



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 51

[Docket No: FR-6054-F-02]

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: Final rule.

SUMMARY: This final rule reduces regulatory and cost burden on communities that may be restricted in their ability to site HUD-assisted projects, by allowing HUD-assisted projects near stationary aboveground propane storage tanks with a capacity of 1,000 gallons or less if the storage tanks comply with National Fire Protection Association (NFPA) 58 (2017). Based on consideration of public comments, HUD is adopting this 1,000-gallon limit in lieu of the 250-gallon limit contemplated in the proposed rule. This final rule incorporates by reference NFPA 58 (2017), a voluntary consensus standard for public safety that establishes safety standards used by the propane industry and operators regarding storage, handling, transportation, and use of propane.

DATES: Effective Date: **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Danielle Schopp, Director, Office of Environment and Energy, Office of Community Planning and Development, U.S. 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 December 10, 2018, HUD published a rule in the *Federal Register*, at 83 FR 63457, which proposed expanding HUD's ability to approve assistance for projects sited near propane storage tanks (otherwise known as "Liquified Petroleum Gas containers" or "LPG containers"). The rule proposed amending HUD regulations at 24 CFR part 51, subpart C, which establish the Acceptable Separation Distance (ASD) that must be kept between HUD-assisted projects and containers of hazardous substances, by creating an exception for aboveground propane storage tanks of a capacity of 250 gallons or less if the storage tank complies with NFPA 58 (2017), a voluntary consensus standard that establishes safety standards used by the propane industry and operators regarding storage, handling, transportation, and use of propane, as well as all underground storage tanks.

HUD's proposed rule was intended to modernize outdated codified safety standards. HUD's current standards, codified at 24 CFR part 51, subpart C, are based on the findings of studies conducted by the Department, in 1975 and 1982.¹ The effect of these standards is to prescribe the ASD of HUD-assisted projects 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,

¹ 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 intended for residential, institutional, recreational, commercial, or industrial use.

Mitigation measures can be costly and limit choices for siting a HUD-assisted project. HUD's experience has been that there are significant practical and economic difficulties in mitigating off-site residential propane tanks located on adjacent properties. HUD has recently provided waivers for approval of HUD-assisted sites that have propane tanks in compliance with NFPA 58 (2017) on the basis that such compliance mitigated any danger to HUD-assisted projects sited adjacent to the hazard.

Based on HUD's experience, HUD issued its proposed rule to streamline and update its current rule.

II. Changes and Clarifications Made in This Final Rule

This final rule follows publication of the December 10, 2018, proposed rule and takes into consideration the public comments received on the proposed rule. In response to public comment, a discussion of which is presented in the following section of this preamble, and in further consideration of issues addressed at the proposed rule stage, the Department is making changes, described below, in this final rule.

A. Propane tanks of up to 1,000 gallons exempted from hazard ASD restrictions

HUD received several comments requesting reconsideration of the 250-gallon limit for aboveground propane tanks exempted from HUD's ASD requirements. After performing further analysis on common residential tank sizes and potential risks posed by larger tanks, HUD has determined that exempting tanks up to 1,000 gallons would increase the rule's effectiveness without posing additional risk. As such, the definition of "hazard" in § 51.201 has been revised to exempt tanks up to 1,000 gallons. The justification for this change is described below.

1. *Common Residential Tank Sizes*

Typical propane consumption and the range of typical tank sizes vary widely between warmer and cooler climates. An average-size modern home using high-efficiency propane heating equipment and other appliances in a warm climate region can expect to use 194 to 258 gallons per year, while the same home in a cold climate region would typically use 991 to 1,844 gallons per year.²

The same variables that impact propane consumption naturally also impact the choice of propane tank sizing. In addition, the average customer, especially in a cold climate prefers to minimize the frequency of refueling to ensure that they don't run out given the high heating loads they experience in the winter. Propane prices also fluctuate with the market throughout the year and tend to be on the higher side during the heating season and lower in the summer. Larger tanks allow customers to buy larger quantities of propane during periods of lower prices resulting in better savings. They also save on delivery related fees by having fewer fill ups. The tank size thus becomes a cost controlling factor for the customer, and tank sizes up to 1,000 gallons are regularly used for residential purposes.³

2. *Safety of 1,000-gallon propane tanks*

The reliability of propane tanks has increased significantly over the past 30 years and studies suggest that the evolution of industry safety practices has reduced the probability of propane tank failure⁴. Studies by the NFPA, documented in the rule's Regulatory Impact Analysis, show that propane is not a leading cause of fires or listed as a source of residential structure fires in the United States. Propane tanks are extremely durable. In a study performed

² Energy and Environmental Analysis of Propane Energy Pod Homes, Prepared for the Propane Education & Research Council, 2011.

³ See NFPA 58 LP-Gas Code Handbook (2017).

⁴ See Ahrens, M. (2017), Ahrens, M. (2018), Flynn, J. (2010), and Hall, J.R. (2014).

by the U.S. Department of Defense and the Energy Research and Development Administration, these tanks sustained very little damage even from the energy of a simulated nuclear blast.⁵ This experiment and others conducted in the propane industry demonstrate that propane tank explosions are difficult and rare.

