

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

**24 CFR Parts 50, 58, 574, 582, 583, and
970**

[Docket No. FR-4523-P-01]

RIN 2501-AC64

**Environmental Review Procedures for
Entities Assuming HUD's
Environmental Responsibilities**

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would update the list of programs and statutory authorities for which other entities may assume HUD's environmental responsibilities, and make other changes to update the regulation on assumption of HUD's environmental responsibilities. Also, the proposed rule would make conforming changes to the affected environmental provisions contained in various program regulations.

DATES: *Comment Due Date:* August 26, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this 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, Office of Community Planning and Development, Room 7240, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-7000. For inquiry by phone or e-mail: contact Walter Prybyla, Deputy Director for Policy, Environmental Review Division, Office of Community Planning and Development, at (202) 708-1201, Ext. 4466 (this is not a toll-free number), or e-mail: WalterPrybyla@hud.gov. Hearing-impaired or speech-impaired individuals may access the voice telephone number listed above by calling the Federal information relay service during working hours at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: This proposed rule would make a number of

changes to HUD regulations in 24 CFR part 58. Part 58 implements statutory authorities that permit certain entities other than HUD to assume HUD's environmental responsibilities for various HUD programs. HUD proposes to update the list of programs and statutory authorities covered by part 58. Also, the proposed rule would make conforming changes to environmental provisions in certain program regulations to include a cross-reference to part 58. In addition, the proposed rule would make conforming changes in HUD's regulations in 24 CFR part 50, which governs when HUD is responsible to perform environmental responsibilities in accordance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations (40 CFR parts 1500-1508), and other environmental requirements (as specified in 24 CFR 50.4).

The following additional programs would be added to the list in § 58.1:

(1) Grants provided to private nonprofit organizations and housing agencies under the Supportive Housing Program and the Shelter Plus Care Program (in accordance with section 443 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11402), as amended by section 208 of the HUD Appropriations Act for FY 2001 (Pub. L. 106-377, approved October 27, 2000)). Section 443 was amended to provide for assumption of environmental responsibilities by a State or unit of general local government regardless of whether or not it is the recipient. The rule would reflect prospective part 58 coverage of grants to nonprofit organizations and housing agencies, i.e., coverage of such grants for Fiscal Year (FY) 2001 and later;

(2) Assistance provided under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. 4101 *et seq.*), (in accordance with section 105 of NAHASDA);

(3) Indian housing loan guarantees under section 184 of the Housing and Community Development Act of 1992 (1992 Act) (12 U.S.C. 1715z-13a, in accordance with section 184(k) of the 1992 Act);

(4) HOPE VI grants for FY 1999 and earlier (in accordance with the HUD Appropriations Act for FY 1999 (Pub. L. 105-276, approved October 21, 1998)). Section 58.1 also would be amended to reflect amendments to the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*), including amendments that make permanent the HOPE VI program and thus make section 26 of the United States Housing Act of 1937 the

permanent authority for States and units of general local government to assume environmental responsibilities for the HOPE VI program;

(5) Housing Opportunities for Persons with AIDS (HOPWA) (42 U.S.C. 12901 *et seq.*) grants. Section 203(c) of the HUD Appropriations Act for FY 2001 (Pub. L. 106-377, approved October 27, 2000) added section 856(h) of the AIDS Housing Opportunity Act, which provides permanent authority for HOPWA grantees to assume environmental responsibilities. Section 207(c) of HUD's Appropriations Act for FY 1999 instructed HUD to treat HOPWA grants for FY 1999 and prior years as assistance for special projects subject to section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994 (42 U.S.C. 3547), and subject to HUD's regulations implementing that section at 24 CFR part 58. The HUD Appropriations Act for FY 2000 (Pub. L. 106-74, approved October 20, 1999) extended section 207(a) and (b) of the 1999 Act to apply to FY 2000 grants, but did not extend section 207(c).

Accordingly, part 58 applies to environmental reviews for all HOPWA grants entered into after enactment of section 856(h) of HOPWA and all HOPWA grants for FY 1999 and prior years. Part 58 also applies to HOPWA formula grants for FY 2000, but does not apply to HOPWA competitive grants for FY 2000, which by their terms are not subject to subsequent changes in the HOPWA legislation. The amendment to § 58.1 would reflect this applicability.

The Rental Rehabilitation Program and the Housing Development Grant Program authorized by section 17 of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) are no longer in use and would be removed from paragraph (b)(2) of the list in § 58.1. The authority for these programs was repealed by the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701 *et seq.*). References to these programs would be removed from §§ 58.4(b)(2), 58.4(b)(3), 58.5(a)(i), 58.17, and 58.18.

A new § 58.1(c) also would be added to clarify that activities assisted with repayments to a revolving loan fund initially assisted with HUD funds are subject to environmental requirements only if HUD program rules treat the activity assisted with repayments as being subject to Federal requirements.

