

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

Office of the Secretary

24 CFR Parts 5, 243, 842, and 942

[Docket No. FR-3942-F-01]

RIN 2501-AC07

**Regulatory Reinvention; Consolidated
Pet Ownership Requirements for the
Elderly and Persons With Disabilities**

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule consolidates HUD's pet ownership rules for its housing and public housing programs. Currently, these similar requirements are repeated in 24 CFR parts 243, 842, and 942. These parts implement section 227 of the Housing and Urban-Rural Recovery Act of 1983. Section 227 provides that no owner or manager of federally assisted housing for the elderly or persons with disabilities may prevent tenants of such housing from owning or keeping common household pets in their units. HUD's consolidation of its pet ownership rules will eliminate redundancy from title 24 and assist in HUD's effort to comply with President Clinton's regulatory reinvention initiative.

EFFECTIVE DATE: April 8, 1996.

FOR FURTHER INFORMATION CONTACT: For Housing: Barbara D. Hunter, Room 6182, telephone number (202) 708-3944; For Public and Indian Housing: Linda Campbell, Room 4206, telephone number (202) 708-0744; Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Hearing or speech-impaired individuals may call 1-800-877-8339 (Federal Information Relay Service TDD). (Except for the "800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

A. HUD's Implementation of Section 227 of the Housing and Urban-Rural Recovery Act of 1983

Section 227 of the Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701r-1) provides that no owner or manager of federally assisted rental housing for the elderly or persons with disabilities¹ may, as a condition of

¹ Section 227 uses the term "federally assisted rental housing for the elderly or handicapped." HUD prefers the use of the term "persons with disabilities" to the term "handicapped." Accordingly, this final rule uses the term "persons with disabilities."

tenancy or otherwise, prohibit or prevent tenants of such housing from owning or keeping common household pets in their units, or restrict or discriminate against persons in connection with admission to, or continued occupancy of, such housing because they own common household pets.

The statute directs HUD to issue regulations necessary to ensure compliance with these provisions and to ensure attaining the goal of providing decent, safe, and sanitary housing for the elderly or persons with disabilities. The statute also requires that these regulations establish guidelines under which owners and managers may prescribe reasonable rules for the keeping of pets by tenants and must consult with tenants in prescribing the rules.

On December 1, 1986 (51 FR 43270), HUD published a final rule creating three new parts in title 24 to implement section 227. Part 243 describes the pet ownership requirements for programs administered by the Assistant Secretary for Housing-Federal Housing Commissioner. Part 942 implements section 227 as it pertains to the public housing programs administered by the Assistant Secretary for Public and Indian Housing. Part 842, which concerns the pet ownership rules for programs assisted under chapter VIII of title 24, merely cross-references the requirements in 24 CFR part 243.

Parts 243 and 942 are identical in many significant respects, but there are differences. Part 942 provides Public Housing Agencies (PHAs) with substantial discretion in the issuance of pet ownership rules. In contrast, part 243 establishes certain limitations on the flexibility of project owners in the promulgation of pet rules. As explained in the preamble to the December 1, 1986 final rule, HUD's decision to establish a flexible standard for PHAs was based on the broad discretion contemplated for PHAs under the United States Housing Act of 1937 (42 U.S.C. 1437) (1937 Act) and the policy towards minimization of Federal control over public bodies created by local government:

(O)ne of the major policies of the United States Housing Act of 1937 * * * is " * * * to vest in local public housing agencies the maximum amount of responsibility in the administration of their housing programs * * *" (section 2 of the 1937 Act, 42 U.S.C. 1437). Moreover PHAs are public bodies created by State, local, and tribal governments and traditionally have jurisdiction over a broad area. Giving these entities greater responsibility for the management of projects serves the goal of minimizing Federal control over matters of

local concern that are within the competency of local governments. (51 FR 43270, 43271.)

The preamble to the December 1, 1986 rule also emphasized that HUD's decision to limit project owner discretion did not indicate a lack of confidence in the administrative abilities of project owners. Rather, the decision stemmed from the fact that absent Federal guidance, project owners were unlikely to receive any governmental guidance in the implementation of section 227:

(I)n some instances, project owners' expertise will equal or surpass that of their PHA counterparts. (HUD) also note(s), however, that project owners, unlike PHAs, are unlikely to receive guidance in the management of their projects from nonmortgagee agencies of State or local government. (51 FR 43270, 43271.)

B. President Clinton's Regulatory Reinvention Initiative

On March 4, 1995, President Clinton announced his Regulatory Reinvention Initiative, which calls for immediate, comprehensive regulatory reform. The President directed all Federal departments and agencies to undertake an exhaustive review of their regulations. This initiative, which is part of the National Performance Review, calls for the elimination of redundant or obsolete regulatory requirements and the modification of others to increase flexibility and reduce burden.

On February 9, 1996 (61 FR 5198), HUD published a final rule creating a new 24 CFR part 5. HUD established part 5 to set forth those requirements which are applicable to one or more program regulations. Consolidation of these requirements in part 5 will eliminate redundancy in title 24 and assist in HUD's overall efforts to streamline the content of its regulations. Accordingly, this final rule removes parts 243, 842, and 943 from title 24 and consolidates HUD's pet ownership rules in a new subpart C to 24 CFR part 5.

Although HUD is consolidating its pet ownership requirements, it is not presently modifying its dual approach towards implementation of section 227. This final rule eliminates redundancy in the existing pet ownership requirements wherever possible, but it retains those provisions which are exclusively applicable to HUD's housing or public housing programs.

The provisions of part 5, subpart C, are organized under three headings. The provisions included under the first heading describe those pet ownership requirements which are applicable to both housing and public housing programs. The second group of

regulatory provisions set forth the requirements which are solely applicable to HUD's housing programs. The third group of requirements describes the pet rules for public housing programs.

Nothing contained in this regulation limits or impairs the right of a person with a disability under either the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, or any other appropriate civil rights authority, to a reasonable accommodation of a pet policy, where it is established that an animal is necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling.

