

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****24 CFR Part 905**

[Docket No. FR-5361-P-01]

RIN-2577-AC81

**Public Housing: Physical Needs Assessment****AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to revise HUD's existing regulations governing a physical needs assessment (PNA) undertaken by a public housing agency (PHA). A PNA identifies all of the work that a PHA would need to undertake to bring each of its projects up to the applicable modernization and energy conservation standards. This rule would require PHAs to project the current modernization and life-cycle replacement repair needs of its projects over a 20-year period, rather than a 5-year period, because the 20-year period coincides better with the useful life of individual properties and their building components and systems to ensure the long-term viability of the property. Additionally, this rule proposes to integrate the performance of the PNA with the performance of an energy audit.

**DATES:** *Comments Due Date:* September 19, 2011.**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures

timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

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

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

*Public Inspection of Public Comments.* All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service, toll free, at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Kevin Gallagher, Capital Program Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410-8000; telephone number 202-402-4192 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

**SUPPLEMENTARY INFORMATION:****I. Background**

A PNA provides PHAs with critical information on the physical condition of each project in its inventory and assists PHAs with identifying and prioritizing work items that require repair and modernization. The requirement to conduct a PNA has long been part of the regulations for HUD's Public Housing Modernization program, found in 24 CFR part 968. HUD's proposed rule on the Public Housing Capital Fund, published on February 7, 2011, at 76 FR 6654, proposes to remove part 968 and incorporate public housing modernization requirements in the regulations governing the Public

Housing Capital Fund program in 24 CFR part 905.

Although the requirement to conduct a PNA has long been part of the regulations for HUD's Public Housing Modernization program, HUD, on July 21, 2009; September 29, 2010; October 14, 2010; and December 2, 2010, hosted meetings with PHAs and their representatives to discuss how repair and modernization needs should be assessed, and the costs and benefits of obtaining that information to PHAs and to HUD. At these meetings, PHAs raised a number of issues regarding costs, the content of the PNAs, and the methodologies that would be involved. Information about these meetings is available at <http://portal.hud.gov/huddoc/report-on-pna.pdf>.

This rule proposes to revise the regulations governing the completion and submission of a PNA, currently found in 24 CFR part 968, based on consideration of issues raised at the above meetings, experience with funding for public housing capital expenditures under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5, approved February 13, 2009 (Recovery Act)), the PNA requirement imposed on PHAs receiving Recovery Act capital funds, and HUD's further consideration of how a PNA should be undertaken, completed, and submitted by a PHA.

The existing requirements of 24 CFR part 968, subpart C (Comprehensive Grant Program), provide that PHAs with 250 or more units are required to periodically complete a PNA in conjunction with their Comprehensive Plan (see § 968.315(e)(2)). There is currently no requirement for PHAs with fewer than 250 units to conduct a PNA. Throughout this preamble where "small" PHAs are referenced, it is in the context of 24 CFR part 968, subpart B, which applies to PHAs with fewer than 250 public housing units. Section 5A of the United States Housing Act of 1937 (1937 Act) (42 U.S.C. 1437c-1(a)(1)), which establishes the PHA 5-year Plan, requires each PHA to submit to HUD, not less than once every 5 years, a plan that includes a statement of the mission of the PHA for serving the needs of low-income and very low-income families, and "a statement of the goals and objectives \* \* \* that will enable the housing authority to serve the needs identified." These needs are, in turn, reflected by PHAs in their Annual Statement/Performance and Evaluation Report (form HUD-50075.1) and Capital Fund Program—Five-Year Action Plan (form HUD-50075.2) and are funded under the capital fund formula authorized at section 9(d)(2) of the 1937

Act (42 U.S.C. 1437g(d)(2)) and established by regulation at 24 CFR 905.10. In accordance with these requirements, PHAs are expected to reflect their capital improvement and spending priorities in their Annual Statements and 5-year action plans, which should be based on PNAs that are prepared in accordance with the requirements of 24 CFR part 968.

