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Part IV

Department of Housing and Urban Development

24 CFR Part 5

**Pet Ownership for the Elderly and
Persons With Disabilities; Final Rule**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5

[Docket No. FR-5127-F-02]

RIN 2501-AD31

Pet Ownership for the Elderly and Persons With Disabilities

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations governing the requirements for pet ownership in HUD-assisted public housing and multifamily housing projects for the elderly and persons with disabilities. Specifically, this final rule conforms these pet ownership requirements to the requirements for animals assisting persons with disabilities in HUD's public housing programs, other than housing projects for the elderly or persons with disabilities. This final rule follows publication of an October 15, 2007, proposed rule, and takes into consideration the public comments received on the proposed rule. In response to one comment, HUD has made a nonsubstantive change to the proposed rule. Specifically, consistent with the phrasing used in HUD's public housing pet ownership regulations, this final rule amends the assisted housing regulations to refer to "animals that assist, support, or provide service to persons with disabilities."

DATES: *Effective Date:* November 26, 2008.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

On October 15, 2007, at 72 FR 58448, HUD published for public comment a proposed rule to revise HUD's regulations that apply to pet ownership in HUD-assisted housing for the elderly and persons with disabilities.

Certain animals provide assistance or perform tasks for the benefit of a person with a disability. Such animals, often referred to as "assistance animals," "service animals," "support animals," or "therapy animals," provide disability

related functions including, but not limited to, guiding visually impaired persons to sounds and noises, providing protection or rescue assistance, pulling a wheelchair, seeking and retrieving items, alerting individuals to impending seizures, and providing emotional support to persons who have a disability related need for such support.

The pet ownership requirements applicable to public housing and multifamily housing projects for the elderly or persons with disabilities are codified at 24 CFR part 5, subpart C ("Pet Ownership for the Elderly or Persons With Disabilities"). Conversely, pet ownership by residents in public housing, except housing projects for the elderly or persons with disabilities and not including housing assisted under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f *et seq.*), is addressed at 24 CFR part 960, subpart G ("Pet Ownership in Public Housing").

The regulations codified at 24 CFR parts 5 and 960 contain minor differences in how they describe animals that assist persons with disabilities that qualify for exclusion from pet ownership rules. In 24 CFR 5.303, entitled, "Exclusion for animals that assist persons with disabilities," project owners and public housing agencies (PHAs) may not apply or enforce any pet rules developed under part 5 against individuals with animals that are used to assist persons with disabilities. Part 5, however, provides that owners or PHAs may require assistance animals to qualify for the exclusion. Project owners must grant this exclusion if: (1) The tenant or prospective tenant certifies, in writing, that the tenant or a member of his or her family is a person with a disability; (2) the animal has been trained to assist persons with that specific disability; and (3) the animal actually assists the person with a disability.

In contrast, 24 CFR 960.705, entitled "Animals that assist, support, or provide service to persons with disabilities," states that PHAs may not apply or enforce pet policies established under 24 CFR part 960 against animals that are necessary as a reasonable accommodation to assist, support, or provide service to persons with disabilities. This exclusion applies to animals that reside in public housing, other than housing developments for the elderly or persons with disabilities, and to such animals that visit these developments. The provisions in part 960 do not contain the tenant certification or the animal training requirements found in § 5.303. PHAs, however, are authorized to verify that

the animal qualifies as a reasonable accommodation under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (Section 504) and the Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended (42 U.S.C. 3601-3631)). An animal qualifies as a reasonable accommodation if: (1) An individual has a disability, as defined in the Fair Housing Act or Section 504, (2) the animal is needed to assist with the disability, and (3) the individual who requests the reasonable accommodation demonstrates that there is a relationship between the disability and the assistance that the animal provides.