C. Appendices to Final Rule.

Section 5.306 of this final rule sets forth separate definitions of the term "Project for the elderly or persons with disabilities" for HUD's Housing and Public Housing programs. The definition applicable to the Housing programs states that projects must be assisted under certain HUD programs in order to qualify as projects for the elderly or persons with disabilities. Further, paragraph (d)(2) of § 5.318 limits the pet deposit charges that may be imposed by project owners assisted under certain HUD programs. In order to eliminate the necessity of amending these regulatory provisions as HUD programs are created, terminated, or amended, HUD has not listed the relevant programs in the regulation. Rather, §§ 5.306 and 5.318 state that HUD will identify these programs through notice.

Appendix A to this final rule identifies those Housing programs which insure or assist projects for the elderly or persons with disabilities. Appendix B to this final rule lists HUD's Housing programs which are affected by the maximum pet deposit provisions. Neither of these appendices will be codified in title 24 of the Code of Federal Regulations. HUD may update these appendices, as necessary, through notice.

II. Justification for Final Rulemaking

It is HUD's policy to publish rules for public comment before their issuance for effect in accordance with its own regulations on rulemaking found at 24 CFR part 10. However, part 10 provides that prior public procedure will be omitted if HUD determines that it is "impracticable, unnecessary, or contrary to the public interest." (24 CFR 10.1.) HUD finds that in this case prior comment is unnecessary since this final rule does not affect or establish policy. This rule merely consolidates HUD's pet ownership requirements for its housing

and public housing programs in 24 CFR part 5. Where consolidation is not possible, this rule retains those provisions which are exclusively applicable to HUD's housing or public housing programs. This final rule does not add or remove program requirements, but merely relocates them to a single part of HUD's regulations.

III. Other Matters

A. Environmental Impact

This rulemaking does not have an environmental impact. This rulemaking simply amends existing regulations by consolidating and streamlining provisions and does not alter the environmental effect of the regulations being amended. A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of regulations implementing Section 227 of the Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701r-1). That Finding remains applicable to this rule, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

B. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, this final rule merely consolidates the pet ownership requirements currently repeated in three separate parts of title 24. This rule effects no changes in the current relationships between the Federal government, the States and their political subdivisions in connection with these programs.

C. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this final rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. This final rule consolidates HUD's frequently repeated pet ownership requirements in

24 CFR part 5. No significant change in existing HUD policies or programs will result from promulgation of this rule as those policies and programs relate to family concerns.

D. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely effectuates HUD's consolidation of its pet ownership rules and will not have any meaningful economic impact on any entity.

List of Subjects

24 CFR Part 5

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

24 CFR Part 243

Aged, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Reporting and recordkeeping requirements.

24 CFR Part 842

Aged, Grant programs—housing and community development, Individuals with disabilities, Low and moderate income housing, Pets, Rent subsidies.

24 CFR Part 942

Aged, Grant programs—housing and community development, Individuals with disabilities, Pets, Public housing, Reporting and recordkeeping requirements.

Accordingly, and under the authority of 42 U.S.C. 3535(d), 24 CFR parts 5, 243, 842, and 942 are amended as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for part 5 is revised to read as follows:

Authority: 12 U.S.C. 1701r-1; 42 U.S.C. 3535(d).

2. A new subpart C is added to read as follows:

Subpart C—Pet Ownership for the Elderly or Persons With Disabilities

Sec.

General Requirements

- 5.300 Purpose.
 5.303 Exclusion for animals that assist persons with disabilities.
 5.306 Definitions.
 5.309 Prohibition against discrimination.
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 5.321 Lease provisions.
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Pet Ownership Requirements for Housing Programs

- 5.350 Mandatory pet rules for Housing programs.
 5.353 Housing programs: Procedure for development of pet rules.
 5.356 Housing programs: Pet rule violation procedures.
 5.359 Housing programs: Rejection of units by applicants for tenancy.
 5.360 Housing programs: Additional lease provisions.
 5.363 Housing programs: Protection of the pet.

Pet Ownership Requirements for Public Housing Programs

- 5.380 Public housing programs: Procedure for development of pet rules.

Subpart C—Pet Ownership for the Elderly or Persons With Disabilities

General Requirements

§ 5.300 Purpose.

(a) This subpart implements section 227 of the Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701r-1) as it pertains to projects for the elderly or persons with disabilities under:

(1) The housing programs administered by the Assistant Secretary for Housing-Federal Housing Commissioner;

(2) Projects assisted under the programs contained in chapter VIII of this title 24; and

(3) The public housing programs administered by the Assistant Secretary for Public and Indian Housing under title I of the United States Housing Act of 1937 (42 U.S.C. 1437, et seq.). This part does not apply to Indian housing administered under title II of that Act.

(b) [Reserved].

§ 5.303 Exclusion for animals that assist persons with disabilities.

(a) This subpart C does not apply to animals that are used to assist persons with disabilities. Project owners and PHAs may not apply or enforce any pet rules developed under this subpart

against individuals with animals that are used to assist persons with disabilities. This exclusion applies to animals that reside in projects for the elderly or persons with disabilities, as well as to animals that visit these projects.

(1) A project owner may require resident animals to qualify for this exclusion. Project owners must grant this exclusion if:

(i) The tenant or prospective tenant certifies in writing that the tenant or a member of his or her family is a person with a disability;

(ii) The animal has been trained to assist persons with that specific disability; and

(iii) The animal actually assists the person with a disability.

(b) Nothing in this subpart C:

(1) Limits or impairs the rights of persons with disabilities;

(2) Authorizes project owners or PHAs to limit or impair the rights of persons with disabilities; or

(3) Affects any authority that project owners or PHAs may have to regulate animals that assist persons with disabilities, under Federal, State, or local law.

§ 5.306 Definitions.

