

**THIS PROPOSED RULE IS PENDING PUBLICATION IN THE FEDERAL REGISTER. PUBLICATION
IN THE FEDERAL REGISTER WILL COMMENCE THE PUBLIC COMMENT PROCESS**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 965 and 966

**[Docket No. FR 5597-P-02]
RIN 2577-AC97**

Instituting Smoke-Free Public Housing

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would require each public housing agency (PHA) administering public housing to implement a smoke-free policy. Specifically, this rule proposes that no later than 18 months from the effective date of the final rule, each PHA must implement a policy prohibiting lit tobacco products in all living units, indoor common areas in public housing, and in PHA administrative office buildings (in brief, a smoke-free policy for all public housing indoor areas). The smoke-free policy must also extend to all outdoor areas up to 25 feet from the housing and administrative office buildings. HUD proposes implementation of smoke-free public housing to improve indoor air quality in the housing, benefit the health of public housing residents and PHA staff, reduce the risk of catastrophic fires, and lower overall maintenance costs.

DATES: Comment Due Date: **[INSERT DATE 60 DAYS AFTER DATE OF
PUBLICATION IN THE FEDERAL REGISTER].**

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule. All communications must refer to the above docket number and title. There are two methods for submitting public comments.

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 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 comments immediately available to the public. Comments submitted electronically through the www.regulations.gov website 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 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Leroy Ferguson, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410-0500; telephone number 202-402-2411 (this is not a toll-free number). Persons who are deaf or hard of hearing and persons with speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Proposed Rule

The purpose of the proposed rule is to require PHAs to, within 18 months of the final rule, establish a policy prohibiting lit tobacco products, as such term is proposed to be defined in § 965.653(c). inside all indoor areas of public housing, including but not limited to living units, indoor common areas, electrical closets, storage units, and PHA administrative office buildings and in all outdoor areas within 25 feet of the housing and administrative office buildings (collectively, “restricted areas”). As further discussed in this rule, such a policy is expected to improve indoor air quality in public housing, benefit the health of public housing residents and PHA staff, reduce the risk of catastrophic fires, and lower overall maintenance costs.

B. Summary of Major Provisions of the Proposed Rule

This proposed rule would apply to all public housing, other than dwelling units in mixed-finance buildings. PHAs would be required, within 18 months of the effective date of the final rule, to establish policies prohibiting lit tobacco products in all restricted areas. PHAs may, but would not be required to, further restrict smoking to outdoor dedicated smoking areas outside the restricted areas, create additional restricted areas in which smoking is prohibited (e.g., near a playground), or, alternatively, make their entire grounds smoke-free.

PHAs would also be required to document their smoke-free policies in their PHA plans, a process that requires resident engagement and public meetings. The prohibition on lit tobacco would also be included in a tenant's lease, which may be done either through an amendment process or as tenants renew their leases annually.

C. Costs and Benefits of this Proposed Rule

The costs to PHAs of implementing smoke-free policies may include training, administrative, legal, and enforcement costs. Of these costs, HUD expects that the expense of additional enforcement efforts may be the highest. The costs of implementing a smoke-free policy as proposed by this rule are minimized by the fact that HUD guidance already exists on many of the topics covered by the smoke-free policy proposed to be required by this rule; that hundreds of PHAs have already voluntarily implemented smoke-free policies; and that infrastructure already exists for enforcement of lease violations, and violation of the smoke-free policy would be a lease violation. In addition, time spent by PHA staff on implementing and enforcing the smoke-free policy will be partially offset by the time that staff no longer have to spend mediating disputes among residents over smoking in secondhand smoke infiltration within living units. Given the existing HUD guidance, initial learning costs associated with implementation of a smoke-free policy may not be significant. For the hundreds of PHAs that are already implementing voluntary smoke-free policies, there will be minimal costs for these PHAs, and, generally, only if their existing policies are not consistent with the minimum requirements for smoke-free policies proposed by this rule.

The benefits of smoke free policies, however, could be considerable. Over 700,000 units would be affected by this rule (including over 500,000 units inhabited by elderly households or households with a non-elderly person with disabilities), and their non-smoking residents would

have the potential to experience health benefits from a reduction of exposure to secondhand smoke. PHAs will also benefit from a reduction of damage caused by smoking, and residents and PHAs both gain from seeing a reduction in injuries, deaths, and property damage caused by fires.

