

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT****Office of the Secretary****24 CFR Part 50**

[Docket No. FR-2206-F-03]

RIN 2501-AA30

**Protection and Enhancement of
Environmental Quality**

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule finalizes the policies and procedures set forth in HUD's April 5, 1996 proposed rule. Additionally, this rule makes several clarifying and technical amendments to the proposed rule. The final rule simplifies, improves, and updates HUD's implementation of responsibilities for environmental review and decision making under the National Environmental Policy Act and the other related Federal environmental laws and authorities. This final rule replaces HUD's current regulations at 24 CFR part 50.

EFFECTIVE DATE: October 28, 1996.

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SUPPLEMENTARY INFORMATION:**I. The April 5, 1996 Proposed Rule**

On April 5, 1996 (61 FR 15340), HUD published a rule for public comment proposing to amend 24 CFR part 50 in its entirety. Part 50 describes the procedures used by HUD to carry out its responsibilities under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321-4347), the NEPA implementing regulations of the Council on Environmental Quality, and the other NEPA-related Federal environmental laws and authorities (See § 50.4 of this final rule). The April 5, 1996 rule proposed to simplify, improve, and update these regulations.

HUD decided to completely revise 24 CFR part 50 due to the implementation of a series of innovative initiatives which have improved the way HUD delivers services to the public. As

detailed in the preamble to the April 5, 1996 proposed rule, these initiatives include: (1) HUD's regulatory reinvention efforts; (2) the reorganization of HUD field offices; (3) Presidential Executive Order 12898 on Environmental Justice; and (4) the need to update 24 part 50 as a result of program experience and the evolving nature of HUD's programs.

This rule finalizes the policies and procedures set forth in the April 5, 1996 proposed rule and makes several technical and clarifying amendments to the proposed regulation. The April 5, 1996 proposed rule discussed in detail the amendments to 24 CFR part 50.

II. This Final Rule

The public comment period on the April 5, 1996 proposed rule expired on June 4, 1996. No comments were received. Although no changes are being made in response to public comment, HUD is making certain technical and clarifying amendments to the proposed rule at the final rule stage. This section of the preamble describes the amendments made by this final rule to the April 5, 1996 proposed rule.

A. Clarification to 24 CFR 50.3(i)(1): Use of properties affected by hazardous materials. Paragraph (i)(1) of § 50.3 concerned the use of properties affected by hazardous materials. The proposed use of such a property will be important with respect to its suitability for approval of HUD assistance. For example, properties which will be used for housing, hospitals, or nursing homes must be free of hazardous materials. In contrast, properties designated for industrial or commercial purposes, as may be the case with "brownfield" locations proposed for new uses, are permitted to be hazard-managed sites.

Proposed 24 CFR 50.3(i)(1) required that a site be hazard-free if a "hazard could affect the health and safety of occupants or the utilization of the property." This broad language could be misinterpreted to mean that only hazard-free sites will be approved for HUD assistance. The final rule amends 24 CFR 50.3(i)(1) to clarify that a site must be free of hazardous materials if a "hazard could affect the health and safety of occupants or conflict with the intended utilization of the property."

B. Section 50.17: Decision points for the hospital mortgage insurance and loan guarantee recovery fund programs. HUD's regulation at 24 CFR 50.17 lists the environmental "decision points" for the various HUD programs. A Finding of No Significant Impact (FONSI) with respect to the environment or an Environmental Impact Statement (EIS) must be completed before the applicable

decision point. This final rule amends the April 5, 1996 proposed rule by making two changes to § 50.17.

The April 5, 1996 proposed rule would have removed from § 50.17 the reference to the decision point for HUD's hospital mortgage insurance program. The Department of Health and Human Services (HHS) is the lead Federal agency responsible for hospital related environmental review and decisionmaking. Accordingly, the preamble to the April 5, 1996 rule explained that HUD, for purposes of its hospital mortgage insurance program, would rely on an HHS certification that HHS had complied with the applicable environmental requirements. Subsequent to publication of the April 5, 1996 proposed rule, HUD decided to continue being responsible for the environmental reviews related to its hospital mortgage insurance program. HUD, therefore, will continue to list the decision point for this program in § 50.17. This final rule continues to require that the FONSI or EIS be completed before issuance of the Site Appraisal and Market Analysis (SAMA) Letter, or initial equivalent indication of HUD approval of a specific site. In the case of hospital mortgage insurance, this decision point is HUD's issuance of a conditional commitment.

This final rule also updates § 50.17 by adding the decision point for HUD's loan guarantee recovery fund program. This program, which is codified at new 24 CFR part 573, was established subsequent to publication of the April 5, 1996 proposed rule. Part 573 implements section 4 of the Church Arson Prevention Act of 1996 (Pub. L. 104-155, approved July 3, 1996). This final rule adds a new § 50.17(a)(3) which states that the decision point for loans guaranteed under part 573 is HUD's issuance of a commitment letter or initial equivalent indication of HUD approval.

