying applicants gets increasingly complicated. The commenter stated that, as a result, the MOR becomes a training opportunity for staff, who often review requirements with and ask questions of CAs. The commenter stated that even the best management companies make mistakes and need checks and balances to ensure they are on track. Another commenter noted that some owners and management agents struggle to understand Enterprise Income Verification (EIV) reports or how to reconcile income discrepancies. Another commenter stated that annual reviews are much more important with the advent of EIV, because many owners and agents do not understand EIV reports or how to reconcile income discrepancies and are not therefore properly identifying underpayments. Because EIV income discrepancy and error information stays in the system for only 1 year after the most recent recertification, and because tenants move frequently, it will be difficult to catch errors and collect underpaid HAP amounts if the property files are being reviewed less frequently than annually.

[1] ''Section 8 Housing Assistance Programs Proposed Management and Occupancy Review Schedule'' (80 FR 1930, Jan. 14, 2015).

Finally, one commenter stated that moving away from annual MORs poses a risk to HUD with respect to HUD's goals under the Improper Payments Elimination and Recovery Act (IPERA).[2] Among other things, IPERA requires HUD to identify and reduce improper payments.

HUD response: HUD believes that the likelihood of payments being made to an owner who has failed to maintain their project in a satisfactory condition is unlikely to increase as a result of moving to a performance-based MOR schedule. Under this new schedule, only properties with a satisfactory or higher performance score and a risk rating of ''Not Troubled'' will move to a bi- or triennial MOR schedule. Nonetheless, this final rule provides HUD with a means of increasing the frequency of MORs if merited, after notice and comment. In addition, this final rule affirms that, irrespective of a project's performance-based MOR schedule, HUD or a CA may inspect a project or assess its operations at any time, as merited based on documented concerns.

With respect to the issue of owner or management agent errors resulting in over- or underpayment of HAP, HUD does not view the MOR as a tool for training owners or their agents on HUD's Occupancy Handbook, EIV, or other guidance or systems that owners and their agents must understand and employ to administer their projects in compliance with HUD requirements. The MOR is a tool employed by HUD to assess management performance vis-à-vis HUD requirements. Owners and agents bear the responsibility for administering projects in compliance with such requirements and, as such, must assure that staff receive the training they need. On the question of system updates of EIV reports, HUD Handbook 4350.3 requires both the Income Report (subparagraph 9–11.B) and the Income Discrepancy Report (subparagraph 9–11.C.3) to be maintained in the tenant file. In this final rule, HUD requires that the CA review all tenant files for each sampled file going back to the previous MOR, relying as needed on reports maintained in tenant files. HUD will not be precluded, therefore, from recovering improper payments under the performance-based MOR schedule. This requirement addresses the comment specific to HUD's goals under IPERA.

Comment: Reducing MORs could result in the loss of Federal funds. A commenter stated that MORs often result in the recovery of assistance payments as a result of either the tenant or property owner and management agent making an error. Another commenter stated that errors in day-to-day certifications and re-certifications have an immediate effect, resulting in HAP over- or underpayment. One commenter noted that property owners and management agents would lose additional funds, because they would err on the side of reducing the overpayment of subsidy so as not to outweigh the cost of continued compliance.

HUD response: HUD believes that the final schedule strikes an appropriate cost-benefit balance and that the concerns raised by commenters will be resolved once property owners and management agents adapt to the new schedule. HUD notes as well that this rule provides HUD with the ability to amend the MOR schedule, if needed, via **Federal Register** Notice, following public comment. Having the ability to amend the MOR schedule in this way enables HUD to address relatively quickly any issues related to the frequency with which MORs are conducted.

B. Scheduling Concerns

Comment: Adequate staffing, scheduling, and compensation. One commenter expressed concerns about the effect of the proposed performance-based MOR schedule on the ability of Performance-Based Contract Administrators (PBCAs) to assure adequate staffing, as the number of MORs scheduled could vary widely from one year to the next. The commenter asked whether PBCAs will be compensated for MORs outside the scope of the Annual Contributions Contract (ACC) if HUD requires additional MORs outside of this schedule.

