

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 50

[Docket No. FR-2206-P-01]

RIN 2501-AA30

**Office of the Secretary; Protection and
Enhancement of Environmental Quality**

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would simplify, improve, and update the Department'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. The proposed rule would apply 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 HUD regulations.

DATES: Comment due date: June 4, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

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, telephone (202) 708-2894. For telephone communication, contact Walter Prybyla, Deputy Director for Policy, Environmental Review Division at (202) 708-1767. Hearing or speech-impaired individuals may call the Federal Information Relay Service number at 1-800-877-TDDY (1-800-877-8339) and refer to (202) 708-1767.

SUPPLEMENTARY INFORMATION: The proposed rule would amend HUD's regulations in 24 CFR part 50 to simplify, improve, and update the current policy and procedures used by HUD for its environmental review and

decision making in carrying out responsibilities in accordance with 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 Federal environmental laws and authorities related to NEPA as cited in § 50.4 of this proposed rule. The proposed rule would apply 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. When this proposed rule is issued as a final rule, it would replace the current interim rule originally issued on December 15, 1982 (47 FR 56268) and amended since then. For HUD programs covered by this rule, see paragraph E.

Some of the more recent action-driving developments for this rulemaking result from the implementation of a series of innovative initiatives designed to improve the way the Department delivers services to the public. These and other reasons for this proposed rule are the following:

A. HUD Regulatory Reinvention

This proposed rule is consistent with the President's March 4, 1995, memorandum directing Federal agencies to examine all regulations, to eliminate those that are obsolete and to revise other regulations to increase flexibility and reduce regulatory burden.

B. HUD Reorganization of Field Offices

The Secretary of HUD directed the transformation of HUD to make it an activist, enabling agent for change through the recent empowering of HUD field staff through reorganization of HUD field offices. The proposed rule would remove from the current part 50 the nomenclature of the previous HUD field office organization and assignments of responsibility that no longer exist.

C. Environmental Justice

The President issued on February 11, 1994, Executive Order 12898, (59 FR 7629-7633, February 16, 1994) which directed Federal agencies to address environmental justice issues affecting minority and low-income populations. HUD is awaiting additional guidance to Federal agencies that the Council on Environmental Quality (CEQ) is preparing on how agencies are to implement this Executive Order.

D. General Updating

There is need for general updating of current part 50, based on program experience and changes in authorizations. The proposed rule would restructure part 50 to focus on the new condition that Federal environmental laws and authorities cited in § 50.4 are now as prominent as NEPA itself in HUD's environmental review processing. The need for the preparation of environmental assessments under NEPA has declined and will continue to decline as the number of categorical exclusions increases in response to the evolving nature of HUD programs of assistance. In addition, the proposed rule would respond to the National Performance Review on government regulations in that the proposed rule would simplify part 50 by removing the appendices and other non-statutory provisions. Further information on the general updating is provided in the following discussion of revisions proposed in each subpart of the current rule:

Subpart A

- Definitions are provided for the terms: HUD approving official, project, and environmental review.
- Additional related Federal laws and authorities are referenced. Examples of new references are: Executive Order 12898 on Environmental Justice; the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); and the National Flood Insurance Reform Act. Removed is the reference to HUD Notice 79-33, Policy Guidance to Address the Problems Posed by Toxic Chemicals and Radioactive Material (September 10, 1979). Issues related to toxic chemicals and radioactive material would be covered under a new § 50.3(i). Removed also was the reference to the Fish and Wildlife Coordination Act, because HUD believes this act does not impose a duty on this Department in light of the nature of HUD's assistance programs and activities.

Subpart B

- Basic responsibility is revised to conform with the new HUD field office organization.
- Terminated functions. Removed from the current rule are the sections covering functions abolished by the field reorganization, for example, references to area and service office supervisors and regional administrators.
- Simplification. Also, removed is non-statutory and internal organizational material that is more suitable for inclusion in a HUD

handbook, for example, the section which currently details the responsibilities of the Other Assistant Secretaries, Administrators, and the General Counsel.

- Responsibility for environmental review is specified. This new section makes clear that the HUD approving official is responsible for the environmental review and may use any information supplied by the applicant or contractor for the environmental review, provided that HUD independently evaluates the information.