Estimates of these and other rule-induced impacts are summarized in the following table:

Impact	Source	Amount (Discount Rates in Parentheses)
Cost (potentially recurring but concentrated during first few years of the rule's implementation)	PHA Compliance	\$3.2 million
Cost (recurring)	Smoker Inconvenience	\$209 million
Cost (recurring)	Enforcement	not quantified
Benefit (recurring)	PHA Reduced Maintenance	\$16 to \$38 million
Benefit (recurring)	PHA Reduced Fire Risk	\$32 million
Benefit (annualized over 10 to 50 years)	Non-Smoker Health	Less than: \$148 to \$447 million (3%) \$70 to \$137 million (7%)
Benefit (recurring)	Non-Smoker Well-Being (PHA residents who do not live in units with smokers)	\$96 to \$275 million
Benefit (recurring)	Smoker Health	not quantified
Partially Quantified Net Benefits (recurring)	See above	Less than: -\$19 to \$302 million (3%) -\$97 to -\$8 million (7%)

For additional details on the costs and benefits of this rule, please see the Regulatory Impact Analysis (RIA) for this rule, which can be found at www.regulations.gov, under the docket number for this rule. Information on how to view the RIA is included below.

II. Background

A. The Effects of Smoking on Health

Tobacco smoking has been determined to be a cause of diseases of nearly all organs in the body, and research continues to newly identify diseases caused by smoking, including diabetes mellitus, rheumatoid arthritis, and colorectal cancer. In addition to causing multiple

diseases and cancers, tobacco smoking has many other adverse effects on the body, including inflammation and impairment to the immune system.¹

Adverse effects of tobacco use are not limited to the smoker. The U.S. Surgeon General estimates that exposure to secondhand tobacco smoke (i.e., the smoke that comes from burning tobacco products and is exhaled by smokers) is responsible for the death of 41,000 adults non-smokers in the United States each year from lung cancer and heart disease.² Secondhand smoke (SHS) contains hundreds of toxic chemicals and is designated as a known human carcinogen by the U.S. Environmental Protection Agency, the U.S. National Toxicology Program, and the International Agency for Research on Cancer.³ Exposure to SHS can also cause sudden infant death syndrome and respiratory symptoms such as cough and wheeze, middle ear infections, and slowed lung growth and reduced lung function in children, and increased risk of stroke in adults.⁴ The Surgeon General has concluded that there is no risk-free level of exposure to SHS, and that eliminating smoking in indoor spaces fully protects nonsmokers from exposure to secondhand smoke. Separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot eliminate exposures of nonsmokers to secondhand smoke.⁵

The effects of SHS are especially damaging in children and unborn fetuses. The Surgeon General estimates that SHS is responsible for the death of hundreds of newborns from Sudden Infant Death Syndrome (SIDS) each year.⁶ Lead in SHS is also a significant source of lead in

¹ Office of the Surgeon General, “The Health Consequences of Smoking—50 Years of Progress,” (2014), available at <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>.

² *Id.*

³ American Cancer Society, “Secondhand Smoke,” <http://www.cancer.org/cancer/cancercauses/tobaccocancer/secondhand-smoke>.

⁴ 2014 Surgeon General’s Report, footnote 1.

⁵ U.S. Dept. of Health and Human Services, “The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General,” (2006), available at <http://www.surgeongeneral.gov/library/reports/secondhandsmoke/fullreport.pdf>.

⁶ *Id.*

house dust and children's blood. The CDC confirmed the association between SHS exposure and blood-lead levels in youth and adults, concluding that youth with SHS exposure had blood lead levels high enough to result in adverse cognitive outcomes.⁷

Approximately half of the U.S. population is protected from SHS exposure through statewide, municipal, and federal laws prohibiting smoking in indoor areas of public places and worksites, including bars and restaurants. However, an estimated 58 million Americans remain exposed to secondhand smoke, including 15 million children ages 3 to 11. The home is the primary source of exposure for children.⁸ Because SHS moves throughout buildings, individuals living in multiunit housing can be exposed to SHS even if no one smokes in their households. Surveys of multiunit housing residents indicate that 26 to 64 percent of residents reported SHS incursions into their units from external sources (e.g., hallways or adjacent apartments), and 65 to 90 percent of the residents experiencing such incursions were bothered by them.⁹

The movement of contaminants from SHS within buildings has also been documented through direct measurements of fine particles (an environmental marker of SHS) in indoor air. SHS can move both from external hallways into apartments and between adjacent units.¹⁰ A study of public housing documented lower concentrations of SHS contaminants in buildings covered by smoke-free policies (i.e., policies prohibiting the smoking of tobacco products in all

⁷ Patricia Richter et al., "Trends in Tobacco Smoke Exposure and Blood Lead Levels Among Youth and Adults in the United States: The National Health and Nutrition Examination Survey, 1999-2008," *Preventing Chronic Disease*, (December 19, 2013), available at http://www.cdc.gov/pcd/issues/2013/pdf/13_0056.pdf.

