

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 960

[Docket No. FR-4437-P-01]

RIN 2577-AB94

Pet Ownership in Public Housing

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish pet ownership requirements for residents of public housing other than federally assisted rental housing for the elderly or persons with disabilities. Regulations covering pet ownership requirements for residents of federally assisted rental housing for the elderly or persons with disabilities are located at 24 CFR part 5, subpart C. This proposed rule would not alter or affect these current regulations in any way.

DATES: *Comments Due Date:* August 23, 1999.

ADDRESSES: Submit your comments about this proposed rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. Your comments should refer to the above docket number and title. We do not accept facsimile (FAX) comments. A copy of each comment submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) at the above address.

FOR FURTHER INFORMATION CONTACT: Patricia S. Arnaudo, Senior Program Manager, Office of Public and Assisted Housing Delivery, Room 4222, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-5000; telephone (202) 708-0744 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background Information

a. Pet Ownership in Public Housing—Section 31 of the United States Housing Act of 1937

Section 526 of the Quality Housing and Work Responsibility Act of 1998 (Public Law 105-276, 112 Stat. 2461, 2568)(the Public Housing Reform Act of 1998) added new section 31 (captioned "Pet Ownership in Public Housing") to

the United States Housing Act of 1937 (42 U.S.C. 1437z-3)(the 1937 Act). Section 31 establishes pet ownership requirements for residents of public housing other than federally assisted rental housing for the elderly or persons with disabilities.¹ Section 31(a) of the 1937 Act (captioned "Ownership Conditions") states that:

A resident of a dwelling unit in public housing (as such term is defined in subsection (c)) may own 1 or more common household pets or have 1 or more household pets present in the dwelling unit of such resident, subject to the reasonable requirements of the public housing agency, if the resident maintains each pet responsibly and in accordance with applicable State and local public health, animal control, and animal anti-cruelty laws and regulations and with the policies established in the public housing agency plan for the agency.

Section 31(b) of the 1937 Act (captioned "Reasonable Requirements") lists a number of requirements that are reasonable for the purposes of section 31(a) and that a public housing agency may impose on residents who own or have pets in their dwelling units. These requirements may include:

- (1) Requiring the payment of a non-refundable nominal fee, a refundable pet deposit, or both;
- (2) Limitations on the number of animals in a unit based on unit size;
- (3) Prohibitions against dangerous animals and other animals based on certain factors including size and weight; and
- (4) Restrictions and prohibitions based on size and type of building or project or other relevant conditions.

b. Pet Ownership for the Elderly and Persons With Disabilities—Section 227 of the Housing and Urban-Rural Recovery Act of 1983

It is important to note that section 31 of the 1937 Act does not apply to public housing that is federally assisted rental housing for the elderly or persons with disabilities. Section 227 of the Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701r-1) (the 1983 Act) covers pet ownership requirements for this type of housing. There are existing regulations that implement section 227 of the 1983 Act located at 24 CFR part 5, subpart C. This proposed rule would not alter or affect these regulations in any way, nor would the regulations at

part 5, subpart C apply in any way to public housing that is covered by section 31 of the 1937 Act. This proposed rule is not related in any way to section 227 of the 1983 Act nor the regulations that implement section 227 located at 24 CFR part 5, subpart C. This proposed rule would implement section 31 of the 1937 Act in 24 CFR part 960, rather than part 5, in part, to make this distinction clear.

c. This Proposed Rule

This proposed rule would implement new section 31 of the 1937 Act by adding new subpart G to 24 CFR part 960. The proposed rule would add four new sections to subpart G. These sections would comprise the entire subpart. New § 960.701 (captioned "Purpose") would state that the purpose of subpart G is to implement section 31 of the 1937 Act. New § 960.703 (captioned "Applicability") would limit the applicability of the subpart G regulations to public housing other than federally assisted rental housing for the elderly or persons with disabilities. New § 960.703 would also direct readers to 24 CFR part 5, subpart C, for regulations covering pet ownership requirements for federally assisted rental housing for the elderly or persons with disabilities.

New § 960.707 (captioned "Pet ownership") would implement the primary requirements of section 31 of the 1937 Act. The structure of new § 960.707 closely follows the structure of section 31. This proposed rule would implement section 31 in this way in order to provide public housing agencies (PHAs) with discretion to fashion pet requirements that reflect local needs. HUD's decision to allow PHAs this discretion derives from the basic policy, reflected in section 502(b) of the Public Housing Reform Act of 1998 (42 U.S.C. 1437 note), of deregulating and decontrolling PHAs.