The current PNA regulation at 24 CFR 968.315(e)(2) requires: A brief summary of the physical improvements needed to bring each development to HUD standards for modernization, energy conservation life-cycle cost effective performance standards, and lead-based paint testing and abatement standards; the replacement needs of equipment and structural elements during the period covered; a preliminary estimate of cost; any physical disparities between buildings occupied predominantly by one racial or ethnic group and the physical improvements required to correct the disparity; and the number of units the PHA is proposing for substantial rehabilitation and subsequent sale, if any (see 24 CFR 968.315(e)(2)). As to energy audits, HUD requires PHAs to complete an energy audit for each PHA-owned project under management, not less than once every 5 years (see 24 CFR 965.302).

## II. This Proposed Rule

The need for PHAs to engage in strategic planning has increased considerably over the past decade as PHAs have transitioned to an asset-based accounting and management model more closely aligned to industry-standard real estate management procedures. A focus on the individual project, rather than on the macro level of the entirety of a PHA's public housing portfolio, further highlights the need for strategic planning over a longer term period. As the public housing portfolio ages, the need to strategically plan impacts all PHAs regardless of size. The opportunities for PHAs to take advantage of a variety of financing vehicles to modernize and develop public housing have also increased over the past decade. Thus, in managing their public housing portfolios, PHAs are increasingly called upon to make long-term reinvestment and portfolio management decisions that may entail demolition, disposition, conversion, financing, redevelopment, or repositioning of real estate assets. A key tool to accomplishing such strategic planning is a PNA.

This rule proposes to supplement the Public Housing Capital Fund Program regulation, published on February 7, 2011, at 76 FR 6654, to include new

PNA regulations. This proposed rule would add a new paragraph (b)(9) to proposed new section § 905.300 in the rule of February 7, 2011 (see 76 FR 6665), which would require all PHAs, including small PHAs and Moving to Work PHAs, to complete PNAs and provide them to HUD so that PHAs may properly administer their Capital Fund programs, and so that HUD may effectuate its implementation and oversight functions in regard to the Capital Fund. In addition, because the rule refers to Moving to Work PHAs, the rule would add a definition of such PHAs in new proposed § 905.108, entitled "Definitions." (See 76 FR 6661)

Section 9(d)(1)(L) of the 1937 Act, 42 U.S.C. 1437g(d)(1)(L), includes in the list of eligible activities related to the Capital Fund "integrated utility management and capital planning to maximize energy conservation and efficiency measures." While energy audits are already required, HUD is proposing to provide for the most cost-effective, useful, and efficient performance of activities funded under 42 U.S.C. 1437g(d)(1)(L) by requiring PHAs to complete their PNAs in conjunction with energy audits, and adopt or consider the findings of an energy audit, identify work items that correspond to energy conservation measures (ECMs), and incorporate cost-effective data from energy audits and PNAs into their assessment.

The integration of the energy audit and PNA is considered to be most effective when both activities are coordinated. In addition, coordination between an energy auditor and PNA provider is considered to be important for energy efficiency and capital upgrade decision-making. As the consulting industry that services PHAs and the public housing program is introduced to conducting coordinated or integrated PNAs and energy audits, the costs associated with performing both of these assessments may be reduced. HUD invites comment on the potential benefits and challenges of preparing energy audits in conjunction with PNAs. HUD is also interested in comment on the effect of aging on energy audit information as related to its usefulness for cost projection and strategic planning in a PNA.

This rule proposes to require PHAs to project the current modernization and life-cycle replacement repair needs over a 20-year period, rather than a 5-year period, in accordance with the useful life of individual properties and their building components and systems, to ensure the long-term viability of the property. This 20-year period is more closely related to the life cycle of

buildings and major physical components than the current 5-year period. This proposed life-cycle-based, project-level PNA will enhance capital planning, recapitalization, and portfolio management practices by PHAs.

