

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 570

[Docket No. FR-4699-P-01]

RIN 2506-AC12  
HUD-2004-0002

### Community Development Block Grant Program Revision of CDBG Eligibility and National Objective Regulations

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would revise the Community Development Block Grant (CDBG) program regulations to clarify the eligibility of brownfields cleanup, development, or redevelopment within existing program eligibility categories. In part, these changes respond to a 1999 statutory direction with respect to brownfields-related eligible activities. In addition, this proposed rule would make changes to CDBG national objectives that relate to brownfields and clarify regulatory language.

The proposed rule would expand the "slums or blight" national objective criteria to include known and suspected environmental contamination, as well as economic disinvestments, as blighting influences. The proposed rule would require grantees to establish definitions of blighting influences and to retain records. In addition, an area slums or blight designation would be required to be redetermined every five years for continued qualification. The proposed rule would include the abatement of asbestos hazards and lead-based paint hazard evaluation and reduction as eligible rehabilitation activities. The proposed rule would eliminate duplicative text concerning the treatment of lead-based paint hazards. Finally, the proposed rule would require that acquisition or relocation must be a precursor to other activities which eliminate specific conditions of

blight or physical decay when addressing slums or blight on a spot basis.

**DATES:** *Comments Due Date:* September 7, 2004.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Regulations Division, 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 8 a.m. and 5 p.m. weekdays at the above address.

Interested persons are also invited to submit comments electronically through <http://www.epa.gov/feddoCKET>. Follow the link to "View Open HUD Dockets." Commenters should follow the electronic submission instructions given on that site. A copy of public comments submitted, and, if applicable, other supporting documents, will be available for viewing at that site.

**FOR FURTHER INFORMATION CONTACT:** Steve Johnson, Director, State and Small Cities Division, Office of Block Grant Assistance, Office of Community Planning and Development, Room 7184, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-7000; telephone (202) 708-1322 (this is not a toll-free number). Hearing-or speech-impaired individuals may access the telephone number listed in this section via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339. Copies of studies mentioned in this rule are available for a fee from HUD User at (800) 245-2691 (a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

While the cleanup and redevelopment of brownfields can be accomplished using any number of categories of eligible activities, qualifying such an activity under the existing criteria concerning the slums or blight national objective has often been confusing and problematic. On May 31, 1994 (59 FR 28176), HUD issued a proposed CDBG Economic Development rule and invited public comment on the concept of broadening the slums or blight national

objective criteria to incorporate environmental contamination and economic disinvestment as blighting conditions. Commenters generally supported this concept, but few provided specific recommendations or quantifiable responses to the questions raised in the preamble dealing with the definition of "contamination." When the final CDBG Economic Development rule was published on January 5, 1995 (60 FR 1922), the Department decided to wait until a later date to publish new proposed rules that specifically addressed changes to the slums or blight criteria.

In 1996, HUD consulted with a task force of local officials organized by the U.S. Conference of Mayors to seek new approaches to adding environmental contamination as a blighting influence. The Department also consulted with other federal agencies, including the Environmental Protection Agency (EPA), on the possibility of increasing CDBG grantees' flexibility to undertake environmental remediation.

In 1997, HUD contracted with Research Triangle, Inc., to survey CDBG grantees and report on their familiarity with brownfields issues and their use of CDBG funds to remediate or redevelop brownfields sites. In 1998, HUD contracted with the National Association of Local Government Environmental Professionals (NALGEP) to evaluate the impact of current CDBG regulations on brownfields redevelopment and to present recommendations based on their local government perspective on revising the CDBG program to better deal with brownfields projects. The conclusions of these reports, described in section II of this **SUPPLEMENTARY INFORMATION** section, have been particularly useful to HUD in identifying and developing policy alternatives.