Common household pet means:

(1) *For purposes of Housing programs:* A domesticated animal, such as a dog, cat, bird, rodent (including a rabbit), fish, or turtle, that is traditionally kept in the home for pleasure rather than for commercial purposes. Common household pet does not include reptiles (except turtles). If this definition conflicts with any applicable State or local law or regulation defining the pets that may be owned or kept in dwelling accommodations, the State or local law or regulation shall apply. This definition shall not include animals that are used to assist persons with disabilities.

(2) *For purposes of Public Housing programs:* PHAs may define the term "common household pet" under § 5.318.

Elderly or disabled family means:

(1) *For purposes of Housing programs:* An elderly person, a person with a disability, or an elderly or disabled family for purposes of the program under which a project for the elderly or persons with disabilities is assisted or has its mortgage insured.

(2) *For purposes of Public Housing programs:* (i) An elderly person, a person with a disability, or an elderly or disabled family as defined in § 5.403 in subpart A of this part.

Housing programs means:

(1) The housing programs administered by the Assistant Secretary

for Housing-Federal Housing Commissioner; and

(2) The programs contained in chapter VIII of this title 24 that assist rental projects that meet the definition of project for the elderly or persons with disabilities in this subpart C.

Project for the elderly or persons with disabilities means:

(1) *For purposes of Housing programs:*

(i) A specific rental or cooperative multifamily property that, unless currently owned by HUD, is subject to a first mortgage, and:

(A) That is assisted under statutory authority identified by HUD through notice;

(B) That was designated for occupancy by elderly or disabled families when funds for the project were reserved, or when the commitment to insure the mortgage was issued or, of not then so designated, that is designated for such occupancy in an effective amendment to the regulatory agreement covering the project, made pursuant to the project owner's request, and that is assisted or insured under one of the programs identified by HUD through notice; or

(C) For which preference in tenant selection is given for all units in the project to elderly or disabled families and that is owned by HUD or assisted under one of the programs identified by HUD through notice.

(ii) This term does not include health and care facilities that have mortgage insurance under the National Housing Act. This term also does not include any of the project owner's other property that does not meet the criteria contained in any one of paragraphs (1)(i)(A) through (C) of this definition, even if the property is adjacent to or under joint or common management with such specific property.

(2) *For purposes of Public Housing programs:* Any project assisted under title I of the United States Housing Act of 1937 (other than under section 8 or 17 of the Act), including any building within a mixed-use project, that was designated for occupancy by the elderly or persons with disabilities at its inception or, although not so designated, for which the PHA gives preference in tenant selection (with HUD approval) for all units in the project (or for a building within a mixed-use project) to elderly or disabled families. For purposes of this part, this term does not include projects assisted the Low-Rent Housing Homeownership Opportunity program or under title II of the United States Housing Act of 1937.

Project owner means an owner (including HUD, where HUD is the owner) or manager of a project for the

elderly or persons with disabilities, or an agent authorized to act for an owner or manager of such housing.

Public Housing Agency (PHA) is defined in § 5.100.

Public Housing programs means the public housing programs administered by the Assistant Secretary for Public and Indian Housing under title I of the United States Housing Act of 1937.

§ 5.309 Prohibition against discrimination.

Except as otherwise specifically authorized under this subpart no project owner or PHA that owns or manages a project for the elderly or persons with disabilities may:

(a) As a condition of tenancy or otherwise, prohibit or prevent any tenant of such housing from owning common household pets or having such pets living in the tenant's dwelling unit; or

(b) Restrict or discriminate against any person in connection with admission to, or continued occupancy of, such housing by reason of the person's ownership of common household pets or the presence of such pets in the person's dwelling unit.

§ 5.312 Notice to tenants.

(a) During the development of pet rules as described in §§ 5.353 or 5.380, the project owner or PHA shall serve written notice on all tenants of projects for the elderly or persons with disabilities in occupancy at the time of service, stating that:

(1) Tenants are permitted to own and keep common household pets in their dwelling units, in accordance with the pet rules (if any) promulgated under this subpart C;

(2) Animals that are used to assist persons with disabilities are excluded from the requirements of this subpart C, as provided in § 5.303;

(3) Tenants may, at any time, request a copy of any current pet rule developed under this subpart C (as well as any current proposed rule or proposed amendment to an existing rule); and

(4) Tenants may request that their leases be amended under § 5.321 to permit common household pets.

(b) The project owner or PHA shall provide to each applicant for tenancy when he or she is offered a dwelling unit in a project for the elderly or persons with disabilities, the written notice specified in paragraphs (a) (1), (2), and (3) of this section.

(c) If a PHA chooses not to promulgate pet rules, the notice shall be served within 60 days of the effective date of this part. PHAs shall serve notice under this section in accordance with their normal service of notice procedures.

§ 5.315 Content of pet rules: general requirements.

(a) *Housing programs.* The project owner shall prescribe reasonable rules to govern the keeping of common household pets. The pet rules must include the mandatory rules described in § 5.350 and may, unless otherwise noted in this subpart C, include other discretionary provisions as provided in § 5.318.

(b) *Public Housing programs.* (1) PHAs may choose not to promulgate rules governing the keeping of common household pets or may include rules as provided in § 5.318. PHAs may elect to include provisions based on those in § 5.350. If they so choose, the PHAs may modify the provisions in § 5.350 in any manner consistent with this subpart C.

(2) If PHAs choose to promulgate pet rules, tenants must be permitted to own and keep pets in their units in accordance with the terms and conditions of their leases, the provisions of this subpart C, and any applicable State or local law or regulation governing the owning or keeping of pets in dwelling accommodations.

(3) PHAs that choose not to promulgate pet rules, shall not impose, by lease modification or otherwise, any requirement that is inconsistent with the provisions of this subpart C.

