

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****24 CFR Parts 50 and 55**

[Docket No. FR-2206-F-04]

**Protection and Enhancement of Environmental Quality; Technical and Clarifying Amendments**

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

**SUMMARY:** On September 27, 1996 (61 FR 50914), HUD published a final rule streamlining and updating 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 of 1969 (NEPA), the NEPA-implementing regulations of the Council on Environmental Quality, and the other NEPA-related Federal environmental laws and authorities. This final rule makes several technical and clarifying amendments to § 50.19 of the September 27, 1996 rule. Section 50.19 lists those activities which are excluded from the compliance requirements of the various environmental authorities. Further, this rule also makes a correction to the preamble of the September 27, 1996 final rule. This rule also makes a necessary conforming amendment to 24 CFR part 55 (Floodplain Management).

**EFFECTIVE DATE:** May 2, 1997.

**FOR FURTHER INFORMATION CONTACT:** Richard H. Broun, Director, Office of Community Viability, Room 7240, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-7000. For telephone communication, contact Walter Prybyla, Deputy Director for Policy, Environmental Review Division at (202) 708-1201. Hearing or speech-impaired individuals may access this number via TTY by calling the Federal Information Relay Service number at 1-800-877-8339. (With the exception of the "800" number, these telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:****I. Background***A. The September 27, 1996 Final Rule*

On September 27, 1996 (61 FR 50914), HUD published a final rule streamlining and updating 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 of 1969 (NEPA) (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 the September 27, 1996 final rule). The September 27, 1996 final rule became effective on October 28, 1996.

*B. Technical and Clarifying Amendments to the September 27, 1996 Final Rule*

Section 50.19 of the September 27, 1996 rule lists those activities and approvals of policy documents which are categorically excluded from the environmental assessment required by NEPA (except in extraordinary circumstances as described in § 50.20(b)) and are not subject to the compliance requirements of the related environmental laws and authorities cited at § 50.4. The final rule makes the following technical and clarifying changes to this section:

**1. Refinancings Under HUD's Loan Guarantee Recovery Fund (LGRF) Program**

Currently, § 50.19(b)(21) excludes the "[r]efinancing of HUD-insured mortgages that will not allow new construction or rehabilitation, nor result in any physical impacts or changes except for routine maintenance." This provision is intended to apply solely to the refinancing of HUD-insured mortgages on existing properties. Since publication of the September 27, 1996 final rule, the issue of refinancings under HUD's Loan Guarantee Recovery Fund (LGRF) program (24 CFR part 573) has arisen for the first time. This final rule updates 24 CFR part 50 by adding a new § 50.19(b)(24) which categorically excludes HUD guarantees under the LGRF program of loans that refinance loans and mortgages where the refinancing will not allow further construction or rehabilitation, nor result in any physical impacts or changes except for routine maintenance. Compliance with §§ 50.4(b)(1), 50.4(c)(1), and 51.303(a)(3), however, is required. LGRF refinancings would be identical or similar to HUD refinancings of HUD-held mortgages on existing properties allowed under § 50.19(b)(21) and the proposed clarification does not constitute a substantive change to the current rule. HUD has determined that such refinancings do not involve physical development and should be categorically excluded from environmental assessment under NEPA and listed under § 50.19 as not subject to the compliance requirements of most of the related environmental laws and authorities. This determination is based on the fact that unlike HUD financing of proposed physical development for which a full environmental review and

compliance with the related authorities is required, the refinancing of existing loans and mortgages would apply only to already-completed construction and would not alter physical conditions so as to trigger compliance with most environmental laws, since any physical change would have occurred prior to the application for a HUD loan guarantee. Only three of the environmental requirements listed in § 50.4 would apply to refinancing under the LGRF program. These requirements are flood insurance, protection of coastal barrier resources, and notification of airport hazards.

A conforming amendment to 24 CFR part 55 (Floodplain Management) is required as a result of the new categorical exclusion for LGRF refinancings. Part 55 covers the proposed acquisition, construction, improvement, disposition, financing and use of properties located in a floodplain for which approval is required either from HUD or from a grant recipient subject to 24 CFR part 58 (Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities). Paragraph (b) of § 55.12 describes the inapplicability of 24 CFR part 55 to certain categories of proposed actions. This final rule adds a new paragraph (b)(4) to § 55.12 for HUD refinancings of loans and mortgages under the LGRF program.