In the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1999 (Pub. L. 105-276, approved October 21, 1998) (FY1999 Appropriations Act), Congress outlined the eligibility of environmental cleanup and economic development activities under the CDBG program. Section 205 of the FY1999 Appropriations Act stated:

For fiscal years 1998, 1999, and all fiscal years thereafter, States and entitlement communities may use funds allocated under

the community development block grants program under title I of the Housing and Community Development Act of 1974 for environmental cleanup and economic development activities related to Brownfields projects in conjunction with the appropriate environmental regulatory agencies, as if such activities were eligible under section 105(a) of such Act.

In addition, in 1997, HUD's Office of the Inspector General (OIG) issued a report on the use of the national objective criteria for eliminating slums or blight on a spot basis in a specific project. This report recommended that HUD consider revising the criteria to eliminate ambiguity and the possibility for misuse of the spot slums or blight criteria.

With this information, HUD revisited the conceptual approach proposed in the 1994 rule, and now publishes this new proposed rule to allow for additional comment.

## II. Changes Proposed by This Rule

### *Eligible Activities, Generally*

HUD has determined that section 205 of the FY1999 Appropriations Act does not add any new eligibility categories to Title I of the Housing and Community Development Act of 1974 (HCDA). The intent of the language is to clarify that costs of environmental remediation, development, or redevelopment of environmentally contaminated sites are indeed eligible costs within the existing categories of eligible activities. Therefore, this proposed rule does not create any new eligibility categories, but would expand the scope of the current description of existing eligible activities in 24 CFR part 570, subpart C, entitled, "Eligible Activities," subpart I, entitled "State Community Development Block Grant Program," and subpart M, entitled "Loan Guarantees," to include environmental remediation, development, or redevelopment of contaminated sites. Other conforming changes are proposed in association with the slums or blight national objective criteria.

It should be noted throughout this rule, that the terms "CDBG funding" and "CDBG programs" refer to, in addition to the Entitlement and State programs, those programs covered by 24 CFR 570.1 (e.g., the Section 108 Loan Guarantee program, the Economic Development Initiative, the Brownfields Economic Development Initiative, the HUD-administered Small Cities and Insular CDBG programs).

### *CDBG Entitlement Program Eligible Activities*

Under this proposed rule, assessment and remediation of sites with known or

suspected environmental contamination would be listed as eligible activities under § 570.201(d), which addresses clearance. Development or redevelopment of properties with known or suspected contamination would be specifically identified as eligible under § 570.203, special economic development activities, and § 570.204, special activities by community-based development organizations. The proposed rule would allow for some site assessment costs to be eligible as planning costs, while others may be actual project delivery costs. For example, preliminary studies to determine whether a site is contaminated, the cause of the contamination, and the extent of the contamination, would generally be planning costs. Studies to determine what type or level of remediation must be undertaken to develop a specific property for a specific use would qualify under other eligibility categories as project implementation costs. HUD further proposes to revise § 570.202(a)(3), to make clear that for a private, for-profit business, abatement of asbestos hazards and lead-based paint hazard evaluation and reduction are eligible. This is proposed because elimination of these conditions results in a health and safety benefit to the public. Abatement of these conditions through demolition is also eligible, provided that there is compliance with environmental requirements. HUD also proposes to revise § 570.202(b)(2), to include "improvements" to the list of items eligible for rehabilitation and preservation activities. "Improvements" would be added to maintain greater consistency with the introductory language of § 570.202.

### *State CDBG Program Eligible Activities*

The State CDBG program regulations do not contain a list of eligible activities. Section 570.482 would be revised to clarify that project-specific assessment or remediation of contaminated properties with known or suspected environmental contamination may be considered as eligible under section 105(a)(14), (15), or (17) of the HCDA, as amended. To incorporate this additional language, some minor renumbering of the existing language at § 570.482 would occur. Other sections of the CDBG Entitlement eligible activity regulations that are being revised do not have a counterpart section in the State CDBG program regulations. States have latitude to interpret the eligibility provisions of the HCDA, and of course, may use the CDBG Entitlement program eligibility regulations as interpretive guidance.