A new § 58.1(d) would clarify that the Assistant Secretary for Community Planning and Development, to the extent permitted by applicable laws and the regulations of the Council on Environmental Quality, may, for good cause and with appropriate conditions,

approve waivers and exceptions or establish criteria for exceptions from the requirements of this part.

Changes would be made to the definitions section, § 58.2. Obsolete references to Indian Housing Authorities would be removed from the definition of "recipient" and the Indian tribe would be defined as the "recipient" for part 58 purposes with respect to assistance awarded under NAHASDA and the Section 184 Indian Housing Loan Guaranty program (Section 184 program). The specification of the Indian tribe as the "recipient" for these two programs is for part 58 purposes only. The revision reflects the Indian tribe's role in the part 58 process under section 105 of NAHASDA and the Section 184 program and would not affect the definition of "recipient" in 24 CFR part 1000 and section 4 of NAHASDA.

Further, the definition of "responsible entity" (RE) would be revised to clarify that the Indian tribe is the RE under NAHASDA whether or not a Tribally Designated Housing Entity is authorized to receive funds on behalf of the tribe and is also the RE under the Section 184 program. This definition also would state that Regional Corporations in Alaska are considered Indian tribes. The inclusion of Regional Corporations as Indian tribes reflects their specific inclusion in the definition of "Indian tribe" in section 4 of NAHASDA.

A new § 58.4(c) would clarify that under NAHASDA and the Section 184 program, Indian tribes have a choice whether or not to assume environmental responsibilities under part 58. This provision conforms to NAHASDA rules that were adopted through negotiated rulemaking (24 CFR 1000.20).

The list of NEPA-related environmental authorities in § 58.5 would be updated by replacing a reference to an obsolete HUD notice on toxic chemicals and radioactive materials with updated requirements regarding contamination. The new requirements would be similar to those identified in 24 CFR 50.3(i), which apply when HUD performs the environmental review for a project. The new provision would reflect a general HUD policy that regardless of whether the environmental reviews are performed by HUD or by the responsible entity, the same standards would be used. The proposed provision would state HUD's policy that property proposed for use in HUD programs must be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants of the property or

conflict with the intended utilization of the property.

Environmental reviews for multifamily housing with five or more units (including leasing) and non-residential property must include evaluation of previous site uses and other evidence of contamination on or near the site. The entity responsible for compliance with part 58 must give particular attention to any proposed site on or in the general proximity of areas that contain or may have contained hazardous waste, such as dumps, landfills, and industrial sites. This provision relies on a general performance standard, which could include a Phase I environmental assessment for toxics (American Society for Testing Materials, ASTM E 1527). Some HUD programs already require a Phase I report, which is a standard of private real estate transactions.

Section 58.11 (pertaining to legal capacity and performance) is revised to exclude the term "Indian housing" recipient and add the term "HOPWA" recipient. This section allows recipients that are not a responsible entity to object to the performance of the environmental review by a responsible entity on the basis of performance, timing, or compatibility of objectives. In such a case, HUD will review the facts to determine who will perform the environmental review.

The current provisions of § 58.22(a) would be revised and placed in paragraphs (a) through (c). The new provisions would make it clear that all participants in the development process are subject to the provisions of this part.

The proposed provisions would clarify that the limitations on activities apply not only to recipients, but also to other project participants, such as public or private nonprofit or for-profit entities and their contractors. The provisions also would make it clear that undertaking an activity that would have adverse environmental impact or limit the choice of alternatives, as well as committing non-HUD funds to such an activity, is prohibited before the request for release of funds and environmental certification have been approved.

New paragraph (c) would require that, if a recipient is considering an application from a prospective sub-recipient or beneficiary and is aware that the applicant is about to take an action within the recipient's jurisdiction that is prohibited by § 58.22(a), the recipient shall promptly notify the applicant that the recipient will take appropriate action to ensure that the objectives and procedures of NEPA are achieved. This latter provision is based on provisions in the NEPA regulations

of the Council on Environmental Quality (40 CFR 1506.1(b)). The Department is concerned that there have been situations in which the environmental review process has been impaired where private participants have undertaken choice-limiting actions on pending projects with the apparent acquiescence or encouragement of recipients. These revisions would clarify that until the environmental review process and release of funds process are completed, participants other than recipients are expected to adhere to limitations on permissible actions. Further, recipients have a responsibility to respond when they are aware that an applicant is taking a prohibited action.

In addition, a new paragraph would be added to § 58.22 to reflect a statutory amendment that permits an organization, consortium, or affiliate under the Self-Help Homeownership Opportunity Program (SHOP) to advance nongrant funds to acquire land prior to completion of the environmental review process. Section 202(b) of the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106-569, approved December 27, 2000) amended section 11(d)(2)(A) of the Housing Opportunity Program Extension Act of 1996 (42 U.S.C. 12805 note) to provide that eligible expenses under the SHOP program "may include reimbursing an organization, consortium, or affiliate upon approval of any required environmental review, for nongrant amounts of the organization, consortium, or affiliate advanced before such a review to acquire land." This amendment permits SHOP recipients to advance nongrant amounts to acquire land before completion of the environmental review process and be reimbursed from grant amounts. However, such advances are incurred at the recipient's risk, and the Department is not under any obligation to reimburse a recipient for these acquisition costs if the subsequent environmental review is unfavorable and the land is deemed unsuitable to carry out the SHOP project. The Department also notes that advancing nongrant funds for land acquisition prior to approval of a request for release of funds is generally considered a choice-limiting action that is prohibited under § 58.22. The new provision would reflect a statutory exception to this prohibition that applies only under the SHOP program. All other forms of HUD assistance continue to have the more restrictive policy.