HUD response: PBCA staffing is based on schedules adopted by PBCAs, as approved by HUD. This final rule has an effective date of September 26, 2022 in order to provide PBCAs with adequate time to assess all Section 8 projects in their portfolios and develop a schedule for the completion of MORs consistent with this final rule and the performance-based MOR schedule. This ''MOR Plan'' will be submitted to HUD for review. In evaluating each PBCA's MOR Plan, HUD will consider historical data on projects' MOR dates and scores. Among the factors HUD will take into consideration is the amount of time since each project's previous MOR, recognizing that, due to a lack of funding to support MORs on 100 percent of the portfolio annually, MORs since April of 2016 have been conducted on only approximately ⅔ of projects annually. PBCAs are aware that HUD may require an MOR sooner than reflected in the performance-based MOR schedule if merited based on a change in conditions at the project, a congressional inquiry, a report from a unit of State or local government, or complaints from project residents.

C. Initial and Ongoing Implementation

Comment: Clarify how HUD will approach the initial implementation of the new MOR schedule. One commenter supported the change to a 3-, 2-, 1-year schedule and suggested that HUD require a baseline inspection to establish each project's risk rating. Another commenter recommended that upon implementation of the new performance-based schedule, any property that has gone 3 or more years without an MOR should receive an MOR within the first year, suggesting that a large number of properties have not received an MOR in more than 3 years. Another commenter recommended that HUD adopt additional parameters, such as requiring a review within 12 months for a change of ownership, management agent, or on-site personnel. Generally, commenters sought clarification regarding how HUD will implement the new MOR schedule.

HUD response: In implementing the performance-based MOR schedule, HUD will establish a time frame for each project's next MOR at the first MOR following the effective date of this final rule. Based upon a project's MOR score following that first MOR and the project's risk rating at the time, HUD will determine the date of each project's next MOR according to the performance-based MOR schedule.

If a project's condition or risk rating worsens following an MOR, either HUD or the CA may move up the date of the project's next scheduled MOR, irrespective of the performance-based MOR schedule for the project. If a project's condition or risk rating improves between MORs, the project will remain subject to its schedule as determined pursuant to the performance-based MOR schedule. In other words, HUD will not entertain requests to reduce the frequency of MORs based upon an improvement in a project's condition or risk rating between scheduled MORs but instead encourages owners to maintain their projects at a level that will merit a decrease in MOR frequency based on the project's risk rating and MOR score at the next scheduled MOR.

HUD agrees with the comment to require an MOR following a change in ownership or management and will

[2] Public Law 111–204, enacted July 22, 2010.

require that an MOR be conducted within 6 months of such a change.

D. HUD's Risk Rating System

Comment: Clarify the process of determining a project's initial and ongoing risk rating. Commenters asked how project owners and property managers can ascertain a project's risk rating. A few commenters asked what parameters are used in determining risk ratings.

HUD response: Under HUD's risk-rating system, each project is rated as ''Not Troubled,'' ''Potentially Troubled,'' or ''Troubled.'' At a high level, HUD's risk-rating system helps HUD to focus resources on projects that are most in need of attention. At the individual project level, the risk-rating criteria are intended to assist HUD staff in assessing the likelihood that a project will decline, considering both quantitative and qualitative factors. Individual project risk ratings are not made available publicly, as the property rating is part of HUD's deliberative process and because a released rating such as ''Troubled'' or ''Potentially Troubled'' could impair a project's ability to obtain the resources needed to improve. HUD will however make available to an owner or an authorized agent of the owner an individual project's risk rating upon request.

With respect to the parameters used to determine each project's risk rating, HUD considers both quantitative and qualitative measures and has adopted some measures unique to insured projects and others unique to non-insured projects. As of the effective date of this final rule, the following examples of criteria are considered:

- *For insured projects:* the likelihood of a claim within 12 months or sooner; whether a partial payment of claim or debt restructuring is in process; the project's Qualitative Assessment Score, which takes into account qualitative factors such as tenant complaints and local code violations; the project's vacancy rate, debt service coverage ratio, Real Estate Assessment Center (REAC) score; whether, for a new construction project, underwriting assumptions have been met.
- *For non-insured projects:* whether a HAP termination or foreclosure is pending; whether a transfer of budget authority or of HAP, debt, and use restrictions is in process; whether a change in ownership is required; whether the project has problems that make it eligible for a conversion to Housing Choice Voucher assistance that has not yet begun; the project's vacancy rate, REAC score; whether the project is in compliance with any applicable use agreement.

Note that the criteria that factor into a project's risk rating and the weighting of such criteria are subject to change.

Comment: Risk-rating changes. A commenter stated that there appear to be two items for CAs to monitor to determine the frequency of future MORs—risk rating and previous MOR score. The commenter asked if the risk rating is based on when the current MOR is complete, and, if not, how CAs will be notified of changes to the risk rating between MORs. Another commenter asked how the CA will be advised about changes in MOR schedules and recommended that HUD implement a standard protocol for informing the CA when a property's risk rating changes to ensure that the CA adheres to the correct schedule.