Although the differences between the exclusions contained in HUD's two pet ownership regulations are minor, the differing requirements have sometimes been a source of confusion to housing providers and program participants. The October 15, 2007, proposed rule addressed this issue by proposing to revise the pet ownership regulations in 24 CFR part 5, subpart C to comport with 24 CFR part 960, subpart G. The proposed regulatory amendments were designed to reduce confusion and make it clear that the same exclusions for animals that assist persons with disabilities apply to the pet ownership requirements for all of HUD's public and assisted housing programs. The amendments do not change existing HUD policy, which applies Fair Housing Act and Section 504 reasonable accommodation principles. Interested readers should refer to the preamble of the October 15, 2007, proposed rule for details regarding the proposed regulatory amendments to 24 CFR part 5.

II. This Final Rule; Change Made to the October 15, 2007, Proposed Rule

This final rule follows publication of the October 15, 2007, proposed rule and takes into consideration the public comments received on the proposed rule. The public comment period on the proposed rule closed on December 14, 2007, and HUD received 28 public comments. Comments were received from PHAs, operators of HUD-assisted housing for the elderly and persons with disabilities, a state human rights commission, nonprofit and trade organizations engaged in affordable housing and community development programs, and other interested parties and stakeholders.

After careful consideration of the issues raised by the commenters, HUD has made one change to the suggestion of public comment. Specifically, HUD has taken the opportunity afforded by this final rule to conform the phrasing used in 24 CFR part 5, subpart C, to

qualify assistance animals to the phrasing used in 24 CFR part 960, subpart G. This change does not alter the substance of the part 5 requirements, but is designed to bring greater uniformity and clarity to HUD's pet ownership regulations.

III. Discussion of the Public Comments on the October 15, 2007, Proposed Rule

This summary of comments presents the major issues and concerns raised by the public commenters on the October 15, 2007, proposed rule, and HUD's responses to those issues.

Comment: Every elderly person should be allowed a pet. One commenter expressed the view that every elderly person should be allowed to have a pet, without restriction or certification.

HUD Response. The Department's existing regulations that apply to pet ownership in HUD-assisted housing for the elderly and persons with disabilities in 24 CFR 5.315 already provide that residents may keep common household pets in accordance with the prescribed mandatory and discretionary pet rules in §§ 5.350 and 5.318. The prescribed pet rules place reasonable limitations on pet ownership to ensure the health, safety, and well-being of all residents. The pet ownership conditions in 24 CFR 960.707 for public housing excluding housing for the elderly or persons with disabilities contain a similar provision permitting common household pets, subject to the reasonable requirements of the PHA.

Comment: The proposed definition of service animal is too broad, and, therefore, ripe for abuse. Several commenters wrote that the proposed revision to the definition of "service animal" in § 5.303 would potentially include all animals as assistive or supportive, without regard to whether the animal had been trained to assist persons with a specific disability. The commenters wrote that, to date, the term "service animal" has had a narrow definition relating to animals with specialized training to assist persons with disabilities for specific purposes. The commenters wrote that the proposed change would create an ambiguity regarding what animals are permitted to reside in HUD-assisted housing. The commenters suggest that the alleged vagueness of the language will force property owners to make subjective decisions that may, in turn, lead to increased litigation, resulting in significant economic burden, especially for smaller PHAs. The commenters objected that the proposed rule would deter property managers from establishing policies to ensure that

animals brought into the property are needed as a reasonable accommodation, and would create a situation in which a tenant can allege a right to keep any pet as a service animal.

HUD Response. The Department does not agree that the revision broadens the scope of service animals in housing. The Department does not believe the final rule will create either ambiguity regarding which animals are permitted or lead to a situation in which a tenant can allege a right to keep any pet as a service animal. The Department's regulations do not provide a specific definition of the term "service animal." The use of assistive animals, also referred to as "service animals," "support animals," "assistance animals," or "therapy animals," is governed by reasonable accommodation law. The Department's revision is not altering existing law on reasonable accommodation. Rather, by amending the language of the part 5 exclusion to correspond to § 960.705, the Department is conforming the part 5 regulation to statutory authority and to a longstanding HUD position on reasonable accommodation. Under both the Fair Housing Act and Section 504, in order for a requested accommodation to qualify as a reasonable accommodation, the requester must have a disability, and the accommodation must be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling. To show that a requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the person's disability. Thus, in the case of assistance/service animals, an individual with a disability must demonstrate a nexus between his or her disability and the function the service animal provides. The Department's position has been that animals necessary as a reasonable accommodation do not necessarily need to have specialized training. Some animals perform tasks that require training, and others provide assistance that does not require training. This position is also articulated in the Public Housing Occupancy Guidebook and the Multifamily Occupancy Handbook.

