

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT****Office of the Secretary****24 CFR Part 51**

[Docket No. FR-4034-F-01]

RIN 2501-AC22

**Regulatory Reinvention; Streamlining
of HUD's Environmental Criteria and
Standards****AGENCY:** Office of the Secretary, HUD.**ACTION:** Final rule.

SUMMARY: In an effort to comply with the President's regulatory reform initiative, this final rule streamlines HUD's regulations governing its environmental criteria and standards. Specifically, this rule amends these regulations to eliminate provisions which do not require regulatory codification. The rule also updates the regulations to more accurately reflect current HUD organization and practices. The streamlining amendments made by this final rule will make HUD's environmental criteria clearer and more concise.

EFFECTIVE DATE: April 25, 1996.**FOR FURTHER INFORMATION CONTACT:**

Richard Broun, Office of Community Viability, Department of Housing and Urban Development, Room 7240, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-3297. Hearing- or speech-impaired individuals may access this number by calling the Federal Information Relay Service TTY at 1-800-877-8339. (With the exception of the "800" number, these numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:**I. Background**

On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, HUD conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved. As part of this review, HUD reexamined its regulations at 24 CFR part 51, which govern HUD's environmental criteria and standards. HUD has determined that several streamlining amendments can be made to part 51.

This final rule removes provisions which do not require regulatory codification. For example, this rule removes most of the substance of § 51.3, which sets forth the responsibility for administering the requirements of 24 CFR part 51. The rule also removes

paragraph (a) of § 51.102, which describes the authority to approve projects under part 51, subpart B. This information, while helpful to HUD's clients, will more appropriately be provided through Federal Register notice. Accordingly, Appendix I to this rule identifies the HUD officials with responsibility for administering the requirements of part 51 and their specific duties. HUD will update this appendix as necessary.

This final rule also updates part 51 to more accurately reflect current HUD organization and practices. For example, paragraph (a)(3) of § 51.101 sets forth HUD's policy for support of construction of new noise sensitive uses. This paragraph states that the "policy does not apply to * * * any action or emergency assistance under disaster emergency programs." The provision originally applied to FEMA programs, which are no longer under HUD jurisdiction. This final rule updates paragraph (a)(3) of § 51.101 to apply this exclusion more generally to other emergency actions, such as those performed under HUD's CDBG and HOME programs.

Finally, the rule streamlines 24 CFR part 51 to eliminate unnecessary wordiness. The streamlining amendments made by this final rule will make HUD's environmental criteria clearer and more concise.

II. Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). In this case, HUD finds that prior public comment is unnecessary.

This rule merely removes provisions which are unnecessarily codified and which HUD will more appropriately set forth through Federal Register notice. The rule also eliminates excessive wordiness and updates the regulations at 24 CFR part 51 to reflect current HUD organization and practices. This final rule does not affect or establish policy.

III. Other Matters**A. Regulatory Flexibility Act**

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that

this rule will not have a significant economic impact on a substantial number of small entities. This rule merely streamlines and updates regulations to reflect current organization and practices. The rule will have no adverse or disproportionate economic impact on any small entity.

B. Environmental Impact

A Finding of No Significant Impact 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. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of General Counsel, the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

C. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

D. Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule will not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule.

List of Subjects in 24 CFR Part 51

Environmental protection, Airports, Hazardous substances, Housing standards, Noise control.

Accordingly, 24 CFR part 51 is amended as follows:

**PART 51—ENVIRONMENTAL
CRITERIA AND STANDARDS**

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

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

Subpart A—General Provisions

2–3. Section 51.2 is revised to read as follows:

§ 51.2 Authority.

This part implements the Department's responsibilities under: The National Housing Act (12 U.S.C. 1701 *et seq.*); sec. 2 of the Housing Act of 1949 (42 U.S.C. 1441); secs. 2 and 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3531 and 3535(d)); the National Environmental Policy Act of 1969 (42 U.S.C. 4321); and the other statutes that are referred to in this part.

4. Section 51.3 is revised to read as follows:

§ 51.3 Responsibilities.

The Assistant Secretary for Community Planning and Development is responsible for administering HUD's environmental criteria and standards as set forth in this part. The Assistant Secretary for Community Planning and Development may be assisted by HUD officials in implementing the responsibilities established by this part. HUD will identify these HUD officials and their specific responsibilities through Federal Register notice.

§ 51.5 [Removed]

5. Section 51.5 is removed.

Subpart B—Noise Abatement and Control

6. Section 51.100 is amended by revising the introductory text of paragraph (a) and revising paragraph (b) to read as follows:

§ 51.100 Purpose and authority.