Furthermore, this rule does not remove all safe distance requirements for LPG containers sited near HUD-assisted projects. All tanks exempted from HUD's ASD requirements under this rule must be fully compliant with NFPA (2017) standards, including NFPA separation distance requirements. Tanks locations must meet a separation distance between the container and important buildings⁶ or line of adjoining property that can be built upon, in accordance with the NFPA 58. Tanks between 125 and 500 gallons must be at least 10 feet apart from important buildings or property lines of adjoining property that can be built upon, while tanks between 501 and 1,000 gallons must be at least 25 feet apart. Under NFPA 58 and this rule's revision of 24 CFR part 51, tanks under 125 gallons would not require a separation distance.

For the reasons described above, HUD has determined that LPG containers with capacities of up to 1,000 gallons that comply with NFPA 58 (2017) will no longer be subject to the hazard restrictions posed by 24 CFR part 51. Since the separation distance imposed by NFPA 58 compliance is sufficient to ensure the safety of HUD-assisted projects, increasing the size of tank covered by this exception will reduce regulatory and cost burden on even more projects and communities without any significant additional risk.

B. Other Changes and Clarifications

⁵ The Effects of Nuclear Weapons, Compiled and edited by Samuel Glasstone and Philip J. Dolan., 1977.

⁶ According to the NFPA 58 LP-Gas Code Handbook, a building can be considered important for a number of reasons such as high replacement value, its human occupancy, or vital importance of contents to a business. A building with characteristics that hinder emergency responders' access and ability to safely apply water to a tank or act as an impediment to applying water should also be considered an important building.

One commenter stated that it was unclear whether the tank size referenced in § 51.201 definition of “hazard” was to be measured in water gallon capacity or propane gallon capacity. As a result, HUD has amended the language of § 51.201 to clarify that tanks are measured in water gallon capacity. This language was clarified in order to align the rule with language in NFPA 58 (which uses water capacity to determine ASD standards). The American Society of Mechanical Engineers, which certifies propane tanks, also rates tanks in terms of their water capacity.

Additionally, a commenter found the language used to describe propane tanks (“Containers which are designed to hold liquefied propane gas...”) confusing. To increase clarity and accuracy, HUD is amending the phrase to read: “Containers which are *used* to hold liquefied *petroleum* gas.” First, replacing “designed” with “used” more accurately describes the scope of the definition, since some containers that are not designed to hold LPG are used to hold it nonetheless, while still complying with NFPA safety requirements. Second, HUD is replacing “liquified propane gas” with “liquefied petroleum gas” because the gas used in heating systems is sometimes comprised of not only propane, but butane as well. These changes will increase consistency between this final rule and NFPA 58 (2017).

III. Discussion of Public Comments Received on December 10, 2018, Proposed Rule

The public comment period for the proposed rule closed on February 8, 2019. HUD received six public comments in response to the proposed rule. These comments were submitted by a nationally recognized fire safety codes and standards organization, the national trade group for the propane industry, a nonprofit affordable housing developer, and private citizens.

None of the commenters opposed conforming the ASD standards for residential propane tanks to industry standards. Commenters were generally supportive of the proposed rule, but, as

provided in the following section of this Preamble, they also recommended changes or clarifications, several of which are discussed above.

Comment: How will this rule impact HUD-assisted projects sited near multiple propane tanks, or propane tanks stored near other gases.

HUD Response: Under this final rule, LPG tanks of 1,000 gallons or less are not subject to ASD requirements, regardless of how many tanks are present, if they comply with NFPA code 58 (2017). The exclusion from the ASD requirement applies only to LPG tanks. If there are other gases stored in stationary aboveground containers, the ASD must be calculated for those nonpropane containers.

Comment: HUD should not exempt all underground propane containers from hazard restrictions, but only those which comply with applicable Federal, State, or local safety standards, because improperly spaced underground containers can leak gas into underground structures.

HUD Response: HUD is declining to implement this change in this final rule, as this rule is amending safety standards relating to fire and blast hazards, which do not take into consideration other issues such as vapor contamination. HUD performs environmental review of most projects, including multifamily housing and new construction, which captures information related to vapor contamination to document compliance with the standards at 24 CFR §§ 50.3(i) and 58.5(i)(2), using investigative techniques including but not limited to ASTM Phase I and Phase II Environmental Site Assessment.⁷ Furthermore, this rule is conforming the relevant regulation with HUD's longstanding policy of considering underground tanks exempt from the ASD restrictions listed in 24 CFR 51 subpart C because they are shielded by the topography

⁷ HUD's environmental review regulations can be found at 24 CFR parts 50, 51, 55, and 58.

from posing fire or blast risks to HUD-assisted projects and, therefore, do not meet the definition of “hazard” at § 51.201. This is also consistent with HUD’s treatment of LPG pipelines in existing regulations, in which LPG pipelines are excluded from the definition of “hazard” so long as they are either underground or comply with Federal, State, and local safety standards.