In addition to the primary requirements of section 31, new § 960.707 would clarify that the non-refundable nominal fee that public housing agencies may require residents to pay is intended to cover the reasonable operating costs to the project, and that the refundable pet deposit is intended to cover additional costs not otherwise covered. New § 960.707 would also clarify that if public housing agencies require a resident to pay a pet deposit, the deposit must be placed in an escrow account and the public housing agency must refund the unused portion of the deposit, plus any accrued interest, to the resident within a reasonable time after the resident moves from the project or no longer owns or

¹ Section 31 of the 1937 Act uses the term "federally assisted rental housing for the elderly or handicapped." HUD prefers to use the term "persons with disabilities" in place of the term "handicapped." Accordingly, this preamble uses the term "persons with disabilities" wherever possible. However, because HUD's regulations must comply with the statutory authority upon which they are based, the text of the regulations proposed by this rule retains the language of the 1937 Act.

has a pet present in the resident's dwelling unit.

d. Service Animals That Assist Persons With Disabilities

New § 960.705 (captioned "Service animals that assist persons with disabilities") would clarify that the regulations that would be added by this proposed rule would not apply to service animals that assist persons with disabilities. New § 960.705 would clarify that this exclusion would apply to both service animals that reside in public housing, covered under section 31 of the 1937 Act, and service animals that visit these projects. New § 960.705 would also clarify that nothing in new subpart G limits or impairs the rights of persons with disabilities, authorizes PHAs to limit or impair the rights of persons with disabilities, or affects any authority PHAs may have to regulate service animals that assist persons with disabilities.

II. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with the HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (Public Law 91-190, 83 Stat. 852, 853, codified as amended at 42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) in the Office of the Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500.

Regulatory Flexibility Act

The Secretary has reviewed this proposed rule before publication and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule implements section 31 of the United States Housing Act of 1937, which establishes pet ownership requirements for public housing other than federally assisted rental housing for the elderly or persons with disabilities.

Section 31, and the regulations proposed by this rule, allow public housing agencies to require residents that own or have pets in their dwelling units to pay a non-refundable nominal fee to cover the reasonable operating costs to the project relating to the presence of pets, a refundable pet

deposit to cover additional costs not otherwise covered, or both. Consequently, HUD does not believe that this proposed rule would have a significant economic impact on a substantial number of small entities.

While HUD has determined that this rule would not have a significant economic impact on a substantial number of small entities, we welcome any comments regarding alternatives to this rule that would meet HUD's objectives, as described in this preamble, and would be less burdensome to small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4, 109 Stat. 48, 64, codified at 2 U.S.C. 1531-1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This proposed rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or tribal governments or on the private sector.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612 (captioned "Federalism"), has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of government.

Regulatory Planning and Review

The Office of Management and Budget (OMB) has reviewed this rule under Executive Order 12866 (captioned "Regulatory Planning and Review") and determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m.) at the Office of the General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500.

List of Subjects in 24 CFR Part 960

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

For the reasons discussed in the preamble, HUD proposes to amend 24 CFR part 960 as follows:

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

1. The authority citation for 24 CFR part 960 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437n, 1437z-3, and 3535(d).

2. Add subpart G to read as follows:

Subpart G—Pet Ownership in Public Housing

Sec.

960.701 Purpose.

960.703 Applicability.

960.705 Service animals that assist persons with disabilities.

960.707 Pet ownership.

Subpart G—Pet Ownership in Public Housing

§ 960.701 Purpose.

The purpose of this subpart is to implement section 31 of the United States Housing Act of 1937 (42 U.S.C. 1437z-3).

§ 960.703 Applicability.

This subpart applies to public housing as that term is defined in section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)), except that such term does not include any public housing that is federally assisted rental housing for the elderly or handicapped, as such term is defined in section 227(d) of the Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701r-1(d)). Regulations that apply to pet ownership in federally assisted rental housing for the elderly or handicapped are located at 24 CFR part 5, subpart C.

§ 960.705 Service animals that assist persons with disabilities.

(a) This subpart G does not apply to service animals that assist persons with disabilities. Public housing agencies may not apply or enforce any policies established under this subpart against service animals that assist persons with disabilities. This exclusion applies to both service animals that reside in public housing, as that term is used in § 960.703, and service animals that visit these projects.

(b) Nothing in this subpart G:

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

(2) Authorizes public housing agencies to limit or impair the rights of persons with disabilities; or

(3) Affects any authority that public housing agencies may have to regulate service animals that assist persons with

disabilities, under Federal, State, or local law.

§ 960.707 Pet ownership.

(a) *Ownership Conditions.* A resident of a dwelling unit in public housing, as that term is used in § 960.703, may own one or more common household pets or have one or more common household pets present in the dwelling unit of such resident, subject to the reasonable requirements of the public housing agency, if the resident maintains each pet:

- (1) Responsibly;
- (2) In accordance with applicable State and local public health, animal control, and animal anti-cruelty laws and regulations; and
- (3) In accordance with the policies established in the public housing agency plan for the agency.

(b) *Reasonable requirements.* Reasonable requirements may include but are not limited to:

- (1) Requiring payment of a non-refundable nominal fee to cover the reasonable operating costs to the project relating to the presence of pets, a refundable pet deposit to cover additional costs not otherwise covered, or both;
- (2) Limitations on the number of animals in a unit, based on unit size;
- (3) Prohibitions on types of animals that are classified as dangerous, and prohibitions on individual animals, based on certain factors, including the size and weight of animals; and
- (4) Restrictions or prohibitions based on size and type of building or project, or other relevant conditions.

(c) *Pet deposit.* A public housing agency that requires a resident to pay a pet deposit must place the deposit in an escrow account, and the public housing agency must refund the unused portion of the deposit, plus any accrued interest, to the resident within a reasonable time after the resident moves from the project or no longer owns or has a pet present in the dwelling unit of such resident.

(d) *Public Housing Agency Plan.* Any policies established under this section must be included in the public housing agency's public housing agency plan.

Dated: June 8, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

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