C. New Paragraphs (b) (21), (22), and (23) to § 50.19: Additional categorical exclusions. Section 50.19 lists those activities which are excluded from the compliance requirements of the various environmental authorities. HUD omitted to list several exclusions in the April 5, 1996 proposed rule. This final rule corrects the oversight.

1. Refinancing of HUD-insured mortgages. This final rule adds a new paragraph (b)(21) to § 50.19, which excludes any refinancing of HUD-insured mortgages that will not allow new construction or rehabilitation, nor result in any physical impacts or changes except for routine maintenance. Such actions are excluded from NEPA as well as the related laws and

authorities listed in § 50.4, except that compliance with 24 CFR 50.4(b)(1), which relates to flood insurance requirements, is required for buildings located in special flood hazard areas.

2. *Sale of HUD-held mortgages.* This final rule adds a new paragraph (b)(22) to § 50.19, which excludes the sale of a HUD-held mortgage on an existing property. In these cases, there is no physical impact and the property is not owned by HUD; the mortgage will be held by a new mortgagee, but the ownership of the real property does not change.

3. *Foreclosure sales of properties with HUD-held mortgages.* This final rule also excludes the foreclosure sale of a property with a HUD-held mortgage. Appropriate restrictions, however, will be imposed to protect historic properties. As is true with the exclusion listed in new 24 CFR 50.19(b)(22), HUD does not own the property in these cases. HUD, therefore, does not dispose of the property, but causes the property to be sold to satisfy HUD's lien. HUD has long viewed foreclosure sales as in the nature of civil enforcement actions (which are not considered Federal actions under the NEPA regulations published by the Council on Environmental Quality). This final rule adds a new 24 CFR 50.19(b)(23) to clarify that these foreclosure sales are categorically excluded from compliance with NEPA and the other environmental authorities.

D. *Intergovernmental review.* An error concerning intergovernmental review appeared in the preamble to the April 5, 1996 proposed rule. HUD's regulations at 24 CFR part 52 govern the intergovernmental review of HUD programs and activities. The preamble to the proposed rule mistakenly stated that 24 CFR part 52 is no longer in active use (61 FR 15340, 15341). Accordingly, the April 5, 1996 rule proposed to remove all references to part 52 from 24 CFR part 50. Part 52 remains current and in effect. This rule, however, finalizes the removal of the references to 24 CFR part 52. The provisions of 24 CFR part 52 apply to HUD programs notwithstanding any specific reference in part 50. It is unnecessary for 24 CFR part 50 to cite these regulatory requirements.

E. *Section 50.23: Public participation notices.* The final rule clarifies that notices pertaining to an EIS, an amendment to an EIS, and any FONSI subject to § 50.34 (Time delays for exceptional circumstances), will be provided to the public, in accordance with HUD's longstanding policy to provide notices to the affected public and to those who have requested them.

This final rule provides that the local HUD field office may be contacted by persons who wish to review a FONSI which is not subject to § 50.34.

HUD also assures public participation in other ways. For example, many HUD programs have public participation elements. To enhance citizen participation and access to information on HUD-supported projects, HUD has placed on the Internet the executive summaries of Consolidated Plans for over 900 major cities and counties. HUD regulations, handbooks, legislation and related documents are also available to the public on the Internet.

III. HUD Programs Subject to 24 CFR Part 50

This final rule, which replaces the current provisions of 24 CFR part 50, applies to all HUD activities and programs, except those for which specific statutory authority exists to assign the environmental review responsibilities to recipients and other responsible entities that are States, units of general local government, Indian Tribes or other entities subject to 24 CFR part 58.

The following is a list of those HUD programs that lack specific authority for assigning the Federal environmental review responsibilities to recipients and other responsible entities. Generally, the list covers all HUD programs other than those identified at 24 CFR 58.1(b). In addition to the programs listed below, part 50 applies to certain projects and activities carried out by recipients subject to the environmental policy and procedures of 24 CFR part 58 (see 24 CFR 50.1(d)).

The following may not be an exhaustive list, but contains the principal HUD assistance programs subject to 24 CFR part 50. The number in brackets represents the part or section of title 24 in which the program regulations can be found. The number, if any following the brackets, represents the Catalog Number of Federal Domestic Assistance.

Office of Community Planning and Development

- HOPE for Homeownership of Single Family Homes: HOPE 3 [572] 14.240.
- Housing Opportunities for Persons with AIDS [574] 14.241.
- Emergency Shelter Grants Program: Stewart B. McKinney Homeless Assistance Act [576] [Part 50 applies only to applicants that are private nonprofit organizations and to governmental entities with special or limited purpose powers] 14.231.
- Supportive Housing Program [583] [Part 50 applies only to applicants that

are private nonprofit organizations and to governmental entities with special or limited purpose powers] 14.235.

- Shelter Plus Care [582] [Part 50 applies to applications from Public Housing Agency applicants, except that Part 58 applies to the Section 8 Moderate Rehabilitation for Single Room Occupancy (SRO) Dwellings component of the Shelter Plus Care program] 14.238.