HUD response: As stated previously, at the time an MOR is completed, HUD will establish a timeframe for the next MOR based on the project's MOR score and its risk rating at that point in time. Changes in a project's risk rating will not always trigger a change in a project's performance-based MOR schedule. For example, as described earlier, HUD will not extend the timeframe between scheduled MORs based on improvements in a project's condition or risk rating between MORs. On the other hand, HUD or the CA may determine that an MOR is needed sooner than scheduled if a project's condition or risk-rating worsens (CAs have access to each property's risk-rating through HUD's Integrated Real Estate Management System (iREMS)). If HUD determines that an MOR is needed sooner than scheduled, HUD will make this known to the CA as part of HUD's review of the CA's next successive quarterly MOR Plan.

Comment: Scope and availability of risk classifications. Commenters requested how project owners and property managers can ascertain the risk classification given to properties. A few commenters asked what parameters are used in determining the risk classification. Another commenter asked if the risk classification is financially based, and, if so, suggested that a property considered ''Troubled'' should be reviewed more often than annually regardless of the last MOR rating. One commenter suggested that HUD should provide information about how input from residents is obtained and used in determining a property's risk score. Another commenter suggested that HUD provide additional clarification and guidance on assessing overall ratings as it relates to risk-based monitoring cycles for MORs. The commenter also asked if this schedule would apply to a traditional CA.

HUD response: HUD's asset risk-rating process uses an objective scale that considers financial characteristics (*e.g.,* low debt service coverage ratio (DSCR)), recent occurrences (*e.g.,* default, excessive vacancies, low Real Estate Assessment Center's (REAC) score), tenant input (as assessed during MORs and as provided directly to HUD), and pending transactions with HUD (*e.g.,* foreclosure, partial payment of claim). The criteria are granular, and there is little room for error/ambiguity in the ratings. If changes in a property's risk classification necessitate an accelerated review, HUD will make this known to the CA as part of HUD's review of the CA's next successive quarterly MOR Plan.

The new schedule will apply to all project-based Section 8 projects, regardless of whether the contract is administered by a PBCA, HUD, or a Traditional Contract Administrator.

Comment: Pools and data. One commenter requested clarification on the pool of properties that are included in the percentages that HUD has rated ''above average,'' ''superior,'' and ''satisfactory'' 92 percent of the time. The commenter stated that if the data is coming from iREMs, it may reflect only properties that are currently receiving MORs, which represent only a portion of the country. One commenter stated that the data provided by the MOR Notice was subjective and not based on the number and severity of actual findings. Some commenters requested a breakdown of MOR ratings for the past 5, 10, and 15 years and information about whether the data provided in the MOR Notice is a nationally representative sampling of properties, including the size of the properties.

HUD response: The data on percentages was derived from a sample of more than 22,000 MORs completed from 2011 through 2013 on all Section 8–assisted properties; this includes a period of time during which MORs were being completed annually. HUD believes that the data is sufficiently representative to inform its policy development. A review of MORs completed from 2014 through 2015 showed a similar scoring distribution as the 2011–2013 sample, though the total number of completed reviews was smaller. In each of the years from 2011 through 2015, a majority of properties (average of 53 percent) has been rated ''satisfactory,'' with roughly 41 percent receiving an ''above average'' or ''superior'' rating, and 6 percent receiving a ''below average'' or ''unsatisfactory'' score. More recently,

for the years 2016 through 2020, 47 percent of properties received a ''satisfactory'' rating, with 45 percent rated ''above average'' or ''superior,'' and 8 percent rated ''below average'' or ''unsatisfactory.''

E. Other Comments

Comment: Changes to MOR schedule. One commenter recommended that properties that are ''Not Troubled'' and have a ''Superior'' score should be rewarded with a 48-month time frame before scheduling another MOR, which would incentivize owners and agents to achieve a higher score. Another commenter suggested that all properties with a rating of ''Satisfactory'' or below be reviewed every 12 months and those with a ''Not Troubled'' risk rating and a score of ''Above Average'' or higher be reviewed every 24 months. One commenter wrote that a building with a ''Below Average'' or ''Unsatisfactory'' rating should have an MOR once per year and a ''Satisfactory'' or ''Above Average'' or ''Superior'' rating should have an MOR once every 2 years. One commenter suggested reviewing any property that is considered ''Troubled'' or ''Potentially Troubled'' every 12 months regardless of the previous MOR rating and stipulating that no property will go longer than 24 months without a review. Another commenter recommended that HUD maintain the current MOR schedule. One commenter stated that a project with a rating of ''Not Troubled'' and an MOR score of ''Satisfactory'' would have little incentive to improve if that is all that is needed to receive an MOR 36 months from the previous MOR.