**2. Lender Insurance Program**

Section 427 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Pub. L. 104-204, approved September 26, 1996; 110 Stat. 2874, 2928) (the Appropriations Act) amended title II of the National Housing Act (12 U.S.C. 1707 et seq.) to provide that the Secretary may delegate to Direct Endorsement (DE) mortgagees the authority to insure mortgages on one-to-four-family properties. Section 50.19(b)(17) of the September 27, 1996 final rule provides that HUD's endorsement of one-to-four family mortgage insurance under the DE program is not subject to all of the individual compliance requirements of the Federal laws and authorities cited in § 50.4; compliance with §§ 50.4(b)(1), 50.4(c)(1), and 51.303(a)(3), however, is required. Since section 427 allows HUD to delegate the authority to insure mortgages to certain eligible DE mortgagees, this Lender Insurance process should be similarly excluded from certain requirements. Therefore, this final rule amends § 50.19(b)(17) to include the Lender Insurance program.

### 3. Tenant-based Rental Assistance

Currently, § 50.19(b)(11) provides that tenant-based rental assistance is categorically excluded from the assessment required by NEPA except in extraordinary circumstances (§ 50.20(b)), and is not subject to the related laws cited at § 50.4. Regarding the approval of policy documents for tenant-based rental assistance, HUD is adding a parenthetical to clarify that the term "leasing" as covered in § 50.19(c)(1) does not include tenant-based rental assistance. Paragraphs (b) and (c) of § 50.19 provide a list of activities and policy documents, respectively, which are categorically excluded from the environmental review requirements described elsewhere in part 50. The list of policy documents in § 50.19(c) was intended to be sufficiently broad to encompass any rules and notices proposed for publication in the **Federal Register** by HUD to establish the policies and procedures necessary for the implementation of a categorically excluded activity listed in § 50.19(b) on the condition that such rules and notices otherwise do not involve real property transfer, physical development or standards setting described in § 50.19(c)(1).

### 4. Other Miscellaneous Corrections and Clarifications to § 50.19

Currently, § 50.19(b)(4) categorically excludes economic development activity costs that are not associated with construction or expansion of existing operations. This final rule clarifies the scope of the exclusion by revising the imprecise phrase "expansion of existing operations" to refer specifically to "physical expansion of existing facilities." Generally, economic development results in some kind of expansion. Where expansion occurs in ways other than expansion of the physical plant, such as expansion in sales volume or number of employees, HUD does not anticipate significant environmental impact or physical changes that would trigger environmental reviews under the related environmental laws and authorities.

A new paragraph (c)(5)(ii) is added to § 50.19 to clarify that proposed Notices of Funding Availability (NOFA) are categorically excluded where an existing regulation or guideline pertaining to the NOFA contains no environmental review provisions because the regulation or guideline concerns only activities listed in § 50.19(b).

The final rule revises § 50.19(c)(6) to refer specifically to the establishment and review of income limits and exclusions with regard to eligibility for or calculation of HUD housing assistance or rental assistance. This activity does not involve physical development or standards setting.

### C. Corrected Preamble to the September 27, 1996 Final Rule

The preamble to the September 27, 1996 final rule included a list of HUD programs subject to the requirements of 24 CFR part 50 (61 FR 50915-50916). HUD wishes to make the following corrections to this list.

1. The HOPE VI Revitalization Program is added to the list of programs administered by the Office of Public and Indian Housing. This program will remain subject to part 50 and is not affected by the October 14, 1996 effective date for the transition to 24 CFR part 58 (Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities) of activities under title I of the United States Housing Act of 1937.

2. The Nehemiah Housing Opportunity Grants Program (NHOP) is deleted from the list of programs administered by the Office of Housing. The Congress is no longer authorizing new grants under NHOP.

3. Research grants authorized under sections 1051-53 of the Lead-Based Paint Hazard Reduction Act of 1992 (LBPHRA) are added to the list of activities subject to 24 CFR part 50. The only lead-based paint grants that are statutorily permitted to be subject to 24 CFR part 58 procedures are the abatement or hazard reduction grants that are authorized under section 1011 of the LBPHRA or under the 1992 HUD appropriations act.