- Opportunities for Youth: Youthbuild [585] 14.243.

- John Heinz Neighborhood Development Program [594] 14.242.

- Special Purpose Grants for Historically-Black Colleges and Universities [570.404] 14.237.

- Base Closure Community Redevelopment and Homeless Assistance [586] 14.227.

- Loan Guarantee Recovery Fund Program [573].

Office of Housing: Single Family Housing Programs

- HUD-Acquired Single Family Property Disposition [291].

Office of Housing: Multifamily Housing Programs

- Multifamily Rental Housing for Moderate-Income Families: Section 221(d)(3) and (4) [221] 14.135.

- Existing Multifamily Rental Housing: Section 223(f) [207.32a] 14.155.

- Supportive Housing for the Elderly: Section 202 [889] 14.157.

- Supportive Housing for Persons with Disabilities: Section 811 [890] 14.181.

- Mortgage Insurance for Single Room Occupancy Projects: Section 221(d) pursuant to Section 223(g) [221.565] 14.135.

- Mortgage Insurance for Nursing Homes, Intermediate Care Facilities, Board and Care Homes, and Assisted Living Facilities: Section 232 [232] 14.129.

- Supplementary Financing for Multifamily Projects: Section 241 [241] 14.151.

- HOPE for Homeownership of Multifamily Units: HOPE 2 [Appendix B to Subtitle A of 24 CFR] 14.185.

- Low-Income Housing Preservation and Resident Homeownership: Title VI [248 subpart B] 14.187.

- Emergency Low-Income Housing Preservation: Title II [248 subpart C] 14.187.

- Flexible Subsidy Program for Troubled Projects: Section 201 [219] 14.164.

- Manufactured Home Parks: Section 207 Land development [207.33] 14.127.

- Disposition of Multifamily Projects and Sale of HUD-held Multifamily Mortgages [290].

- Mortgage Insurance for Housing for the Elderly: Section 231 [231] 14.138 [Not used. Instead Sections 221 (d)(3) and (d)(4) are used.]

- Cooperative Housing: Section 213 [213] 14.126 [Authorized but not used. New construction and substantial rehabilitation cooperative projects are currently insured under Section 221(d)(3).]

- Multifamily Rental Housing: Section 207 [207] 14.134 [Not used. Instead Sections 221 (d)(3) and (d)(4) are used.]

- Mortgage Insurance and Insured Improvement Loans for Urban Renewal and Concentrated Development Areas: Section 220 [220] 14.139 [Not frequently used.]

- Group Practice Medical Facilities: Title XI [244] 14.116 [Not used in recent years.]

- Nehemiah Housing Opportunity Grants Program [280] [No current funding.]

Office of Public and Indian Housing

- HOPE for Public and Indian Housing Homeownership Program [Appendix A to Subtitle A of 24 CFR] 14.858.

- Public and Indian Housing Youth Sports Program [proposed 961.50] 14.863.

- Public and Indian Housing Drug Elimination Program [761] 14.854.

- Part 50 continues to be used for the following public housing programs until October 14, 1996, when the programs will become subject to environmental review procedures under 24 CFR part 58:

- Public Housing Development [941] 14.850 and 14.851.

- Public Housing Modernization [968] 14.852 and 14.859.

- Demolition or Disposition of Public Housing Projects [970] 14.850.

Office of Policy Development and Research

- CDBG Joint Community Development Program [570.411] [Part 50 applies only to applicants (e.g. to universities) that are not a State or unit of general local government.]

IV. Findings and Certifications

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, implementing section 102(2)(C) of the National Environmental Policy Act of

1969 (42 U.S.C. 4332) at the time of the development of the proposed rule. The Finding of No Significant Impact remains applicable to this final rule and is available for public inspection during business hours in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule have no federalism implications, and that the policies are not subject to review under the Order. This rule is limited to updating HUD's implementation of its responsibilities for environmental review and decision making under the National Environmental Policy Act and other related Federal environmental laws and authorities.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this final rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. This rule updates and streamlines 24 CFR part 50, which sets forth HUD's regulations governing the protection and enhancement of environmental quality. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this 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, which revises 24 CFR part 50 in its entirety, finalizes the policies and procedures set forth in the April 5, 1996 proposed rule. Specifically, the rule simplifies, improves, and updates HUD's implementation of responsibilities for environmental review and decision making under the National Environmental Policy Act and the other related Federal environmental laws and authorities. This final rule will have no adverse or disproportionate economic impact on small entities.

Unfunded Mandates Reform Act

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

Catalog of Federal Domestic Assistance

The program numbers are 14.128-14.900. Also see section III. of this preamble.

List of Subjects in 24 CFR Part 50

Environmental quality, Environmental protection, Environmental review policy and procedures, Environmental assessment, Environmental impact statement, Compliance record.