HUD response: HUD adopted changes to the proposed schedule based on its consideration of these comments. The final schedule is considered to present the minimum burden to owners while maintaining adequate oversight of management operations and owner compliance. Scheduling MORs based on past performance and establishing risk-rating protocols constitutes a major step in HUD's efforts to streamline its management of assets. HUD believes the final schedule is a good compromise that strikes the right balance.

Comment: Use limited reviews in lieu of fewer reviews. The commenter wrote that although some strain is put on HUD and project resources in conducting limited reviews, HUD does not explain how a ''limited review'' puts an undue strain on HUD and project resources to justify restructuring the MOR schedule. The commenter suggested that HUD should avoid risking the widespread deterioration and decline in housing projects due to a lack of adequate oversight, which could also ultimately result in the need for increased compensatory resources. The commenter requested that HUD provide the reasons behind its assumption that a more limited review of housing projects alone would not ease the strain on resources while retaining the virtue of regular oversight.

HUD response: The proposed streamlining of management reviews represents HUD's effort to respond to OIG recommendations [3] and criticisms from industry partners. Future research may suggest other adjustments to the frequency and scope of reviews, but given the consistent ''Above Average,'' ''Superior,'' and ''Satisfactory'' ratings for most projects, HUD believes that moving to fewer reviews for such projects is justified.

Comment: Require properties to submit a report to HUD annually that assesses the current level of compliance and add incentives for compliance. A commenter stated that in conjunction with the new performance-based MOR schedule, HUD should require properties to submit a report to HUD annually that assesses their current level of compliance, which will help HUD reduce costs while allowing HUD to focus its staff and resources on areas that require greater attention. The commenter explained that the report need not be burdensome to those properties that qualify to forgo scheduling an MOR with HUD annually, but the report should consist of enough relevant data that HUD can determine a property's compliance by means of a quick review. The commenter wrote that the report could provide HUD with a consistent form of documentation and help to ensure that properties with consistently high marks do not lower their standards inadvertently or out of convenience or apathy due to the new MOR schedule. The commenter submitted that depending on the cost savings HUD realizes, HUD could include an incentive process for those properties that remain accountable by submitting reports to HUD on an annual basis. The commenter suggested that by providing an incentive to properties that remain compliant, other properties may actively seek high ratings, which will further alleviate costs to HUD and allow even more staff and resources to be used in areas that need greater attention.

HUD response: HUD's view is that an owner would have little incentive to report anything other than full compliance when less than full compliance would likely induce another review. Thus, HUD believes that such certifications would have little if any substantive impact on project performance. In contrast, HUD believes that the promise of less frequent MORs will incentivize property owners to strive for higher performance. HUD and CAs will continue to perform additional MORs when warranted.

Comment: Eliminate redundancies. One commenter recommended that HUD eliminate the physical inspection part of the MOR, because REAC conducts extensive inspections on a 1- to 3-year schedule. The commenter also recommended removing the financial management/procurement portion of the MOR, since REAC evaluates financial statement data. The commenter noted that eliminating redundancies would increase efficiency and reduce costs. One commenter stated that MORs should focus exclusively on areas that are not covered by other reviews—specifically, eliminating excess HUD subsidy payments. The commenter believes that the prospect of discovering overpayment of subsidy merits a continuation of annual MORs.

HUD response: Although some elements of the REAC and MOR assessments overlap, each serves a distinct and valuable purpose with respect to HUD's asset management oversight responsibilities. REAC physical inspections provide an objective assessment of a property's physical condition and are not meant to consider housekeeping issues that may also affect the physical condition of the property. The physical assessment component of the MOR supplements the REAC physical inspection and provides additional insight into the physical condition of the property. The MOR is meant to assess the overall management of the property, including management's ability to maintain a property in decent, safe, and sanitary condition. The financial management/procurement elements analyzed in an MOR are supplemental to those assessed via an audited financial statement. The MOR provides an assessment of the day-to-day financial management of a property, often resulting in recommendations for improvements to such things as cash controls. In addition, a review performed by HUD staff or the CA, who are experienced in multifamily property management, provides a necessary perspective that is different from that of a REAC inspector. The MOR also evaluates ''rent readiness,'' enabling HUD staff and CAs to determine where improvements may be warranted. The MOR results help to inform REAC

[3] Audit Report 2010–LA–0001: ''HUD's Performance-Based Contract Administration Contract Was Not Cost Effective.'' See ''Conclusion'' on page 19.

inspection scheduling and the determination of whether other financial reporting or follow up may be required.

