

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

**Office of the Assistant Secretary for
Community Planning and
Development**

24 CFR Part 597

[Docket No. FR-4281-F-02]

RIN 2506-AB97

**Empowerment Zones: Rule
Modifications for First Round
Designations**

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

ACTION: Final rule.

SUMMARY: This final rule conforms HUD's regulations to statutory changes which were stated to take effect on August 5, 1997. Provisions of the existing regulations for the Empowerment Zones (EZs) and Enterprise Communities (ECs) that limit the number of EZs and ECs that can be designated under the regulations are removed, since section 951 of the Taxpayer Relief Act of 1997 authorized designation of two additional EZs.

DATES: *Effective date:* April 3, 1998.

Applicability date: The amendments in this final rule apply retroactively to August 5, 1997.

FOR FURTHER INFORMATION CONTACT: Dennis Kane, Director, Office of Economic Development, Department of Housing and Urban Development, Room 7136, 451 Seventh Street, SW, Washington, DC 20410. Telephone (202) 708-2290. (This telephone number is not toll-free.) For hearing-and speech-impaired persons, these telephone numbers may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1-800-877-8339 (toll-free).

SUPPLEMENTARY INFORMATION:

Background

In 1993, the Secretary of Housing and Urban Development (HUD) was authorized to designate not more than six urban Empowerment Zones and not more than 65 urban Enterprise Communities, which were then eligible for various tax benefits, as well as for grants from the Department of Health and Human Services. (See section 13301 of the Omnibus Budget Reconciliation Act of 1993, adding sections 1391-1397D to the Internal Revenue Code, 26 U.S.C. 1391-1397D.) The same statute also authorized the Secretary of Agriculture to designate not more than three Empowerment Zones. The two

Departments issued separate but parallel interim rules, following a standard format, on January 18, 1994 (59 FR 2700). Notices Inviting Applications were published, and the agencies designated the maximum number of EZs and ECs authorized. HUD issued a final rule, making only technical changes to the interim rule, on January 12, 1995 (60 FR 3034).

The authority for the EZ designations (section 1391(b) of the Internal Revenue Code) was amended recently (section 951 of the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, 111 Stat. 788, enacted on August 5, 1997) to provide for designation of two additional Empowerment Zones in urban areas. The same amendment increased the total population covered by all urban EZs from 750,000 to 1,000,000. The Act specifies that these amendments take effect on the date of its enactment, and that the new zones must be designated within 180 days of enactment (by February 1, 1998), although they will not take effect before January 1, 2000.

Although the first six empowerment zones to be designated received social services block grant funding from the Department of Health and Human Services, there is no such funding available this year for the two new empowerment zones to be designated under this revised rule. The benefits that will accrue to these new zones will be the empowerment zone employment credit and accelerated depreciation tax benefits in place under sections 1396-1397D, starting on January 1, 2000.

Changes Needed in This Rule

The increase in the total population included in EZs does not require a change in the regulation, because it is not stated in the current rule. However, the statutory authorization for two new designations of Empowerment Zones under the existing eligibility criteria would conflict with provisions of the current rule that state the number of EZs authorized, so those provisions of the rule are removed. Now that there is statutory authority for a second round of EZ designations, based on revised criteria, the heading of this rule is also revised to reflect that it is applicable only to the first round designations. (See sections 952-954 of the Taxpayer Relief Act of 1997, being implemented by a separate rule.)

Findings and Certifications

Environmental Impact

This rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321). In view of the

unavailability of social services block grant funding as a benefit to newly designated zones to be authorized in accordance with this amendment, the amendment falls within the exclusion provided by 24 CFR 50.19(c)(1), in that it does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this amendment is categorically excluded because it amends an existing document where the existing document as a whole would not fall within the exclusion in 24 CFR 50.19(c)(1), but the amendment by itself would do so.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities as distinguished from large entities. The burdens placed on applicants derive from the statute, and primary among them is the requirement for a strategic plan. The entity responsible for preparing a strategic plan for HUD funds for a metropolitan area is the city or county that generally would be seeking the nomination of an area, not the small businesses that are located or could be located within the area.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that, although this rule may have a substantial direct effect on the States or their political subdivisions that are designated as Empowerment Zones, this effect is intended by the legislation authorizing the program. The purpose of the rule is to provide a cooperative atmosphere between the Federal government and States and local governments, and to reduce any regulatory burden imposed by the Federal government that impedes the ability of States and local governments to solve pressing economic, social, and physical problems in their communities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (12 U.S.C. 1501) established 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 mandates on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995, because it does not mandate any particular action. The rule just authorizes states, localities, and tribes to apply for designation of areas within their jurisdiction as Empowerment Zones, which permits special tax treatment of business activities within the areas and may make the areas eligible for other government benefits.

Justification for Final Rule

The Department generally publishes a rule for public comment before issuing a rule for effect, in accordance with its regulations on rulemaking in 24 CFR part 10. However, part 10 provides that prior public procedure will be omitted if HUD determines that it is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1).

The change made by this final rule merely removes impediments to implementing recent statutory changes authorizing additional empowerment zones under current regulations on

empowerment zones. Since the minor changes being made in this rule are ministerial in nature and not controversial, soliciting public comment is unnecessary and contrary to the public interest in orderly and expeditious implementation of the statute. Therefore, the Department has determined that good cause exists to omit prior public procedure for this final rule.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Program number assigned to this program is 14.243.

List of Subjects in 24 CFR Part 597

Community development, Empowerment zones, Enterprise communities, Economic development, Housing, Indians, Intergovernmental relations, Reporting and recordkeeping requirements, Urban areas.

Accordingly, part 597 of title 24 of the Code of Federal Regulations is amended as follows:

PART 597—URBAN EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES: ROUND ONE DESIGNATIONS

1. The heading of part 597 is revised to read as set forth above.

2. The authority citation for part 597 continues to read as follows:

Authority: 26 U.S.C. 1391; 42 U.S.C. 3535(d).

§ 597.3 [Amended]

3. Section 597.3 is amended by removing the last sentence from the definitions of both "Empowerment Zone" and "Enterprise Community", respectively.

§ 597.4 [Amended]

4. Section 597.4 is amended by removing the last sentence from paragraph (a).

§ 597.302 [Removed]

5. Section 597.302 is removed.

Dated: February 25, 1998.

Saul N. Ramirez, Jr.,

Assistant Secretary for Community Planning and Development.

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