Accordingly, 24 CFR part 50 is revised to read as follows:

PART 50—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

Subpart A—General: Federal Laws and Authorities

Sec.

50.1 Purpose, authority, and applicability.

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50.20 Categorical exclusions subject to the Federal laws and authorities cited in § 50.4.

50.21 Aggregation.

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Subpart E—Environmental Assessments and Related Reviews

50.31 The EA.

50.32 Responsibility for environmental processing.

50.33 Action resulting from the EA.

50.34 Time delays for exceptional circumstances.

- 50.35 Use of prior environmental assessments.
50.36 Updating environmental reviews.

Subpart F—Environmental Impact Statements

- 50.41 EIS policy.
50.42 Cases when an EIS is required.
50.43 Emergencies.
Authority: 42 U.S.C. 3535(d) and 4332; and Executive Order 11991, 3 CFR, 1977 Comp., p. 123.

Subpart A—General: Federal Laws and Authorities

§ 50.1 Purpose, authority, and applicability.

(a) This part implements the policies of the National Environmental Policy Act (NEPA) and other environmental requirements (as specified in § 50.4).

(b) NEPA (42 U.S.C. 4321 *et seq.*), establishes national policy, goals and procedures for protecting, restoring and enhancing environmental quality. NEPA is implemented by Executive Order 11514 of March 5, 1970, (3 CFR, 1966—1970 Comp., p. 902) as amended by Executive Order 11991 of May 24, 1977, (3 CFR, 1977 Comp., p. 123) and by the Council on Environmental Quality (CEQ) Regulations, 40 CFR parts 1500–1508.

(c) The regulations issued by CEQ at 40 CFR parts 1500–1508 establish the basic procedural requirements for compliance with NEPA. These procedures are to be followed by all Federal agencies and are incorporated by reference into this part. This part, therefore, provides supplemental instructions to reflect the particular nature of HUD programs, and is to be used in tandem with 40 CFR parts 1500–1508 and regulations that implement authorities cited at § 50.4.

(d) These regulations apply to all HUD policy actions (as defined in § 50.16), and to all HUD project actions (see § 50.2(a)(2)). Also, they apply to projects and activities carried out by recipients subject to environmental policy and procedures of 24 CFR part 58, when the recipient that is regulated under 24 CFR part 58 claims the lack of legal capacity to assume the Secretary's environmental review responsibilities and the claim is approved by HUD or when HUD determines to conduct an environmental review itself in place of a nonrecipient responsible entity. For programs, activities or actions not specifically identified or when there are questions regarding the applicability of this part, the Assistant Secretary for Community Planning and Development shall be consulted.

§ 50.2 Terms and abbreviations.

(a) The definitions for most of the key terms or phrases contained in this part appear in 40 CFR part 1508 and in the authorities cited in § 50.4.

The following definitions also apply to this part:

Environmental review means a process for complying with NEPA (through an EA or EIS) and/or with the laws and authorities cited in § 50.4.

HUD approving official means the HUD official authorized to make the approval decision for any proposed policy or project subject to this part.

Project means an activity, or a group of integrally-related activities, undertaken directly by HUD or proposed for HUD assistance or insurance.

(b) The following abbreviations are used throughout this part:

AS/CPD—Assistant Secretary for Community Planning and Development.

CEQ—Council on Environmental Quality

EA—Environmental Assessment

EIS—Environmental Impact Statement

FONSI—Finding of No Significant Impact

HUD—Department of Housing and Urban Development

NEPA—National Environmental Policy Act

NOI/EIS—Notice of Intent to Prepare an Environmental Impact Statement

§ 50.3 Environmental policy.

(a) It is the policy of the Department to reject proposals which have significant adverse environmental impacts and to encourage the modification of projects in order to enhance environmental quality and minimize environmental harm.

(b) The HUD approving official shall consider environmental and other Departmental objectives in the decisionmaking process.

(c) When EA's or EIS's or reviews under § 50.4 reveal conditions or safeguards that should be implemented once a proposal is approved in order to protect and enhance environmental quality or minimize adverse environmental impacts, such conditions or safeguards must be included in agreements or other relevant documents.

(d) A systematic, interdisciplinary approach shall be used to assure the integrated use of the natural and social sciences and the environmental design arts in making decisions.

(e) Environmental impacts shall be evaluated on as comprehensive a scale as is practicable.

(f) HUD offices shall begin the environmental review process at the

earliest possible time so that potential conflicts between program procedures and environmental requirements are identified at an early stage.

(g) Applicants for HUD assistance shall be advised of environmental requirements and consultation with governmental agencies and individuals shall take place at the earliest time feasible.

(h) For HUD grant programs in which the funding approval for an applicant's program must occur before the applicant's selection of properties, the application shall contain an *assurance* that the applicant agrees to assist HUD to comply with this part and that the applicant shall:

(1) Supply HUD with all available, relevant information necessary for HUD to perform for each property any environmental review required by this part;

(2) Carry out mitigating measures required by HUD or select alternate eligible property; and

(3) Not acquire, rehabilitate, convert, lease, repair or construct property, nor commit or expend HUD or local funds for these program activities with respect to any eligible property, until HUD approval of the property is received.