⁸ 2006 Surgeon General's Report, footnote 5; David M. Homa et al., "Vital Signs: Disparities in Nonsmokers' Exposure to Secondhand Smoke—United States, 1999-2012," *Morbidity and Mortality Weekly Report* (February 6, 2015), available at http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6404a7.htm?s_cid=mm6404a7_w.

⁹ Kimberly Snyder et al., "Smoke-free Multiunit Housing: A Review of the Scientific Literature," *Tobacco Control* (2015), available at <http://tobaccocontrol.bmj.com/content/early/2015/01/07/tobaccocontrol-2014-051849.short?rss=1>.

¹⁰ Brian A. King et al., "Secondhand Smoke Transfer in Multiunit Housing," *12 Nicotine and Tobacco Research* 1133 (2010), available at <http://ntr.oxfordjournals.org/content/12/11/1133>.

indoor spaces) compared to buildings without these policies.¹¹ Analysis of data from the National Health and Nutrition Examination Survey (NHANES) demonstrated evidence of greater SHS exposure among children (aged 6 to 18) living in multiunit housing through measurements of cotinine (a metabolite of nicotine) in their blood.¹² The study demonstrated that children living in non-smoking households in apartments had 45 percent higher levels of cotinine in their blood compared to children living in non-smoking households in detached homes. CDC researchers analyzed NHANES data over the period from 1999-2012 and reported that one of four nonsmokers (approximately 58 million people) continue to be exposed to SHS, with the highest exposures among children, non-Hispanic blacks, renters, and those living in poverty.¹³

The Surgeon General concluded in 2006 that separating smokers and nonsmokers, building ventilation, and cleaning the air cannot eliminate exposure to SHS; that can only be accomplished by eliminating smoking from indoor spaces.¹⁴

B. The Financial Costs of Smoking

Beyond the increased costs associated with higher healthcare expenses, tobacco smoking can have profound financial impacts on PHAs and owners of other multiunit properties. Smoking is the leading cause of fire deaths in multiunit properties.¹⁵ In 2011, smoking caused 17,600 residential fires resulting in 490 civilian deaths, 1,370 injuries, and \$516 million in direct

¹¹ Elizabeth T. Russo, et al., “Comparison of Indoor Air Quality in Smoke-Permitted and Smoke-Free Multiunit Housing: Findings from the Boston Housing Authority,” 10 *Nicotine and Tobacco Research* 1093 (2014), available at http://ntr.oxfordjournals.org/content/early/2014/08/25/ntr.ntu146.abstract?utm_source=rss&utm_medium=rss&utm_campaign=comparison-of-indoor-air-quality-in-smoke-permitted-and-smoke-free-multiunit-housing-findings-from-the-boston-housing-authority.

¹² Karen M. Wilson et al., “Tobacco-Smoke Exposure in Children Who Live in Multiunit Housing,” 127 *Pediatrics* 85 (2011), available at <http://pediatrics.aappublications.org/content/127/1/85.full.pdf+html>.

¹³ David M. Homa et al., “Disparities in Nonsmokers Exposure to Secondhand Smoke in the United States, 1999-2012,” *Mortality and Morbidity Weekly Report, Early Release*, 64 (February 3, 2015), available at <http://www.cdc.gov/mmwr/pdf/wk/mm64e0203a1.pdf>

¹⁴ U.S. Dept. of Health and Human Services. See footnote note 2.

¹⁵ U.S. Fire Administration, *Residential Structure and Building Fires*, http://www.usfa.fema.gov/downloads/pdf/publications/residential_structure_and_building_fires.pdf

property damage.¹⁶ Smoking is especially dangerous in units where a household member is receiving oxygen for medical purposes. Research conducted by the U.S. Fire Protection Association found that for fire deaths during the period from 2007-2011 in which oxygen administration equipment was cited as being involved in the ignition, 82 percent involved smoking materials as the heat source.¹⁷

Smoking is also associated with higher maintenance costs for landlords of multiunit housing. Smoking indoors increases the cost of rehabilitating a housing unit because of the need for additional cleaning, painting, and repair of damaged items at unit turnover compared to non-smoking units. The cost of cleaning and renovating a smoking unit adds up quickly, and smaller properties generally pay more per unit than larger properties when repairing smoking damage. A survey of public and subsidized housing managers found that the additional cost of rehabilitating the units of smokers averaged \$1,250 to \$2,955 per unit, depending on the intensity of smoking.¹⁸ A study conducted in California found that the owners of multiunit housing could save over \$18 million per year if the operators of all multiunit housing in the state adopted smoke-free building policies.¹⁹ Researchers from the CDC estimated that a nationwide smoke-free public housing policy would result in an estimated annual cost savings of \$152.91 million, including \$42.99 million in reduced renovation costs and \$15.92 million in averted fire losses.²⁰

¹⁶ Marty Ahrens, Ntl. Fire Protection Assn., "Home Structure Fires," (April 2013), available at <http://www.nfpa.org/~media/Files/Research/NFPA%20reports/Occupancies/oshomes.pdf>.

