

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Part 200**

[Docket No. FR-4272-P-01]

RIN 2502-AH03

HUD Minimum Property Standard—Adoption of the 1995 Model Energy Code

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Minimum Property Standards (MPS) in 24 CFR part 200, subpart S, by referencing the latest edition of the Model Energy Code (MEC): the 1995 edition. The 1992 MEC edition presently cited in the MPS regulations and incorporated in Handbook, 4910.1 would be replaced. These proposed changes are necessary to keep the MPS current and to help protect the Department's insurance fund. In addition, the proposed changes are consistent with legislation and OMB Circular A-119, which require Federal agencies to use national voluntary consensus standards, when practical, in lieu of developing an agency standard. In order to determine the appropriateness of these proposed changes, HUD asked Pacific Northwest National Laboratory (PNNL) to perform a detailed analysis of the 1995 MEC. PNNL determined that the use of the 1995 MEC will achieve a significant increase in energy savings, and that it is technologically feasible, and economically justified.

DATES: Comment due date: August 17, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing & Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410-8000. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. FAXED comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, 451 Seventh Street S.W., Room 9156, Washington, D.C. 20410-8000; telephone: voice, (202) 708-6423;

TTY, (202) 708-4594 (these are not toll free numbers.)

SUPPLEMENTARY INFORMATION:**Background**

The National Housing Act, 12 U.S.C. 1702 *et seq.*, authorizes the Secretary of Housing and Urban Development (Secretary) to prescribe standards for determining the acceptability of one- and two-family residential structures, multifamily residential structures, and care-type facilities (nursing home, intermediate care facility, combined nursing home and intermediate care facility, board and care home, hospital or group practice facility). (See e.g., 12 U.S.C. 1715(f).) Some general statutory guidelines govern the nature of these standards. For example, the standards are "to establish the acceptability of * * * property for mortgage insurance * * *." (12 U.S.C. 1715(f)). In addition, the standards must be consistent with the declared national housing policy of realizing "the goal of a decent and suitable living environment for every American family * * *." (42 U.S.C. 1441). The Minimum Property Standards (MPS) requirements in 24 CFR part 200, subpart S, are also published in HUD Handbook 4910.1, as provided in § 200.929(b)(2) of the MPS. Any changes made in the MPS by this rule will, accordingly, be reflected in the referenced handbook.

The current MPS are consistent with the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104-113, 110 Stat. 783, approved March 7, 1996) and OMB Circular A-119. This statute and circular establish a Federal policy that, whenever feasible, model codes and standards developed by private organizations should be adopted by the U.S. Government when their use will eliminate the necessity for separate Federal agency standards covering the same technical issues.

Section 526(a) of the National Housing Act requires the Secretary to "promote the use of energy saving techniques through the minimum property standards" and assure that the MPS are "at least as effective in performance as the energy performance requirements incorporated in the minimum property standards that were in effect under this subsection on September 30, 1982."

This requirement was supported and extended in section 101 of the Energy Policy Act of 1992 (Pub. L. 102-486, Oct. 24, 1992), which amended section 109 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12709). This provision covers public and assisted housing, and single family and multifamily residential housing

(other than manufactured housing) subject to mortgages insured under the National Housing Act. HUD implemented the requirement of Section 101 by amending the Minimum Property Standards (MPS) for Housing (See 24 CFR 200.925; 24 CFR 200.926e) to reference the provisions of the 1992 Model Energy Code (MEC). (See FR Vol. 58, No. 218, November 15, 1993)

Also under section 109 of the Cranston-Gonzalez National Affordability Housing Act, "If the requirements of 1992 Model Energy Code or, in the case of multifamily high rises, ASHRAE [American Society of Heating, Refrigerating and Air Conditioning Engineers] Standard 90.1-1989, are revised at any time, the Secretaries (of HUD and Agriculture) shall, not later than 1 year after such revision, amend the standards established under subsection (a) to meet or exceed the requirements of such revised code or standard unless the Secretaries determine that compliance with such revised code or standard would not result in a significant increase in energy efficiency or would not be technologically feasible or economically justified." This proposed rule has been prepared as expeditiously as possible following receipt of the PNNL analysis.

The Model Energy Code 1995 establishes minimum requirements for energy-related features of new buildings and additions to existing buildings. It covers low-rise buildings, three stories or less, as well as one- and two-family buildings. It also includes high-rise buildings, four stories or more, and applies to any additions to existing buildings. Since the Minimum Property Standards only apply to new structures and do not include additions, sections of the MEC that deal with additions were deleted from adoption by the MPS. Further, the MEC sections dealing with mixed occupancy and change of occupancy are deleted from adoption by the MPS because the MPS apply only to multifamily buildings, caretype occupancy, and one- and two-family dwellings.

The MEC is applicable to all types of residential and non-residential buildings. It is not applicable to historic structures (specifically designated as historically significant by the State or local governing body, or listed in the National Register of Historic Places, or which have been determined to be eligible for listing). Nor does it apply to manufactured homes regulated by the Federal Manufactured Home Construction and Safety Standards. HUD has other energy standards for manufactured housing.

The MEC emphasizes flexibility to suit local needs and conditions by offering a number of means for achieving compliance. MEC compliance can be demonstrated based on using the building envelope specifications for insulation/windows (thermal transmittance). Compliance can also be demonstrated with the building envelope which has an overall thermal transmittance equal to or better than specified in the MEC. The MEC allows compliance to be demonstrated by showing the estimated energy use of a residence is less than or equal to the energy use resulting from a building which meets the explicit requirements of the MEC. In addition, the MEC allows compliance of residences whose estimated energy costs are less than or equal to the energy costs resulting from the same house if it was built to the MEC specifications.