### 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. 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). HUD finds that in this case prior public procedure is unnecessary. This rule does not make any substantive amendments to the September 27, 1996 final rule. The rule clarifies that HUD's guarantees for the refinancing of a mortgage or loan under the LGRF program are categorically excluded. This amendment will benefit

eligible program participants by facilitating their ability to secure a lower interest rate. This rule also clarifies that since the insurance of mortgages through the Direct Endorsement process is categorically excluded, the insurance of mortgages through the Lender Insurance process should be similarly excluded. The other amendments made by this final rule clarify the policies and procedures contained in the September 27, 1996 final rule.

### III. 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). The Finding of No Significant Impact 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 clarifying 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 clarifies 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 makes several technical and clarifying changes to the September 27, 1996 final rule. 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.

#### **List of Subjects**

##### *24 CFR Part 50*

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

##### *24 CFR Part 55*

Floodplain management, Floodplains,  
Environmental protection.

Accordingly, 24 CFR parts 50 and 55 are amended as follows:

#### **PART 50—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY**

1. The authority citation for part 50 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 4332; and Executive Order 11991, 3 CFR, 1977 Comp., p. 123.

2. Section 50.19 is amended by:

- a. Revising paragraph (a);
- b. Adding a heading to paragraph (b);
- c. Revising paragraph (b)(14);
- d. Revising paragraph (b)(17);
- e. Adding a new paragraph (b)(24);

and

f. Revising paragraph (c), to read as follows:

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

(a) *General.* The activities and related approvals of policy documents listed in paragraphs (b) and (c) of this section are not subject to the individual compliance requirements of the Federal laws and authorities cited in § 50.4, unless otherwise indicated below. These

activities and approvals of policy documents 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 policy documents 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) *Activities.* (1) Environmental and other studies, resource identification and the development of plans and strategies.

\* \* \* \* \*

(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 physical expansion of existing facilities; however, in the case of equipment purchase, compliance with § 50.4(b)(1) is required.

\* \* \* \* \*

(17) HUD's endorsement of one-to-four family mortgage insurance under the Direct Endorsement program, the insurance of one-to-four family mortgages under the Lender Insurance 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.

\* \* \* \* \*

(24) HUD guarantees under the Loan Guarantee Recovery Fund Program (24 CFR part 573) of loans that refinance existing loans and mortgages, where any new construction or rehabilitation financed by the existing loan or mortgage has been completed prior to the filing of an application under the program, and the refinancing will not allow further construction or rehabilitation, nor result in any physical impacts or changes except for routine maintenance; however, compliance with §§ 50.4 (b)(1) and (c)(1) and 51.303(a) is required.

(c) *Approval of policy documents.* (1) Approval of rules and notices proposed for publication in the **Federal Register** or other policy documents that do not:

- (i) Direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing (other than tenant-based rental assistance), rehabilitation, alteration, demolition, or new construction; or
- (ii) Establish, revise, or provide for standards for construction or

construction materials, manufactured housing, or occupancy.

(2) Approval of policy documents that amend an existing document where the existing document as a whole would not fall within an exclusion in this paragraph (c) but the amendment by itself would do so;

(3) Approval of policy documents that set out fair housing or nondiscrimination standards or enforcement procedures 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 any environmental requirements of, a regulation or program guideline that was previously published in the **Federal Register**, provided that

(i) The NOFA specifically refers to the environmental review provisions of the regulation or guideline; or

(ii) The regulation or guideline contains no environmental review provisions because it concerns only activities listed in paragraph (b) of this section.

(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, income limits and exclusions with regard to eligibility for or calculation of HUD housing assistance or rental assistance, 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.

#### **PART 55—FLOODPLAIN MANAGEMENT**

3. The authority citation for 24 CFR part 55 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 4001–4128; E.O. 11988, 42 FR 26951, 3 CFR, 1977 Comp., p. 117.

4. Section 55.12 is amended by revising paragraph (b)(3) and adding a new paragraph (b)(4) to read as follows:

##### **§ 55.12 Inapplicability of 24 CFR part 55 to certain categories of proposed actions.**

\* \* \* \* \*

(b) \* \* \*

(3) HUD actions involving the disposition of individual HUD-acquired, one- to four-family properties; and

(4) HUD guarantees under the Loan Guarantee Recovery Fund Program (24 CFR part 573) of loans that refinance existing loans and mortgages, where any new construction or rehabilitation financed by the existing loan or mortgage has been completed prior to the filing of an application under the program, and the refinancing will not allow further construction or rehabilitation, nor result in any physical impacts or changes except for routine maintenance.

\* \* \* \* \*

Dated: March 4, 1997.

**Andrew M. Cuomo,**

*Secretary.*

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