¹⁷ John R. Hall, Jr., Ntl. Fire Protection Assn., "The Smoking-Material Fire Problem," (July 2013), available at <http://www.nfpa.org/~media/Files/Research/NFPA%20reports/Major%20Causes/ossmoking.pdf>.

¹⁸ Ntl. Ctr. For Healthy Hsg., "Reasons to Explore Smoke-Free Housing," (Early Fall 2009), available at http://www.nchh.org/portals/0/contents/nchh_green_factsheet_smokefree.pdf.

¹⁹ Michael K. Ong et al, "Estimates of Smoking-Related Properties Costs in California Multiunit Housing," 102 Am J Public Health 490 (2012), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3487653/>.

²⁰ Brian King et al., "National and State Cost Savings Associated With Prohibiting Smoking in Subsidized and Public Housing in the United States," Preventing Chronic Disease (October 2014), available at http://www.cdc.gov/pcd/issues/2014/pdf/14_0222.pdf.

Self-imposed rules prohibiting smoking in individual households (referred to as smoke-free home rules) are becoming increasingly common in the United States. CDC researchers found that the prevalence of smoke-free home rules among U.S. households increased from 43 percent in 1992-1993 to 83 percent in 2010-2011, including an increase among households with at least one adult smoker, implying that the smokers in these households agree to smoke outside of the home.²¹ Two national surveys discussed by the CDC researchers identified voluntary smoke-free home rules among residents of multiunit housing in over 70 percent of those surveyed. Additionally, CDC researchers, reviewing published studies, found that the majority of residents in multiunit housing expressed support for a complete smoke-free building policy in six of eight reviewed studies.²² The findings from these national and local surveys suggest that a smoke-free rule will be supported by a majority of public housing residents and will help those residents who already have a smoke-free home rule in place achieve the desired goal of eliminating the presence of SHS in their homes.

C. Moving to Smoke-Free Public Housing Units

HUD determined that the advantages of smoke-free housing policies were sufficient to warrant action by HUD to promote the voluntary adoption of smoke-free policies by PHAs and the owners/operators of federally subsidized multifamily properties. In 2009, HUD's Office of Public and Indian Housing published a notice that strongly encouraged PHAs to adopt smoke-free policies in at least some of the properties that they managed (this notice was reissued in

²¹ Brian A. King et al., "Prevalence of Smokefree Home Rules—United States, 1992-1993 and 2010-2011," *Morbidity and Mortality Weekly Report* (Sept. 5, 2014), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6335a1.htm>.

²² Kimberly Snyder et al., *supra* note 9.

2012).²³ HUD's Office of Housing issued a similar program notice in 2010 that encouraged owners/operators of subsidized multifamily properties to adopt smoke-free policies (also reissued in 2012).²⁴ The notices describe the advantages of smoke-free policies, identify required and recommended actions in implementing smoke-free policies, and provide links to resources (e.g., smoking cessation assistance for residents). In June 2012, HUD published more detailed information on smoke-free housing policies for residents and the providers of subsidized housing, referred to as "smoke-free toolkits."²⁵

In October 2012, HUD also published a Federal Register notice that solicited feedback on the HUD's smoke-free housing initiative, specifically seeking information on topics such as best practices and practical strategies from housing providers who have implemented smoke-free policies, potential obstacles to policy implementation and how these could be overcome, suggestions for supporting housing providers and residents to facilitate policy implementation, and feedback from housing providers who have decided not to implement smoke-free policies.²⁶ HUD received many comments in response to this solicitation, largely from public health organizations and State and local health departments, expressing support for the concept and citing the great health risks posed by smoking and SHS.²⁷

In 2014, HUD released additional guidance for PHAs and owners/agents of subsidized multifamily properties on implementing smoke-free policies. This guidance incorporates some of

²³ PIH Notices 2009-21, "Non-Smoking Policies in Public Housing" and 2012-25, "Smoke-Free Policies in Public Housing", available at

http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/notices/pih.

²⁴ Housing Notices 2010-21, "Optional Smoke-Free Housing Policy Implementation" and 2012-22, "Further Encouragement for O/As to Adopt Optional Smoke-Free Housing Policies," available at

http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/notices/hsg.

²⁵ See: <http://portal.hud.gov/hudportal/HUD?src=/smokefreetoolkits1>.

²⁶ 77 FR 60712, "Request for Information on Adopting Smoke-Free Policies in PHAs and Multifamily Housing" (October 4, 2012).