The proposed rule would revise the first sentence of § 58.33(b) concerning when and how the pre-submission

comment periods for the Notice of Finding of No Significant Impact (FONSI Notice) and/or the Notice of Intent to Request a Release of Funds (NOI/RROF) may be combined with the post-submission comment period for the Request for Release of Funds (RROF). Under the proposed rule, the combined procedure could be used if funds are needed on an emergency basis due to a locally declared emergency as well as during a Presidentially declared disaster, and there is immediate need for public action to protect public safety.

Three of the NEPA categorical exclusions in § 58.35 would be revised and one new exclusion would be added. With respect to rehabilitation, the rule would be revised to clarify that the categorical exclusion for minor rehabilitation applies to single-family dwellings as well as to multifamily buildings. The rule would add a reference to “single-family” residential buildings (with one to four dwelling units), whose unit density is not increased beyond four units, and whose dwelling units do not result from a conversion of use from a non-residential use. The rule also would indicate that the exclusion for an individual action on a one-to four-family dwelling would apply when there are no more than four dwelling units on any one site, whether in one or multiple buildings. This rulemaking includes conforming changes to 24 CFR part 50 pertaining to the proposed revision for the exclusions for rehabilitation and individual actions.

New § 58.35(b)(7) would exclude from NEPA and non-NEPA environmental requirements the approval of supplemental assistance (including insurance or guarantee) to complete a project previously approved under this part, if the project or activities have already been environmentally assessed by the same responsible entity, unless a reevaluation of the environmental findings is required under § 58.47(a). This statement of policy is new to this part and would conform this part to the long-held HUD policy stated at 24 CFR 50.36, when HUD itself performs the environmental responsibilities. Also, the exclusion for acquisition of an existing structure or vacant land to be retained for the same use would be revised to clarify that acquisition includes leasing, and a conforming change would be made to 24 CFR part 50. The homeownership assistance exclusion in § 58.35(b)(5) covers dwelling units under construction as well as existing units, while the similar exclusion in § 50.19(b)(5) covers only existing construction; therefore, this

rule amends § 50.19(b)(5) to cover units under construction.

Sections 58.34(b) and 58.35(d) would be revised to clarify that the responsible entity’s documentation of exemptions and exclusions must be made prior to committing funds for or undertaking the exempt or excluded activities.

In § 58.45, revised language would clarify that the periods provided for certain public comment periods are minimum required periods. Section 58.45 also has been reformatted into a chart for easier reading.

Sections 58.72 and 58.75 would be revised to conform to the changes proposed in § 58.22 “Limitations on actions pending clearance.”

The Department also proposes to add language to certain program regulations for programs that are subject to part 58 procedures. They are part 574 (Housing Opportunities for Persons with AIDS or HOPWA), part 582 (Shelter Plus Care), part 583 (Supportive Housing Program), and part 970 (Public Housing Program—Demolition or Disposition of Public Housing Projects). The added language makes conforming amendments for certain program regulations that do not currently adequately reflect the applicability of part 58 procedures.

Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment for this rule has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–5000.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose a Federal mandate on any State, local, or tribal governments, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C.

605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities, and there are not any unusual procedures that would need to be complied with by small entities. Although HUD has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities, HUD welcomes comments regarding any less burdensome alternatives to this rule that will meet HUD’s objectives as described in this preamble.

Executive Order 13132, Federalism

This proposed rule does not have Federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

List of Subjects in 24 CFR

Part 58

Environmental protection, Community Development Block Grants, Public Housing Capital Fund Grants, HOPE VI Program Grants, Indian Housing Block Grants, HOME Investment Partnerships Grants, Housing Opportunities for Persons with AIDS Grants, Shelter Plus Care Grants, Supportive Housing Program Grants, Self-Help Homeownership Opportunity Program Grants, Environmental Impact Statements, Environmental Assessments, Grant programs—housing and community development, Reporting and recordkeeping requirements.

Part 574

AIDS, Community facilities, Disabled, Emergency shelter, Grant programs—health programs, Grant programs—housing and community development, Grant programs—social programs, Homeless, Housing, Low and moderate income housing, Nonprofit organizations, Rent subsidies, Reporting and recordkeeping requirements, Technical assistance.

Part 582

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

Part 583

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing

and community development, Supportive services.

Part 970

Grant programs—housing and community development, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers are 14.235, 14.238, 14.241, 14.850, and 14.866.

