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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 51

[Docket No: FR-6054-P-01]

RIN: 2506-AC45

#### Conforming the Acceptable Separation Distance (ASD) Standards for Residential Propane Tanks to Industry Standards

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would modernize an existing regulation to reduce regulatory and cost burden on communities that may be restricted in their ability to site HUD-assisted projects, including those for low- and moderate-income housing, because of the presence of stationary aboveground liquefied petroleum gas (propane) storage tanks that may be nearby. Specifically, this proposed rule would allow the siting of HUD-assisted projects near stationary aboveground propane storage tanks with a capacity of 250 gallons or less if the storage tank complies with National Fire Protection Association (NFPA) Code 58 (Liquefied Petroleum Gas Code) (2017). HUD proposes to incorporate, by reference, NFPA 58, a voluntary consensus standard for public safety that establishes standards used by the propane industry and operators regarding storage, handling, transportation, and use of propane. To ensure the continued safety of residents in HUD-assisted projects and communities, HUD would rely upon NFPA codes and standards, with which many states already comply.

**DATES:** Comment Due Date: [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed rule. All communications must refer to the above docket number and title. There are two methods for submitting public comments.

**1. Submission of Comments by Mail.** Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410–0500.

**2. Electronic Submission of Comments.** Interested persons may submit comments electronically through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the [www.regulations.gov](http://www.regulations.gov) website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

**Note:** To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

**No Facsimiled Comments.** Facsimiled (faxed) comments are not acceptable.

**Public Inspection of Public Comments.** Copies of all comments submitted are available for inspection and downloading at [www.regulations.gov](http://www.regulations.gov). In addition, all properly submitted 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). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

**FOR FURTHER INFORMATION CONTACT:** Danielle Schopp, Director, Office of Environment and Energy, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410; telephone number 202-402-5226 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

## **SUPPLEMENTARY INFORMATION**

### **I. Background**

On February 10, 1984 (49 FR 5100), HUD published a final rule to minimize the possibility of loss of life and substantial property loss by establishing for HUD-assisted projects safety standards to calculate acceptable separation distances (ASD) from specific, stationary, hazardous operations that store, handle, or process hazardous substances, including petrochemical products. HUD's standards, currently codified at 24 CFR part 51, subpart C, are based on the findings of studies conducted by the Department, one in 1975 and one in 1982.<sup>1</sup> The effect of these standards is to withhold HUD approval of an application for assistance for projects located at less than a prescribed ASD from specific hazardous operations, unless appropriate mitigating measures are implemented. Substances deemed hazardous include petrochemical products, such as propane. HUD-assisted projects include the development, construction, rehabilitation, modernization, or conversion with HUD subsidy, grant assistance,

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<sup>1</sup> Safety Consideration in Siting Housing Projects, prepared by Arthur D. Little Inc., 1975; and Urban Development Siting with Respect to Hazardous Commercial/Industrial Facilities, by Rolf Jensen and Associates Inc., 1982.

loan, loan guarantee, or mortgage insurance of any project that is intended for residential, institutional, recreational, commercial, or industrial use.

Mitigation measures can be costly and limit choices for siting a HUD-assisted project. Acceptable mitigation measures, as described in § 51.205 and HUD guidance, include tank burial or building a blast wall.<sup>2</sup> Tank burial is an involved process requiring costly construction procedures, and permit and design fees, especially in an urban environment. Similarly, constructing a blast wall or a barrier to surround the tank or a building structure on a HUD-assisted property's site to shield a proposed project from the hazard may be cost-prohibitive and burdensome, because most of the propane tanks that affect HUD-assisted projects are located offsite on adjacent properties.

HUD's experience has been that there are significant practical and economic difficulties in mitigating off-site residential propane tanks located on adjacent properties. For example, in the wake of Hurricane Katrina in 2008, HUD waived § 51.202(a) to permit applications to be considered for the State of Mississippi's Small Rental Assistance and Long-Term Workforce Housing Programs, because the HUD-assisted projects would be less than the ASD to residential propane tanks as established by regulation. More recently, HUD was advised that 22.7 percent of Vermont households are served by propane gas<sup>3</sup> and that projects using HUD Community Development Block Grant and HOME Investment Partnerships assistance would require mitigation measures to comply with HUD's ASD regulation. To address this issue, HUD waived § 51.202. In both waivers, HUD stated that propane tank compliance with National Fire Protection Association Code 58 (NFPA 58) mitigated any danger to HUD-assisted projects sited adjacent to the hazard.

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<sup>2</sup> [https://www.hud.gov/sites/documents/BARRIER\\_DESIGN\\_GUIDANCE.PDF](https://www.hud.gov/sites/documents/BARRIER_DESIGN_GUIDANCE.PDF).

<sup>3</sup> This information was provided by the Vermont Department of Forests, Parks & Recreation.