Housing providers are entitled to verify the existence of the disability, and the need for the accommodation—if either is not readily apparent. Accordingly, persons who are seeking a reasonable accommodation for an emotional support animal may be required to provide documentation from a physician, psychiatrist, social worker, or other mental health professional that

the animal provides support that alleviates at least one of the identified symptoms or effects of the existing disability.

In addition, housing providers are not required to provide any reasonable accommodation that would pose a direct threat to the health or safety of others. Thus, if the particular animal requested by the individual with a disability has a history of dangerous behavior, the housing provider does not have to accept the animal into the housing. Moreover, a housing provider is not required to make a reasonable accommodation if the presence of the assistance animal would (1) result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by a reasonable accommodation; (2) pose an undue financial and administrative burden; or (3) fundamentally alter the nature of the provider's operations.

For an extensive discussion of reasonable accommodation principles, see the "Joint Statement of the Department of Housing and Urban Development and the Department of Justice: Reasonable Accommodations Under the Fair Housing Act" (HUD/DOJ Joint Statement), available at: <http://www.hud.gov/offices/fheo/disabilities/index.cfm>.

Comment: The proposed elimination of the animal training requirement may result in further confusion and lead to abuse. Several commenters, raising concerns similar to those raised by the comments on the definition of a service animal, objected to the elimination of the training and certification requirements. The commenters wrote that the proposed rule would open the door to abuse by allowing a tenant to obtain an animal without any verification of need. To expand the definition of animals exempt from the pet rules, while at the same time prohibiting property managers from confirming the need for the animal, might lead to litigation and other costly expenditures. The commenters wrote that the operative effect of the proposed amendment would be to exclude from any regulation at all, under either part 5 or part 960, not only animals that meet the traditional criteria for assistive or service animals, but also animals that have come to be known as "comfort pets."

HUD Response. The Department believes removing the animal training and certification requirements and conforming the language of the part 5 exclusion to § 960.705 will actually result in less confusion by improving uniformity in its regulations and by

conforming the regulations to HUD policy and existing case law. The Department does not believe that the elimination of the training requirement will in effect exclude all animals from the regulatory requirements. Under amended § 5.303, the animal must be “necessary as a reasonable accommodation to assist, support, or provide service to persons with disabilities” in order to qualify under the exclusion from pet ownership policies. Persons with disabilities who cannot establish that they need the animal as a reasonable accommodation are not covered by the exclusion, and, therefore, must comply with the housing provider’s pet rules if they wish to keep the animal.

Both the Fair Housing Act and Section 504 require that in order to qualify as a reasonable accommodation, the requester must have a disability, and there must be a relationship between the requested accommodation and that person’s disability. For example, the person with a disability who is requesting the assistance animal must demonstrate a disability-related need for the animal, such as service, or assistance, performing tasks for the benefit of a person with a disability, or providing emotional support that alleviates one or more identified symptoms or effects of a person’s disability. Examples of disability-related functions, include, but are not limited to, guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support.

Finally, the Department believes that removing the animal training requirement ensures equal treatment of persons with disabilities who need animals in housing as a reasonable accommodation, for a wide variety of purposes. While many animals are trained to perform certain tasks for persons with disabilities, others do not need training to provide the needed assistance. For example, there are animals that have an innate ability to detect that a person with a seizure disorder is about to have a seizure and can let the individual know ahead of time so that the person can prepare. This ability is not the result of training, and a person with a seizure disorder might need such an animal as a reasonable accommodation to his/her disability. Moreover, emotional support animals do not need training to ameliorate the effects of a person’s

mental and emotional disabilities. Emotional support animals by their very nature, and without training, may relieve depression and anxiety, and/or help reduce stress-induced pain in persons with certain medical conditions affected by stress.