Accordingly, for the reasons described in the preamble, the Department proposes to amend 24 CFR parts 50, 58, 574, 582, 583, and 970 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. Amend § 50.19 by revising paragraph (b)(15) to read as follows:

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

* * * * *

(b) * * *

(15) Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and downpayment assistance, interest buydowns, and similar activities that result in the transfer of title.

* * * * *

3. Amend § 50.20 by revising paragraphs (a)(2), (a)(3), and (a)(4), to read as follows:

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

(a) * * *

(2) Rehabilitation of buildings and improvements when the following conditions are met:

(i) In the case of single-family buildings (with one to four units), unit density is not increased beyond four units and the dwellings do not result from a conversion of use from a non-residential use;

(ii) In the case of multifamily residential buildings:

(A) Unit density is not changed more than 20 percent;

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

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

(iii) In the case of non-residential structures, including commercial, industrial, and public buildings:

(A) The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and

(B) The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.

(3)(i) An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between; or

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

(4) Acquisition (including leasing) or disposition of, or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use.

* * * * *

PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES

4. The authority citation for part 58 is revised to read as follows:

Authority: 12 U.S.C. 1707 note, 1715z–13a(k); 25 U.S.C. 4115; 42 U.S.C. 1437x, 3535(d), 3547, 4332, 4852, 5304(g), 11402, 12838, and 12905(h); title II of Pub. L. 105–276; E.O. 11514 as amended by E.O. 11991, 3 C.F.R. 1977 Comp. p 123.

5. Amend § 58.1 as follows:

a. Removing paragraph (b)(2) and designating it as “reserved”;

b. Redesignating paragraph (b)(3) as paragraph (b)(3)(i) and revising newly redesignated paragraph (b)(3)(i);

c. Adding paragraph (b)(3)(ii);

d. Revising paragraph (b)(6);

e. Removing “and” at the end of paragraph (b)(8);

f. Replacing the period at the end of paragraph (b)(9) with a semicolon; and

g. Adding new paragraphs (b)(10), (11), (12), (c), and (d).

The revisions and additions read as follows:

§ 58.1 Purpose and applicability.

* * * * *

(b) * * *

(2) [Reserved]

(3)(i) Grants to States and units of general local government under the Emergency Shelter Grant Program, Supportive Housing Program (and its predecessors, the Supportive Housing Demonstration Program (both Transitional Housing and Permanent Housing for Homeless Persons with Disabilities) and Supplemental Assistance for Facilities to Assist the Homeless), Shelter Plus Care Program, Safe Havens for Homeless Individuals Demonstration Program, and Rural Homeless Housing Assistance, authorized by Title IV of the McKinney-Vento Homeless Assistance Act, in accordance with section 443 (42 U.S.C. 11402);

(ii) Grants beginning with fiscal year 2001 to private nonprofit organizations and housing agencies under the Supportive Housing Program and Shelter Plus Care Program authorized by Title IV of the McKinney-Vento Homeless Assistance Act, in accordance with section 443 (42 U.S.C. 11402);

* * * * *

(6)(i) Public Housing Programs under Title I of the United States Housing Act of 1937, including HOPE VI grants authorized under section 24 of the Act for fiscal year 2000 and later, in accordance with section 26 (42 U.S.C. 1437x);

(ii) Grants for the revitalization of severely distressed public housing (HOPE VI) for fiscal year 1999 and prior years, in accordance with Title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105–276, approved October 21, 1998); and

(iii) Assistance administered by a public housing agency under section 8 of the United States Housing Act of 1937, except for assistance provided under part 886 of this title, in accordance with section 26 (42 U.S.C. 1437x);

* * * * *

(10) Assistance provided under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), in accordance with section 105 (25 U.S.C. 4115);

(11) Indian Housing Loan Guarantees authorized by section 184 of the Housing and Community Development Act of 1992, in accordance with section 184(k) (12 U.S.C. 1715z–13a(k)); and

(12) Grants for Housing Opportunities for Persons with AIDS (HOPWA) under the AIDS Housing Opportunity Act, as follows: competitive grants beginning with fiscal year 2001 and all formula

grants, in accordance with section 856(h) (42 U.S.C. 12905(h)); all grants for fiscal year 1999 and prior years, in accordance with section 207(c) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105-276, approved October 21, 1998).

(c) When HUD assistance is used to help fund a revolving loan fund that is administered by a recipient or another party, the activities initially receiving assistance from the fund are subject to the requirements in this part. Future activities receiving assistance from the revolving loan fund, after the fund has received loan repayments, are subject to the environmental review requirements if the rules of the HUD program that initially provided assistance to the fund continue to treat the activities as subject to the Federal requirements. If the HUD program treats the activities as not being subject to any Federal requirements, then the activities cease to become Federally funded activities and the provisions of this part do not apply.

(d) To the extent permitted by applicable laws and the applicable regulations of the Council on Environmental Quality, the Assistant Secretary for Community Planning and Development may, for good cause and with appropriate conditions, approve waivers and exceptions or establish criteria for exceptions from the requirements of this part.