(a) It is the purpose of this subpart B to:

(b) *Authority.* Specific authorities for noise abatement and control are contained in the Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*); and the General Services Administration, Federal Management Circular 75–2; *Compatible Land Uses at Federal Airfields.*

7. Section 51.101 is amended by:

- Removing paragraph (a)(1)(iii); and
- Revising paragraphs (a)(1) introductory text, (a)(1)(ii), (a)(2), and (a)(3) to read as follows:

§ 51.101 General policy.

(a) * * *

(1) *Planning assistance.* HUD requires that grantees give adequate consideration to noise exposures and sources of noise as an integral part of the urban environment when HUD

assistance is provided for planning purposes, as follows:

* * * * *

(ii) Applicants shall take into consideration HUD environmental standards impacting the use of land.

(2) *Activities subject to 24 CFR part 58.* (i) Responsible entities under 24 CFR part 58 must take into consideration the noise criteria and standards in the environmental review process and consider ameliorative actions when noise sensitive land development is proposed in noise exposed areas. Responsible entities shall address deviations from the standards in their environmental reviews as required in 24 CFR part 58.

(ii) Where activities are planned in a noisy area, and HUD assistance is contemplated later for housing and/or other noise sensitive activities, the responsible entity risks denial of the HUD assistance unless the HUD standards are met.

(3) *HUD support for new construction.* HUD assistance for the construction of new noise sensitive uses is prohibited generally for projects with unacceptable noise exposures and is discouraged for projects with normally unacceptable noise exposure. (Standards of acceptability are contained in § 51.103(c).) This policy applies to all HUD programs providing assistance, subsidy or insurance for housing, manufactured home parks, nursing homes, hospitals, and all programs providing assistance or insurance for land development, redevelopment or any other provision of facilities and services which are directed to making land available for housing or noise sensitive development. The policy does not apply to research demonstration projects which do not result in new construction or reconstruction, flood insurance, interstate land sales egestion, or any action or emergency assistance under disaster assistance provisions or appropriations which are provided to save lives, protect property, protect public health and safety, remove debris and wreckage, or assistance that has the effect of restoring facilities substantially as they existed prior to the disaster.

* * * * *

8. Section 51.102 is amended by:

- Removing paragraphs (a) and (d);
- Redesignating paragraphs (b), (c), and (e) as paragraphs (a), (b), and (c), respectively;

- Revising the introductory text of newly designated paragraph (b); and

- Revising newly designated paragraph (c) to read as follows:

§ 51.102 Responsibilities.

* * * * *

(b) *Notice to applicants.* At the earliest possible stage, HUD program staff shall:

* * * * *

(c) *Interdepartmental coordination.* HUD shall foster appropriate coordination between field offices and other departments and agencies, particularly the Environmental Protection Agency, the Department of Transportation, Department of Defense representatives, and the Department of Veterans Affairs. HUD staff shall utilize the acceptability standards in commenting on the prospective impacts of transportation facilities and other noise generators in the Environmental Impact Statement review process.

9. Section 51.104 is amended by:

- Removing paragraph (a)(1);
- Redesignating the introductory text to paragraph (a) as paragraph (a)(1);
- Revising paragraph (a)(2); and
- Revising the introductory text of paragraph (b) and paragraphs (b)(1)(ii) and (b)(2) to read as follows:

§ 51.104 Special requirements.

(a) * * *

(2) *Normally unacceptable noise zones and unacceptable noise zones.* Approvals in Normally Unacceptable Noise Zones require a minimum of 5 decibels additional sound attenuation for buildings having noise-sensitive uses if the day-night average sound level is greater than 65 decibels but does not exceed 70 decibels, or a minimum of 10 decibels of additional sound attenuation if the day-night average sound level is greater than 70 decibels but does not exceed 75 decibels. Noise attenuation measures in Unacceptable Noise Zones require the approval of the Assistant Secretary for Community Planning and Development, or the Certifying Officer for activities subject to 24 CFR part 58. (See § 51.104(b)(2).)

(b) *Environmental review requirements.* Environmental reviews shall be conducted pursuant to the requirements of 24 CFR parts 50 and 58, as applicable, or other environmental regulations issued by the Department. These requirements are hereby modified for all projects proposed in the Normally Unacceptable and Unacceptable noise exposure zones as follows:

(1) * * *

(ii) When an EIS is required, the concurrence of the Program Assistant Secretary is also required before a project can be approved. For the purposes of this paragraph, an area will be considered as largely undeveloped unless the area within a 2-mile radius of

the project boundary is more than 50 percent developed for urban uses and infrastructure (particularly water and sewers) is available and has capacity to serve the project.