(c) *Use of discretion.* (1) This subpart C does not define with specificity the limits of the project owners' or PHAs' discretion to promulgate pet rules. Where a project owner or PHA has discretion to prescribe pet rules under this subpart C, the pet rules should be:

(i) Reasonably related to furthering a legitimate interest of the project owner or PHA, such as the owner's or PHA's interest in providing a decent, safe, and sanitary living environment for existing and prospective tenants and in protecting and preserving the physical condition of the project and the owner's or PHA's financial interest in it; and

(ii) Drawn narrowly to achieve the owner's or PHA's legitimate interests, without imposing unnecessary burdens and restrictions on pet owners and prospective pet owners.

(2) Where a project owner or PHA has discretion to prescribe pet rules under this subpart C, the owner or PHA may vary the rules' content among projects and within individual projects, based on factors such as the size, type, location, and occupancy of the project or its units, provided that the applicable rules are reasonable and do not conflict with any applicable State or local law or regulation governing the owning or keeping of pets in dwelling accommodations.

(d) *Conflict with State or local law.* The pet rules adopted by the project owner or PHA shall not conflict with applicable State or local law or regulations. If such a conflict may exist, the State and local law or regulations shall apply.

§ 5.318 Discretionary pet rules.

Pet rules promulgated by project owners and PHAs may include, but are not limited to, consideration of the following factors:

(a) *Definitions of "common household pet."*—(1) *For Public Housing programs.* The pet rules established by a PHA may contain a reasonable definition of a common household pet.

(2) *For Housing programs.* Project owners wishing to define "common household pet" in their pet rules must use the Housing programs definition of the term in § 5.306.

(b) *Density of tenants and pets.* (1)(i) The pet rules established under this section may take into account tenant and pet density. The pet rules may place reasonable limitations on the number of common household pets that may be allowed in each dwelling unit. In the case of group homes, the pet rules may place reasonable limitations on the number of common household pets that may be allowed in each home.

(ii) *For Housing programs.* Under these rules, project owners may limit the number of four-legged, warm-blooded pets to one pet in each dwelling unit or group home.

(iii) Other than the limitations described in this paragraph (b)(1), the pet rules may not limit the total number of pets allowed in the project.

(2) As used in paragraph (b)(1) of this section, the term "group home" means:

(i) *For purposes of Housing programs.* A small, communal living arrangement designed specifically for individuals who are chronically mentally ill, developmentally disabled, or physically disabled who require a planned program of continual supportive services or supervision (other than continual nursing, medical or psychiatric care).

(ii) *For purposes of Public Housing programs.* A dwelling or dwelling unit for the exclusive residential use of elderly persons or persons with disabilities who are not capable of living completely independently and who require a planned program of continual supportive services or supervision (other than continual nursing, medical or psychiatric care).

(c) *Pet size and pet type.* The pet rules may place reasonable limitations on the size, weight, and type of common household pets allowed in the project.

(d) *Potential financial obligations of tenants* (1) *Pet deposits.* The pet rules may require tenants who own or keep pets in their units to pay a refundable pet deposit. In the case of project owners, this pet deposit shall be limited to those tenants who own or keep cats or dogs in their units. This deposit is in addition to any other financial obligation generally imposed on tenants of the project. The project owner or PHA may use the pet deposit only to pay reasonable expenses directly attributable to the presence of the pet in the project, including (but not limited to) the cost of repairs and replacements to, and fumigation of, the tenant's dwelling unit and, for project owners, the cost of animal care facilities under § 5.363. The project owner or PHA shall refund the unused portion of the pet deposit to the tenant within a reasonable time after the tenant moves from the project or no longer owns or keeps a pet (or a cat or dog in the case of project owners) in the dwelling unit.

(2) *Housing programs: Maximum pet deposit.* (i) Pet deposits for the following tenants shall not exceed an amount periodically fixed by HUD through notice.

(A) Tenants whose rents are subsidized (including tenants of a HUD-owned project, whose rents were subsidized before HUD acquired it) under one of the programs identified by HUD through notice.

(B) Tenants who live in a project assisted (including tenants who live in a HUD-owned project that was assisted before HUD acquired it) under one of the programs identified by HUD through notice.

(C) For all other tenants of projects for the elderly or persons with disabilities, the pet deposit shall not exceed one month's rent at the time the pet is brought onto the premises.

(ii) In establishing the maximum amount of pet deposit under paragraph (d)(2)(i) of this section, HUD will consider factors such as:

(A) Projected, estimated expenses directly attributable to the presence of pets in the project;

(B) The ability of project owners to offset such expenses by use of security deposits or HUD-reimbursable expenses; and

(C) The low income status of tenants of projects for the elderly or persons with disabilities.

(iii) For pet deposits subject to paragraph (d)(2)(i)(A) of this section, the pet rules shall provide for gradual accumulation of the deposit by the pet owner through an initial payment not to exceed \$50 when the pet is brought onto the premises, and subsequent monthly

payments not to exceed \$10 per month until the amount of the deposit is reached.

(iv) For pet deposits subject to paragraphs (d)(2)(i)(B) and (C) of this section, the pet rules may provide for gradual accumulation of the deposit by the pet owner.

(v) The project owner may (subject to the HUD-prescribed limits) increase the amount of the pet deposit by amending the house pet rules in accordance with § 5.353.

(A) For pet deposits subject to paragraph (d)(2)(i)(A) of this section, the house pet rules shall provide for gradual accumulation of any such increase not to exceed \$10 per month for all deposit amounts that are being accumulated.

(B) [Reserved].

(vi) Any pet deposit that is established within the parameters set forth by paragraph (d)(2) of this section shall be deemed reasonable for purposes of this subpart C.

(3) *Public Housing programs: Maximum pet deposit.* The maximum amount of pet deposit that may be charged by the PHA, on a per dwelling unit basis, shall not exceed the higher of the Total Tenant Payment (as defined in 24 CFR 913.102) or such reasonable fixed amount as the PHA may require. The pet rules may permit gradual accumulation of the pet deposit by the pet owner.