6. Amend § 58.2 as follows:

- a. Revising paragraph (a)(5)(v);
- b. Removing “and” at the end of paragraph (a)(5)(vii);
- c. Adding new paragraphs (a)(5)(ix) and (x);
- d. Revising paragraphs (a)(6) and (a)(7), introductory text, (a)(7)(i), and (a)(7)(ii), introductory text;
- e. Removing paragraphs (a)(7)(ii)(D) and (E).

The revisions and additions read as follows:

§ 58.2 Terms, abbreviations and definitions.

- (a) * * *
- (5) * * *

(v) With respect to Public Housing Programs under § 58.1(b)(6)(i), fiscal year 1999 and prior HOPE VI grants under § 58.1(b)(6)(ii) or Section 8 assistance under § 58.1(b)(6)(iii), a public housing agency;

* * * * *

(vii) With respect to the FHA Multifamily Housing Finance Agency Pilot Program under § 58.1(b)(8), a qualified housing finance agency;

(viii) With respect to the Self-Help Homeownership Opportunity Program

under § 58.1(b)(9), any direct grantee of HUD;

(ix) With respect to NAHASDA assistance under § 58.1(b)(10) and the Section 184 Indian Housing Loan Guarantee program under § 58.1(b)(11), the Indian tribe.

(x) With respect to the Shelter Plus Care and Supportive Housing Programs under § 58.1(b)(3)(ii), nonprofit organizations and other entities.

(6) *Release of funds.* In the case of the FHA Multifamily Housing Finance Agency Pilot Program under § 58.1(b)(8), Release of Funds, as used in this part, refers to HUD issuance of a firm approval letter, and Request for Release of Funds refers to a recipient’s request for a firm approval letter. In the case of the Section 184 Indian Housing Loan Guarantee program under § 58.1(b)(11), Release of Funds refers to HUD’s issuance of a commitment to guarantee a loan, or if there is no commitment, HUD’s issuance of a certificate of guarantee.

(7) *Responsible Entity.* Responsible Entity means:

(i) With respect to environmental responsibilities under programs listed in § 58.1(b)(1), (2), (3)(i), (4), and (5), a recipient under the program.

(ii) With respect to environmental responsibilities under the programs listed in § 58.1(b)(3)(ii) and (6) through (12), a State, unit of general local government, Indian tribe or Alaska Native Village, when it is the recipient under the program. Under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) listed in § 58.1(b)(10), the Indian tribe is the responsible entity whether or not a Tribally Designated Housing Entity is authorized to receive grant amounts on behalf of the tribe. The Indian tribe is also the responsible entity under the Section 184 Indian Housing Loan Guarantee program listed in § 58.1(b)(11). Regional Corporations in Alaska are considered Indian tribes in this part. Non-recipient responsible entities are designated as follows:

* * * * *

7. Amend § 58.4 as follows:

- a. Revising paragraph (b)(2);
- b. Removing paragraph (b)(3); and
- c. Adding a new paragraph (c).

The revision and addition read as follows:

§ 58.4 Assumption authority.

* * * * *

(b) * * *

(2) States must exercise HUD’s responsibilities in accordance with § 58.18, with respect to approval of a unit of local government’s environmental certification and RROF

for a HUD assisted project funded through the State. Approval by the State of a unit of local government’s certification and RROF satisfies the Secretary’s responsibilities under NEPA and the related laws cited in § 58.5.

(c) *Particular responsibilities of Indian tribes.* An Indian tribe may, but is not required to, assume responsibilities for environmental review, decision-making and action for programs authorized by the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) or section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z-13a). The tribe must make a separate decision regarding assumption of responsibilities for each of these Acts and communicate that decision in writing to HUD. If the tribe assumes these responsibilities, the requirements of this part shall apply. If a tribe formally declines assumption of these responsibilities, they are retained by HUD and the provisions of part 50 of this title apply.

8. Amend § 58.5 by revising paragraphs (a)(1) and (i) to read as follows:

§ 58.5 Related Federal laws and authorities.

* * * * *

(a) *Historic properties.* (1) The National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*), particularly sections 106 and 110 (16 U.S.C. 470 and 470h-2).

* * * * *

(i) *HUD environmental standards.* (1) Applicable criteria and standards specified in part 51 of this title, other than the runway clear zone notification requirement in § 51.303(a)(3). Also, it is HUD policy that all properties that are being proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property.

(2) The environmental review of multifamily housing with five or more dwelling units (including leasing), or non-residential property, must include the evaluation of previous uses of the site or other evidence of contamination on or near the site, to assure that the occupants of proposed sites are not adversely affected by any of the hazards listed in § 58.5(i)(1).

(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, or may have contained, hazardous wastes.

(4) The responsible entity shall use current techniques by qualified professionals to undertake investigations determined necessary.

* * * * *

9. Revise § 58.10 to read as follows:

§ 58.10 Basic environmental responsibility.