In addition, PNAs covering 20 years or more of projected capital needs are standard in real estate management. PNAs are standard requirements for refinancing, purchase of existing real estate, and property management. It is recognized that PNAs, especially in the later years of the 20-year period, will provide an estimate of future costs, not a statement of actual cost. These projections will be revised and become more accurate as time passes. The value of this order-of-magnitude estimate is the identification that there will be future obligations that must be planned and budgeted for in advance. Actual cost will be established by a contract for performance of the work; a PNA represents an informed estimate of future cost.

There currently exists no guidance as to the qualifications for the PNA provider. In addition, there exists no professional industry certification standard for providers of PNAs. Providers of such services range from architects and engineers to experienced practitioners from the building and inspection trades. Some PHAs directly employ staff people that perform physical needs assessment for their property. The proposed rule would establish minimum qualifications for the PNA provider, which standards would include experiential qualifications in property inspection and evaluation, cost estimating, energy efficiency and green capital upgrade and construction practices, and working knowledge of common information technology software. The rule would continue to permit the PHA to have its staff perform PNAs, but would give PHAs better guidance as to qualifications staff should have to perform this function. Although this is intended to minimize the compliance burden on PHAs, HUD understands that PHAs must weigh the decreased cost of the in-house assessment against the possibly greater objectivity, and hence validity, of third-party assessments. PHAs that plan to use PNAs to directly support a financial or funding transaction are advised to consider contracting with a third-party provider to the extent they are financially able. HUD invites public comment regarding appropriate qualifications for PNA providers and the appropriateness of PHA staff performing PNAs used for internal strategic planning purposes, PNAs used to directly support a funding

or financial transaction, or both. HUD also seeks comment on the implications of adopting a requirement that PHAs use independent third-party providers to conduct their PNAs and the extent to which such a requirement would affect the compliance burden on PHAs and the validity of the PNA data.

This rule would require that the PNA and energy audit be completed in conjunction with each other once every 5 years to promote coordination of capital planning involving the selection of building materials and supplies, as well as capital expenditures that address life-cycle replacement repairs and energy efficiency improvements. The new PNA regulation and PNA form being developed by HUD will record energy conservation measures as identified in an energy audit. This rule proposes that, using information from the energy audit, the PHA shall identify specific work items and their associated costs in the PNA that match energy conservation measures (ECMs) identified in the energy audit.

While HUD proposes to require PHAs to update the PNA annually (and wholly revise it once every 5 years), HUD proposes to minimize any burden associated with the updates by having the PNA submitted electronically via a mechanism that will allow HUD to both aggregate and analyze the PNA data. Moreover, the annual update of the PNA, as proposed to be required by this rule, will provide HUD with the information it needs to effectively monitor PHA performance with respect to the manner in which the PHA addresses capital repair needs and administers the Capital Fund. PNA updates will be used to show how PHAs reduce capital repair backlog in their inventory and will enable HUD to assess the impact on the physical needs of the entire public housing portfolio.

*Annual Update.* The specific procedures for annual PNA updates will be determined as the new PNA tool is developed, but HUD plans for these updates to be a simple process performed by PHA staff in an automated format. The PHA, at the conclusion of the fiscal year, would review the PNA

that it had prepared and would eliminate capital costs for the year that just ended by eliminating estimated costs for capital improvements actually completed. For capital improvements that were not completed during the year that just ended, the costs for those incomplete improvements would be moved to a future year. The PHA would continue in this manner for each year until the next comprehensive PNA is performed to refresh the data. This is the standard process used in the management of multifamily real estate portfolios. In this way, the PHA and HUD will have continuous visibility of the effectiveness of Capital Funds for long-term capital and financial planning.