(i)(1) It is HUD policy that all property proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gasses, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property.

(2) HUD environmental review of multifamily and non-residential properties shall include evaluation of previous uses of the site and other evidence of contamination on or near the site, to assure that occupants of proposed sites are not adversely affected by the hazards listed in paragraph (i)(1) of this section.

(3) Particular attention should be given to any proposed site on or in the general proximity of such areas as dumps, landfills, industrial sites or other locations that contain hazardous wastes.

(4) HUD shall require the use of current techniques by qualified professionals to undertake investigations determined necessary.

§ 50.4 Related Federal laws and authorities.

HUD and/or applicants must comply, where applicable, with all environmental requirements, guidelines and statutory obligations under the following authorities and HUD standards:

(a) *Historic properties*: (1) The National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*), as amended.

(2) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (3 CFR, 1971—1975 Comp., p. 559).

(3) The Archaeological and Historic Preservation Act of 1974, which amends the Reservoir Salvage Act of 1960 (16 U.S.C. 469 *et seq.*).

(4) Procedures for the Protection of Historic and Cultural Properties (Advisory Council on Historic Preservation—36 CFR part 800).

(b) *Flood insurance, floodplain management and wetland protection*: (1) Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128) and the National Flood Insurance Reform Act of 1994 (Pub.L. 103–325, 108 Stat. 2160).

(2) HUD Procedure for the Implementation of Executive Order 11988 (3 CFR, 1977 Comp., p. 117)—24 CFR part 55, Floodplain Management.

(3) Executive Order 11990 (Protection of Wetlands), (3 CFR, 1977 Comp., p. 121).

(c) *Coastal areas protection and management*. (1) The Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3501 *et seq.*).

(2) The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*), as amended.

(d) *Sole source aquifers*. The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300 *et seq.*, and 21 U.S.C. 349), as amended. (See 40 CFR part 149.)

(e) *Endangered species*. The Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as amended. (See 50 CFR part 402.)

(f) *Wild and scenic rivers*. The Wild and Scenic Rivers Act (16 U.S.C. 1271 *et seq.*), as amended.

(g) *Water quality*. The Federal Water Pollution Control Act, as amended by the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.*), and later enactments.

(h) *Air quality*. The Clean Air Act (42 U.S.C. 7401 *et seq.*), as amended. (See 40 CFR parts 6, 51, and 93.)

(i) *Solid waste management*. (1) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 *et seq.*), and later enactments.

(2) The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*), as amended.

(j) *Farmlands protection*. The Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 *et seq.*), as amended. (See 7 CFR part 658.)

(k) *HUD environmental standards*. Applicable criteria and standards specified in HUD environmental regulations (24 CFR part 51).

(l) *Environmental justice*. Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (3 CFR, 1994 Comp., p. 859).

Subpart B—General Policy: Responsibilities and Program Coverage

§ 50.10 Basic environmental responsibility.

(a) It is the responsibility of all Assistant Secretaries, the General Counsel, and the HUD approving official to assure that the requirements of this part are implemented.

(b) The Assistant Secretary for Community Planning and Development (A/S CPD), represented by the Office of Community Viability, whose Director shall serve as the Departmental Environmental Clearance Officer (DECO), is assigned the overall Departmental responsibility for environmental policies and procedures for compliance with NEPA and the related laws and authorities. To the extent permitted by applicable laws and the CEQ regulations, the A/S CPD shall approve waivers and exceptions or establish criteria for exceptions from the requirements of this part.

§ 50.11 Responsibility of the HUD approving official.

(a) The HUD approving official shall make an independent evaluation of the environmental issues, take responsibility for the scope and content of the compliance finding, EA or EIS, and make the environmental finding, where applicable. (Also, see § 50.32.)

(b) Copies of environmental reviews and findings shall be maintained in the project file for projects, in the rules docket files for Federal Register publications, and in program files for non-Federal Register policy documents.

Subpart C—General Policy: Decision Points

§ 50.16 Decision points for policy actions.

Either an EA and FONSI or an EIS on all policy actions not meeting the criteria of § 50.19 shall be completed prior to the approval action. Policy actions include all proposed Federal Register policy documents and other policy-related Federal actions (40 CFR 1508.18). The decision as to whether a proposed policy action is categorically excluded from an EA shall be made by the Program Environmental Clearance

Officer (PECO) in Headquarters as early as possible. Where the PECO has any doubt as to whether a proposed action qualifies for exclusion, the PECO shall request a determination by the AS/CPD. The EA and FONSI may be combined into a single document.

§ 50.17 Decision points for projects.

Either an EA and FONSI or an EIS for individual projects shall be completed before the applicable program decision points below for projects not meeting the criteria of § 50.20. Compliance with applicable authorities cited in § 50.4 shall be completed before the applicable program decision points below unless the project meets the criteria for exclusion under § 50.19.