²⁷ All public comments submitted on the October 4, 2012, notice can be found under docket 5597-N-01 in the www.regulations.gov portal at <http://www.regulations.gov/#!docketDetail;D=HUD-2012-0103>.

the feedback that HUD received from the 2012 Federal Register notice and includes summaries of interviews with nine early implementers of smoke-free housing policies, including administrators of public housing, subsidized multifamily housing, and market rate housing.²⁸ The guidance includes best practices around enforcement, especially graduated enforcement to assist residents with compliance and prevent evictions.

As a result of these combined actions, over 500 PHAs have implemented smoke-free policies in at least one of their buildings. While this voluntary effort has been highly successful, it has also resulted in a scattered distribution of smoke-free policies, with the greatest concentration in the Northeast, West, and Northwest, which also results in unequal protection from SHS for public housing residents. HUD recognizes that additional action is necessary to truly eliminate the risk of SHS exposure to public housing residents, reduce the risk of catastrophic fires, lower overall maintenance costs, and implement uniform requirements to ensure that all public housing residents are equally protected.

Therefore, HUD is proposing to require PHAs to implement smoke-free policies within public housing except for dwelling units in a mixed-finance project. Public housing is defined as low-income housing, and all necessary appurtenances (e.g., community facilities, public housing offices, day care centers, and laundry rooms) thereto, assisted under the U.S. Housing Act of 1937 (the 1937 Act), other than assistance under section 8 of the 1937 Act.

While the smoke-free policy will also apply to scattered sites and single family properties, this requirement would not extend to public housing units that are part of a mixed-finance project because the PHA may not be the primary owner, and non-public housing units may be contained within the building. While smoking in single family units does not lead to

²⁸ See: <http://portal.hud.gov/hudportal/documents/huddoc?id=SFGuidanceManual.pdf>.

smoke intrusion to adjacent units, the risk of fire and the increased unit turnover costs remain. Further, including all public housing units covered by this proposed rule means that all tenants will be treated equally and be subject to the same lease requirements. This prohibition on smoking would cover all types of lit tobacco products, including but not limited to cigarettes, cigars, and pipes. While the prohibition does not specifically cover waterpipe tobacco smoking (referred to as hookahs), such smoking involves lit charcoal and results in heating tobacco to temperatures high enough to produce secondhand smoke that contains harmful toxins.²⁹ For this reason, HUD is seeking comment on whether to include a prohibition on waterpipe tobacco in the final rule.

The prohibition on the use of lit tobacco products in this proposal does not include electronic nicotine delivery systems (ENDS), including electronic cigarettes (“e-cigarettes”). The absence of a prohibition on the use of e-cigarettes in this rule should not be read as an endorsement of e-cigarettes as an acceptable health alternative to cigarettes. The aerosol from ENDS typically contains nicotine derived from tobacco plants, and may contain other hazardous and potentially hazardous constituents such as formaldehyde and lead.³⁰ Accidental ingestion of nicotine liquid used in ENDS can cause acute nicotine toxicity in children, accounting for an increasing proportion of exposure calls to poison control centers.³¹ ENDS may also present an additional enforcement challenge for PHAs that are implementing smoke-free policies because the user may appear to be smoking a conventional cigarette. In light of growing health concerns

²⁹ See World Health Organization. Advisory note: waterpipe tobacco smoking: 2nd edition (2015), available at http://www.who.int/tobacco/publications/prod_regulation/waterpipesecondedition/en/.

³⁰ See Offerman, F.J. The hazards of e-cigarettes. June, 2014. ASHRAE Journal. See also National Institute for Occupational Safety and Health, “Promoting Health and Preventing Disease and Injury Through Workplace Tobacco Policies,” Current Intelligence Bulletin 67 (2015), available at http://www.cdc.gov/niosh/docs/2015-113/pdfs/fy15_cib-67_2015-113_v3.pdf.

³¹ CDC. Notes from the field: Calls to Poison Centers for Exposures to Electronic Cigarettes—United States, September 2010– February 2014. MMWR 2014;63:292-93.

regarding exposure to the aerosol of these products among non-users, especially children and pregnant women, HUD is seeking additional comments on the issue of ENDS, and may prohibit the use of these products in public housing in the final rule. HUD encourages PHAs that already have smoke-free policies to consider whether ENDS should be included in their smoke-free policies.

