



Rural Development

Rural Housing Service

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MEMORANDUM FOR: Joaquin Altoro
Administrator
Rural Housing Service

FROM: Zaur Atnilov
Director
Program Support Services, Rural Housing Service

SUBJECT: Environmental Assessment and Finding of No
Significant Impact under the National
Environmental Policy Act for the Preliminary
Affordability Determination – Minimum Energy
Standards (HUD FR-6271-N-01; RIN 2506-AC55)

It is the finding of this office that the Preliminary Affordability Determination – Minimum Energy Standards (copy attached) does not constitute a major Federal action that would have an individually or cumulatively significant impact on the human environment and, therefore, does not require the preparation of an Environmental Impact Statement.

RHS is adopting the analysis that follows, prepared by HUD, as our Environmental Assessment and Finding of No Significant Impact.

Proposed Action

This Notice would implement the requirements of Section 481 of the Energy Independence and Security Act of 2007 (EISA). EISA amended Section 109 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (Cranston-Gonzalez), which establishes procedures for the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Agriculture (USDA) to adopt revisions to the 2006 International Energy Conservation Code (IECC) and ASHRAE 90.1-2004, or subsequent revisions to these codes.

EISA requires HUD and USDA to adopt revisions to the IECC and ASHRAE 90.1 codes, subject to (1) a determination that the revised codes do not negatively affect the availability or affordability of new construction of assisted housing and single family and multifamily residential housing (other than manufactured homes) subject to mortgages insured under the National Housing Act or insured, guaranteed, or made by the Secretary of Agriculture under title V of the Housing Act of 1949, and (2) a determination by the Secretary of Energy that the revised codes “would improve energy efficiency.”

This Notice only addresses new construction. The IECC standard

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referenced in EISA applies to single family homes and multifamily low rise buildings (up to 3 stories), while the ASHRAE 90.1 standard applies to multifamily high rise residential buildings (4 or more stories).

The Notice announces HUD and USDA’s preliminary determination that the 2021 IECC and ASHRAE 90.1-2019 codes will not negatively affect the affordability or availability of housing covered by the Act. The two subject codes would automatically apply to covered programs upon subsequent publication of a final affordability and availability determination. As of January 2022, three (3) states have already adopted the 2021 IECC, its equivalent, or a higher standard for single family and low-rise multifamily homes. Five (5) states and the District of Columbia have already adopted ASHRAE 90.1-2019 for multifamily buildings.

For those states that have not yet adopted either of these standards, the Notice relies on several studies that show that these codes are cost effective, in that the incremental cost of the additional efficiency measures pays for itself with energy cost savings on a life-cycle basis.

Covered Programs

EISA identifies the following as covered HUD and USDA programs:

- A. HUD: New construction of public and assisted housing and single family and multifamily residential housing (other than manufactured homes) subject to mortgages insured under the National Housing Act;
- B. USDA: New construction of single family housing (other than manufactured homes) subject to mortgages insured, guaranteed, or made by the Secretary of Agriculture under title V of the Housing Act of 1949; and,
- C. HUD: HOPE VI. Rehabilitation and new construction of public and assisted housing funded by HOPE VI revitalization grants under section 24 of the United States Housing Act of 1937 (42 U.S.C. 1437v).

Within the categories established by EISA, the specific programs covered under this Notice are contained in the table below, with the exception of HUD’s HOPE VI program (EISA Category C), which no longer awards grants.

HUD and USDA Programs Covered by This Notice

Agency	HUD	HUD	HUD	HUD	HUD	HUD	USDA	USDA	USDA
Program	FHA-Insured Multifamily	Section 202-811 Supportive Housing	FHA Single Family	HOME-Housing Trust Fund ¹	Public Housing*	RAD	Section 502 Direct	Section 502 Guaranteed Loans	Section 523 Grants
IECC	✓	✓	✓	✓	✓	✓	✓	✓	✓
ASHRAE	✓	✓		✓	✓	✓			

¹Sections 215(b)(4) and section 215(a)(1)(F) of the Cranston-Gonzalez National Affordable Housing Act require newly constructed HOME units to meet minimum energy efficiency standards promulgated by the Secretary in accordance with Cranston-Gonzalez section 109; the energy efficiency standards are applied to new construction under the Housing Trust Fund by regulation at 24 CFR 93.301(a)(2)(ii).

Environmental Assessment and Finding

Because under this Preliminary Determination, newly-constructed housing financed or insured under any of the covered programs would meet minimum efficiency standards that exceed prior standards, HUD and USDA expect the standards proposed for adoption to reduce net energy usage for those housing units, and thus create a modest positive environmental impact. This impact would occur in those states or local home rule jurisdictions that have not already adopted standards that equal or exceed the proposed standards.