In accordance with the provisions of law cited in § 58.1(b), except as otherwise provided in § 58.4(c), the responsible entity must assume the environmental responsibilities for projects under programs cited in § 58.1(b). In doing so, the responsible entity must comply with the provisions of NEPA and the CEQ regulations contained in 40 CFR parts 1500 through 1508, including the requirements set forth in this part.

10. Amend § 58.11 by revising paragraph (b) to read as follows:

§ 58.11 Legal capacity and performance.

* * * * *

(b) If a public housing, special project, HOPWA, Supportive Housing, Shelter Plus Care, or Self-Help Homeownership Opportunity recipient that is not a responsible entity objects to the non-recipient responsible entity conducting the environmental review on the basis of performance, timing, or compatibility of objectives, HUD will review the facts to determine who will perform the environmental review.

* * * * *

11. Remove and reserve § 58.17 to read as follows.

§ 58.17 [Reserved]

12. Revise § 58.18 to read as follows:

§ 58.18 Responsibilities of States assuming HUD environmental responsibilities.

States that elect to administer a HUD program shall ensure that the program complies with the provisions of this part. The State must:

(a) Designate the State agency or agencies that will be responsible for carrying out the requirements and administrative responsibilities set forth in subpart H of this part and which will:

(1) Develop a monitoring and enforcement program for post-review actions on environmental reviews and monitor compliance with any environmental conditions included in the award.

(2) Receive public notices, RROFs and certifications from recipients pursuant to §§ 58.70 and 58.71; accept objections from the public and from other agencies (§ 58.73); and perform other related responsibilities regarding releases of funds.

(b) Fulfill the State role in subpart H relative to the time period set for the receipt and disposition of comments, objections and appeals (if any) on particular projects.

13. Revise § 58.22 to read as follows:

§ 58.22 Limitations on activities pending clearance.

(a) Neither a recipient nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance under a program listed in § 58.1(b) on an activity or project until HUD or the state has approved the recipient's RROF and the related certification from the responsible entity. In addition, until the RROF and the related certification have been approved, neither a recipient nor any participant in the development process may commit non-HUD funds on or undertake an activity or project under a program listed in § 58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives.

(b) If a project or activity is exempt under § 58.34, or is categorically excluded (except in extraordinary circumstances) under § 58.35(b), no RROF is required and the recipient may undertake the activity immediately after the responsible entity has documented its determination as required in § 58.34(b) and § 58.35(d), but the recipient must comply with applicable requirements under § 58.6.

(c) If a recipient is considering an application from a prospective subrecipient or beneficiary and is aware that the prospective subrecipient or beneficiary is about to take an action within the jurisdiction of the recipient that is prohibited by § 58.22(a), then the recipient will take appropriate action to ensure that the objectives and procedures of NEPA are achieved.

(d) An option agreement on a proposed site or property is allowable prior to the completion of the environmental review if the option agreement is subject to a determination by the recipient on the desirability of the property for the project as a result of the completion of the environmental review in accordance with this part and the cost of the option is a nominal portion of the purchase price. There is no constraint on the purchase of an option by third parties that have not been selected for HUD funding, have no responsibility for the environmental review and have no say in the approval or disapproval of the project.

(e) *Self-Help Homeownership Opportunity Program (SHOP)*. In

accordance with section 11(d)(2)(A) of the Housing Opportunity Program Extension Act of 1996 (42 U.S.C. 12805 note), an organization, consortium, or affiliate receiving assistance under the SHOP program may advance nongrant funds to acquire land prior to completion of an environmental review and approval of an Request for Release of Funds (RROF) and certification, notwithstanding § 58.22(a). Any advances to acquire land prior to approval of the RROF and certification are made at the risk of the organization, consortium, or affiliate and reimbursement for such advances may depend on the result of the environmental review. This authorization is limited to the SHOP program only and all other forms of HUD assistance are subject to the limitations in paragraph (a) of this section.

(f) *Relocation*. Funds may be committed for relocation assistance before the approval of the RROF and related certification for the project provided that the relocation assistance is required by 24 CFR part 42.

14. Amend § 58.33 by revising paragraph (b) to read as follows:

§ 58.33 Emergencies.

* * * * *

(b) If funds are needed on an emergency basis and adherence to separate comment periods would prevent the giving of assistance during a Presidentially declared disaster, or during a local emergency that has been declared by the chief elected official of the responsible entity who has proclaimed that there is an immediate need for public action to protect the public safety, the combined Notice of FONSI and Notice of Intent to Request Release of Funds (NOI/RROF) may be disseminated and/or published simultaneously with the submission of the RROF. The combined Notice of FONSI and NOI/RROF shall state that the funds are needed on an emergency basis due to a declared disaster and that the comment periods have been combined. The Notice shall also invite commenters to submit their comments to both HUD and the responsible entity issuing the notice to assure that these comments will receive full consideration.

15. Amend § 58.34 by revising paragraph (b) to read as follows:

§ 58.34 Exempt activities.