Subpart C

- Terminated programs. The proposed rule would remove from the list of project decision points all references to liquidated programs such as the Urban Renewal Program, New Community Development Corporation, and Rehabilitation Loan Program (Sec. 312). Also, the proposed rule would remove project decision points for hospitals to remove duplication of environmental review between HUD and the Department of Health and Human Services (HHS). HHS is the Federal lead agency responsible for all aspects of hospital need, type, necessary services, design, capacity, location and physical/structural requirements as well as for environmental review and decisionmaking. HUD's function is confined to insuring the loan after all other considerations (local, State, and Federal) are met. With each application submitted to HUD for assistance, HHS would provide HUD with a certification that HHS has complied with the applicable requirements of NEPA and other related authorities in accordance with its regulations.

- Other program decision points. At § 50.17(e), the proposed rule would replace the reference to the Community Development Block Grants Program (CDBG) with a general reference to "HUD programs subject to 24 CFR part 58." This general reference now covers a greater number of HUD programs other than the CDBG program. Section 50.17(g) would provide the decision points for the Stewart B. McKinney Homeless Assistance Act Programs where the recipients are nonprofit organizations or governmental entities with special or limited purpose powers.

Subpart D

- Categorical exclusions. § 50.19 is being revised to cover all actions that are excluded from NEPA as well as the related laws and authorities in § 50.4. § 50.20 continues to cover actions that are categorically excluded from NEPA,

but may be subject to the laws and authorities cited in § 50.4.

- § 50.19: The exclusions listed at § 50.19—unlike the exclusions listed at § 50.20—rarely, if ever, assist physical development and therefore are not generally subject to compliance with the related Federal laws and authorities cited at § 50.4. The rule proposes additions to include simple transfers from the current list at § 50.20, for example, GNMA secondary mortgage market activities and interstate land sales disclosure. Other additions include assistance to control the effects of imminent threats to health and safety, activities related to assistance for homeownership, and HUD's acceptance for insurance of loans under Title I of the National Housing Act. Also, in response to deregulation goals, the proposed rule at § 50.19 would require HUD to prepare environmental assessments and findings of no significant impact on Departmental clearance documents only when they involve physical development.

- § 50.20: The NEPA categorical exclusions listed at § 50.20 do assist physical development and therefore are generally subject to compliance with the related Federal laws and authorities cited at § 50.4. An example of a new addition is any assistance for the removal of material and architectural barriers that restrict the mobility of and accessibility to the elderly and persons with disabilities. In making its determinations that an activity is excluded at § 50.20 and in compliance with the Federal laws and authorities cited at § 50.4, HUD will use new form HUD-4128 to replace both the current form HUD-4128 (an amended version of Appendix A of the current rule) and the current form HUD-4128.1 (issued 07/93) (an amended version of Appendix B of the current rule).

- Intergovernmental Review: HUD policy is to provide notices to the affected public and those who have requested them. The proposed rule would remove references in §§ 50.25 and 50.31 of the current interim rule which requires HUD to submit notices to the state process adopted under 24 CFR part 52, "Intergovernmental Review of Departmental Programs." Because both part 52 and the underlying Executive Order 12372 are currently not in active use, HUD would provide notices only to state agencies requesting them. This would reduce unnecessary paperwork and acknowledge a decline in the state process, largely due to the fact that States and local governments have their own environmental review procedures, which regulate projects including those proposed by developers

with HUD assistance. Also, for a number of years, HUD no longer is involved in programs that support large-scale new community and residential subdivision development having multi-jurisdictional impacts, which necessitated intergovernmental coordination and review.

Subpart E

- Compliance record for environmental assessment. To document the environmental assessment for projects, the proposed rule removes references to Appendix A of the current rule and states that HUD shall use form HUD-4128—Environmental Assessment and Compliance Findings for the Related Laws.

Subpart F

- EIS policy: Rarely do HUD approvals involve a major Federal action for which a detailed environmental impact statement is required under the National Environmental Policy Act. As a result, subpart F has become inactive. The proposed rule would address this matter by improving this subpart in the following ways. It would reduce duplication by eliminating the several sections of the current interim rule which repeat guidance found in 40 CFR part 1502. The duplicative guidance that is proposed for deletion includes the following sections: § 50.44 (Notice of intent to prepare an EIS); § 50.45 (Scoping, lead agencies and co-operating agencies); § 50.46 (Tiering); § 50.47 (Procedural requirements); § 50.48 (Adoption of other agencies' environmental impact statements); and § 50.49 (Use of prior environmental impact statements). The proposed change in no way diminishes the basic legal requirements under the removed sections, because § 50.1 of the proposed rule continues to incorporate the CEQ regulations, including the requirements of part 1502 with respect to EISs, by reference into part 50.