The primary environmental benefits of the expected reduction in energy consumption are the reduction of carbon emissions and improved health benefits. The emission of pollutants from fossil fuel combustion (such as particulate matter) causes health and property damage. In addition, greenhouse gases (such as carbon dioxide) cause climate change, which imposes a cost on health, agriculture, and other sectors.

Greater energy efficiency also allows households to afford energy for heating during severe cold or cooling during intense heat, which could have positive health effects for vulnerable populations. Studies have found a strong link between health outcomes and indoor environmental quality, of which temperature, lighting, and ventilation are important determinants.² For example, Clinch and Healy³ discuss how to value the effect on mortality and morbidity in a benefit-cost analysis of energy efficiency.

In addition to the direct health benefits for residents of energy-efficient housing, there will be indirect public health benefits. First, the local population will gain from reducing emissions of particulate matter and other pollutants that have harmful health effects. Second, there may be a positive safety effect from reducing the probability of fires by eliminating the need for supplemental heating sources.⁴

As discussed further below, the individual approval decisions for projects funded under the programs covered by the standards proposed in the Preliminary Determination have either been found to be categorically excluded from environmental review under the National Environmental Policy Act (NEPA) or will be reviewed individually at the appropriate time, and the environmental impacts assessed in the relevant local setting.

For *new FHA-insured single family housing* (EISA Category A, above), the Preliminary Determination is concerned with the terms and conditions governing the provision of FHA mortgage insurance under Title II of the National Housing Act, and does not involve a development decision with respect to any particular project or site. HUD's regulations implementing NEPA at 24 CFR part 50 categorically exclude "HUD's insurance of one-to-four family mortgages under the Direct Endorsement program" and "the insurance of one-to-four family mortgages under the Lender Insurance program" from review under NEPA and from the

² Fisk, William J. "How IEQ Affects Health, Productivity." ASHRAE Journal (2002): 57.

³ Clinch, J. Peter and John D. Healy, "Cost-benefit analysis of domestic energy efficiency," Energy Policy, 29 (2001) pp. 113-124.

⁴ Schweitzer, Martin. *Nonenergy Benefits from the Weatherization Assistance Program: A Summary of Findings from the Recent Literature*. No. ORNL/CON-484. ORNL Oak Ridge National Laboratory (US), 2002.

individual compliance requirements of most federal environmental laws and authorities (see 50.19(b)(17)). Projects that will be impacted by the higher codes identified in the Preliminary Determination are HUD-insured one-to-four family mortgages under the Direct Endorsement and Lender Insurance programs.

For *new FHA-insured multifamily housing* referenced in EISA Category A, above, before actions that could have a physical impact or limit the choice of alternatives may be taken, HUD will complete an environmental review under 24 CFR part 50 that will assess the potential environmental impacts in a local setting before the impacts or any choice-limiting activities may take place. Thus, the environmental effects of activities undertaken in conformance with the proposed standards under this Notice will be taken into account at the appropriate time, and environmental impacts will be assessed in the local setting in which they will occur. Similarly, environmental reviews for new Section 202 and 811 Supportive Housing Program multifamily developments will be completed at the time of project development as required under 24 CFR part 50.

In addition to applying to FHA-insured multifamily housing, the proposed standards under the Notice will also apply to both *single family and multifamily HOME Investment Partnerships Program (HOME)- and Housing Trust Fund (HTF)-financed housing*. New construction of individual and scattered site one- to four-family housing financed by HOME is categorically excluded from environmental review under NEPA due to the lack of potential for significant environmental impact, but is subject to review under other applicable environmental laws and authorities prior to any choice limiting activities.

New construction of multifamily housing financed by HOME will undergo environmental review under NEPA and other authorities prior to any choice limiting activities. These reviews will be done by a responsible entity in accordance with 24 CFR Part 58.

New construction of single family and multifamily housing financed with HTF funding is excluded from environmental review under NEPA and the other environmental laws and authorities due to the lack of any Federal action in the State grantees' selection of projects.

Individual approval actions for specific *single family housing projects receiving USDA-loans and grants* (EISA Category B, above) are anticipated to be Categorically Excluded from environmental review under NEPA. These categories of actions have been determined to not normally have a significant impact on the quality of the human environment, either individually or cumulatively and are not expected to require environmental assessments or environmental impact statements. Application of this Categorical Exclusion will undergo extraordinary circumstances review.

For these reasons our offices conclude that the individual and cumulative environmental impacts of the Preliminary Affordability Determination do not have a potential for significantly affecting the quality of the human environment.

Attachment: Notice of Preliminary Affordability Determination – Minimum Energy Standards

Approval:

Joaquin Altoro
Administrator, Rural Housing Service.