Comment: Proposed elimination of training component is inconsistent with the regulations implementing the Americans with Disabilities Act. Several commenters wrote that the applicable definition of the term “service animal” is contained in the Department of Justice regulations implementing the Americans with Disabilities Act (ADA) (42 U.S.C. 12101 *et seq.*). The commenters wrote that HUD regulations have never specifically defined the term “service animal.” Under the ADA regulations at 28 CFR 36.104, a service animal is defined as an animal “individually trained” to do work or perform tasks for the benefit of an individual with a disability. The commenters wrote that this definition covers both ADA claims and claims under Section 504, which HUD is responsible for enforcing. Also according to the commenters, by eliminating the training requirement, the proposed rule contradicts the ADA definition.

HUD Response. The Department does not agree that the definition of the term “service animal” contained in the Department of Justice regulations implementing the ADA should be applied to the Fair Housing Act and Section 504. The ADA governs the use of animals by persons with disabilities primarily in the public arena. There are many areas where the ADA and the Fair Housing Act and Section 504 contain different requirements. For example, accessibility is defined differently under the ADA than under the Fair Housing Act and Section 504.

The Fair Housing Act and HUD’s Section 504 regulations govern the use of animals needed as a reasonable accommodation in housing. HUD’s regulations and policies pertaining to reasonable accommodation were constructed specifically to address housing and, furthermore, were enacted prior to the development and implementation of the ADA regulations. Thus, the requirements for assistance/service animals must be evaluated in the appropriate context of housing, and are independent of the ADA regulations that were formulated to meet the needs of persons with disabilities in a different context and were adopted subsequent to HUD’s regulations.

There is a valid distinction between the functions animals provide to persons with disabilities in the public

arena, i.e., performing tasks enabling individuals to use public services and public accommodations, as compared to how an assistance animal might be used in the home. For example, emotional support animals provide very private functions for persons with mental and emotional disabilities. Specifically, emotional support animals by their very nature, and without training, may relieve depression and anxiety, and help reduce stress-induced pain in persons with certain medical conditions affected by stress. Conversely, persons with disabilities who use emotional support animals may not need to take them into public spaces covered by the ADA.

Comment: The regulations should clarify that reasonable rules may be established to address health and safety concerns. Several commenters wrote that the proposed regulatory changes might create an unsafe living environment. These commenters wrote that the proposed rule has the potential to increase the number and types of animals living in assisted housing. The commenters suggested that the regulatory language be revised to clarify that project owners are permitted to establish reasonable rules to address legitimate concerns for the safe and sanitary management of all animals who live on the premises. These basic requirements include ensuring that animals are properly inoculated; meet minimal sanitary standards; are properly restrained; and are identified and registered with the project owner. The commenters wrote that the rights of all tenants deserve respect, and that reasonable regulations to ensure health, safety, and quiet enjoyment should maintain that respect without denying residents the right to have animals.

HUD Response. The rule will not interfere with the ability of housing providers to address health and safety concerns that arise with respect to assistance animals. The final rule at § 5.303(b)(3) states that nothing in subpart C “affects any authority that project owners or PHAs may have to regulate animals that assist, support, or provide service to persons with disabilities, under federal, state, or local law.” Project owners and PHAs thus continue to retain their authority to regulate animals that are exempt from the pet ownership requirements in accordance with federal, state, or local law.

In addition, a person with a disability who uses an assistance animal is responsible for the animal’s care and maintenance. For example, a housing provider may establish reasonable rules in lease provisions requiring a person

with a disability to pick up and dispose of his or her assistance animal's waste.