### *Section 108 Loan Guarantee Program Eligible Activities*

Section 570.703, which governs eligible activities in the Section 108 Loan Guarantee program, the Economic Development Initiative, and the Brownfields Economic Development Initiative, would be revised to add project-specific assessment and remediation of known or suspected environmental contamination to paragraph (e), which addresses clearance, paragraph (f), which addresses site preparation; and paragraph (l), which addresses public facilities. Each of these eligible activity provisions contains limitations concerning the situations in which they may be used; therefore, incorporating project-specific assessment and remediation into all three paragraphs would increase grantees' flexibility. Language would be added to paragraphs (e) and (f) of § 570.703 to clarify that eligible remediation could include certain environmental assessment costs (as activity delivery costs) that would not be considered as planning costs. Planning costs eligible under § 570.205 are not statutorily eligible under the Section 108 Loan Guarantee program. Historic preservation would be added to paragraph (l), public facilities, of § 570.703. Historic preservation is currently permitted by policy as an eligible form of rehabilitation or reconstruction of a public facility financed under the Section 108 Loan Guarantee Program. The addition of historic preservation to the regulations is intended to give public notice of this policy.

### *Public Benefit Standards*

Economic development projects funded under §§ 570.203 and 570.204 of the CDBG entitlement regulations, and sections 105(a)(14), (15), and (17) of the HCDA, are subject to the public benefit standards regulations found in § 570.209 (for the entitlement CDBG program) and § 570.482 (for the State CDBG program). Note that environmental assessment or remediation work carried out under other eligibility categories of the HCDA or the regulations are not subject to the public benefit standards.

Because treatment and redevelopment of brownfields is one of the administration's major community development initiatives, HUD proposes to add development or redevelopment of environmentally contaminated sites to the list of "important national interest" economic development activities that a grantee may exclude from the aggregate public benefit test. To be excluded from the aggregate

public benefit standards, such an activity must directly involve the economic development of property known to be environmentally contaminated. CDBG-funded activities must either directly pay for the development or redevelopment activities or be an integral precursor activity to development paid for from other sources.

*National Objective Standards for Addressing Slums or Blight on an Area Basis*

The existing regulations contain four criteria for activities addressing slums or blight on an area basis:

1. The area must meet a state or local definition of a slum, blighted, deteriorated, or deteriorating area.
2. The area must contain a substantial number of deteriorated or deteriorating buildings or the public improvements must be in a general state of deterioration.
3. The assisted activity must address one or more of the conditions that contributed to the deterioration of the area.
4. The recipient must keep records sufficient to document its findings that a project meets the national objective of prevention or elimination of slums or blight.

HUD proposes to significantly expand the second of these criteria. In addition to deteriorated or deteriorating buildings, HUD proposes to expand this criterion to include physical deterioration of improvements on private property. HUD also proposes to include several other factors that recognize economic disinvestment and environmental contamination as blighting influences. These are:

1. Abandonment of properties;
2. Chronic high turnover rates or chronic high vacancy rates in occupancy of commercial or industrial buildings;
3. Significant declines in property values or abnormally low property values relative to other areas in the community; and
4. Known or suspected environmental contamination of properties.

Grantees would be able to “mix and match” these factors. Some individual properties in an area might qualify because of abandonment, others might qualify because of environmental contamination, still others because of building conditions. The expansion of the deteriorating or deteriorated buildings criterion to include physical deterioration of improvements on private property recognizes that certain improvements that are not maintained can have blighting influences. Some

examples of this include: Retaining walls that are in a state of disrepair; abandoned industrial equipment on land; or a deteriorated pedestrian bridge. HUD would expect a significant level of deterioration to be present in order to meet this criterion. Situations involving minor deterioration such as cracked sidewalks, chipped paint, or other insignificant items would not meet this criterion.