*Initial Submission and Transition.* HUD plans to require that the PNAs, as proposed, be required only after the appropriate submission and evaluation systems are developed. Additionally, for the first two PNAs and first two energy audits, HUD may establish different dates for the submission of this information, recognizing that the initial effort to aggregate PNA and energy audit data may not allow for integration of the information into the 5-year reporting format as contemplated. For example, the 5-year planning cycle places many PHAs in a timeframe to submit their 5-year plans in Fiscal Year (FY) 2011. The new HUD PNA format is not anticipated to be available for use before FY 2012. HUD has provided initial guidance to PHAs to extend their existing PNAs and delay performance of a wholly new PNA until availability of the new PNA tool. It is envisioned that PHAs will report on their 5-year plan in FY 2011 on the basis of their existing PNA, as extended. The PHA will then perform the new PNA when the PNA tool becomes available in 2012. Since the new PNA will provide a 20-year schedule and would be updated annually by the PHA, adequate information from the 2012 PNA would exist for the PHA to use as the basis for its 5-year plan of 2016. The next PNA would be performed in 2020, in advance of the PHA's 5-year plan for 2021. Thereafter, the timing of completion of

new PNAs shall be aligned to support more directly the 5-year PHA plan cycle.

The current PNA regulation assesses the needs and costs to ensure long-term physical viability, while the proposed rule would require the PNA to include all projected capital costs needed to keep the projects decent, safe, in good repair, and in compliance with all public housing requirements. When preparing capital repair and life-cycle repair cost estimates for modernization purposes, PHAs will continue their current practice of complying with local building and construction codes, as well as with all applicable public housing requirements, including uniform physical conditions standards, section 504 of the Rehabilitation Act (see 29 U.S.C. 794), and Uniform Federal Accessibility Standards (UFAS) (see 24 CFR part 40) requirements.

HUD believes that the amendments to the PNA regulations as proposed to be provided in new § 905.300(b)(9) of this rule will make the PNA tool a more effective tool and therefore better address the modernization and life-cycle replacement repair needs of a PHA's projects. The PNA existing regulation in 24 CFR 968.315(e)(2) was already proposed to be removed by the February 7, 2011, proposed rule. (See 76 FR 6661)

**III. Findings and Certifications**

*Paperwork Reduction Act*

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). 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 burden of the information collections in this proposed rule is estimated as follows:

**REPORTING AND RECORDKEEPING BURDEN**

Section reference	Number of respondents	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
§ 905.300(b)(9)—PNA performed every 5 years including data collection and site inspection .....	620	1	<sup>1</sup> 130	80,600
§ 905.300(b)(9)—PNA data analysis and reporting .....	620	1	<sup>2</sup> 45	27,900
§ 905.300(b)(9)(vii)—annual update .....	2,480	1	<sup>3</sup> 8	19,840

REPORTING AND RECORDKEEPING BURDEN—Continued

Section reference	Number of respondents	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
Quality Assurance .....	104	1	4 16	1664
Total Paperwork Burden for the New Rule				130,004
Total Burden from current OMB ICR 2577–0157 <sup>5</sup>				47,740
Total Additional Burden as a result of this rule				82,264

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

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

(2) Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

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

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days

<sup>1</sup> PHAs are only required to complete PNAs once every 5 years. This entry reflects the data collection and inspections. Therefore, to reflect the annual burden, a weighted average was derived by taking 1/5 of the total burden required of PHAs once every 5 years.

<sup>2</sup> This entry reflects the time to analyze the collected data, prepare a report, and upload the data to HUD.

<sup>3</sup> Per the new rule, PHAs will be required to complete an annual update in the years that they are not required to do a full PNA (thus annual updates will be required 4 out of every 5 years). Therefore, to reflect an annual burden, a weighted average was derived by taking 4/5 of the burden for PHAs to fulfill the annual update requirement.

<sup>4</sup> Quality Assurance will be performed by HUD on a sample of approximately 521 PNAs after each 5-year PNA cycle. Since all of the sampled PHAs would already have collected the basic quantity, component age, and other data into a PNA, the additional burden on the sampled PHAs is expected to be minimal.

<sup>5</sup> In the currently effective Information Collection Request (ICR), the burden is 15.4 hours annually for 3,100 PHAs.

after today’s publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today’s publication date. This time frame does not affect the deadline for comments to the agency on the proposed rule, however. Comments must refer to the proposal by name and docket number (FR–5361–P–01) and must be sent to:

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

and one of the two options below:  
 Colette Pollard, HUD Reports Liaison Officer, Office of the Chief Information Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 2204, Washington, DC 20410; or

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

**Regulatory Planning and Review**

OMB reviewed this proposed rule under Executive Order 12866 (entitled “Regulatory Planning and Review”). This rule is a “significant regulatory action” as defined in 3(f) of the order (although not an economically significant regulatory action, as

provided under section 3(f)(1) of the order).