(4) *Housing programs: Waste removal charge.* The pet rules may permit the project owner to impose a separate waste removal charge of up to five dollars (\$5) per occurrence on pet owners that fail to remove pet waste in accordance with the prescribed pet rules. Any pet waste removal charge that is within this five dollar (\$5) limitation shall be deemed to be a reasonable amount for the purposes of this subpart C.

(5) The pet deposit (for Housing and Public Housing programs) and waste removal charge (for Housing programs) are not part of the rent payable by the tenant. Except as provided in paragraph (d) of this section for Housing programs and, paragraph (d) of this section and 24 CFR 966.4(b) for Public Housing programs, project owners or PHAs may not prescribe pet rules that impose additional financial obligations on pet owners that are designed to compensate the project owner or PHA for costs associated with the presence of pets in the project, including (but not limited to) requiring pet owners:

(i) To obtain liability or other insurance to cover damage caused by the pet;

(ii) To agree to be strictly liable for all damages caused by the pet where this

liability is not otherwise imposed by State or local law, or

(iii) To indemnify the project owner for pet-related litigation and attorney's fees.

(e) *Standards of pet care.* The pet rules may prescribe standards of pet care and handling, but must be limited to those necessary to protect the condition of the tenant's unit and the general condition of the project premises, or to protect the health or safety of present tenants, project employees, and the public. The pet rules may not require pet owners to have any pet's vocal cords removed. Permitted rules may:

(1) Bar pets from specified common areas (such as lobbies, laundry rooms, and social rooms), unless the exclusion will deny a pet reasonable ingress and egress to the project or building.

(2) Require the pet owner to control noise and odor caused by a pet.

(3) Housing programs: Project owners may also:

(i) Require pet owners to have their dogs and cats spayed or neutered; and

(ii) Limit the length of time that a pet may be left unattended in a dwelling unit.

(f) *Pet licensing.* The pet rules may require pet owners to license their pets in accordance with applicable State and local laws and regulations. (Failure of the pet rules to contain this requirement does not relieve the pet owner of responsibility for complying with applicable State and local pet licensing requirements.)

(g) *Public Housing programs: Designated pet areas.* (1) PHAs may designate buildings, floors of buildings, or sections of buildings as no-pet areas where pets generally may not be permitted. Similarly, the pet rules may designate buildings, floors of buildings, or sections of buildings for residency generally by pet-owning tenants. The PHA may direct such initial tenant moves as may be necessary to establish pet and no-pet areas. The PHA may not refuse to admit (or delay admission of) an applicant for tenancy on the grounds that the applicant's admission would violate a pet or no-pet area. The PHA may adjust the pet and no-pet areas or may direct such additional moves as may be necessary (or both) to accommodate such applicants for tenancy or to meet the changing needs of existing tenants.

(2) Project owners may not designate pet areas in buildings in their pet rules.

(h) *Pets temporarily on the premises.* The pet rules may exclude from the project pets not owned by a tenant that are to be kept temporarily on the project premises. For the purposes of paragraph

(h) of this section, pets are to be kept "temporarily" if they are to be kept in the tenant's dwelling accommodations for a period of less than 14 consecutive days and nights. HUD, however, encourages project owners and PHAs to permit the use of a visiting pet program sponsored by a humane society, or other nonprofit organization.

§ 5.321 Lease provisions.

(a) *Lease provisions.* (1) PHAs which have established pet rules and project owners shall ensure that the leases for all tenants of projects for the elderly or persons with disabilities:

(i) State that tenants are permitted to keep common household pets in their dwelling units (subject to the provisions of this subpart and the pet rules);

(ii) Shall incorporate by reference the pet rules promulgated by the project owner or PHA;

(iii) Shall provide that the tenant agrees to comply with these rules; and

(iv) Shall state that violation of these rules may be grounds for removal of the pet or termination of the pet owner's tenancy (or both), in accordance with the provisions of this subpart and applicable regulations and State or local law.

(b) Where a PHA has not established pet rules, the leases of all tenants of such projects shall not contain any provisions prohibiting the owning or keeping of common household pets, and shall state that owning and keeping of such pets will be subject to the general obligations imposed on the PHA and tenants in the lease and any applicable State or local law or regulation governing the owning or keeping of pets in dwelling accommodations.

§ 5.324 Implementation of lease provisions.

The lease for each tenant of a project for the elderly or persons with disabilities who is admitted on or after the date on which this subpart C is implemented shall contain the lease provisions described in § 5.321 and, if applicable, § 5.360. The lease for each tenant who occupies a unit in such a project under lease on the date of implementation of this part shall be amended to include the provisions described in § 5.321 and, if applicable, § 5.360:

(a) For Housing programs:

(1) Upon renewal of the lease and in accordance with any applicable regulation; and

(2) When a Housing program tenant registers a common household pet under § 5.350

(b) For Public Housing programs:

(1) Upon annual reexamination of tenant income in accordance with any applicable regulation; and

(2) When a Public Housing program tenant wishes to own or keep a common household pet in his or her unit.

§ 5.327 Nuisance or threat to health or safety.

Nothing in this subpart C prohibits a project owner, PHA, or an appropriate community authority from requiring the removal of any pet from a project, if the pet's conduct or condition is duly determined to constitute, under the provisions of State or local law, a nuisance or a threat to the health or safety of other occupants of the project or of other persons in the community where the project is located.

Pet Ownership Requirements for Housing Programs

§ 5.350 Mandatory pet rules for Housing programs.

Mandatory rules. The project owner must prescribe the following pet rules:

(a) *Inoculations.* The pet rules shall require pet owners to have their pets inoculated in accordance with State and local laws.

(b) *Sanitary standards.* (1) The pet rules shall prescribe sanitary standards to govern the disposal of pet waste. These rules may:

(i) Designate areas on the project premises for pet exercise and the deposit of pet waste;

(ii) Forbid pet owners from exercising their pets or permitting their pets to deposit waste on the project premises outside the designated areas;

(iii) Require pet owners to remove and properly dispose of all removable pet waste; and

(iv) Require pet owners to remove pets from the premises to permit the pet to exercise or deposit waste, if no area in the project is designated for such purposes.