In proposing this policy, it is important for HUD to clarify that HUD's proposal does not prohibit individual PHA residents from smoking. PHAs should continue leasing to persons who smoke. This rule is not intended to contradict HUD's goals to end homelessness and help all Americans secure quality housing. Rather, HUD is proposing a prohibition on smoking inside public housing living units and indoor common areas, public housing administrative office buildings, public housing community rooms or community facilities, public housing day care centers and laundry rooms, in outdoor areas within 25 feet of the housing and administrative office buildings, and in other areas designated by a PHA as smoke-free (collectively, "restricted areas"). PHAs will have the discretion to establish outside designated smoking locations outside of the required 25 feet perimeter, which may include partially enclosed structures, to accommodate smoking residents, to establish additional smoke-free areas (such as around a playground), or, alternatively, to make their entire grounds smoke-free. In addition, section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act provides the participant the right to seek a reasonable accommodation, including requests from residents with mobility-impairment or mental disability. A request for a reasonable accommodation from an eligible participant must at least be considered, and granted in appropriate circumstances. To assist PHAs, HUD will work with its Office of Fair Housing and Equal Opportunity to develop guidance on accommodating persons with a disability related to smoke-free policies. The

guidance will be informed by comments on the proposed rule and issued in advance of the final rule.

The benefits of this proposed regulatory action may be substantial, and beneficiaries include both PHAs and residents of public housing. Over 700,000 units would be affected by this rule (including over 500,000 units inhabited by elderly households or households with a non-elderly person with disabilities), and their residents would have the potential to experience health benefits from a reduction of exposure to secondhand smoke. There are also over 775,000 children in these units. PHAs will benefit from a reduction of damage and renovation costs caused by smoking. Both residents and PHAs will gain from reducing deaths, injuries, and property damage caused by fires. The costs to PHAs of implementing the smoke-free policy proposed by this rule may include training, administrative, legal, and enforcement costs. Of these costs to PHAs, HUD expects that the expense of additional enforcement efforts may be the highest. The costs of implementing the smoke-free policy proposed by this rule are minimized by the fact that HUD guidance already exists on many of the topics covered by the proposed regulatory changes, and that over 500 PHAs have already implemented smoke-free policies. Given the existence of this HUD guidance, initial learning costs associated with implementation of a smoke-free policy as proposed by this rule may not be significant.

There may be costs to residents as a result of eviction, particularly for persons with disabilities, and especially those with mobility impairments. HUD recognizes that this rule could adversely impact those with mobility impairment or particular frailties that prevent them from smoking in designated areas. As mentioned above, HUD will develop guidance on reasonable accommodation, and HUD solicits public comment on how to mitigate these potential adverse impacts.

HUD recognizes that PHAs developing smoke-free housing policies may need technical assistance in writing the policies, engaging residents, and assisting residents who want to stop smoking. HUD will continue to provide free webinars and training sessions addressing these and related topics. PHAs are encouraged to work with their State HUD office, State and local tobacco prevention and cessation programs, state and community health organizations, and the Environmental Protection Agency's community-based asthma program network (www.asthmacommunitynetwork.org). CDC provides funding and technical assistance to State tobacco prevention and control programs and prevention and smoking cessation programs in every state and the District of Columbia (see http://www.cdc.gov/tobacco/stateandcommunity/tobacco_control_programs/ntcp/index.htm). Contact information for local organizations will be provided through HUD's website on a page dedicated to smoke-free resources that is under development.

D. Discussions with Stakeholders

In addition to the October 2012 Federal Register notice soliciting information on adopting smoke-free policies in HUD subsidized housing, in March 2015, HUD reached out to organizations representative of the interests and concerns of PHAs to solicit feedback on moving forward with smoke-free policies in public housing. The organizations expressed support for smoke-free policies but also requested that any regulations requiring smoke-free policies allow sufficient flexibility for PHAs to tailor such policies to their local conditions. In this rule, HUD has strived to provide such flexibility.

III. This Proposed Rule—Summary of Changes

Applicability (§ 965.651)

As stated above, this proposal would apply to all PHAs of any size and Moving-to-Work (MTW) agencies, but it would only apply to public housing, and would not apply to dwelling units in a mixed-finance project. Public housing is defined as low-income housing, and all necessary appurtenances (e.g., community facilities, public housing offices, day care centers and laundry rooms) assisted under the U.S. Housing Act of 1937 (the 1937 Act), other than assistance under section 8 of the 1937 Act.

Requirements (§ 965.653)

In § 965.653, HUD provides that a PHA's smoke-free policy must prohibit all "lit tobacco products." HUD proposes to define "lit tobacco products" as all lit tobacco products that involve the ignition and burning of tobacco leaves such as cigarettes, cigars, and pipes. HUD is proposing to require that PHAs prohibit all lit tobacco products not only in dwelling units, but also within indoor common areas and in outdoor areas within 25 feet of the housing and any PHA administrative office buildings (the "restricted areas"). Outside of these areas, PHAs would be permitted to limit smoking to outdoor designated smoking areas, which may include partially enclosed structures to accommodate residents who smoke, or, alternatively, to make their entire grounds smoke-free. PHAs that are not making the entire grounds smoke-free are encouraged to work with their residents to identify outdoor designated smoking areas that are accessible within the grounds of the public housing or administrative office buildings, that are not frequented by children (e.g., not a playground), and that are situated in a way that minimizes nonsmoking residents' exposure to secondhand smoke. While not required, a designated smoking area with shade and benches may assist residents with compliance.