Based on HUD’s experience, HUD recognizes the need to streamline and update its current rule to allow the siting of HUD-assisted projects near stationary propane tanks that hold up to 250 gallons. HUD’s determination that there exists a need to update this rule is also based on the advent of modern propane tank designs; updated fire safety codes, including NFPA 58; and the often cost-prohibitive nature of mitigation measures. This proposed rule would strike a more appropriate balance between safety and cost-effective measures to reduce regulatory burden across communities that need HUD-assisted projects.

## **II. This Proposed Rule**

Current HUD regulations at § 51.202 provide that HUD will not approve an application for assistance for a proposed project located less than the ASD from a hazard unless appropriate mitigation measures (defined in § 51.205) are implemented or in place. With two exceptions, a hazard is defined in § 51.201 as “any stationary container which stores, handles or processes hazardous substances of an explosive or fire prone nature.” Propane is included in the definition of a “hazardous gas.” An ASD assessment is required for both blast overpressure (explosion) and thermal radiation (fire) for propane tanks near HUD-assisted projects. Where projects are less than the ASD from a propane tank, mitigation measures are required to protect outdoor areas, buildings, and their inhabitants from potential explosions and fires.

This rule proposes to update the existing regulation concerning aboveground propane storage tanks by creating a new exception to the definition of “hazard” as set out in 24 CFR 51.201. While the current codified definition of “hazard” at § 51.201 will remain unchanged for the most part, this proposed rule would except from the definition propane tanks of up to 250 gallons if the handling and storage of such tanks is compliant with NFPA 58 (2017). The rule

proposes an exception for propane tanks up to 250 gallons. Typically, propane tanks up to 250 gallons are used for residential purposes, including heating and cooking.

NFPA 58 is a voluntary consensus standard and most states have adopted an edition of NFPA 58 into their state and local codes and regulations for propane tanks. HUD proposes to incorporate the 2017 edition of NFPA 58 because this edition has documentation requirements for the addition of odorant and verification of its presence, which is a safety measure that older editions of NFPA 58 do not contain. While HUD proposes to incorporate NFPA 58 (2017), HUD welcomes comments from states that have adopted editions of NFPA 58 other than the 2017 edition on how this proposed rule will affect them.

Additionally, this proposed rule would explicitly codify HUD's longstanding policy that there is no need for an ASD between HUD-assisted projects and underground containers. HUD has interpreted existing regulations to exempt belowground storage tanks, as the burial of hazardous materials is subject to state laws that ensure tanks are buried deeply enough so that the risk of fire or blast overpressure is sufficiently mitigated. As a result, belowground storage tanks fall within the existing exclusion for facilities shielded from proposed projects by the topography. Therefore, HUD wishes to explicitly clarify that all underground containers are similarly exempt from the definition of "hazard."

HUD is proposing this rule to update its current regulation that was published in 1984 and which does not account for updated standards and technology. As discussed, the awareness of safety standards and tank designs have contributed to reducing the hazard of fire and explosion. HUD has determined, therefore, the risk posed by any stationary propane tank of up to 250 gallons is adequately addressed by NFPA 58 (2017), a widely used standard. When the current regulation was originally drafted, most of the new and updated safety features

incorporated into industrial propane gas tanks did not exist. For a propane tank to comply with NFPA 58 (2017), specific safety precautions must be met. For example, the tank must be equipped with certain features, including a spring-loaded pressure relief valve, a cylinder foot ring, cylinder collar, and valve cover; the contents of the tank must be identified, including note of the date it was manufactured or recertified; and the tank must be in good condition and free of signs of specific wear and defects. HUD's proposed exception to the term "hazard" will minimize the imposition of unjustified costs, saving HUD grantees the cost of constructing mitigation measures to address residential propane tanks located on properties that do not meet the ASD.

Overall, HUD proposes this action to reduce regulatory burden and cost and, at the same time, ensure the safety and health of residents.

### **III. Incorporation by Reference**

Before HUD issues a final rule, the reference standards proposed for incorporation will be approved by the Director of the *Federal Register*, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This rule proposes to incorporate the following voluntary consensus standard for siting of HUD-assisted projects near aboveground propane storage tanks that hold up to 250 gallons:

- NFPA 58 Liquefied Petroleum Gas Code (2017). The NFPA develops building, fire, and electrical safety codes and standards. Federal agencies frequently use these codes and standards as the basis for developing Federal regulations concerning safety. NFPA 58 provides industry benchmark and operational information and standards for safe propane storage, handling, transportation, and use. NFPA 58 mitigates risks and ensures safe

installations, to prevent failures, leaks, and tampering that could lead to fires and explosions.

This proposed rule would only incorporate the 2017 version of NFPA 58. The rule cannot account for future editions of NFPA that do not yet exist. Therefore, if HUD wishes to revise the standard in the future to incorporate newer editions of NFPA 58, further rulemaking would be required.