Comment: HUD should update the FHA *Single Family Housing Policy Handbook* to indicate that FHA can assist in the purchase of properties with underground propane tanks.

HUD Response: This final rule focuses on updates to the regulation at 24 CFR 51 subpart C, and updates to subregulatory guidance are beyond the scope of this rulemaking. Nevertheless, HUD agrees that the referenced guidance should reflect these revisions.

Comment: The rule only incorporates NFPA 58 by reference for LPG containers 250 gallons or less which are exempt from hazard restrictions. HUD should incorporate NFPA 58 by reference for all LPG containers regardless of size in order to maintain a consistent approach to handling LPG as a hazard.

HUD response: As discussed above, in this final rule HUD is incorporating NFPA 58 (2017) by reference for LPG containers 1,000 gallons or less that are exempt from hazard restrictions. Containers larger than 1,000 gallons will still be defined as “hazards” and will still need to comply with HUD’s safety standards at 24 CFR part 51, subpart C. This rulemaking is intended to mitigate regulatory and cost burden related to residential propane tanks (which typically hold 1,000 gallons or less⁸) and is not intended to address commercial, industrial, or agricultural propane tanks (which typically hold more than 1,000 gallons).⁹

IV. Incorporation by Reference

⁸ See NFPA 58 LP-Gas Code Handbook (2017).

⁹ Ibid.

This rule incorporates the following voluntary consensus standard for siting of HUD-assisted projects near aboveground propane storage tanks that hold up to 1000 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 (2017) provides industry benchmark and operational information and standards for safe propane storage, handling, transportation, and use. NFPA 58 (2017) mitigates risks and ensures safe installations, to prevent failures, leaks, and tampering that could lead to fires and explosions. The regulation 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 this would require further rulemaking.

NFPA 58 (2017) is available online, via read-only access, at <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 username 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, MA 02169, telephone number (800) 344-3555, fax number (800) 593-6372.

V. 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 final rule is a significant regulatory action under section 3(f) of Executive Order 12866 (but not an economically significant action). HUD has prepared a regulatory impact analysis that addresses the costs and benefits of the final rule. The analysis is available at Regulations.gov and is part of the docket file for this rule.

Executive Order 13771

Executive Order 13771, entitled “Reducing Regulation and Controlling Regulatory Costs,” was issued on January 30, 2017. This final rule is an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this 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 nonprofit organizations, and small governmental jurisdictions.

This rule updates 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 allows the siting of HUD-assisted projects near stationary aboveground propane storage tanks with a capacity of 1,000 gallons or less if the storage tank complies with NFPA Code 58 (2017). HUD has determined that the rule would result in the reduction of costly mitigation measures.

Small entities affected by the rule include owner-occupied single family, small public housing authorities, and a limited number of multifamily projects. Notwithstanding, HUD has determined that the rule's impact will be to reduce administrative burdens and generate cost savings estimated to be from \$200,000–\$18,000,000 per year. Due to economies of scale and the cost of compliance with the existing rule, these reductions of administrative burden will provide relatively greater benefit to entities that are small. This rule would have minimal impact on small firms because they would not be required to modify current operational procedures. The rule will eliminate the need for costly waiver processes and mitigation costs on the part of these small entities. For example, as described in the Regulatory Impact Analysis, of 1200 small rental properties in Mississippi applying for disaster recovery assistance after Hurricane Katrina, 750 required additional compliance measures or a waiver under current 24 CFR part 51 subpart C in order to be eligible for assistance. Removing such obstacles to assistance would have particularly beneficial impact for similarly situated small rental properties, and other small entities, that are assisted going forward. Similarly, as discussed in the Regulatory Impact Analysis, HUD's 2017 waiver for certain Community Development Block Grant and Home Investment Partnerships programs in Vermont included both residences and small businesses; specifically, restaurants. In waiving the requirements of the existing regulation as to these small businesses, HUD noted that in 2011 there were 1,346 restaurants in Vermont using propane.

These restaurants were affected by the cost or practicability of compliance with the existing rule, and these costs will be saved in future projects under this rule. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

A Finding of No Significant Impact with respect to the environment for this rule 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 Finding of No Significant Impact is available for public inspection between 8 a.m. and 5 p.m., weekdays in the Regulations Division, Office of General Counsel, U.S. Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-5000. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the Finding 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. The Finding of No Significant Impact will also be available for review in the docket for this rule on 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 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 amends 24 CFR part 51 as follows:

PART 51 –ENVIRONMENTAL CRITERIA AND STANDARDS

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

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

2. 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 used to hold liquefied petroleum gas with a volumetric capacity not to exceed 1,000 gallons water capacity, if they comply with National Fire Protection Association (NFPA) 58. NFPA 58, Liquefied Petroleum Gas Code, 2017 Edition, copyright 2016 is incorporated by reference into this section 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 is available from National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169, telephone number 800-344-3555, fax number 800-593-6372, www.nfpa.org. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fedreg.legal@nara.gov or visit 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.

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Date: January 9, 2020.

David C. Woll, Jr.,
Principal Deputy Assistant Secretary for
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