The rule is not expected to have a significant economic impact. It is estimated that full compliance with the rule as proposed would cost PHAs, collectively, up to \$29 million once every 5 years or an average of \$5.9 million annually. The rule would not have any budgetary impact to the Federal Government, as costs to implement the PNA would be accommodated within HUD’s existing budget authority. However, the additional expenses to expand PNA activities would generate some transfers from PHAs to those entities performing PNAs. These changes, however, are necessary for the transition to asset management and to accommodate the growing flexibility of financing granted to PHAs.

This proposed rule would require all PHAs to project the current modernization life-cycle replacement repair needs over a 20-year period.<sup>6</sup> This rule would coordinate the performance of the PNA with the performance of an energy audit and would expand the PNA requirements to apply to PHAs with fewer than 250 units.

The cost to perform PNAs can be approximated using existing examples and HUD’s own experience.

HUD is using the PNA format of HUD’s Green Retrofit Program (GRP), a Recovery Act program, as a source for the development of the PNA to be used in public housing and the new HUD PNA will be comparable in complexity/comprehensiveness.<sup>7</sup> HUD’s Office of

<sup>6</sup> The current PNA regulation assesses the needs and costs to ensure long-term physical and social viability over a 5-year period.

<sup>7</sup> HUD’s Office of Affordable Housing Programs, in the Office of Housing, manages the GRP, which involves direct engagement of providers to perform Physical Needs Assessment and Energy Audits for affordable housing projects. The GRP PNA is a baseline PNA including all of the components generally understood to be found in a PNA. It should be noted that the GRP includes an energy audit portion and an integrated pest management

Affordable Housing Programs (OAHP), in the Office of Housing, has shared a summary of its costs to perform PNAs during 2009/10 using its format for a set of 66 projects nationwide. These projects averaged 96 units per project, making them very comparable to the average project size of small PHAs of 84 units.

The average cost for the PNA portion of the GRP for these projects was \$6,220 per project or \$65.22 per unit.

During 2010, HUD staff in the Office of Public Housing visited a number of PHAs nationwide in an effort to familiarize itself with PNA procedures, forms, and formats used by PHAs, as well as to evaluate the burden of performance. These visits yielded some cost data that can be used as illustrative

of the costs to perform PNAs to generally accepted industry standards for a baseline PNA. Notably, a large housing authority provided a copy of a proposal for its completed PNA indicating a cost of \$63 per unit in 2007 from a nationally recognized high quality third-party provider. Two other PHAs, each of which had previously engaged third-party PNA providers to complete PNAs, are currently preparing to solicit proposals for new PNAs. Each indicated that their respective budget for the effort was \$50 per unit in the context of having contracted for similar work previously and having baseline data from those prior assessments.

The \$50 per-unit cost is used in this analysis as the cost to PHAs that are currently performing PNAs.

Assuming that PHAs are currently spending \$50 per unit to perform PNAs and that it would cost \$65.22 per unit under this rule, Exhibit-1 shows that compliance with the PNA requirements as proposed would cost about \$79 million once every 5 years. However, the additional cost beyond what PHAs are already doing would be only \$29 million. Small PHAs will be required to perform PNAs where no requirement previously existed. For these authorities, the cost would be estimated based upon the GRP cost data for similarly sized projects. This cost would be estimated at between \$13,286,423 (203,717 units at \$65.22 per unit) and \$15,077,280 (2,424 projects at \$6,220 per project) for the first performance of the PNA.

