

concurrence. If the MFD does not concur, the DEC Compliance Plan will be submitted to the Deputy Assistant Secretary for Housing and the Deputy Director of the DEC for review and concurrence. If the DEC Compliance Plan remains unapproved, a final decision on the plan will be made by HUD's Deputy Secretary in consultation with the General Counsel, the Assistant Secretary for Housing, and the Director of the DEC.

(iii) Following submission of the DEC Compliance Plan to the owner, the owner will be provided a period of 30 calendar days to review and accept the DEC Compliance Plan. If the owner agrees to comply with the DEC Compliance Plan, the plan will be forwarded to the appropriate Multifamily Office for implementation and monitoring of completion of the plan's requirements.

(2) *Counter compliance plan proposal by owner.* The owner may submit an acceptable counter proposal to the DEC Compliance Plan. An owner's counter proposal to a DEC Compliance Plan must be submitted no later than the 30th day following submission of the DEC Compliance Plan to the owner. The DEC, in coordination with the MFD, may enter into discussions with the owner to achieve agreement to a revised DEC Compliance Plan. If the owner and the DEC agree on a revised DEC Compliance Plan, the revised plan will be forwarded to the appropriate Multifamily Office for implementation and monitoring of completion of the plan's requirements.

(3) *Non-cooperation and Non-compliance by owner.* If at the conclusion of the 30th calendar day following submission of the DEC Compliance Plan to the owner, the DEC receives no response from the owner, or the owner refuses to accept the DEC Compliance Plan, or to present a counter compliance plan proposal, or if the owner accepts the DEC Compliance Plan or revised DEC Compliance Plan, but refuses to take the actions required of the owner in the plan, the DEC may take appropriate enforcement action.

(4) *No limitation on existing enforcement authority.* The administrative process provided in this section does not prohibit the Office of Housing, the DEC, or HUD generally, to take what-

ever action may be necessary when necessary (notwithstanding the commencement of this process), as authorized under existing statutes, regulations, contracts or other documents, to protect HUD's financial interests in multifamily properties and to protect the residents of these properties.

(j) *Limitations on material alteration of physical inspection software.* HUD will not materially alter the physical inspection requirements in a manner which would materially increase the cost of performing the inspection.

[65 FR 77240, Dec. 8, 2000, as amended at 72 FR 54517, Sept. 25, 2007]

Subpart R [Reserved]

Subpart S—Minimum Property Standards

§ 200.925 Applicability of minimum property standards.

All housing constructed under HUD mortgage insurance and low-rent public housing programs shall meet or exceed HUD Minimum Property Standards, except that this requirement shall be applicable to manufactured homes eligible for insurance pursuant to §203.43f of this chapter only to the extent provided therein. The Minimum Property Standards may be waived to the same extent as the other regulatory requirements for eligibility for insurance under the specific mortgage insurance program involved.

[58 FR 60248, Nov. 15, 1993]

§ 200.925a Multifamily and care-type minimum property standards.

(a) *Construction standards.* Multifamily or care-type properties shall comply with the minimum property standards contained in the handbook identified in §200.929(b)(2). In addition, each such property shall, for the Department's purposes, comply with:

(1) The applicable State of local building code, if the property is located within a jurisdiction which has a building code accepted by the Secretary under §200.925a(d); or

(2)(i) The applicable State or local building code, and

(ii) Those portions of the codes identified in §200.295c which are designated

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by the HUD Field Office serving the jurisdiction in which the property is to be located, if the property is located in a jurisdiction which has a building code partially accepted by the Secretary; or

(3) The appropriate codes, as identified in §200.925c(c), if the property is not located within a jurisdiction which has a building code accepted by the Secretary.

(b) *Conflicting standards.* The minimum property standards contained in the handbook identified in §200.929(b)(2) do not preempt state or local standards, nor do they alter or affect a builder's obligation to comply with any state or local requirements. However, a property shall be eligible for benefits only if it complies with all applicable minimum property standards, including referenced standards.

(c) *Standard for evaluating local building codes.* The Secretary shall compare the portions of a local or State building code applicable to residential or institutional occupancy, as appropriate, submitted under §200.925a(d) to the list of construction related areas contained in §200.925b.

(1) A State or local code will be accepted if it regulates each area on the list.

(2) A State or local building code will be partially accepted if it regulates most of the areas on the list. However, no code may be partially accepted if it fails to regulate the subarea for seismic design (see §200.925b(c)(5)), or if it fails to regulate subareas in more than one of the following major areas listed in §200.925b: fire safety, light and ventilation, structural loads and seismic design, foundation systems, materials standards, construction components, glass, mechanical, plumbing, electrical, and elevators.

(3) For purposes of this paragraph, a state or local code regulates an area if it establishes a standard concerning that area. However, for earthquake loads (see §200.925b(c)(5)), ASCE 7-88 is mandatory.