Implementation (§ 965.653)

HUD is proposing to provide PHAs 18 months from the effective date of the final rule to implement smoke-free public housing, as proposed by this rule. HUD believes that 18 months will provide PHAs sufficient time to conduct resident engagement, to hold any public meetings that are required to amend their PHA plans, and to incorporate the required new lease provisions during tenants' recertifications or at a date before the policy is fully effective. PHAs that already have a smoke-free policy in effect will be required to review their existing policies for compliance with the requirements of this rule, as presented in the final rule, and amend their policies as necessary in the same timeframe of 18 months from the effective date of the final rule in order to implement smoke-free public housing, consistent with the requirements of the final rule.

In addition, HUD is proposing to require PHAs to amend their PHA plans to incorporate the smoke-free policy. If the PHA determines the imposition of a smoke-free policy is a significant amendment to the PHA plan, the PHA must conduct public meetings in accordance with standard PHA Plan amendment procedures, and these meetings must be held in accessible buildings and provided in accessible formats, as necessary, for persons with disabilities and those who are limited in English proficiency. HUD would recommend that all PHAs conduct meetings with residents to fully explain the smoke-free building requirements and to best determine which outside areas, if any, to designate as smoking areas and to accommodate the needs of all residents.

Lease Provisions (§ 966.4)

HUD believes that the best way to implement smoke-free policies is to incorporate the prohibition on indoor smoking in the leases each tenant must sign. This will allow PHAs to use enforcement mechanisms already in place and provide an additional notification of the policy to

tenants. HUD expects PHAs to follow the PIH administrative grievance procedures during enforcement of their smoke-free housing policies. Because some tenants may not be recertified before the policy takes effect, PHAs may require that all remaining leases be amended, or may establish their own schedule for lease amendments, provided that all leases are amended by the effective date of the policy.

IV. Specific Questions for Comments

While HUD welcomes comments on all aspects of this proposed rule, HUD is seeking specific comment on the following questions:

1. What barriers that PHAs could encounter in implementing smoke-free housing? What costs could PHAs incur? Are there any specific costs to enforcing such a policy?
2. Does this proposed rule adequately address the adverse effects of smoking and secondhand smoke on PHAs and PHA residents?
3. Does this proposed rule create burdens, costs, or confer benefits specific to families, children, persons with disabilities, owners, or the elderly, particularly if any individual or family is evicted as a result of this policy?
4. For those PHAs that have already implemented a smoke-free policy, what exceptions to the requirements have been granted based on tenants' requests?
5. For those PHAs that have already implemented a smoke-free policy, what experiences, lessons, or advice would you share based on your experiences with implementing and enforcing the policy?
6. For those PHAs that have already implemented a smoke-free policy, what tobacco cessation services were offered to residents to assist with the change? Did you establish partnerships with external groups to provide or refer residents to these services?

7. Are there specific areas of support that HUD could provide PHAs that would be particularly helpful in the implementation of the proposed rule?

8. Should the policy extend to electronic nicotine delivery systems, such as e-cigarettes?

9. Should the policy extend to waterpipe tobacco smoking? Does such smoking increase the risk of fire or property damage?

V. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866 (entitled “Regulatory Planning and Review”). OMB determined that this rule was economically significant under the order. The docket file is available for public inspection in the Regulations Division, Office of General Counsel, U.S. Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC, 20410-0500. The initial Regulatory Impact Analysis (RIA) prepared for this rule is also available for public inspection in the Regulations Division and may be viewed online at www.regulations.gov, under the docket number above, or on HUD’s website at http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/ia/. 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) 708-3055 (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 at (800) 877-8339.

Information Collection Requirements

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) and assigned OMB control number 2577-0226. 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.

Unfunded Mandates Reform Act

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

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding is available for public inspection during regular business hours 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, please schedule an appointment to review the Finding by calling the Regulations Division at 202–708–3055 (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 at 800–877–8339.

Impact on Small Entities

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 rule prohibits smoking of tobacco in all indoor areas of and within 25 feet of any public housing and administrative office buildings for all PHAs, regardless of size.

There are 2334 “small” PHAs (defined as PHAs with fewer than 250 units), which make up 75 percent of the public housing stock across the country. Of this number, approximately 378 have already instituted a voluntary full or partial policy on indoor tobacco smoking.