- Cases when an EIS is required. Because HUD's New Community Program no longer exists, the proposed rule would remove the reference to the normal EIS requirement for an amendment to a Development Plan for a new community.

- Emergencies. The proposed rule would broaden the concept of emergencies: (i) to include those other than national emergencies and disasters and cases of imminent threat to health and safety; and (ii) to apply to applicable § 50.4 authorities which provide for emergencies.

Appendices to 24 CFR 50

The proposed rule would remove dated Appendix A to Part 50 (Environmental Assessments for Subdivision and Multifamily Projects) and Appendix B to Part 50 (Compliance and LAC Conditions Record). The current rule references Appendices A (form HUD-4128) and B (form HUD-4128.1) for use by HUD for documenting environmental assessments and environmental reviews for categorical exclusions, respectively. Under the proposed rule, the two forms (last issued 07/93) would be simplified and combined into a new form HUD-4128—Environmental Assessment and Compliance Findings for Related Laws.

E. HUD Programs Subject to 24 CFR 50

HUD programs that lack specific authority for assigning the Federal environmental review responsibilities to recipients are presented below by the HUD office that administers the program, the program title, the program regulation part number of title 24 CFR, and the program number used in the Catalog of Federal Programs. This list is provided for the reader's convenience. Generally, this list covers all HUD programs other than those identified at § 58.1(b) of 24 CFR Part 58 (60 FR 49469). In addition to the programs listed below, part 50 applies to projects and activities carried out by recipients subject to environmental policy and procedures of 24 CFR part 58 in specific circumstances discussed at § 50.1(d) of this proposed rule. The following may not be an exhaustive list, but contains the principal HUD assistance programs subject to part 50.

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 only to conditionally selected applications received from Public Housing Authority applicants] 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

Office of Housing: Single Family Housing Programs

- HUD-Owned Single Family Property Disposition [291] 14.XXX

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, and Board and Care Homes: Section 232 [232] 14.129
- Supplemental Loans 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 A] 14.187
- Emergency Low-Income Housing Preservation: Title II [248 B] 14.187
- Flexible Subsidy Program for Troubled Projects: Section 201 [219] 14.164
- Manufactured Home Parks: Section 207 Land development [207.33] 14.127
- Management and Disposition of HUD-owned Multifamily Projects [290] 14.XXX
- Mortgage Insurance for Housing for the Elderly: Section 231 [231] 14.138 [Not used. Instead Section 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 Section 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 [961] 14.854
- Part 50 continues to be used, because the implementation of part 58 is delayed for the remaining Public housing programs until a Federal Register notice is published making part 58 effective or until October 14, 1996, whichever comes first:
 - 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 Research and Development

- CDBG Joint Community Development Program [570.411] 14.XXX [Part 50 applies only to applicants (e.g. to universities) that are not a State or unit of general local government.]

Findings and Other Matters

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, S.W., Washington, D.C. 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 proposed rule have no federalism implications, and that the policies are not subject to review under the order. This proposed rule is limited to updating the Department's

implementation of its responsibilities for environmental review and decisionmaking 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, "The Family," has determined that this proposed 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. No significant change in existing HUD policies or programs will result from promulgation of this proposed 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 proposed rule, and in so doing certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would streamline 24 CFR part 50 and carry out the statutory mandate of the National Environmental Policy Act and the other Federal environmental laws and authorities listed in § 50.4.

Catalog of Federal Domestic Assistance (1994)

The program numbers are 14.128–14.900. Also see the above paragraph E.

List of Subjects in 24 CFR Part 50

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

For the reasons set forth in the preamble, part 50 of title 24 of the Code of Federal Regulations is proposed to be 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.
 - 50.2 Terms and abbreviations.
 - 50.3 Environmental policy.
 - 50.4 Related Federal laws and authorities.
 - 50.5—50.9 [Reserved]

Subpart B—General Policy: Responsibilities and Program Coverage

- 50.10 Basic environmental responsibility.
- 50.11 [Reserved]

50.12 Responsibility of the HUD approving official.

50.13—50.15 [Reserved]

Subpart C—General Policy: Decision Points

- 50.16 Decision points for policy actions.
- 50.17 Decision points for projects.