(2) In the case of cats and other pets using litter boxes, the pet rules may require the pet owner to change the litter (but not more than twice each week), may require pet owners to separate pet waste from litter (but not more than once each day), and may prescribe methods for the disposal of pet waste and used litter.

(c) *Pet restraint.* The pet rules shall require that all cats and dogs be appropriately and effectively restrained and under the control of a responsible individual while on the common areas of the project.

(d) *Registration.* (1) The pet rules shall require pet owners to register their pets with the project owner. The pet owner must register the pet before it is brought

onto the project premises, and must update the registration at least annually. The project owner may coordinate the annual update with the annual reexamination of tenant income, if applicable. The registration must include:

(i) A certificate signed by a licensed veterinarian or a State or local authority empowered to inoculate animals (or designated agent of such an authority) stating that the pet has received all inoculations required by applicable State and local law;

(ii) Information sufficient to identify the pet and to demonstrate that it is a common household pet; and

(iii) The name, address, and phone number of one or more responsible parties who will care for the pet if the pet owner dies, is incapacitated, or is otherwise unable to care for the pet.

(2) The project owner may require the pet owner to provide additional information necessary to ensure compliance with any discretionary rules prescribed under § 5.318, and shall require the pet owner to sign a statement indicating that he or she has read the pet rules and agrees to comply with them.

(3) The pet rules shall permit the project owner to refuse to register a pet if:

(i) The pet is not a common household pet;

(ii) The keeping of the pet would violate any applicable house pet rule;

(iii) The pet owner fails to provide complete pet registration information or fails annually to update the pet registration; or

(iv) The project owner reasonably determines, based on the pet owner's habits and practices, that the pet owner will be unable to keep the pet in compliance with the pet rules and other lease obligations. The pet's temperament may be considered as a factor in determining the prospective pet owner's ability to comply with the pet rules and other lease obligations.

(4) The project owner may not refuse to register a pet based on a determination that the pet owner is financially unable to care for the pet or that the pet is inappropriate, based on the therapeutic value to the pet owner or the interests of the property or existing tenants.

(5) The pet rules shall require the project owner to notify the pet owner if the project owner refuses to register a pet. The notice shall state the basis for the project owner's action and shall be served on the pet owner in accordance with the requirements of § 5.353(f)(1)(i) or (ii). The notice of refusal to register

a pet may be combined with a notice of pet violation as required in § 5.356.

§ 5.353 Housing programs: Procedure for development of pet rules.

(a) *General.* Project owners shall use the procedures specified in this section to promulgate the pet rules referred to in §§ 5.318 and 5.350.

(b) *Development and notice of proposed pet rules.* Project owners shall develop proposed rules to govern the owning or keeping of common household pets in projects for the elderly or persons with disabilities. Notice of the proposed pet rules shall be served on each tenant of the project as provided in paragraph (f) of this section. The notice shall:

(1) Include the text of the proposed rules;

(2) State that tenants or tenant representatives may submit written comments on the rules; and

(3) State that all comments must be submitted to the project owner no later than 30 days from the effective date of the notice of the proposed rules.

(4) The notice may also announce the date, time, and place for a meeting to discuss the proposed rules (as provided in paragraph (c) of this section).

(c) *Tenant consultation.* Tenants or tenant representatives may submit written comments on the proposed pet rules to the project owner by the date specified in the notice of proposed rules. In addition, the owner may schedule one or more meetings with tenants during the comment period to discuss the proposed rules. Tenants and tenant representatives may make oral comments on the proposed rules at these meetings. The project owner must consider comments made at these meetings only if they are summarized, reduced to writing, and submitted to the project owner before the end of the comment period.

(d) *Development and notice of final pet rules.* The project owner shall develop the final rules after reviewing tenants' written comments and written summaries of any owner-tenant meetings. The project owner may meet with tenants and tenant representatives to attempt to resolve issues raised by the comments. Subject to this subpart C, the content of the final pet rules, however, is within the sole discretion of the project owner. The project owner shall serve on each tenant of the project, a notice of the final pet rules as provided in paragraph (f) of this section. The notice must include the text of the final pet rules and must specify the effective date of the final pet rules.

(e) *Amendment of pet rules.* The project owner may amend the pet rules

at any time by following the procedure for the development of pet rules specified in paragraphs (b) through (d) of this section.

(f) *Service of notice.* (1) The project owner must serve the notice required under this section by:

(i) Sending a letter by first class mail, properly stamped and addressed to the tenant at the dwelling unit, with a proper return address; or

(ii) Serving a copy of the notice on any adult answering the door at the tenant's leased dwelling unit, or if no adult responds, by placing the notice under or through the door, if possible, or else by attaching the notice to the door; or

(iii) For service of notice to tenants of a high-rise building, posting the notice in at least three conspicuous places within the building and maintaining the posted notices intact and in legible form for 30 days. For purposes of paragraph (f) of this section, a high-rise building is a structure that is equipped with an elevator and has a common lobby.

(2) For purposes of computing time periods following service of the notice, service is effective on the day that all notices are delivered or mailed, or in the case of service by posting, on the day that all notices are initially posted.

§ 5.356 Housing programs: Pet rule violation procedures.

(a) *Notice of pet rule violation.* If a project owner determines on the basis of objective facts, supported by written statements, that a pet owner has violated a rule governing the owning or keeping of pets; the project owner may serve a written notice of pet rule violation on the pet owner in accordance with § 5.353(f)(1)(i) or (ii). The notice of pet rule violation must:

(1) Contain a brief statement of the factual basis for the determination and the pet rule or rules alleged to be violated;

(2) State that the pet owner has 10 days from the effective date of service of the notice to correct the violation (including, in appropriate circumstances, removal of the pet) or to make a written request for a meeting to discuss the violation;

(3) State that the pet owner is entitled to be accompanied by another person of his or her choice at the meeting; and

(4) State that the pet owner's failure to correct the violation, to request a meeting, or to appear at a requested meeting may result in initiation of procedures to terminate the pet owner's tenancy.