The existing law on reasonable accommodation also addresses health and safety concerns. Under the Fair Housing Act, a housing provider need not make a dwelling available to any person whose tenancy constitutes a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. Consistent with that provision of the Fair Housing Act, a housing provider may exclude an assistance animal from a housing complex when that animal's behavior poses a direct threat and its owner takes no effective action to control the animal's behavior so that the threat is mitigated or eliminated.

The determination of whether an assistance animal poses a direct threat must rely on an individualized assessment that is based on objective evidence about the specific animal in question, such as the animal's current conduct or a recent history of overt acts. The assessment must consider the nature, duration, and severity of the risk of injury; the probability that the potential injury will actually occur; and whether reasonable modifications of rules, policies, practices, procedures, or services will reduce the risk. In evaluating a recent history of overt acts, a provider must take into account whether the assistance animal's owner has taken any action that has reduced or eliminated the risk. Examples would include obtaining specific training, medication, or equipment for the animal.

This direct threat provision of the Fair Housing Act requires the existence of a significant risk—not a remote or speculative risk. Accordingly, the determination cannot be the result of fear or speculation about the types of harm or damage an animal may cause, or evidence about harm or damage caused by other animals (See HUD/DOJ Joint Statement).

Comment: Need for further guidance. Two commenters wrote that the issuance of formal legal guidance on the general requirement to provide reasonable accommodation to allow "animals that assist, support, or provide service to persons with disabilities" would be of great assistance to all concerned in the field. Such guidance would provide an invaluable sequel to the HUD/DOJ Joint Statement.

HUD Response. The Department appreciates the commenters' interest in obtaining additional legal guidance. The HUD/DOJ Joint Statement and HUD's policy manuals and handbooks, including the Public Housing

Occupancy Guidebook and the Multifamily Occupancy Handbook, currently provide applicable guidance on reasonable accommodation law. This rule does not alter existing law, which under both the Fair Housing Act and Section 504 requires that in order to qualify as a reasonable accommodation: (1) The requester must have a disability, and (2) there must be a relationship between the requested accommodation and the person's disability. Once this final rule takes effect, the Department will carefully consider, in light of the revisions in § 5.303, whether there is a need to issue further guidance on reasonable accommodation.

Comment: Efforts to achieve uniformity in HUD's pet regulations should involve conforming 24 CFR part 960 to 24 CFR part 5, not the other way around. Three commenters wrote that this action would more accurately reflect the position of the Department of Justice and federal judicial decisions. In seeking internal uniformity within its own regulations, HUD may actually be creating disunity in the legal principles applicable to service animals that are to be applied across the federal government.

HUD Response. The Department does not agree that uniformity should be achieved by conforming 24 CFR part 960 to 24 CFR part 5. The HUD regulations addressing pet ownership in public housing do not include training or certification requirements and exclude from coverage of the regulation animals that "assist, support or provide service to persons with disabilities" (24 CFR 960.705). It is the Department's position that animals that are necessary as a reasonable accommodation do not necessarily need to be trained or meet certification requirements. This position is consistent with HUD Administrative Law Judge decisions, and with HUD handbooks and guidance used by the HUD Office of Housing and Office of Public and Indian Housing.

In addition, the Department's position is consistent with federal case law that has recognized, in cases involving emotional support animals in the housing context, that whether a particular accommodation is reasonable is a fact-intensive, case-specific determination (*Janush v. Charities Hous. Dev. Corp.*, 159 F. Supp. 2d 1133 (N.D. Cal. 2000); *Majors v. Hous. Auth. of the County of DeKalb, Ga.*, 652 F.2d 454, 457–58 (5th Cir. 1981) (remanding the case for trial on whether the plaintiff's disability required the companionship of a dog).

The Department recognizes that its regulations continue to provide guidance on service animals that differs

from the Department of Justice's regulations implementing the ADA—which define service animals as "individually trained." However, there are legitimate reasons why the Fair Housing Act and housing covered under Section 504 must cover emotional support animals, as well as other animals that may not need training to provide assistance to persons with other disabilities and that are not included under the ADA. In particular, assistance animals provide specific functions for persons with mental and emotional disabilities in the private setting of the home and do not require training. Generally, these animals are not needed in the public spaces covered by the ADA.

