

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

[Docket No. FR-5070-F-02]

RIN 2502-A143

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:** Final rule.

SUMMARY: HUD's regulations provide for the assessment of the physical condition of HUD-assisted multifamily properties and notification to owners of such assessment. The owners, under certain circumstances, are provided an opportunity to seek a technical review of the 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. Because the current regulations establish different time frames for owners to request a technical review, depending on whether HUD transmits the inspection results via the Internet or by certified mail, HUD published a proposed rule on April 24, 2007, that would improve uniformity in the technical review request process by implementing a standard time frame of 30 calendar days for the submission of a request for a technical review. This final rule takes into consideration the public comment received on the proposed rule and adopts the rule without change.

DATES: *Effective Date:* October 25, 2007.

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 number (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—the April 24, 2007, Proposed Rule**

For multifamily housing, HUD's regulations in 24 CFR part 200, subpart P, establish 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. Currently, these regulations 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 via the Internet or by certified mail. Owners receiving their inspection results by 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.

On April 24, 2007, HUD published a proposed rule to establish a uniform time frame for requesting technical review (72 FR 20405). Specifically, HUD proposed to revise 24 CFR 200.857(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 by certified mail. The proposed rule provided 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 proposed this rule because a single time frame for requesting a technical review would be more equitable to its clients and simpler for its multifamily field offices to administer.

II. This Final Rule

The public comment period on the April 24, 2007, proposed rule closed on May 24, 2007. HUD received one comment from a trade association that offered support for the rule. The commenter urged HUD to establish uniformity in the technical review request process and provide communication about the time frames, once implemented. HUD appreciates the commenter's support and has adopted the uniform time frames, in the April 24, 2007, proposed rule, without change.

III. Findings and Certifications*Paperwork Reduction Act*

The information collection requirements contained in this final 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 final 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.*) 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 rule establishes a uniform time frame for submission of review requests for all owners, regardless 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.

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 amends 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: September 19, 2007.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

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