* * * * *

(2) *Unacceptable noise zone.* An EIS is required prior to the approval of projects with unacceptable noise exposure. Projects in or partially in an Unacceptable Noise Zone shall be submitted to the Assistant Secretary for Community Planning and Development, or the Certifying Officer for activities subject to 24 CFR part 58, for approval. The Assistant Secretary or the Certifying Officer may waive the EIS requirement in cases where noise is the only environmental issue and no outdoor noise sensitive activity will take place on the site. In such cases, an environmental review shall be made pursuant to the requirements of 24 CFR parts 50 or 58, as appropriate.

10. Section 51.105 is amended by revising paragraph (a)(1) to read as follows:

§ 51.105 Exceptions.

(a) * * *

(1) The project does not require an Environmental Impact Statement under provisions of § 51.104(b)(1) and noise is the only environmental issue.

* * * * *

11. Section 51.106 is amended by revising paragraph (a)(4) introductory text to read as follows:

§ 51.106 Implementation.

(a) * * *

(4) *Use of areawide acoustical data.* HUD encourages the preparation and use of areawide acoustical information, such as noise contours for airports. Where such new or revised contours become available for airports (civil or military) and military installations they shall first be referred to the HUD State Office (Environmental Officer) for review, evaluation and decision on appropriateness for use by HUD. The HUD State Office shall submit revised contours to the Assistant Secretary for Community Planning and Development for review, evaluation and decision whenever the area affected is changed by 20 percent or more, or whenever it is determined that the new contours will have a significant effect on HUD programs, or whenever the contours are not provided in a methodology acceptable under § 51.106(a)(1) or in other cases where the HUD State Office determines that Headquarters review is warranted. For other areawide acoustical data, review is required only where existing areawide data are being utilized and where such data have been

changed to reflect changes in the measurement methodology or underlying noise source assumptions. Requests for determination on usage of new or revised areawide data shall include the following:

* * * * *

Subpart C—Siting of HUD-Assisted Projects Near Hazardous Operations Handling Conventional Fuels or Chemicals of an Explosive or Flammable Nature

12. Section 51.200 is amended by revising the introductory text to read as follows:

§ 51.200 Purpose.

The purpose of this subpart C is to:

* * * * *

13. Section 51.201 is amended by revising the definition of “*Acceptable separation distance (ASD)*” to read as follows:

§ 51.201 Definitions.

Acceptable separation distance (ASD)—means the distance beyond which the explosion or combustion of a hazard is not likely to cause structures or individuals to be subjected to blast overpressure or thermal radiation flux levels in excess of the safety standards in § 51.203. The ASD is determined by applying the safety standards established by this subpart C to the guidance set forth in HUD Guidebook, “Siting of HUD-Assisted Projects Near Hazardous Facilities.”

* * * * *

§ 51.202 [Amended]

14. Section 51.202 is amended by removing the first sentence of paragraph (a).

15. Section 51.203 is amended by adding a paragraph (d) to read as follows:

§ 51.203 Safety standards.

* * * * *

(d) Background information on the standards and the logarithmic thermal radiation and blast overpressure charts that provide assistance in determining acceptable separation distances are contained in Appendix II to this subpart C.

16. Section 51.206 is revised to read as follows:

§ 51.206 Implementation.

This subpart C shall be implemented for each proposed HUD-assisted project by the HUD approving official or responsible entity responsible for review of the project. The implementation procedure will be part of the environmental review process in

accordance with the procedures set forth in 24 CFR parts 50 and 58.

17. Section 51.207 is revised to read as follows:

§ 51.207 Special circumstances.

The Secretary or the Secretary's designee may, on a case-by-case basis, when circumstances warrant, require the application of this subpart C with respect to a substance not listed in Appendix I to this subpart C that would create thermal or overpressure effect in excess of that listed in § 51.203.

Subpart D—Siting of HUD Assisted Projects in Runway Clear Zones at Civil Airports and Clear Zones and Accident Potential Zones at Military Airfields

§ 51.300 [Amended]

18. Section 51.300 is amended by removing paragraph (a) and removing the paragraph designation of paragraph (b).

19. Section 51.302 is amended by revising the first sentence in paragraph (a) to read as follows:

§ 51.302 Coverage.