Comment: Need for staff training. One commenter noted that CAs often identify needed improvements to management as part of the MOR. The commenter explained that in situations where a new property owner or management company has been hired at a project that is in a 3-year MOR cycle, training may be needed to assure that the project does not deteriorate.

HUD response: HUD agrees with the commenter and has revised the regulation to require an MOR within 6 months of a change in ownership or management.

Comment: Other suggestions. A commenter stated that HUD should consider a quantitative and qualitative evaluation of the costs and benefits to properties from MORs and how properties' MOR ratings are likely to be affected with less-frequent monitoring. The commenter also suggested that HUD consider a delay in implementing the performance-based approach until an evaluation on the outcomes of not performing MORs can be conducted. The commenter recommended that HUD consider evaluating the impacts based on the portion of the portfolio that is currently not being monitored by CAs to validate their assumptions. Another commenter suggested using the prevalence of EIV discrepancies, voucher programs, and development types (*e.g.,* elderly) when determining the frequency of site reviews.

HUD response: Several alternatives for MOR procedures to reduce the burden of annual reviews on satisfactorily operating properties were considered. The proposed schedule is considered to present the minimum burden to owners, while maintaining adequate oversight of management operations and owner compliance. The Department will monitor and evaluate the impact of the new performance-based schedule on property compliance and revisit the schedule, if needed.

F. Scope

Comment: Mark-to-Market projects. One commenter questioned whether HUD intends to adopt the proposed MOR schedule for projects subject to renewal under Mark-to-Market. The commenter suggested that HUD could provide a 36-month, 24-month, and 12-month schedule for such projects by allowing scaled-back limited reviews between the full MORs for high-performance properties, which could include analyses of properties' financial statements, surplus cash analysis, the risk-rating system, and/or other information that HUD collects to ensure regulatory compliance. Another commenter requested clarification as to whether the MOR schedule would change for restructured Mark-to-Market properties under Section 519 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA), for which HUD had previously provided guidance that MORs would be required annually. The commenter also recommended that the inspections for such properties align with the new proposed schedule.

HUD response: Section 519(b)(1) of MAHRA requires CAs to monitor the status of projects renewed under Mark-to-Market at least annually. Therefore, this schedule would not and could not apply to restructured Mark-to-Market properties.

Comment: Other programs. One commenter requested clarification about the applicability of the regulatory changes to other programs, noting that the instructions and applicability of form HUD–9834 indicate that properties other than those with a Section 8 HAP contract utilize the form for monitoring and oversight.

HUD response: The performance-based MOR schedule and the associated regulatory changes apply only to projects covered by this Final Regulation.

G. Other Suggested Changes and Questions

Comment: Codify the schedule by regulations. Some commenters recommended that HUD should write a permanent schedule in the regulations. One commenter recommended that HUD use the physical inspection schedule at 24 Code of Federal Regulations (CFR) § 200.855 and § 200.857 as a model for writing a permanent schedule in regulations that permit 3-, 2-, and 1-year reviews.

HUD response: If HUD determines a change in the schedule is needed, a new schedule will be established via **Federal Register** Notice, following a review and comment period. Use of a **Federal Register** Notice to dictate the schedule rather than codifying the schedule in regulation provides HUD with greater latitude to modify the schedule going forward, if merited.

Comment: Additional reviews conflict with State and local laws. Commenters wrote that providing for HUD to inspect project operation and units at any time may conflict with State and local laws, which often require notice before entering a resident's unit. The commenters suggested that HUD revise the language to clarify that notice is required.

HUD response: HUD Account Executives and CAs are generally familiar with local requirements. All independent inspections performed by HUD will continue to be in compliance with State and local laws.

Comment: Other applications. One commenter recommended that HUD consider similar reduction principles when developing the next iteration of the Public Housing Assessment System and the Section 8 Management Assessment Program.

HUD response: While HUD appreciates this comment, this recommendation is outside the scope of this rulemaking as the Public Housing Assessment System and the Section 8 Management Assessment Program fall under the purview of the Assistant Secretary for Public and Indian Housing.

Comment: The Notice fails to provide adequate notice for certain persons to comment on the proposed Paperwork Reduction Act (PRA) changes. One commenter asked how HUD will ensure that the solicitation of comments, as required under the PRA in accordance with 5 CFR 1320.8, is adequately provided to certain persons, especially those who are elderly or lack computers.