HUD anticipates that implementation of the policy will impose minimal additional costs, as creation of the smoke-free policy only requires amendment of leases and the PHA plan, both of which may be done as part of a PHA’s normal course of business. Additionally, enforcement of the policy will add minimal incremental costs, as PHAs must already regularly inspect public housing units and enforce lease provisions. Any costs of this rule are mitigated by the fact that PHAs have up to 18 months to implement the policy, allowing for costs to be spread across that time period.

While there are significant benefits to the smoke-free policy requirement, the majority of those benefits accrue to the public housing residents themselves, not to the PHAs. PHAs will realize monetary benefits due to reduced unit turnover costs and reduced fire and fire prevention costs, but these benefits are variable according to the populations of each PHA and the PHA’s existing practices.

Finally, this rule does not impose a disproportionate burden on small PHAs. The rule does not require a fixed expenditure; rather, all costs should be proportionate to the size of the PHA implementing and enforcing the smoke-free policy.

Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

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

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments or is not required by statute, or the rule 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 for the Public Housing program is 14.872.

List of Subjects

24 CFR Part 965

Government procurement, Grant programs-housing and community development, Lead poisoning, Loan programs-housing and community development, Public housing, Reporting and recordkeeping requirements, Utilities

24 CFR Part 966

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 parts 965 and 966 as follows:

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

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

Authority: 42 U.S.C. 1547, 1437a, 1437d, 1437g, and 3535(d). Subpart H is also issued under 42 U.S.C. 4821-4846.

2. Add subpart G to read as follows:

Subpart G—Smoke-Free Public Housing

965.651 Applicability

965.653 Smoke-free public housing

965.655 Implementation

Subpart G – Smoke-Free Public Housing

§ 965.651 Applicability.

This subpart applies to public housing units, except for dwelling units in a mixed-finance project. Public housing is defined as low-income housing, and all necessary appurtenances (e.g., community facilities, public housing offices, day care centers, and laundry rooms) thereto, assisted under the U.S. Housing Act of 1937 (the 1937 Act), other than assistance under section 8 of the 1937 Act.

§ 965.653 Smoke-free public housing.

(a) In general. PHAs must design and implement a policy prohibiting the use of lit tobacco products in all public housing living units and interior common areas (including but not limited to hallways, rental and administrative offices, community centers, day care centers, laundry centers, and similar structures), as well as in outdoor areas within 25 feet from public housing and administrative office buildings (collectively, “restricted areas”) in which public housing is located.

(b) Designated smoking areas. PHAs may limit smoking to designated smoking areas on the grounds of the public housing or administrative office buildings, which may include partially enclosed structures, to accommodate residents who smoke. These areas must be outside of any restricted areas, as defined in paragraph (a) of this section. Alternatively, PHAs may choose to create additional smoke-free areas outside the restricted areas or to make their entire grounds smoke-free.

(c) Lit tobacco products. Lit tobacco products are those that involve the ignition and burning of tobacco leaves, such cigarettes, cigars, and pipes. A PHA’s smoke-free policy must, at a minimum, include a prohibition on the use of all lit tobacco products.

§ 965.655 Implementation.

(a) Amendments. PHAs are required to implement the requirements of this subpart by amending each of the following:

- (1) All applicable PHA plans, according to the provisions in 24 CFR part 903.
- (2) Tenant leases, according to the provisions of 24 CFR 966.4.

(b) Deadline. All PHAs must be in full compliance, with effective policy amendments, by [insert, at the final rule stage, the date that is 540 days after the effective date of the final rule].

PART 966 – PUBLIC HOUSING LEASE AND GRIEVANCE PROCEDURE

3. The authority section for 24 CFR part 966 continues to read as follows:

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

4. In § 966.4, revise paragraphs (f) (12) (i) and (ii) to read as follows:

§ 966.4 Lease Requirements.

* * * * *

(f) * * *

(12) * * *

(i) To assure that no tenant, member of the tenant's household, or guest engages in:

(A) Criminal activity. (1) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other residents;

(2) Any drug-related criminal activity on or off the premises; or

(B) Civil activity. For any units covered by 24 CFR part 965, subpart G, any smoking of lit tobacco products in restricted areas, as defined by 24 CFR 965.653(a), or in other outdoor areas that the PHA has designated as smoke-free.

(ii) To assure that no other person under the tenant's control engages in:

(A) Criminal activity. (1) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other residents;

(2) Any drug-related criminal activity on the premises; or

(B) Civil activity. For any units covered by 24 CFR part 965, subpart G, any smoking of lit tobacco products in restricted areas, as defined by 24 CFR 965.653(a), or in other outdoor areas that the PHA has designated as smoke-free.

* * * * *

Dated: October 22, 2015

/s/

Lourdes Castro Ramírez, Principal Deputy Assistant
Secretary for Public and Indian Housing

[FR-5597-P-02]