Subpart D—General Policy: Environmental Review Procedures

- 50.18 General.
- 50.19 Categorical exclusions not subject to the Federal laws and authorities cited in § 50.4.
- 50.20 Categorical exclusions subject to the Federal laws and authorities cited in § 50.4.
- 50.21 Aggregation.
- 50.22 Environmental management and monitoring.
- 50.23 Public participation.
- 50.24 HUD review of another agency's EIS.
- 50.25—50.30 [Reserved]

Subpart E—Environmental Assessments and Related Reviews

- 50.31 The EA.
- 50.32 Responsibility for environmental processing.
- 50.33 Action resulting from the assessment.
- 50.34 Time delays for exceptional circumstances.
- 50.35 Use of prior environmental assessments.
- 50.36 Updating of environmental reviews.
- 50.37—50.40 [Reserved]

Subpart F—Environmental Impact Statements

- 50.41 EIS policy.
 - 50.42 Cases when an EIS is required.
 - 50.43 Emergencies.
 - 50.44—50.50 [Reserved]
- 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 through 1508.

(c) The regulations issued by CEQ at 40 CFR parts 1500 through 1508 establish the basic procedural requirements for compliance with NEPA. These procedures are to be followed by all Federal agencies. 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 through 1508 and regulations that implement authorities cited at § 50.4.

(d) The regulations in this part 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:

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

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

(3) *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.

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

AS/CPD—Assistant Secretary for Community Planning and Development
 CEQ—Council on Environmental Quality
 CO—HUD Headquarters (Central Office)
 DECO—Departmental Environmental Clearance Officer
 EA—Environmental Assessment
 EIS—Environmental Impact Statement
 EPA—U.S. Environmental Protection Agency
 FEEO—Field Environmental Clearance Officer
 FO—HUD Field Office
 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
 PECO—Program Environmental Clearance Officer
 PHA—Public Housing Authority

§ 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 the 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 as amended (16 U.S.C. 470 *et seq.*).

(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 of May 24, 1977 (3 CFR, 1977 Comp., p. 117)—24 CFR part 55, Floodplain Management.

(3) Executive Order 11990 of May 24, 1977 (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) [Reserved]

(j) *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.*).

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

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

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

§§ 50.5-50.9 [Reserved]**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 *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 [Reserved]**§ 50.12 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.

§§ 50.13–50.15 [Reserved]**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 PECO 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 described in this section 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 described in this section 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, 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: PHA proposal approval.

(b) *Rehabilitation.* 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 Programs.* Modernization Programs: HUD approval of the modernization grants.

(d) *Property Disposition.* (1) Vacant land and one to four family structures: HUD approval of the Disposition Program.

(2) Multifamily structures, college housing, nursing homes, manufactured homes and parks, group practice facilities: 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 PHA to proceed with execution of an Agreement to Enter into Housing Assistance Payments (HAP) Contract.

(f) 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 (see § 50.3(h)).

(g) *Steward 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 in this section are not subject to the individual compliance requirements of the Federal laws and authorities cited in § 50.4, unless otherwise indicated in this section. 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 activities by HUD clients.

(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, imminent threats or 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 24 CFR 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 24 CFR 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 Checksheet (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.*).

(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. However, 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 in this paragraph 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 actions (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 of this part. 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 of this part.

§ 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 FECO 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 and public meetings and environmental documents. Where project actions result in a FONSI, the FONSI will be available in the project file. 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 NEPA-related laws and authorities and their implementing procedures cited in § 50.4.

(a) A NOI/EIS shall be forwarded to the AS/CPD to the attention of the DECO 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 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 FO in whose jurisdiction the project is located, the FECO 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.

§§ 50.25–50.30 [Reserved]

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 of this part. The DECO 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 FECO or, in

the absence of a FECO, to the PECO 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 PECO. 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.

§§ 50.37–50.40 [Reserved]

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 of this part.

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

(1) Would provide a site or sites for 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. However, 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.

§§ 50.44—50.50 [Reserved]

Dated: February 26, 1996.

Henry G. Cisneros,

Secretary.

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