HUD response: The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520) and regulations at 5 CFR 1320 require that agencies publish requests for comments on paperwork in the **Federal Register**, which HUD has done for HUD's form HUD–9834, ''Management Review for Multifamily Housing Projects.'' HUD will also ensure updates are processed in accordance with applicable notice and comment procedures set forth by the PRA. As for the ''certain persons, including those who are elderly or lack computers,'' referenced by the commenter, HUD notes that public libraries provide access to computers.

IV. Findings and Certifications

Regulatory Review—Executive Orders 12866, 13563, and 13771

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. This rule was determined to be a non-significant regulatory action under section 3(f) of Executive Order 12866.

Executive Order 13563 (Improving Regulation and Regulatory Review) directs executive agencies to analyze

regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 also directs that where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule is part of HUD's retrospective review carried out under Executive Order 13563.

Need for Regulatory Action

Executive Order 12866 emphasizes that ''Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people.'' Because the schedule for MORs was established by regulation, HUD must use rulemaking to reduce the burden of annual MORs. Moreover, HUD has determined that the current MOR schedule places a strain on HUD resources and on projects that consistently receive high marks on their MORs. This fact, and the costs placed on projects to prepare for an MOR and that result from the interruption in normal operations caused by an MOR, makes reducing this burden an important topic for rulemaking. As a result, consistent with Executive Order 13563, this rulemaking is intended to modify, streamline, or repeal burdensome regulations.

Discussion of Costs and Benefits

This final rule will provide consistency across the project-based Section 8 programs administered by the Office of Multifamily Housing Programs for the scheduling of MORs and allow HUD to issue the schedule by publishing it in the **Federal Register**, subject to public comment. The purpose of an MOR is to verify property compliance with the terms of the HAP contract. The MOR process is a lengthy and resource-heavy process, involving the inspection of residents' units; a review of owner compliance with civil rights regulations; a review of complaints from residents, congressional inquiries, and media reports; and a review of any contractual violations and imposed sanctions. Because many of the properties that receive assistance under a Section 8 HAP contract have consistently received high marks on their MORs, reducing the frequency of MORs will result in fewer interruptions in project operations. HUD also concludes that deficiencies discovered as part of the MOR of a property that receives a high mark are typically less than the costs to the project of preparing for and participating in the MOR.

Information Collection Requirements

The information collection requirements for this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control numbers 2502–0178. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number. The overall burden of this collection will be reduced, however, by reducing the frequency of MORs for properties that perform well.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment was made as part of the proposed rule in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI remains applicable to this final rule and is available for inspection on *Regulations.gov*.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This rule does not impose a Federal mandate on any State, local, or tribal government, or on the private sector, within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. It is HUD's position that the burden reduction measures provided by this rule would not have a significant economic impact (beneficial or adverse) on a substantial number of small entities.

As noted earlier in this preamble, this rule is one of the regulatory actions being undertaken as part of HUD's Retrospective Review Plan, established in accordance with Executive Order 13563. The primary focus of this rule is to reduce burden across all project owners regardless of size. The focus of MORs is on ensuring that the units that HUD subsidizes are decent, safe, and sanitary and are made available to eligible tenants in a nondiscriminatory manner. These are not requirements that HUD can alter on the basis that a project owner is a small entity. However, as noted above, this rule reduces burden for all project owners, large or small, that manage their properties well in accordance with HUD regulations and score well under the MOR rating system.

Executive Order 13132, Federalism

Executive Order 13132 (''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either (1) imposes substantial direct compliance costs on State and local governments and is not required by statute, or (2) preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempt State law within the meaning of the Executive Order.

Catalog of Federal Domestic Assistance.

The Catalog of Federal Domestic Assistance number applicable to the programs that would be affected by this rule is 14.195.

List of Subjects

24 CFR Part 880

Annual contributions contract, Audit, Construction, Contract administration, Financing, Grant programs—housing and community development, Housing assistance, Housing assistance payments contract, Management, New construction, Owner, Public housing agency, Property standards, Rent subsidies, Reporting and recordkeeping requirements, Section 8, Tenants, Units.

24 CFR Part 881

Annual contributions contract, audit, contract administration, conversion, housing assistance, Grant programs—housing and community development, housing assistance payments contract, inspections, low-income family, owner, public housing agency, Rent subsidies, Reporting and recordkeeping

requirements, Section 8, Substantial rehabilitation, Tenants, Units.