EXHIBIT—1

	Universe <sup>1</sup>						PNA current regulation		PNA proposed regulation		Estimate regulatory cost
	PHAs	% PHAs	Projects	% Projects	Total	% Units	\$/Unit <sup>2</sup>	\$Total	\$/Unit <sup>3</sup>	\$Total	
Under 250 Units ....	2,424	74.95	2,312	31.67	203,717	16.79	(PNA not required)		65.22	13,286,423	13,286,423
Over 250 Units .....	810	25.05	4,988	68.33	1,009,436	83.21	50.00	50,471,800	65.22	65,835,416	15,363,616
Totals .....	3,234	100.00	7,300	100.00	1,213,153	100.00	.....	50,471,800	.....	79,121,839	28,650,039

<sup>1</sup> The number of PIH units is from the PUD records.

<sup>2</sup> This is the average for Baltimore and Boston, each of which has previously hired third-party PNA contractors.

<sup>3</sup> HUD is using the Green Retrofit Physical Condition Assessment (GRPCA) as a source for the development of the PNA to be used in public housing and the new HUD PNA will be comparable complexity and comprehensiveness. The average cost of the PNA portion of the GRPCA for these assessments was \$65.22 per unit.

Large PHAs that already are required to perform PNAs with 5-year terms will now be required to perform PNAs with 20-year terms and to potentially higher standards than the current PNA requirement. Regardless of the term of the PNA, it is assumed that an assessor would still be required to examine virtually every component of a project in order to determine its remaining useful life and whether that life falls within the term of the PNA. The difference in performance, therefore, is primarily the entry of data over a 20-year term rather than a 5-year term. The cost of greater standards of performance for large PHAs could be estimated at \$15,363,616, representing the difference between the cost to perform a PNA to the GRP standard (\$65.22 per unit) and the cost to perform a PNA to the PHAs standards in the absence of a new standard from HUD (\$50 per unit) multiplied by the number of units (1,009,436) within larger authorities.

These estimates are probably high since it is known that some proportion of small PHAs (with fewer than 250 units) perform a PNA as a capital planning and strategic planning tool. Also, many larger PHAs (with 250 units

or more) already perform PNAs to generally similar or higher standards than the baseline PNA required by the PNA rule and many PHAs perform, and will continue to perform, PNAs with in-house staff.

The rule also has significant benefits. Planning is a hallmark of a well-managed property. A Physical Needs Assessment (PNA) is a key planning tool. HUD distributes several billion dollars in capital and operating funds annually to PHAs. The quality and efficiency of property management directly impacts the effective use of these funds. While it is self-evident that efficiently managed real estate costs less to operate, it is not feasible to quantify a dollar cost savings owing to efficient management applicable to all properties, since the implementation of planning varies over a very broad spectrum. It is certainly feasible to assume that such savings would exceed the costs for performing PNAs on an aggregate basis. The following is a list (not exhaustive) of possible benefits of the rule.

1. The identification of capital expenditures far enough in advance of their required implementation to allow

for consideration of the most efficient method of paying for the improvement, whether by the application of grant funds, borrowing, or other mechanisms, including repositioning of the property.

2. The identification of synergies in the timing and intensity of capital improvements, and the avoidance of duplicative or wasteful capital expenditures that might be lost in the subsequent comprehensive modernization or obsolescence of a property.

3. Informing a preventative maintenance strategy that most efficiently employs maintenance resources to maximize the useful life of property components and to potentially extend useful lives beyond their expected duration.

4. Minimizing unexpected component failures and the potential for additional costs for tenant relocation, emergency services, premium time, liability exposure, and insurance costs, etc.

5. Promoting the implementation of energy efficiency measures and the utility savings that accrue.

6. Increased occupancy and enhanced health and safety as a result of more habitable units.

portion, in addition to the PNA portion. Energy audits are already required to be performed every

5 years for every PHA regardless of size; integrated

pest management is not a requirement in public housing and is not required by the new PNA.

This analysis also considers transfers. The proposed rule has the potential to generate about \$29 million in additional PNA work every 5 years. These additional expenses would constitute a transfer from PHAs to those entities performing PNAs. There exists an active industry engaged in providing PNAs to PHAs.