* * * * *

(b) A recipient does not have to submit an RROF and certification, and no further approval from HUD or the State will be needed by the recipient for

the drawdown of funds to carry out exempt activities and projects. However, the responsible entity must document in writing its determination that each activity or project is exempt and meets the conditions specified for such exemption under this section. Documentation in the Environmental Review Record (ERR) must be made prior to the commitment of funds or undertaking any of the activities listed in § 58.34(a).

- 16. Amend § 58.35 as follows:
 - a. Redesignating paragraphs (a)(3)(i) and (a)(3)(ii) as paragraphs (a)(3)(ii) and (a)(3)(iii);
 - b. Adding a new paragraph (a)(3)(i);
 - c. Revising newly redesignated paragraph (a)(3)(ii)(B);
 - d. Revising paragraphs (a)(4) and (a)(5); and
 - e. Adding a new paragraph (b)(7) and adding a last sentence to the end of paragraph (d).

The additions and revisions read as follows:

§ 58.35 Categorical exclusions.

- (a) * * *
- (3) * * *
- (i) In the case of single family residential buildings (with one to four units), unit density is not increased beyond four units and the dwellings do not result from a conversion of use from a non-residential use.
 - (ii) * * *
 - (A) * * *
 - (B) The project does not involve changes in land use from non-residential to residential or from residential to non-residential; and
 - (C) * * *
- (4)(i) An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between; or
 - (ii) An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site.
- (5) Acquisition (including leasing) or disposition of, or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed or disposed of will be retained for the same use.

* * * * *

- (b) * * *
- (7) Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under this part, if the approval is made by the same

responsible entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under § 58.47.

* * * * *

(d) Documentation in the ERR must be made prior to the commitment of funds or to undertaking any of the activities listed in § 58.35.

17. Revise § 58.45 to read as follows:

§ 58.45 Public comment periods.

Required notices must afford the public the following minimum comment periods, counted in accordance with § 58.21:

(a) Notice of Finding of No Significant Impact (FONSI): 15 days when published or, if no publication, 18 days when mailing and posting.

(b) Notice of Intent to Request Release of Funds (NOI-RROF): 7 days when published or, if no publication, 10 days when mailing and posting.

(c) Concurrent or combined notices: 15 days when published or, if no publication, 18 days when mailing and posting.

18. Amend § 58.72 by revising paragraph (b) to read as follows:

§ 58.72 HUD or State actions on RROFs and certifications.

* * * * *

(b) HUD (or the State) may disapprove a certification and RROF if it has knowledge that the responsible entity or other participants in the development process have not complied with the items in § 58.75, or that the RROF and certification are inaccurate.

* * * * *

19. Amend § 58.75 by revising paragraph (e) to read as follows:

§ 58.75 Permissible bases for objections.

* * * * *

(e) The recipient or other participants in the development process have committed funds, incurred costs or undertaken activities not authorized by this part before release of funds and approval of the environmental certification by HUD (or the State).

* * * * *

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

20. The authority citation for part 574 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12901–12912.

21. Revise § 574.510 to read as follows:

§ 574.510 Environmental procedures and standards.

(a) Activities under this part are subject to HUD environmental regulations in part 58 of this title, except that HUD will perform an environmental review in accordance with part 50 of this title for any competitive grant for fiscal year 2000.

(b) The recipient, its project partners and their contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish or construct property for a project under this part, or commit or expend HUD or local funds for such eligible activities under this part, until the responsible entity (as defined in § 58.2 of this title) has completed the environmental review procedures required by part 58 and the environmental certification and RROF have been approved (or HUD has performed an environmental review and the recipient has received HUD approval of the property). HUD will not release grant funds if the recipient or any other party commits grant funds (i.e., incurs any costs or expenditures to be paid or reimbursed with such funds) before the recipient submits and HUD approves its RROF (where such submission is required).

(c) For activities under a grant to a nonprofit entity that would generally be subject to review under part 58, HUD may make a finding in accordance with § 58.11(d) and may itself perform the environmental review under the provisions of part 50 of this title if the recipient nonprofit entity objects in writing to the responsible entity's (RE) performing the review under part 58. Irrespective of whether the RE in accord with part 58 (or HUD in accord with part 50) performs the environmental review, the recipient shall supply all available, relevant information necessary for the RE (or HUD, if applicable) to perform for each property any environmental review required by this part. The recipient also shall carry out mitigating measures required by the RE (or HUD, if applicable) or select alternate eligible property.

PART 582—SHELTER PLUS CARE

22. The authority citation for part 582 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11403–11407b.

23. Revise § 582.230 to read as follows:

§ 582.230 Environmental review.