24 CFR Part 883

Annual contributions contract, Audit, Contract administration, Housing finance agencies, Grant programs—housing and community development, Housing assistance, Housing assistance payments contract, Low-income family, Owner, Rent subsidies, Reporting and recordkeeping requirements, Section 8, Substantial rehabilitation, State agencies, Tenants, Units.

24 CFR Part 884

Annual contributions contract, Audit, Contract administration, Conversion, Grant programs—housing and community development, Housing assistance, Housing assistance payments contract, Income limit, Inspections, Low-income family, Maintenance, New construction, Owner, Public housing agency, Rent subsidies, Reporting and recordkeeping requirements, Rural areas, Rural housing, Section 8, Security deposits, Tenants, Units, Utility deposits.

24 CFR Part 886

Audit, Contract administration, Grant programs—housing and community development, Housing assistance, Housing assistance payments contract, Income, Inspection, Lead poisoning, Maintenance, Marketing, Mortgages, Owner, Rehabilitation, Rent subsidies, Reporting and recordkeeping requirements, Section 8, Security deposits, Special allocations, Tenants, Units, Utility deposits.

24 CFR Part 891

Aged, Grant programs—housing and community development, Capital advances, Individuals with disabilities, Loan programs—housing and community development, Project rental assistance, Rent subsidies, Reporting and recordkeeping requirements, Section 8, Supportive housing for persons with disabilities, Supportive services, Tenants, Units.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 880, 881, 883, 884, 886, and 891 as follows:

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

■ 1. 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.

■ 2. Revise § 880.612 to read as follows:

§ 880.612 Management and occupancy reviews.

(a) The contract administrator will conduct management and occupancy reviews to determine whether the owner is in compliance with the Contract. Such reviews will be conducted in accordance with a schedule set out by the Secretary and published in the **Federal Register**, following notice and the opportunity to comment. Where a change in ownership or management occurs, a management and occupancy review must be conducted within six months following the change in ownership or management.

(b) HUD or the Contract Administrator may inspect project operations and units at any time.

(c) Equal Opportunity reviews may be conducted by HUD at any time.

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

■ 3. 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.

■ 4. Revise § 884.224 to read as follows:

§ 884.224 Management and occupancy reviews.

(a) The contract administrator will conduct management and occupancy reviews to determine whether the owner is in compliance with the Contract. Such reviews will be conducted in accordance with a schedule set out by the Secretary and published in the **Federal Register**, following notice and the opportunity to comment. Where a change in ownership or management occurs, a management and occupancy review must be conducted within six months.

(b) HUD or the Contract Administrator may inspect project operations and units at any time.

(c) Equal Opportunity reviews may be conducted by HUD at any time.

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

■ 5. 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.

■ 6. Revise § 886.130 to read as follows:

§ 886.130 Management and occupancy reviews.

(a) The contract administrator will conduct management and occupancy reviews to determine whether the owner is in compliance with the Contract. Such reviews will be conducted in accordance with a schedule set out by the Secretary and published in the **Federal Register**, following notice and the opportunity to comment. Where a change in ownership or management occurs, a management and occupancy review must be conducted within six months.

(b) HUD or the Contract Administrator may inspect project operations and units at any time.

(c) Equal Opportunity reviews may be conducted by HUD at any time.

§ 886.309 [Amended]

■ 7. In § 886.309, in paragraph (e), remove ''§ 886.327'' and add in its place ''§ 886.328''.

■ 8. Revise § 886.335 to read as follows:

§ 886.335 Management and occupancy reviews.

(a) The contract administrator will conduct management and occupancy reviews to determine whether the owner is in compliance with the Contract. Such reviews will be conducted in accordance with a schedule set out by the Secretary and published in the **Federal Register**, following notice and the opportunity to comment. Where a change in ownership or management occurs, a management and occupancy review must be conducted within six months.

(b) HUD or the Contract Administrator may inspect project operations and units at any time.

(c) Equal Opportunity reviews may be conducted by HUD at any time.

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

■ 9. 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.

■ 10. Add § 891.582 to read as follows:

§ 891.582 Management and occupancy reviews.

(a) The contract administrator will conduct management and occupancy reviews to determine whether the owner is in compliance with the HAP Contract. Such reviews will be conducted in accordance with a schedule set out by the Secretary and published in the **Federal Register**, following notice and the opportunity to comment. Where a change in ownership or management occurs, a management and occupancy review must be conducted within six months.

(b) HUD or the Contract Administrator may inspect project operations and units at any time.