Comment: The proposed language should be revised to make it fully uniform with the language of 24 CFR 960.705. One commenter wrote that uniformity among the regulations will not be achieved until all of the phrasing used to qualify the type of animals exempt from project owners' pet rules is the same.

HUD Response. HUD agrees with the suggestion made by the commenter, and has revised the rule accordingly. HUD has taken the opportunity afforded by this final rule to conform the phrasing used in 24 CFR part 5 to qualify assistance animals to the phrasing used in the part 960 pet regulations. This change does not alter the substance of the part 5 requirements, but is designed to bring greater uniformity and clarity to HUD's pet ownership regulations. Specifically, and in accordance with the part 960 language, this final rule amends § 5.303 to consistently refer to "animals that assist, support, or provide service to persons with disabilities." Section 5.303 currently refers to "animals that assist persons with disabilities."

Comment: HUD should assess federal best practices regarding service animals. One commenter suggested that HUD should assess federal best practices concerning service, assistance, and companion animals implemented by other federal departments.

HUD Response. The Department appreciates this comment and recognizes the value of evaluating federal best practices in order to best meet the needs of persons with disabilities. Once the final rule takes effect, the Department will consider whether further guidance is needed to ensure consistent application. At that time, the Department may elect to consider the policies of other federal departments. However, the needs of persons with disabilities in the housing arena are distinct from other settings,

such as in the public arena or in transportation. The Department must rely on its expertise specifically in the realm of HUD-assisted housing for the elderly and persons with disabilities and in public housing to best assess the rights and obligations of persons with disabilities and housing providers relating to the use of assistance animals.

IV. Findings and Certifications

Environmental Impact

This final rule involves a policy document that sets out nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3), this rule is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (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. This final rule does not change existing HUD policy, which applies Fair Housing Act and Section 504 reasonable accommodation principles. Rather, the final rule conforms the pet ownership and exclusion provisions for animals that assist persons with disabilities contained in 24 CFR part 5, subpart C, with the provisions for assistance animals and reasonable accommodation for persons with disabilities contained in 24 CFR part 960, subpart G. As discussed above in this preamble, most of the differences between the two pet ownership regulations are minor and nonsubstantive. For example, the regulations currently use different phrasing, which is being conformed in this final rule. The most substantive change being made by this final rule is the removal of the animal training and tenant certification requirements

currently codified at § 5.303. To the extent this final rule has any impact on small entities, it would be to reduce the administrative and economic burdens associated with the oversight of these animal training and certification requirements.

Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (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 the private sector. This rule does not impose any federal mandate on state, local, or tribal government or the private sector within the meaning of UMRA.

Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications, if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

List of Subjects in 24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage

insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social Security, Unemployment compensation, Wages.

■ Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR part 5 to read as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 1. The authority citation for part 5 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d), and Sec. 327, Pub. L. 109–115, 119 Stat. 2936.

■ 2. Revise § 5.303 to read as follows:

§ 5.303 Exclusion for animals that assist, support, or provide service to persons with disabilities.

(a) This subpart C does not apply to animals that are used to assist, support, or provide service to persons with disabilities. Project owners and PHAs may not apply or enforce any policies established under this subpart against animals that are necessary as a reasonable accommodation to assist, support, or provide service to persons with disabilities. This exclusion applies to animals that reside in projects for the elderly or persons with disabilities, as well as to animals that visit these projects.

(b) Nothing in this subpart C:

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

(2) Authorizes project owners or PHAs to limit or impair the rights of persons with disabilities; or

(3) Affects any authority that project owners or PHAs may have to regulate animals that assist, support, or provide service to persons with disabilities, under federal, state, or local law.

Dated: October 10, 2008.

Roy A. Bernardi,
Deputy Secretary.

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