(b) (1) *Pet rule violation meeting.* If the pet owner makes a timely request for a meeting to discuss an alleged pet rule

violation, the project owner shall establish a mutually agreeable time and place for the meeting but no later than 15 days from the effective date of service of the notice of pet rule violation (unless the project owner agrees to a later date). At the pet rule violation meeting, the pet owner and project owner shall discuss any alleged pet rule violation and attempt to correct it. The project owner may, as a result of the meeting, give the pet owner additional time to correct the violation.

(2) *Notice for pet removal.* If the pet owner and project owner are unable to resolve the pet rule violation at the pet rule violation meeting, or if the project owner determines that the pet owner has failed to correct the pet rule violation within any additional time provided for this purpose under paragraph (b)(1) of this section, the project owner may serve a written notice on the pet owner in accordance with § 5.353(f)(1)(i) or (ii) (or at the meeting, if appropriate), requiring the pet owner to remove the pet. The notice must:

(i) Contain a brief statement of the factual basis for the determination and the pet rule or rules that have been violated;

(ii) State that the pet owner must remove the pet within 10 days of the effective date of service of the notice of pet removal (or the meeting, if notice is served at the meeting); and

(iii) State that failure to remove the pet may result in initiation of procedures to terminate the pet owner's tenancy.

(c) *Initiation of procedures to remove a pet or terminate the pet owner's tenancy.* (1) The project owner may not initiate procedures to terminate a pet owner's tenancy based on a pet rule violation, unless:

(i) The pet owner has failed to remove the pet or correct a pet rule violation within the applicable time period specified in this section (including any additional time permitted by the owner); and

(ii) The pet rule violation is sufficient to begin procedures to terminate the pet owner's tenancy under the terms of the lease and applicable regulations.

(2) The project owner may initiate procedures to remove a pet under § 5.327 at any time, in accordance with the provisions of applicable State or local law.

§ 5.359 Housing programs: Rejection of units by applicants for tenancy.

(a) An applicant for tenancy in a project for the elderly or persons with disabilities may reject a unit offered by a project owner if the unit is in close

proximity to a dwelling unit in which an existing tenant of the project owns or keeps a common household pet. An applicant's rejection of a unit under this section shall not adversely affect his or her application for tenancy in the project, including (but not limited to) his or her position on the project waiting list or qualification for any tenant selection preference.

(b) Nothing in this subpart C imposes a duty on project owners to provide alternate dwelling units to existing or prospective tenants because of the proximity of common household pets to a particular unit or the presence of such pets in the project.

§ 5.360 Housing programs: Additional lease provisions.

(a) *Inspections.* In addition to other inspections permitted under the lease, the leases for all Housing program tenants of projects for the elderly or persons with disabilities may state that the project owner may, after reasonable notice to the tenant and during reasonable hours, enter and inspect the premises. The lease shall permit entry and inspection only if the project owner has received a signed, written complaint alleging (or the project owner has reasonable grounds to believe) that the conduct or condition of a pet in the dwelling unit constitutes, under applicable State or local law, a nuisance or a threat to the health or safety of the occupants of the project or other persons in the community where the project is located.

(b) *Emergencies.* (1) If there is no State or local authority (or designated agent of such an authority) authorized under applicable State or local law to remove a pet that becomes vicious, displays symptoms of severe illness, or demonstrates other behavior that constitutes an immediate threat to the health or safety of the tenancy as a whole, the project owner may place a provision in tenant leases permitting the project owner to enter the premises (if necessary), remove the pet, and take such action with respect to the pet as may be permissible under State and local law, which may include placing it in a facility that will provide care and shelter for a period not to exceed 30 days.

(2) The lease shall permit the project owner to enter the premises and remove the pet or take such other permissible action only if the project owner requests the pet owner to remove the pet from the project immediately, and the pet owner refuses to do so, or if the project owner is unable to contact the pet owner to make a removal request. The lease may not contain a provision

relieving the project owner from liability for wrongful removal of a pet. The cost of the animal care facility shall be paid as provided in § 5.363.

(3) The project owner may place a provision in tenant leases permitting the project owner to enter the premises, remove the pet, and place the pet in a facility that will provide care and shelter, in accordance with the provisions of § 5.363. The lease may not contain a provision relieving the project owner from liability for wrongful removal of a pet.

§ 5.363 Housing programs: protection of the pet.

(a) If the health or safety of a pet is threatened by the death or incapacity of the pet owner, or by other factors that render the pet owner unable to care for the pet, the project owner may contact the responsible party or parties listed in the pet registration required under § 5.350(d)(1)(iii).

(b) If the responsible party or parties are unwilling or unable to care for the pet, or the project owner, despite reasonable efforts, has been unable to contact the responsible party or parties, the project owner may contact the appropriate State or local authority (or designated agent of such an authority) and request the removal of the pet.

(c) If there is no State or local authority (or designated agent of such an authority) authorized to remove a pet under these circumstances and the project owner has placed a provision in the lease agreement (as described in § 5.360(c)(2)), the project owner may enter the pet owner's unit, remove the pet, and place the pet in a facility that will provide care and shelter until the pet owner or a representative of the pet owner is able to assume responsibility for the pet, but not longer than 30 days.

(d) The cost of the animal care facility provided under this section shall be borne by the pet owner. If the pet owner (or the pet owner's estate) is unable or unwilling to pay, the cost of the animal care facility may be paid from the pet deposit, if imposed under the pet rules.

Pet Ownership Requirements for Public Housing Programs

§ 5.380 Public Housing programs: Procedure for development of pet rules.

