

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Part 5**

[Docket No. FR-5127-P-01]

RIN 2501-AD31

Pet Ownership for the Elderly and Persons With Disabilities**AGENCY:** Office of the Secretary, HUD.**ACTION:** Proposed rule.

SUMMARY: This proposed rule would revise HUD's regulations that apply to pet ownership in HUD-assisted housing for the elderly and persons with disabilities by conforming the exceptions for animals that assist persons with disabilities to those that apply to HUD's public housing programs, as defined in section 3(b) of the United States Housing Act.

DATES: *Comment Due Date:* December 14, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Interested persons also may submit comments electronically through the federal eRulemaking portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically so that HUD, in turn, can make them immediately available to the public. Commenters should follow the instructions provided on that site to submit comments electronically. Facsimile (FAX) comments are not accepted. In all cases, communications must refer to the docket number and title. All 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). Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:

Bryan Greene, Deputy Assistant Secretary for Enforcement and Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5204, Washington, DC 20410-2000; telephone number (202) 619-8046 (this is not a toll-free number). Hearing- or speech-impaired

persons may contact this number by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:**I. Background**

Certain animals provide assistance or perform tasks for the benefit of a person with a disability. These animals, often referred to as "assistance animals," "service animals," "support animals," or "therapy animals," provide disability-related functions including, but not limited to, guiding visually impaired individuals, alerting hearing-impaired persons to sounds and noises, providing protection or rescue assistance, pulling a wheelchair, seeking and retrieving items, alerting individuals to impending seizures, and providing emotional support to persons who have a disability-related need for such support.

The pet ownership policies and general requirements for pet ownership applicable to public housing and multifamily housing projects for the elderly or persons with disabilities are described in HUD's regulations at 24 CFR part 5, subpart C. Pet ownership by residents in public housing, except housing projects for the elderly or persons with disabilities and not including housing assisted under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f *et seq.*), is addressed in HUD's regulations at 24 CFR part 960, subpart G. Under these regulations, in addition to HUD's pet ownership policies, public housing agencies (PHAs) and owners may develop and impose additional, reasonable requirements for pet ownership by tenants and residents. See 24 CFR part 5, subpart C and 24 CFR part 960, subpart G for descriptions of applicable policies and requirements.

Parts 5 and 960 contain minor differences in pet ownership exclusion policies and requirements for animals that assist persons with disabilities. In 24 CFR 5.303, entitled, "Exclusion for animals that assist persons with disabilities," project owners and PHAs may not apply or enforce any pet rules developed under part 5 against individuals with animals that are used to assist persons with disabilities. Part 5, however, states that owners or PHAs may require that assistance animals qualify for the exclusion and that owners must grant this exclusion under certain circumstances. These circumstances include: (1) 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; (2) the animal has been trained to assist persons with that specific disability;

and (3) the animal actually assists the person with a disability.

In contrast, § 960.705 states that PHAs may not apply or enforce pet policies established under 24 CFR part 960 against animals that are necessary as a reasonable accommodation to assist, support, or provide service to persons with disabilities. This exclusion applies to such animals that reside in public housing, other than housing developments for the elderly or persons with disabilities, and to such animals that visit these developments. The provisions in part 960 do not contain the tenant certification or the animal training requirements found in § 5.303. PHAs however, are authorized to verify that the animal qualifies as a reasonable accommodation under Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act (the Acts). An animal qualifies as a reasonable accommodation if: (1) An individual has a disability, as defined in the Acts, (2) the animal is needed to assist with the disability, and (3) the individual who requests the reasonable accommodation demonstrates that there is a relationship between the disability and the assistance that the animal provides.

II. This Proposed Rule

This proposed rule would revise HUD's regulations that apply to assistance animals in HUD-assisted housing, including public housing serving elderly and disabled families, by making the assistance animal exceptions in those regulations similar to the requirements and procedures that currently apply to HUD's other public housing programs. HUD is undertaking this effort to improve uniformity in its regulations.

In order to conform the assistance animal provisions for housing serving elderly or disabled families in 24 CFR 5.303 to the public housing provisions, excluding section 8, in 24 CFR 960.705, HUD is proposing minor revisions to § 5.303.

First, HUD would revise § 5.303(a) to broaden the functions of assistance animals to state that the exclusion applies to animals that "assist, support, or provide service to persons with disabilities." The current regulation is limited to animals that "assist persons with disabilities."

Second, § 5.303(a) would be revised to state that project owners and PHAs may not apply or enforce any policies established under this subpart against animals that are necessary as a reasonable accommodation to assist, support, or provide service to persons with disabilities. This language is

adopted from the similar provision in § 960.705, for uniformity.

Finally, in order to conform to the provisions in § 960.705, HUD proposes to remove the tenant certification and animal training requirements in § 5.303(a)(1)(i)–(iii). Removing the training and certification requirements will ensure uniformity in HUD's regulations.

III. Findings and Certifications

Environmental Impact

This proposed rule involves a policy document that sets out nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The proposed rule would conform the assistance animal requirements in certain housing for the elderly or persons with disabilities with the provisions for assistance animals in other HUD-assisted housing programs. Specifically, this change would remove the training and certification requirements. Such a change is likely to decrease the administrative burden on project owners to process assistance animal certifications. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not

have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives, as described in this preamble.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) 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 does not impose any federal mandate on state, local, or tribal government or the private sector within the meaning of UMRA.

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 and 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 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.

List of Subjects in 24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and

recordkeeping requirements, Social Security, Unemployment compensation, Wages.

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR part 5 to read as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

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

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d), and Sec. 327, Pub. L. 109–115, 119 Stat. 2936.

2. Revise § 5.303 to read as follows:

§ 5.303 Exclusion for animals that assist persons with disabilities.

(a) This subpart C does not apply to animals that are used to assist, support, or provide service to persons with disabilities. Project owners and PHAs may not apply or enforce any policies established under this subpart against animals that are necessary as a reasonable accommodation to assist, support, or provide service to 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.

(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.

Dated: September 18, 2007.

Roy A. Bernardi,

Deputy Secretary.

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