(a) *New Construction*. (1) Project mortgage insurance or other financial assistance for multifamily housing projects (including sections 202 and 811), nursing homes, hospitals, group practice facilities and manufactured home parks: Issuance of Site Appraisal and Market Analysis (SAMA) Letter or initial equivalent indication of HUD approval of a specific site;

(2) *Public Housing*: HUD approval of the proposal.

(3) *Loan Guarantee Recovery Fund Program* (24 CFR part 573). HUD issuance of a letter of commitment or initial equivalent indication of HUD approval.

(b) *Rehabilitation projects*. Use the decision points under “new construction” for HUD programs cited in paragraph (a) of this section; otherwise the decision point is the HUD project approval.

(c) *Public housing modernization programs*. HUD approval of the modernization grants.

(d) *Property Disposition*. Multifamily structures, college housing, nursing homes, manufactured homes and parks, group practice facilities, vacant land and one to four family structures: HUD approval of the Disposition Program.

(e) *HUD programs subject to 24 CFR part 58*. For cases in which HUD exercises environmental responsibility under this part where a recipient lacks legal capacity to do so or HUD determines to do so in place of a nonrecipient responsible entity under 24 CFR part 58 (see § 50.1(d)), the decision point is: HUD’s execution of an agreement or contract, whichever comes first, or in the case of Section 8 Project-Based Certificate Assistance and Moderate Rehabilitation, HUD notification to the Public Housing Agency to proceed with execution of an Agreement to Enter into Housing Assistance Payments (HAP) Contract.

(f) *Section 50.3(h)*. Notwithstanding the other paragraphs of this section, the decision point for grant programs in which HUD approval of funding for an applicant's program must occur before the applicant's selection of properties for use in its program is: HUD approval of specific properties.

(g) *Stewart B. McKinney Homeless Assistance Act Programs*. Where the recipients are nonprofit organizations or governmental entities with special or limited purpose powers, the decision point is: HUD project approval.

(h) *Programs not specifically covered in this section*. Consult with the AS/CPD for decision points.

Subpart D—General Policy: Environmental Review Procedures

§ 50.18 General.

HUD may, from time to time, complete programmatic reviews that further avoid the necessity of complying with the laws and authorities in § 50.4 on a property-by-property basis.

§ 50.19 Categorical exclusions not subject to the Federal laws and authorities cited in § 50.4.

(a) The activities listed below are not subject to the individual compliance requirements of the Federal laws and authorities cited in § 50.4, unless otherwise indicated below. These activities are also categorically excluded from the EA required by NEPA except in extraordinary circumstances (§ 50.20(b)). HUD approval or implementation of these categories of activities and related policy actions does not require environmental review, because they do not alter physical conditions in a manner or to an extent that would require review under NEPA or the other laws and authorities cited at § 50.4.

(b)(1) Environmental and other studies, resource identification and the development of plans and strategies.

(2) Information and financial advisory services.

(3) Administrative and management expenses.

(4) Public services that will not have a physical impact or result in any physical changes, including but not limited to services concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs.

(5) Inspections and testing of properties for hazards or defects.

(6) Purchase of insurance.

(7) Purchase of tools.

(8) Engineering or design costs.

(9) Technical assistance and training.

(10) Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration.

(11) Tenant-based rental assistance.

(12) Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services.

(13) Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs; however, in the case of equipment, compliance with § 50.4(b)(1) is required.

(14) Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations; however, in the case of equipment purchase, compliance with § 50.4(b)(1) is required.

(15) Activities to assist homeownership of existing dwelling units, including closing costs and down payment assistance to home buyers, interest buydowns and similar activities that result in the transfer of title to a property; however, compliance with §§ 50.4 (b)(1) and (c)(1) and 51.303(a)(3) is required.

(16) Housing pre-development costs including legal, consulting, developer and other costs related to site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.

(17) HUD's endorsement of one-to-four family mortgage insurance under the Direct Endorsement program and HUD's acceptance for insurance of loans under Title I of the National Housing Act; however, compliance with §§ 50.4 (b)(1) and (c)(1) and 51.303(a)(3) is required.

(18) HUD's endorsement of one-to-four family mortgage insurance for proposed construction under Improved Area processing; however, the Appraiser/Review Appraiser Checklist (Form HUD-54891) must be completed.

(19) Activities of the Government National Mortgage Association under Title III of the National Housing Act (12 U.S.C. 1716 *et seq.*).

(20) Activities under the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 *et seq.*).

(21) Refinancing of HUD-insured mortgages that will not allow new construction or rehabilitation, nor result in any physical impacts or changes except for routine maintenance; however, compliance with § 50.4(b)(1) is required.

(22) Approval of the sale of a HUD-held mortgage.

(23) Approval of the foreclosure sale of a property with a HUD-held mortgage; however, appropriate restrictions will be imposed to protect historic properties.