(a) These policies apply to HUD programs which provide assistance, subsidy or insurance for construction, land development, community development or redevelopment or any other provision of facilities and services which are designed to make land available for construction. * * *

* * * * *

20. Section 51.303 is amended by revising paragraph (a)(3) to read as follows:

§ 51.303 General policy.

* * * * *

(a) * * *

(3) Special notification requirements for Runway Clear Zones and Clear Zones. In all cases involving HUD assistance, subsidy, or insurance for the purchase or sale of an existing property in a Runway Clear Zone or Clear Zone, HUD (or the responsible entity or recipient under 24 CFR part 58) shall advise the buyer that the property is in a Runway Clear Zone or Clear Zone, what the implications of such a location are, and that there is a possibility that the property may, at a later date, be acquired by the airport operator. The buyer must sign a statement acknowledging receipt of this information.

* * * * *

21. Section 51.304 is revised to read as follows:

§ 51.304 Responsibilities.

(a) The following persons have the authority to approve actions in Accident Potential Zones:

(1) For programs subject to environmental review under 24 CFR part 58: the Certifying Officer of the responsible entity as defined in 24 CFR part 58.

(2) For all other HUD programs: the HUD approving official having approval authority for the project.

(b) The following persons have the authority to approve actions in Runway Clear Zones and Clear Zones:

(1) For programs subject to environmental review under 24 CFR part 58: The Certifying Officer of the responsible entity as defined in 24 CFR part 58.

(2) For all other HUD programs: the Program Assistant Secretary.

Dated: March 7, 1996.

Henry G. Cisneros,
Secretary.

[Note: This appendix will not be codified in title 24 of the CFR.]

Appendix I

Responsibility for Administering HUD's Environmental Criteria and Standards

Section

1. Purpose.

2. General Responsibilities in the Administration of HUD's Environmental Criteria and Standards.

3. Responsibilities in the Administration of HUD's Noise Abatement and Control Standards.

1. Purpose

HUD's environmental criteria and standards are set forth in 24 CFR part 51. The Assistant Secretary for Community Planning and Development is responsible for administering these regulations. However, § 51.3 states that the "Assistant Secretary * * * may be assisted by HUD officials in implementing the responsibilities established by" 24 CFR part 51. The purpose of this appendix is to identify these HUD officials and their specific duties.

It is unnecessary to codify this information in title 24 of the Code of Federal Regulations. Providing this information through Federal Register notice will allow HUD to better assist its clients and maintain up-to-date environmental standards. HUD will update this appendix as necessary.

Section 2 of this appendix describes the general responsibilities in administering HUD's environmental criteria and standards. These duties are applicable across-the-board to all the requirements established by 24 CFR part 51. Section 3 of this appendix is more limited in scope and complements the duties described in Section 2. Section 3 sets forth the responsibilities in administering HUD's noise abatement and control standards, which are described in subpart B to 24 CFR part 51.

2. General Responsibilities in the Administration of HUD's Environmental Criteria and Standards

HUD approving officials shall assure that adopted environmental regulations are implemented in relation to program decisions and recommendations. They shall also monitor projects to assure that mitigation measures are implemented.

3. Responsibilities in the Administration of HUD's Noise Abatement and Control Standards

(a) *Authority to approve projects.* (1) HUD approving officials shall make decisions on

proposed projects with acceptable noise exposures, including projects where increased noise levels are considered acceptable because of non-acoustic benefits under 24 CFR 51.105(a). HUD approving officials may also approve projects in normally unacceptable noise exposed areas where adequate sound attenuation is provided and where the project does not require an Environmental Impact Statement under 24 CFR 51.104(b).

(2) Other approvals in normally unacceptable noise exposed areas require the concurrence of the Program Assistant Secretary.

(3) Requests for approvals of projects or portions of projects with unacceptable noise exposure shall be referred through the HUD approving official to the Assistant Secretary for Community Planning and Development for approval pursuant to 24 CFR 51.104(b).

(4) In cases where the HUD approving official determines that an important precedent or issue is involved, such cases shall be referred with recommendations to the Assistant Secretary for Community Planning and Development.

(b) *Technical assistance.* Technical assistance in the measurement, estimation, interpretation, or prediction of noise exposure is available from the Office of Community Planning and Development and the Office of Policy Development and Research. Field office questions shall be forwarded through the HUD approving official to the Assistant Secretary for Community Planning and Development or his/her designee.

[FR Doc. 96-7062 Filed 3-25-96; 8:45 am]

BILLING CODE 4210-32-P