

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

[Docket No. FR-5070-P-01]

RIN 2502-AI43

Uniform Physical Condition Standards and Physical Inspection Requirements for Certain HUD Housing; Revision to Response Time for Requesting a Technical Review of a Physical Inspection Report

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

ACTION: Proposed rule.

SUMMARY: HUD assesses the physical conditions of multifamily properties and notifies owners of its assessment. The owners, under certain circumstances, are provided an opportunity to seek a technical review of HUD's physical condition assessment and HUD may take action in certain cases where the housing is found not to be in compliance with the physical condition standards. Currently, the regulations establish different time frames for owners to request a technical review, depending on whether HUD transmits the inspection results through the Internet or certified mail. In order to improve uniformity in the technical review request process, this proposed rule would implement a standard time frame of 30 calendar days for the submission of a request for a technical review for both physical inspection results that are transmitted to the owner via the Internet or in hard copy form via certified mail.

DATES: *Comment Due Date:* May 24, 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 <http://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 acceptable. 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 <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Kenneth Hannon, Director, Business Relationships and Special Initiatives Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6176, Washington, DC 20410-8000; telephone (202) 708-3944, extension 2599 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

HUD's regulations in 24 CFR part 200, subpart P, establish for multifamily housing certain administrative processes by which HUD notifies owners of HUD's assessment of the physical condition of their multifamily housing. The regulations provide owners, under certain circumstances, with the opportunity to seek a technical review of HUD's physical condition assessment of the multifamily housing; the regulations also allow HUD to take action in certain cases where such housing is found not to be in compliance with the physical condition standards. The regulations in 24 CFR part 200, subpart P, build upon the regulations in 24 CFR part 5, subpart G, that establish uniform physical condition standards (UPCS) for public housing and housing that is insured and/or assisted under certain HUD programs (collectively, such housing is referred to as HUD properties).

The regulations in 24 CFR part 5, subpart G, also establish a uniform physical inspection protocol, based on computer software developed by HUD, which allows HUD to determine compliance with these standards. The UPCS are intended to ensure that HUD program participants carry out their legal obligations to maintain HUD properties in a condition that is decent, safe, sanitary, and in good repair. The uniform inspection protocol is intended to assure that, to the greatest extent possible, there is uniformity and

objectivity in the evaluation of the physical condition of HUD properties.

The regulations in 24 CFR part 200, subpart P, currently provide for two different time frames for owners to request a technical review of HUD's physical inspection assessment, depending on whether HUD transmits the inspection results to the owner through the Internet or via certified mail. Owners receiving their inspection results through certified mail are provided 30 calendar days to submit a request for a technical review, while those owners receiving their results electronically have only 15 calendar days to request a review.

II. This Proposed Rule

For technical review requests, HUD originally established one time frame for reviewing HUD inspection results for owners who receive the results by mail and another for reviewing HUD inspection results for owners who receive the results electronically. HUD did this because mailed communications between HUD and the owner would be slower. In establishing a response time of 30 days for a request from an owner who received the results by mail, HUD allowed for time to review the results and time for the owner to receive the mailed request. From almost 10 years of experience with this process, HUD has concluded that the differing deadlines have been confusing and do not necessarily establish equal review and response time for owners.

To address these concerns, this proposed rule would make one change to the time frames for requesting technical review. In § 200.857, HUD is revising paragraphs (c)(3) and (d) to include a uniform, 30-calendar-day time frame for the submission of a request for a technical review for physical inspection results that are transmitted to the owner either via the Internet or in hard copy via certified mail. Specifically, the proposed rule provides that HUD must receive requests for review no later than 30 calendar days from the date that HUD transmits the physical inspection report to the owner (as established by the postmark, if applicable). HUD believes that establishing a uniform time frame for requesting a technical review will be more equitable and less confusing to its clients, and simpler for its multifamily field offices to administer.

III. Justification for 30-Day Comment Period

In accordance with HUD's regulations concerning rulemaking at 24 CFR part 10 (entitled, "Rulemaking Policy and Procedures"), it is HUD's policy that the

public comment period for proposed rules should be 60 days. In the case of this proposed rule, however, HUD has determined there is good cause to reduce the public comment period to 30 days. As discussed in more detail earlier in this preamble, this proposed rule would implement only a minor regulatory change that would make HUD's procedures more uniform and easier to follow. Specifically, the proposed rule would provide for a uniform, 30-calendar-day period for submission of review requests, whether the owner receives the results electronically or via certified mail. HUD anticipates that a uniform time frame will expedite the processing of review requests because it will eliminate confusion and, therefore, promote efficiency in the process. The regulatory change is procedural and does not revise or establish new binding physical inspection requirements on owners. Nothing in the proposed rule would restrict owners from submitting a review request prior to the close of the 30 days, and owners may continue to submit their requests as quickly as they choose.

Given the procedural and streamlining nature of the proposed regulatory changes, HUD believes that good cause exists to reduce the public comment period to 30 days. All comments will be considered in the development of the final rule.

IV. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been approved by 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 2502–0369. 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.

Environmental Impact

In accordance with 24 CFR 50.19(c)(1) of the Department's regulations, this rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this proposed rule is categorically excluded

from the requirements of 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.*) (RFA) 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 establish a uniform time frame for submission of review requests for all owners, irrespective of size. The regulatory change is procedural and does not revise or establish new binding requirements on owners. HUD anticipates that a uniform time frame will eliminate confusion and, therefore, expedite the processing of review requests. 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 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, and Wages.

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR part 200 as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

1. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1702–1715z–21; 42 U.S.C. 3535(d).

2. Revise § 200.857(c)(3) and (d) introductory text to read as follows:

§ 200.857 Administrative process for scoring and ranking the physical condition of multifamily housing properties.

* * * * *

(c) * * *

(3) If, following review of the physical inspection results and score, the owner reasonably believes that an objectively verifiable and material error (or errors) occurred in the inspection, which, if corrected, will result in a significant improvement in the property's overall score ("significant improvement" is defined in paragraph (d)(4) of this section), the owner may submit a written request for a technical review. The technical review request must be received in writing no later than 30 calendar days (as established by the postmark, if applicable) from the date the physical inspection results are transmitted to the owner by REAC whether the results and score are transmitted to the owner via the Internet, or by hard copy via certified mail.

(d) *Technical review of physical inspection results.* A request for a technical review of physical inspection results must be submitted in writing to REAC and must be received by REAC no later than the 30th calendar day, as applicable under paragraph (c)(3) of this section, following submission of the physical inspection report to the owner as provided in paragraph (c)(1) of this section.

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Dated: March 21, 2007.

Brian D. Montgomery,

*Assistant Secretary for Housing—Federal
Housing Commissioner.*

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