HUD's economic analysis can be found at <http://www.regulations.gov> and in the docket file, which is available for public inspection between the hours of 8 a.m. and 5 p.m., weekdays, in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

*Unfunded Mandates Reform Act*

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

*Environmental Impact*

This proposed rule that does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern, or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial

number of small entities. This proposed rule expands the PNA requirements to apply to PHAs that have fewer than 250 units. However, all PHAs, including small PHAs, have been required to complete energy audits, which essentially review building systems for the purpose of assessing whether the project would benefit from energy conservation measures.

With respect to small PHAs that would have to complete PNAs under this rule, while there is some burden, it is not considered a significant economic impact nor is it considered significant in the context of standard operating procedures for real estate management. The burden entails assembling existing physical data for the property and organizing a brief site survey of a sample of the physical property. It is generally acknowledged that the burden is greater the first time a PNA is completed, since a completed PNA becomes a data repository that is largely reusable. There are a total of approximately 3,100 PHAs. Of these, approximately 2,300 are small entities that have previously not been required to complete a PNA. While these 2,300 PHAs represent approximately 74 percent of all PHAs, they only represent approximately 20 percent of the units in the public housing portfolio, or 200,000 of the 1,200,000 units. The total additional paperwork burden imposed by the rule for small entities is 95,220 hours per year for 2,300 parties, or 41.4 hours per small PHA. HUD assumes for the purpose of this analysis that, in most cases, staff at small PHAs would complete the paperwork, thus requiring no additional expenditure beyond salaries. Even were the small PHAs to hire third parties to complete a PNA, the costs for completing a PNA once every 5 years are expected to be minimal when compared to the amount of Capital Funds the PHA will receive during that same 5-year period, and enable the PHA to more effectively expend those funds. Hence, this rule does not have significant economic impact on small PHAs.

Notwithstanding the determination that this rule would not have a significant economic impact on a substantial number of small entities, HUD specifically invites any comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

*Executive Order 13132, Federalism*

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation

that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

*Catalog of Federal Domestic Assistance Number*

The Catalog of Federal Domestic Assistance number for 24 CFR part 905 is 14.872.

**List of Subjects in 24 CFR Part 905**

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

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR part 905, as proposed to be revised at 76 FR 6661, February 7, 2011, as follows:

**PART 905—THE PUBLIC HOUSING CAPITAL FUND PROGRAM**

1. The authority citation for part 905 continues to read as follows:

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

2. In § 905.108, add the definition of "Moving to Work PHA" in proper alphabetical order to read as follows:

**§ 905.108 Definitions.**

\* \* \* \* \*

*Moving to Work PHA* means a PHA that participates in the Moving to Work (MTW) demonstration program, which provides PHAs the opportunity to design and test innovative, locally designed strategies that use federal dollars more efficiently, help residents find employment and become self-sufficient, and increase housing choices for low-income families. MTW is funded through annual appropriations acts.

\* \* \* \* \*

3. In § 905.300, add a new paragraph (b)(9) to read as follows:

**§ 905.300 Capital Fund Submission Requirements.**

\* \* \* \* \*

(b) \* \* \*

(9) *Physical needs assessment (PNA)*. Each PHA, including Moving to Work PHAs, shall complete and submit a comprehensive PNA at a time and in a form and manner prescribed by HUD that incorporates the life-cycle repair

and replacement costs of project systems and components for a 20-year period, for each public housing project in its inventory. The PNA will provide summary level information for the PHA's overall public housing portfolio, as well as information from the energy audit completed in conjunction with the PNA.

(i) The PNA and the associated estimates shall be completed without regard to whether funds are available at the time the PNA is completed to do the repair and replacement work projected by the PNA.

(ii) The PNA shall capture all capital costs needed to comply with public housing requirements, including section 504 of the Rehabilitation Act (see 29 U.S.C. 794), Uniform Federal Accessibility Standards (UFAS) requirements (see 24 CFR part 40), and Lead Safe Housing Rule (LSHR) requirements (see 24 CFR part 35).

(iii) The PNA shall account for the impact of any projected or actual removal of units from the inventory by the corresponding removal of cost associated with physical needs of those removed units.