NFPA 58 (2017) is available online for review and comment during this rule's comment period, via read-only access, at NFPA link <https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=58>. Members of the public may visit the link and create a user name and password to view the free-access edition. The standard may also be obtained from the National Fire Protection Association at 1 Batterymarch Park, Quincy, Massachusetts 02269, telephone number 617-770-3000, fax number 617-770-0700.

#### **IV. Findings and Certifications**

##### Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

HUD has examined the economic, budgetary, legal, and policy implications of this action and has determined that this proposed rule is a significant regulatory action under section 3(f) of Executive Order 12866 (but not an economically significant action). HUD has prepared a cost benefit analysis that addresses the costs and benefits of the proposed rule. The cost analysis is part of the docket file for this rule.

The docket file is available for public inspection at either [www.regulation.gov](http://www.regulation.gov) or in the Regulations Division, Office of the General Counsel, Room 10276, 451 7th Street, SW, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202-402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at toll-free 800-877-8339.

#### Executive Order 13771

Executive Order 13771, entitled “Reducing Regulation and Controlling Regulatory Costs,” was issued on January 30, 2017. This proposed rule is expected to be an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in the rule’s economic analysis.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (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. Small entities include small businesses, small not-for-profit organizations, and small governmental jurisdictions.

The purpose of this proposed rule is to update a codified regulation to reduce regulatory and cost burden on communities that may be restricted in their ability to site HUD-assisted projects because of the presence of stationary aboveground propane storage tanks that may be nearby. Specifically, the rule proposes to allow the siting of HUD-assisted projects near stationary aboveground propane storage tanks with a capacity of 250 gallons or less if the storage tank complies with the National Fire Protection Association (NFPA) Code 58 (Liquefied Petroleum Gas Code) (2017). HUD has determined that the rule, if implemented as proposed, would result in the reduction of costly mitigation measures. Savings are estimated to be from \$100,000 to \$4 million per year and involve approximately 20 projects per year. Accordingly, the undersigned certifies that this rule would not have a significant economic impact on a substantial number of small entities.

#### Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection on [www.regulations.gov](http://www.regulations.gov).

#### Federalism Impact

Executive Order 13132 (entitled “Federalism”) prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive order are met. This rule does not have federalism implications and does not impose

substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

#### Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This proposed rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of UMRA.

#### **List of Subjects in 24 CFR Part 51**

Airports, Hazardous substances, Housing standards, Incorporation by reference, Noise control.

Accordingly, for the reasons stated in the foregoing preamble, HUD proposes to amend 24 CFR part 51 as follows:

#### **PART 51 –ENVIRONMENTAL CRITERIA AND STANDARDS**

1. The authority citation for 24 CFR part 51 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d), unless otherwise noted.

2. In § 51.200, revise the heading, designate the introductory text as paragraph (a), redesignate paragraphs( a) through (e) as paragraphs (a0(1) through (a)(5), and add new paragraph (b) to read as follows:

#### **§ 51.200 Purpose and Incorporation by Reference.**

- (a) The purpose of this subpart C is to:

\* \* \* \*

(b) Certain material is incorporated by reference into this part with the approval of the Director of the *Federal Register* under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at HUD's Office of Environment and Energy, 202-402-5226, and from the sources indicated below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or visit [www.archives.gov/federal-register/cfr/ibr-locations.html](http://www.archives.gov/federal-register/cfr/ibr-locations.html). Persons with hearing or speech impairments may access the numbers above through TTY by calling the Federal Relay Service, toll-free, at 800-877-8339.

(1) National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02269, telephone number 617-770-3000, fax number 617-770-0700, [www.nfpa.org](http://www.nfpa.org).

(i) NFPA 58: Liquefied Petroleum Gas Code (2017), IBR approved for § 51.201.

(ii) [Reserved]

(2) [Reserved]

3. In § 51.201, revise the definition of "Hazard" to read as follows:

**§ 51.201 Definitions.**

\* \* \* \*

*Hazard* – means any stationary container which stores, handles, or processes hazardous substances of an explosive or fire prone nature. The term "hazard" does not include:

(1) Pipelines for the transmission of hazardous substances, if such pipelines are located underground, or comply with applicable Federal, State and local safety standards;

- (2) Containers with a capacity of 100 gallons or less when they contain common liquid industrial fuels, such as gasoline, fuel oil, kerosene and crude oil, since they generally would pose no danger in terms of thermal radiation or blast overpressure to a project;
- (3) Facilities that are shielded from a proposed HUD-assisted project by the topography, because these topographic features effectively provide a mitigating measure already in place;
- (4) All underground containers; and
- (5) Containers designed to hold liquefied propane gas with a volumetric capacity not to exceed 250 gallons, if they comply with the NFPA 58 (incorporated by reference, see § 51.200(b)).

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Date: October 18, 2018

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Neal J. Rackleff, Assistant Secretary  
for Community Planning and Development

**Billing Code: 4210-67**

**[FR-6054-P-01]**

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