(d) *Review process and acceptance—(1) Jurisdictions without previously accepted building codes.* The following submission requirements apply to developers and other interested parties in jurisdictions without building codes, jurisdic-

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tions with building codes which have never been submitted for acceptance, and jurisdictions with building codes which have been submitted for acceptance and neither accepted nor partially accepted by the Secretary.

(i) Developers or other interested parties must comply with one of the following by the time of application for insurance or other benefits:

(A) The developer or other interested party may choose to comply with the appropriate codes as identified in §200.925c. If the developer or other interested party so chooses, then the multifamily or care-type property shall be constructed in accordance with one of the model codes designated in paragraph (c)(1), (2) or (3) of §200.925c and with any other code or codes identified in the same paragraph. In such instances, the developer or other interested party shall notify the Department of the code or group of codes with which it intends to comply by the time of application for insurance or other benefits; or

(B) The developer or other interested party may choose to comply with the State or local building code, if such code is acceptable to the Secretary. To obtain the Secretary's acceptance, the developer or other interested party shall submit the material specified in paragraph (d)(1)(ii) of this section to the HUD Field Office serving the jurisdiction in which the property is to be constructed. Such material may be submitted at any time; provided, however, that it must be submitted no later than the time of application for mortgage insurance or other benefits.

(ii) If, under paragraph (d)(1)(i)(B) of this section, the developer or other interested party chooses to comply with the State or local building code as prescribed in paragraph (a)(1) of this section, it shall submit the following material to the HUD field Office serving the jurisdiction in which the property is to be constructed:

(A) A copy of the jurisdiction's building code, including all applicable service codes, appendices and referenced standards; and

(B) A copy of the statute, ordinance, regulation, or order establishing the

code, if such statute, ordinance, regulation or order is not contained in the building code itself.

However, the developer or other interested party need not submit any document already on file in the Field Office.

(2) *Jurisdictions with previously accepted or partially accepted building codes.* The following submission requirements apply to developers and other interested parties in any jurisdiction with a building code which has been accepted or partially accepted by the Secretary:

(i) At the time of application for mortgage insurance or other benefits, the developer or other interested party shall submit to the HUD Field Office serving the jurisdiction in which the property is to be constructed.

(A) A certificate stating that, since its acceptance by the Secretary, the jurisdiction's building code has not been changed; or

(B)(1) A copy of all changes to the jurisdiction's building code, including all applicable service codes and appendices, which have been made since the date of the code's acceptance by the Secretary. However, the developer or other interested party need not submit any part already in the possession of the Field Office; and

(2) A copy of the statute, ordinance regulation, or order making such changes in the code.

(3) *Notification of decision.* The Secretary shall review the material submitted under paragraphs (d) (1)(ii) and (2)(i). Following that review, the Secretary shall issue a written notice (except in the case of a previously accepted code which hasn't been changed) to the submitting party stating whether the State or local building code has been accepted, partially accepted, or whether the Secretary's previous acceptance or partial acceptance has been continued; the basis for the Secretary's decision; and a notification of the submitting party's right to present its views concerning the denial of acceptance if the code is neither accepted nor partially accepted. The Secretary may, in his discretion, permit either an oral or written presentation of views.

(i) If a developer or other interested party is notified that a State or local building code has not been accepted,

then the multifamily or care-type properties eligible for HUD benefits in that jurisdiction shall be constructed in accordance with the appropriate codes indicated in §200.925c(c). In such instances, the developer or other interested party shall notify the HUD Field Office of the code or codes with which it chooses to comply, in accordance with §200.925a(d)(1)(i)(A).

(ii) If a developer or other interested party is notified that a State or local building code has been partially accepted, then the multifamily or care-type properties eligible for HUD benefits in that jurisdiction shall be constructed in accordance with the applicable State or local building code, plus those additional requirements identified in the written notice issued by the Secretary under §200.925a(d)(3). The written notice shall identify, in accordance with appendix J of the Handbook identified in §200.929(b)(2), those portions of the codes listed at §200.925c(a) with which the property must comply.

(iii) Each Regional Office will maintain a current list of jurisdictions with accepted building codes and a current list of jurisdictions with partially accepted building codes. The lists will state the most recent date of each code's acceptance or partial acceptance and will be available to any interested party upon request. In addition, the list of jurisdictions whose codes have been partially accepted shall identify those portions of the codes listed at §200.925c(a) with which the property must comply.

(Approved by the Office of Management and Budget under control number 2502-0321)

[49 FR 18695, May 1, 1984, as amended at 51 FR 28699, Aug. 11, 1986; 58 FR 60248, Nov. 15, 1993; 59 FR 36695, July 19, 1994]

§ 200.925b Residential and institutional building code comparison items.

HUD will review each local code submitted under this chapter to determine whether it regulates all of the following areas and subareas:

- (a) *Fire safety.* (1) Construction types permitted;
- (2) Allowable height and area;
- (3) Fire separations;
- (4) Fire resistance requirements;