(iv) The first two PNAs pursuant to this part and first two energy audits completed after [effective date of final rule to be inserted at final rule stage] shall be completed in accordance with a timeframe delineated by HUD in order to better enable PHAs, after the completion of the first PNA pursuant to this part, to better utilize the PNA in support of their 5-year planning cycle. After the completion of the first two PNAs and first two energy audits, the PHA shall completely update the PNA and energy audit no less often than once every 5 years.

(v) The PNA provider shall be experienced in the performance of residential building assessment including building systems, health and safety conditions, physical and structural conditions, cost estimating, and building modernization. The PNA provider shall have knowledge of energy efficiency and green capital upgrade and construction practices. The PNA submission shall identify the PNA provider(s). Additional qualifications shall include:

(A) Five (5) years or more of direct experience in physical facility inspection and/or assessment;

(B) Five (5) years or more of direct experience in cost estimating;

(C) Knowledge of applicable building standards and codes, including federal, state, and local requirements as demonstrated by experience, training, or certifications;

(D) Knowledge of energy conservation and energy efficiency and green capital upgrade and construction practices, as demonstrated by experience, training, or certifications;

(E) Working knowledge of commonly used computer technology and software.

(vi) The PNA shall be performed in conjunction with an energy audit and the energy audit findings shall be integrated into the PNA. PHAs that will have completed an energy audit within 2 years of the date that the PHA will complete its first PNA, pursuant to this part, shall not be required to complete a new energy audit concurrent with its first PNA if the existing energy audit contains the cost-effectiveness data required by HUD. Using information from the energy audit, the PHA shall identify specific work items and their associated costs in the PNA that match energy conservation measures (ECMs) identified in the energy audit. For each ECM reviewed as part of an energy audit, unless otherwise directed by HUD, the PNA shall incorporate the pay back data from the energy audit in a form and manner prescribed by HUD.

(vii) As modernization and repairs of public housing developments are completed, the PHA shall make revisions to its PNA to indicate that repairs to individual buildings have been addressed. These PNA revisions shall be completed on an annual basis.

(viii) The PHA shall submit its PNAs and annual updates to HUD in a time, manner, and format determined by HUD. HUD may evaluate the quality and accuracy of PNAs. HUD may require a PHA to revise its PNA to correct errors or inaccuracies, or elements of the PNA that do not comply with HUD requirements, all as determined by HUD. In addition, HUD may directly revise a PHA's PNA to make such corrections. To the extent such revisions are made, the PHA shall update the corrected PNA in its annual update submission.

(ix) A PHA shall not obligate or expend Capital Funds for administration, for transfers to operations, or for management improvements unless:

(A) A PNA has been submitted in a time, manner, and format determined by HUD in accordance with this subpart; and

(B) Corrections to the PNA required in accordance with paragraph (b)(9)(viii) of this section have been completed by the PHA within 3 months of having been notified of the need for correction by HUD.

Dated: June 10, 2011.

**Sandra B. Henriquez,**

*Assistant Secretary for Public and Indian Housing.*

[FR Doc. 2011-18046 Filed 7-19-11; 8:45 am]

**BILLING CODE 4210-67-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 41

[REG-122813-11]

RIN 1545-BK35

#### Highway Use Tax; Filing and Payment for Taxable Period Beginning July 1, 2011

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance on the filing of Form 2290 "Heavy Highway Vehicle Use Tax Return" and payment of the associated highway use tax for the taxable period beginning July 1, 2011. These regulations affect owners and operators of highway motor vehicles with a taxable gross weight of 55,000 pounds or more. The text of the temporary regulations also serves as the text of the proposed regulations on this subject.

**DATES:** Written and electronic comments and requests for a public hearing must be received by October 18, 2011.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-122813-11), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered to: CC:PA:LPD:PR Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-122813-11), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW.; Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-122813-11).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Natalie Payne, (202) 622-3130; concerning submissions of comments and requests for a public hearing, Regina Johnson, (202) 622-7180 (not toll-free numbers).