(c)(1) Approval of policy documents that do not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate property acquisition, disposition, lease, rehabilitation, alteration, demolition, or new construction, or set out or provide for standards for construction or construction materials, manufactured housing, or occupancy;

(2) Approval of policy documents that amend a previous document where the underlying document as a whole would not fall within the exclusion but the amendment by itself would do so;

(3) Approval of policy documents that set out fair housing or nondiscrimination standards or provide for assistance in promoting or enforcing fair housing or nondiscrimination;

(4) Approval of handbooks, notices and other documents that provide operating instructions and procedures in connection with activities under a Federal Register document that has previously been subject to a required environmental review.

(5) Approval of a Notice of Funding Availability (NOFA) that provides funding under, and does not alter environmental requirements of, a regulation or program guideline that was previously published in the Federal Register, provided that the NOFA specifically refers to the environmental review provisions of the regulation or guideline.

(6) Statutorily required and/or discretionary establishment and review of interest rates, loan limits, building cost limits, prototype costs, fair market rent schedules, HUD-determined prevailing wage rates, and similar rate and cost determinations and related external administrative or fiscal requirements or procedures which do not constitute a development decision that affects the physical condition of specific project areas or building sites.

§ 50.20 Categorical exclusions subject to the Federal laws and authorities cited in § 50.4.

(a) The following actions, activities and programs are categorically excluded from the NEPA requirements of this part. They are not excluded from individual compliance requirements of other environmental statutes, Executive orders and HUD standards cited in § 50.4, where appropriate. Form HUD-4128 shall be used to document compliance. Where the responsible official determines that any item identified below may have an environmental effect because of extraordinary circumstances (40 CFR 1508.4), the requirements of NEPA shall apply (see paragraph (b) of this section).

(1) Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and persons with disabilities.

(2) Rehabilitation of structures when the following conditions are met:

(i) In the case of residential buildings, the unit density is not changed more than 20 percent;

(ii) The project does not involve changes in land use (from non-residential to residential or from residential to non-residential); and

(iii) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.

(3) An individual action on a one- to four-family dwelling or an individual action on a project of five or more units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four units on any one site.

(4) Acquisition or disposition of, or equity loans on, an existing structure.

(5) Purchased or refinanced housing and medical facilities under section 223(f) of the National Housing Act (12 U.S.C. 1715n).

(6) Mortgage prepayments or plans of action (including incentives) under 24 CFR part 248.

(b) For categorical exclusions having the potential for significant impact because of extraordinary circumstances, HUD must prepare an EA in accordance with subpart E. If it is evident without preparing an EA that an EIS is required pursuant to § 50.42, HUD should proceed directly to the preparation of an EIS in accordance with subpart F.

§ 50.21 Aggregation.

Activities which are geographically related and are logical parts of a composite of contemplated HUD projects shall be evaluated together.

§ 50.22 Environmental management and monitoring.

An Environmental Management and Monitoring Program shall be established prior to project approval when it is deemed necessary by the HUD approving official. The program shall be part of the approval document and must:

(a) Be concurred in by the Field Environmental Clearance Officer (FECO) (in the absence of a FECO, by the Program Environmental Clearance Officer in Headquarters) and any cooperating agencies;

(b) Contain specific standards, safeguards and commitments to be completed during project implementation;

(c) Identify the staff who will be responsible for the post-approval inspection; and

(d) Specify the time periods for conducting the evaluation and monitoring the applicant's compliance with the project agreements.

§ 50.23 Public participation.

HUD shall inform the affected public about NEPA-related hearings, public meetings, and the availability of environmental documents (see 40 CFR 1506.6(b)) in accordance with this section. Where project actions result in a FONSI, the FONSI will be available in the project file. The local HUD field office may be contacted by persons who wish to review the FONSI. In all cases, HUD shall mail notices to those who have requested them. Additional efforts for involving the public in specific notice or compliance requirements shall be made in accord with the implementing procedures of the laws and authorities cited in § 50.4. Notices pertaining to an EIS or an amendment to an EIS or a FONSI subject to § 50.34 shall be given to the public in accordance with paragraphs (a) through (d) of this section.

(a) A NOI/EIS shall be forwarded to the AS/CPD to the attention of the Departmental Environmental Clearance Officer for publication in the Federal Register.

(b) Notices will be bilingual if the affected public includes a significant portion of non-English speaking persons and will identify a date when the official public involvement element of the proposed action is to be completed and HUD internal processing is to continue.

(c) All required notices shall be published in an appropriate local printed news medium, and sent to individuals and groups known to be interested in the proposed action.

(d) All notices shall inform the public where additional information may be obtained.

§ 50.24 HUD review of another agency's EIS.

Where another agency's EIS is referred to the HUD Field Office in whose jurisdiction the project is located, the Field Environmental Clearance Officer shall determine whether HUD has an interest in the EIS and, if so, will review and comment. Any EIS received from another Federal agency requesting comment on legislative proposals, regulations, or other policy documents shall be sent to the AS/CPD for comment, and the AS/CPD shall provide the General Counsel the opportunity for comment.