PHAs that choose to promulgate pet rules shall consult with tenants of projects for the elderly or persons with disabilities administered by them with respect to their promulgation and subsequent amendment. PHAs shall develop the specific procedures governing tenant consultation, but these procedures must be designed to give tenants (or, if appropriate, tenant

councils) adequate opportunity to review and comment upon the pet rules before they are issued for effect. PHAs are solely responsible for the content of final pet rules, but must give consideration to tenant comments. PHAs shall send to the responsible HUD field office, copies of the final (or amended) pet rules, as well as summaries or copies of all tenant comments received in the course of the tenant consultation.

PART 243—[REMOVED]

3. Part 243 is removed.

PART 842—[REMOVED]

4. Part 842 is removed.

PART 942—[REMOVED]

5. Part 942 is removed.

Dated: February 22, 1996.

Henry G. Cisneros,

Secretary.

Note: This Appendix A will not be codified in Title 24 of the CFR.

Appendix A—Guide to Definition of Projects for the Elderly or Persons With Disabilities for Purposes of HUD's Housing Programs Sec.

1. Purpose.
2. Housing Programs Which Insure or Assist Projects for the Elderly or Persons with Disabilities.

1. Purpose

The regulations at 24 CFR part 5, subpart C, describe HUD's pet ownership requirements. Section 5.306 provides separate definitions of the term "Project for the elderly or persons with disabilities" for HUD's Housing and Public Housing programs. The definition applicable to the Housing programs states that projects must be assisted under certain HUD programs in order to qualify as projects for the elderly or persons with disabilities. However, in order to eliminate the necessity of amending this regulatory definition as HUD programs are created, terminated, or revised, HUD has not listed the relevant Housing programs in the definition. Rather, the definition states that HUD will identify these programs through notice. The purpose of this appendix is to identify HUD's Housing programs which insure or assist projects for the elderly or persons with disabilities.

2. Housing Programs Which Insure or Assist Project for the Elderly or Persons With Disabilities

This appendix repeats the definition for HUD's Housing programs in 24 CFR 5.306, but lists the applicable programs. HUD may periodically update this appendix through notice.

Project for the elderly or persons with disabilities means:

- (1) For purposes of Housing programs: A specific rental or cooperative multifamily

property that, unless currently owned by HUD, is subject to a first mortgage, and:

(i) That is assisted under section 202 of the Housing Act of 1959 (Housing for the Elderly or Handicapped);

(ii) That was designated for occupancy by elderly or disabled families when funds for the project were reserved, or when the commitment to insure the mortgage was issued or, if not then so designated, that is designated for such occupancy in an effective amendment to the regulatory agreement covering the project, made pursuant to the project owner's request, and:

(A) That is assisted (with or without HUD mortgage insurance) under section 221(d)(3) (BMIR) of the National Housing Act or 24 CFR part 236; or

(B) Insured under section 221(d)(3) (Market Rate) or section 221(d)(4) of the National Housing Act, or 24 CFR part 231 (Housing Mortgage Insurance for the Elderly);

(iii) For which preference in tenant selection is given for all units in the project to elderly or disabled families and that is owned by HUD or assisted under the following programs:

- (A) Housing Development Grant program;
- (B) Section 8 New Construction;
- (C) Section 8 Substantial Rehabilitation;
- (D) Section 8 Moderate Rehabilitation;
- (E) Section 8 State Housing Agency programs;

(F) Section 8 Rural Set-Aside;

(G) Section 8 Loan Management and Property Disposition.

(2) This term does not include health and care facilities that have mortgage insurance under the National Housing Act. This term also does not include any of the project owner's other property that does not meet the

criteria contained in any one of paragraphs (1) (i) through (iii) of this definition, even if the property is adjacent to or under joint or common management with such specific property.

Note: This Appendix B Will not be Codified in Title 24 of the CFR.

Appendix B—Guide to Maximum Pet Deposit for Housing Programs

Sec.

1. Purpose.
2. Housing Programs Affected by Maximum Pet Deposit Requirements.

1. Purpose

The regulations at 24 CFR part 5, subpart C, describe the pet ownership requirements for HUD's Housing and Public housing programs. Paragraph (d)(2) of § 5.318 limits the pet deposit charges that may be imposed by project owners assisted under certain HUD programs. In order to eliminate the necessity of amending this regulatory provision as HUD programs are created, eliminated, or amended, HUD has not listed the relevant Housing programs in this regulation. Rather, paragraphs (d)(2)(i) (A) and (B) of § 5.318 state that HUD will identify through notice the Housing programs affected by the maximum pet deposit requirements. The purpose of this appendix is to identify these Housing programs.

2. Housing Programs Affected by Maximum Pet Deposit Requirements

This appendix repeats the maximum pet deposit provision in 24 CFR 5.318(d)(2), but lists the applicable Housing programs. HUD may periodically update this appendix through notice.

Housing programs: Maximum pet deposit.
(i) Pet deposits for the following tenants shall not exceed an amount periodically fixed by HUD through notice:

(A) Tenants whose rents are subsidized (including tenants of a HUD-owned project, whose rents were subsidized before HUD acquired it) under the following programs:

- (1) Rent Supplement Payments;
- (2) Rental assistance Payments;
- (3) Housing Development Grant program;
- (4) Section 8 New Construction;
- (5) Section 8 Substantial Rehabilitation;
- (6) Section 8 Moderate Rehabilitation;
- (7) Section 8 State Housing Agency program;
- (8) Section 8 Rural Set-Aside;
- (9) Loans for Housing for the Elderly or Persons with Disabilities; or
- (10) Section 8 Loan Management and Property Disposition.

(B) Tenants who live in a project assisted (including tenants who live in a HUD-owned project that was assisted before HUD acquired it) under:

- (1) The Interest Reduction Payments program;
- (2) Section 202 of the Housing Act of 1959; or
- (3) Section 221(d)(3) (BMIR) of the National Housing Act.

(C) For all other tenants of projects for the elderly or persons with disabilities, the pet deposit shall not exceed one month's rent at the time the pet is brought onto the premises. The house pet rules may permit gradual accumulation of the pet deposit by the pet owner.

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