To assure that the 1995 MEC standards meet legislative requirements, HUD contracted with Pacific Northwest National Laboratory (PNNL), a Department of Energy national laboratory, to review and analyze the technical aspects of these standards. Their report, entitled "Assessment of the 1995 Model Energy Code for Adoption" March 1997, analyzed this matter and has determined that there is a significant increase in energy savings, that it is technologically feasible, and economically justified. PNNL performed a detailed cost/benefit analysis in accordance with established analytical methods. Their analysis added the discounted cost and benefits of an energy investment which are based on existing and forecasted economic parameters. Some of these parameters include: interest rates, loan term, inflation rate, alternative investments, loan fees and state taxes. Present and projected escalation fuel costs are also used.

This report concluded that the present value of estimated savings to each new home buyer is approximately \$700, for an additional up-front cost of approximately \$300. This is based on a national average of single family and multifamily homes. In addition, the report detailed the specific differences between the 1992 MEC and the 1995 MEC.

ASHRAE 90.1, which is mentioned in section 109 of the Cranston-Gonzalez National Affordability Housing Act and adopted by reference in the 1995 MEC, was also analyzed in this report. Public and HUD-assisted multifamily high-rise housing (buildings four stories or more) are required to comply with ASHRAE Standard 90.1-1989 (ASHRAEa). It incorporated a number of addenda

adding new requirements or modifying existing ones. This codified version of Standard 90.1 endorsed in 1993, which included addenda, did not increase the requirements, or costs, from the 1992 MEC. Rather, it made the enforcement of the code easier for building officials.

In order to simplify compliance with the MEC, HUD has made available two computer software programs, MECcheck and COMcheck, which can be used to demonstrate compliance with the requirements. These materials were developed by the U.S. Department of Energy to simplify compliance with building energy codes.

Copies of the MPS are available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, at the Department of Housing and Urban Development, Washington, DC 20410-8000. Also, copies of the PNNL report, "Assessment of the 1995 Model Energy Code for Adoption" March 1997, are available from HUD USER, P.O. Box 6091, Rockville, MD 20849. MECcheck is also available from HUD USER.

Incorporation by Reference

These standards have been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR 51. Copies of the standards may be obtained from the Council of American Building Officials, 5203 Leesburg Pike, Suite 708, Falls Church, VA 22041.

Findings and Certifications

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 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 mandates on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, D.C. 20410.

Impact on Small Entities

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 is not anticipated to have a significant economic impact on a substantial number of small entities. The rule is not anticipated to have any adverse or disproportionate economic impact on small businesses. The rule only proposes to adopt model energy standards that are already nationally recognized throughout the affected industry. Notwithstanding this determination, HUD specifically invites comments regarding alternatives to this rule that would meet HUD's objectives as described in this preamble.

Federalism Impact

The General Counsel has determined, as the Designated Official for HUD under Section 6(a) of Executive Order 12612, *Federalism*, that this rule does not have federalism implications concerning the division of local, State, and federal responsibilities. The rule only proposes to adopt standards that are already nationally recognized throughout the affected industry.

List of Subjects for 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social Security, Unemployment compensation, Wages.

Accordingly, 24 CFR part 200 would be amended as follows:

1. The authority citation for part 200 continues to read as follows:

Authority: 12 U.S.C. 1701-1715z-18; 42 U.S.C. 3535(d).

Subpart S [Amended]

2. All references in part 200, subpart S, to "the CABO Model Energy Code, 1992" are replaced with "the CABO Model Energy Code, 1995".

3. Section 200.926d is amended by revising paragraph (e) to read as follows:

§ 200.926d Construction requirements.

* * * * *

(e) *Energy efficiency.* All buildings shall be constructed in compliance with the requirements of:

(i) The CABO Model Energy Code (MEC), 1995 Edition, except Sections

101.4.3 (or as otherwise provided in this paragraph), 101.4.4, 104 and 105;

(ii) Section 101.4.3.2, Historic buildings;

(iii) The MEC Appendix; and

(iv) HUD UM 100, HUD Building Product Standards and Certification Program for Solar Water Heating Systems.

(v) ASHRAE/IES 90.1–1989, including addenda, as referenced in the MEC, applies to all multifamily high-rise buildings. All buildings which comply with ASHRAE/IES 90.1–1989, Energy Efficiency Design of New Buildings Except Low-Rise Residential Buildings,

will use ASHRAE Standard 62–1989 or its equivalent for specific ventilation requirements.

§ 200.929 [Amended]

4. Section 200.929(b)(2) is amended by substituting the date “1994” for the date “1993” in the first sentence.

Appendix A [Amended]

5. The introductory paragraph to Appendix A to 24 CFR part 200 is revised to change in two places the address for obtaining MPS and for public inspection of the MPS to “HUD Manufactured Housing and Standards Division, Office of Consumer and

Regulatory Affairs, Room 9156, to 451 7th Street, SW, Washington, DC 20410”. In the standards referenced in the paragraph under Council of American Building Officials: the reference to “CABO Model Energy Code—1992 Edition” is replaced with “CABO Model Energy Code—1995 Edition”.

Dated: April 27, 1998.

Art Agnos,

Acting General Deputy, Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 98–15849 Filed 6–15–98; 8:45 am]

BILLING CODE 4210–27–P