Subpart E—Environmental Assessments and Related Reviews

§ 50.31 The EA.

(a) Form HUD-4128—Environmental Assessment and Compliance Findings for the Related Laws—is the EA form to be used for analysis and documentation by HUD for projects and activities under subpart E. The Departmental Environmental Clearance Officer shall approve the issuance of equivalent formats, if Form HUD-4128 does not meet specific program needs.

(b) The program representative shall obtain interdisciplinary assistance from professional experts and other HUD staff as needed. Additional information may also be requested of the sponsor/applicant. HUD is responsible for assessing and documenting the extent of the environmental impact.

§ 50.32 Responsibility for environmental processing.

The program staff in the HUD office responsible for processing the project application or recommending a policy action is responsible for conducting the compliance finding, EA, or EIS. The collection of data and studies as part of the information contained in the environmental review may be done by an applicant or the applicant's contractor. The HUD program staff may use any information supplied by the applicant or contractor, provided HUD independently evaluates the information, will be responsible for its accuracy, supplements the information, if necessary, to conform to the requirements of this part, and prepares the environmental finding. Assessments for projects over 200 lots/dwelling units or beds shall be sent to the Field Environmental Clearance Officer (FECO) or, in the absence of a FECO, to the Program Environmental Clearance

Officer in Headquarters for review and comment.

§ 50.33 Action resulting from the assessment.

(a) A proposal may be accepted without modifications if the EA indicates that the proposal will not significantly (see 40 CFR 1508.27) affect the quality of the human environment and a FONSI is prepared.

(b) A proposal may be accepted with modifications provided that:

(1) Changes have been made that would reduce adverse environmental impact to acceptable and insignificant levels; and

(2) An Environmental Management and Monitoring Program is developed in accordance with § 50.22 when it is deemed necessary by the HUD approving official.

(c) A proposal should be rejected if significant and unavoidable adverse environmental impacts would still exist after modifications have been made to the proposal and an EIS is not prepared.

(d) A proposal (if not rejected) shall require an EIS if the EA indicates that significant environmental impacts would result.

§ 50.34 Time delays for exceptional circumstances.

(a) Under the circumstances described in this section, the FONSI must be made available for public review for 30 calendar days before a final decision is made whether to prepare an EIS and before the HUD action is taken. The circumstances are:

(1) When the proposed action is, or is closely similar to, one which normally requires the preparation of an EIS pursuant to § 50.42(b) but it is determined, as a result of an EA or in the course of preparation of a draft EIS, that the proposed action will not have

a significant impact on the human environment; or

(2) When the nature of the proposed action is without precedent and does not appear to require more than an assessment.

(b) In such cases, the FONSI must be concurred in by the AS/CPD and the Program Environmental Clearance Officer. Notice of the availability of the FONSI shall be given to the public in accordance with paragraphs (a) through (d) of § 50.23.

§ 50.35 Use of prior environmental assessments.

When other Federal, State, or local agencies have prepared an EA or other environmental analysis for a proposed HUD project, these documents should be requested and used to the extent possible. HUD must, however, conduct the environmental analysis and prepare the EA and be responsible for the required environmental finding.

§ 50.36 Updating of environmental reviews.

The environmental review must be re-evaluated and updated when the basis for the original environmental or compliance findings is affected by a major change requiring HUD approval in the nature, magnitude or extent of a project and the project is not yet complete. A change only in the amount of financing or mortgage insurance involved does not normally require the environmental review to be re-evaluated or updated.

Subpart F—Environmental Impact Statements

§ 50.41 EIS policy.

EIS's will be prepared and considered in program determinations pursuant to the general environmental policy stated in § 50.3 and 40 CFR 1505.2 (b) and (c).

§ 50.42 Cases when an EIS is required.

(a) An EIS is required if the proposal is determined to have a significant impact on the human environment pursuant to subpart E.

(b) An EIS will normally be required if the proposal:

(1) Would provide a site or sites for hospitals or nursing homes containing a total of 2,500 or more beds; or

(2) Would remove, demolish, convert, or substantially rehabilitate 2,500 or more existing housing units (but not including rehabilitation projects categorically excluded under § 50.20), or which would result in the construction or installation of 2,500 or more housing units, or which would provide sites for 2,500 or more housing units.

(c) When the environmental concerns of one or more Federal authorities cited in § 50.4 will be affected by the proposal, the cumulative impact of all such effects should be assessed to determine whether an EIS is required. Where all of the affected authorities provide alternative procedures for resolution, those procedures should be used in lieu of an EIS.

§ 50.43 Emergencies.

In cases of national emergency and disasters or cases of imminent threat to health and safety or other emergency which require the taking of an action with significant environmental impact, the provisions of 40 CFR 1506.11 and of any applicable § 50.4 authorities which provide for emergencies shall apply.

Dated: September 19, 1996.

Henry G. Cisneros,
Secretary.

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