(a) Activities under this part are subject to HUD environmental regulations in part 58 of this title, except that HUD will perform an

environmental review in accordance with part 50 of this title prior to its approval of any conditionally selected applications for PHAs for fiscal year 2000 and prior years for other than the SRO component. For activities under a grant to a PHA that generally would be subject to review under part 58, HUD may make a finding in accordance with § 58.11(d) and may itself perform the environmental review under the provisions of part 50 of this title if the recipient PHA objects in writing to the responsible entity's (RE) performing the review under part 58. Irrespective of whether the RE in accord with part 58 (or HUD in accord with part 50) performs the environmental review, the recipient shall supply all available, relevant information necessary for the RE (or HUD, if applicable) to perform for each property any environmental review required by this part. The recipient also shall carry out mitigating measures required by the RE (or HUD, if applicable) or select alternate eligible property. HUD may eliminate from consideration any application that would require an Environmental Impact Statement (EIS).

(b) The recipient, its project partners and their contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish or construct property for a project under this part, or commit or expend HUD or local funds for such eligible activities under this part, until the responsible entity (as defined in § 58.2 of this title) has completed the environmental review procedures required by part 58 and the environmental certification and RROF have been approved or HUD has performed an environmental review under part 50 and the recipient has received HUD approval of the property. HUD will not release grant funds if the recipient or any other party commits grant funds (i.e., incurs any costs or expenditures to be paid or reimbursed with such funds) before the recipient submits and HUD approves its RROF (where such submission is required).

PART 583—SUPPORTIVE HOUSING

24. The authority citation for part 583 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11389.

25. Revise § 583.230 to read as follows:

§ 583.230 Environmental review.

(a) Activities under this part are subject to HUD environmental regulations in part 58 of this title, except that HUD will perform an environmental review in accordance with part 50 of this title prior to its

approval of any conditionally selected applications for fiscal year 2000 and prior years that were received directly from private nonprofit entities and governmental entities with special or limited purpose powers. For activities under a grant that generally would be subject to review under part 58, HUD may make a finding in accordance with § 58.11(d) and may itself perform the environmental review under the provisions of part 50 of this title if the recipient objects in writing to the responsible entity (RE) performing the review under part 58. Irrespective of whether the RE in accord with part 58 (or HUD in accord with part 50) performs the environmental review, the recipient shall supply all available, relevant information necessary for the RE (or HUD, if applicable) to perform for each property any environmental review required by this part. The recipient also shall carry out mitigating measures required by the RE (or HUD, if applicable) or select alternate eligible property. HUD may eliminate from consideration any application that would require an Environmental Impact Statement (EIS).

(b) The recipient, its project partners and their contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish or construct property for a project under this part, or commit or expend HUD or local funds for such eligible activities under this part, until the RE (as defined in § 58.2 of this title) has completed the environmental review procedures required by part 58 and the environmental certification and RROF have been approved or HUD has performed an environmental review under part 50 and the recipient has received HUD approval of the property. HUD will not release grant funds if the recipient or any other party commits grant funds (i.e., incurs any costs or expenditures to be paid or reimbursed with such funds) before the recipient submits and HUD approves its RROF (where such submission is required).

PART 970—PUBLIC HOUSING PROGRAM—DEMOLITION OR DISPOSITION OF PUBLIC HOUSING PROJECTS

26. The authority citation for part 970 continues to read as follows:

Authority: 42 U.S.C. 1437p and 3535(d).

27. Amend § 970.4 by revising paragraph (b), removing paragraph (c) and designating it as reserved, to read as follows:

§ 970.4 General requirements for HUD approval of applications for demolition or disposition.

* * * * *

(b) *Environmental review.* (1) Activities under this part are subject to HUD environmental regulations in part 58 of this title. However, HUD may make a finding in accordance with § 58.11(d) and may itself perform the environmental review under the provisions of part 50 of this title if a PHA objects in writing to the responsible entity (RE) performing the review under part 58.

(2) The PHA, its project partners and their contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish or construct property for a project under this part, or commit or expend HUD or local funds for such eligible activities under this part, until the responsible entity (as defined in § 58.2 of this title) has completed the environmental review procedures required by part 58 and the environmental certification and RROF have been approved or HUD has performed an environmental review under part 50 and has notified the PHA in writing of environmental approval of the property. HUD will not release grant funds if the recipient or any other party commits grant funds (i.e., incurs any costs or expenditures to be paid or reimbursed with such funds) before the recipient submits and HUD approves its RROF (where such submission is required).

(3) Irrespective of whether the RE in accord with part 58 (or HUD in accord with part 50) performs the environmental review, the PHA shall supply all available, relevant information necessary for the RE (or HUD, if applicable) to perform for each property any environmental review required by this part. The PHA also shall carry out mitigating measures required by the RE (or HUD, if applicable) or select alternate eligible property.

(4) Demolition or disposition (including any related replacement housing plan) will be aggregated in accordance with § 58.32 to meet the environmental review requirements. If the site of the replacement housing is unknown at the time of submission of the application for demolition or disposition, the application must contain a certification that the applicant agrees to assist the responsible entity to comply with part 58 (or HUD to comply with part 50, if applicable) of this title, and that the applicant shall obtain environmental clearance of the replacement housing in accordance with

procedures of part 58 (or part 50 if applicable) of this title.

(c) [Reserved]

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Dated: May 28, 2002.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

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