(c) Equal Opportunity reviews may be conducted by HUD at any time.

Julia R. Gordon,

Assistant Secretary for Housing–Federal Housing Commissioner.

[FR Doc. 2022–13426 Filed 6–24–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 310

[Docket ID: DoD–2022–OS–0067]

RIN 0790–AL32

Privacy Act of 1974; Implementation

AGENCY: Office of the Secretary of Defense, Department of Defense (DoD).

ACTION: Direct final rule with request for comments.

SUMMARY: The DoD is amending this part to remove the exemption rules associated with three systems of records notices (SORNs) established for the Department of the Air Force and two SORNs established for the Office of the Secretary of Defense under the Privacy Act of 1974, as amended. Elsewhere in this issue of the **Federal Register**, the DoD is giving concurrent notice of the rescindment of these same five SORNs as part of a notice rescinding numerous other SORNs. The DoD is also amending this part to remove an exemption rule associated with one SORN established for the Marine Corps that was previously rescinded by the DoD. This rule is being published as a direct final rule as the Department does not expect to receive any adverse comments. If such comments are received, this direct final rule will be withdrawn and a proposed rule for comments will be published.

DATES: The rule is effective on September 6, 2022 unless comments are received that would result in a contrary determination. Comments will be accepted on or before August 26, 2022. If adverse comment is received, the Department will publish a timely withdrawal of the direct final rule.

ADDRESSES: You may submit comments, identified by docket number, Regulatory Identifier Number (RIN), and title, by any of the following methods.

* Federal eRulemaking Portal: *https://www.regulations.gov.*

Follow the instructions for submitting comments.

* Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Rahwa Keleta, Defense Privacy and Civil Liberties Division, Directorate for Privacy, Civil Liberties and Freedom of Information, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Department of Defense, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700; *OSD.DPCLTD@mail.mil*; (703) 571–0070.

SUPPLEMENTARY INFORMATION:

Privacy Act Exemption

The Privacy Act permits Federal agencies to exempt eligible records in a system of records from certain provisions of the Act, including the provisions providing individuals with a right to request access to and amendment of their own records and accountings of disclosures of such records. If an agency intends to exempt a particular system of records, it must first go through the rulemaking process to provide public notice and an opportunity to comment on the proposed exemptions. The rule explains why exemptions are being claimed for the associated system of records. During the rule-making process, the public are invited to comment, which DoD will consider before the issuance of a final rule implementing those exemptions. The final rules implementing exemptions for DoD systems of records are codified in DoD's privacy regulation at 32 CFR part 310.

When a system of records is no longer required to be collected or maintained, the system of records may be discontinued. The notice for that system of record is rescinded in the **Federal Register**, and the records covered by the rescinded system of records are lawfully transferred or disposed of in accordance with applicable requirements. At the time of rescindment or following rescindment for the system of records notice, Federal agencies will seek to also rescind the associated exemption rules within the Code of Federal Regulations.

Direct Final Rulemaking

This rule is being published as a direct final rule as the Department does not expect to receive any significant adverse comments. If such comments are received, this direct final rule will be withdrawn and a proposed rule for comments will be published. If no such comments are received, this direct final rule will become effective ten days after the comment period expires.

For purposes of this rule, a significant adverse comment is one that explains (1) why the rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of this direct final rule, the Department will consider whether the comment raises an issue that would have warranted a substantive response had it been submitted in response to a standard notice of a proposed rule. A comment recommending an addition to the rule will not be considered significant and adverse unless the comment explains how this direct final rule would be ineffective without the addition.

The DoD is amending 32 CFR part 310 by rescinding the following regulation provisions (in their entirety) due to the underlying SORNs being rescinded (concurrently by associated public notice) or having been previously rescinded through public notice:

- 32 CFR 310.14(f)(12), *System identifier and name.* F031 497IG A, Sensitive Compartmented Information Personnel Records.
- 32 CFR 310.14(f)(14) *System identifier and name.* F031 497IG B, Special Security Case Files.
- 32 CFR 310.14(f)(15) *System identifier and name.* F031 AF SP N, Special Security Files.
- 32 CFR 310.29(c)(2), *System identifier and name.* DWHS P28, Personnel Security Operations Files.
- 32 CFR 310.29(c)(8), *System identifier and name.* DWHS P29, Personnel Security, Suitability, and Homeland Security Presidential Directive 12 (HSPD–12) Adjudications.
- 32 CFR 310.17, consisting of paragraph (a)(1), *System identifier and name.* MIN00001, Personnel and Security Eligibility and Access Information System.