The rule would refer more generally to “properties” rather than just buildings, as vacant properties may exhibit some of the other proposed blighting influences. Note, however, that two of the criteria specifically relate to conditions of buildings themselves. This proposed rule would retain the existing provision allowing an area to qualify as blighted based on the deterioration of public improvements. This is an alternative, stand-alone criterion that cannot be “mixed and matched” with the other criteria. This latter criterion would be clarified to specify that the deteriorated state of public improvements must exist throughout the designated area, not just on a few blocks or in one corner of an area.

Grantees would be required to establish definitions and retain records to substantiate how the area met the slums or blighted area criteria. Specifically, grantees would be required to define deteriorating or deteriorated buildings or improvements, abandonment of properties, chronic high turnover rates, chronic high vacancy rates, significant declines in property values, abnormally low property values, and environmental contamination. Grantees would also be required to redetermine the slums or blighted area designation every five years and retain documentation to support continued qualification. Grantees would not be required to develop a definition for the existing regulatory standard concerning public improvements in a general state of deterioration, but the recordkeeping requirements would remain in place.

*Review of Public Comments and Applicability to This Proposed Rule*

In responding to HUD’s 1994 proposed rule, several commenters, remarking that vacant properties are an economic disinvestment issue, asked HUD to clarify how many buildings it considers to be a “significant number” of vacant buildings. Current HUD regulations indicate that a “substantial number” of buildings must be deteriorated or deteriorating in a designated area in order to qualify as a slum or blighted area. HUD’s policy

determinations currently define a “substantial number” to mean at least 25 percent of the buildings in the area, unless State law specifies some other minimum. These policy determinations are contained on page 3–35 of the *Guide to National Objectives and Eligible Activities for Entitlement Communities* and on page 3–41 of the *Guide to National Objectives and Eligible Activities for the State CDBG Program*. Since this rule would recognize a wider range of blighting influences, HUD also proposes to require that a higher percentage, 33 percent, of properties in an area meet one or more of these conditions.

Several commenters on the 1994 proposed rule also asked HUD to clarify what it considers to be an “unusually high” turnover rate. To maintain grantee flexibility, HUD does not propose to quantify what constitutes chronic “high” turnover or “high” vacancy rates or “significant declines” in property values. Lease turnover rates and property values change over time and vary greatly around the country and even within a city.

Other comments responding to the 1994 proposed rule urged HUD to simply accept local certifications or determinations that an area is blighted, eliminating any additional test concerning property conditions, or to allow vacant or undeveloped land as evidence of blight. The preamble to CDBG entitlement regulations issued in September 1983 noted that the criteria in State laws are often broadly or vaguely defined and that areas could meet many State definitions despite the lack of “objectively determinable signs of blight” (which are required by the HCDA). The Federal statute sets a higher standard than is either intended or required under some State laws, which have broader purposes. Some States’ laws, for example, include such conditions as “inappropriately zoned land” or “underdeveloped” land.

Although the Department proposes to allow recipients to establish the definitions of blighting influences, as described previously, HUD does not accept inappropriate zoning or the presence of vacant or undeveloped land as prima facie evidence of blighted conditions and holds to the higher standard set by the HCDA. Similarly, HUD does not accept the lack of certain public facilities in an area as equating to public facilities being in a general state of deterioration. Finally, with regard to environmental contamination, HUD strongly believes that certain widespread, generalized types of pollution, such as air pollution or non-point pollution of surface waters in the

public domain, should not be considered to be blighting influences and would object to local definitions that contained these factors.

*National Objective Standards for Addressing Slums or Blight on a Spot Basis*

The existing national objective criterion under the CDBG regulations for addressing slums or blight on a spot basis allows a limited number of activities to be undertaken to address spot conditions of blight or decay outside of a designated blighted area. This proposed rule would add remediation of environmental contamination and rehabilitation of improvements to the list of activities that may be undertaken using the spot slums or blight criterion. Under this criterion, rehabilitation is limited to eliminating specific conditions detrimental to public health and safety. Given the health risks associated with environmental contaminants (including lead-based paint and asbestos), rehabilitation activities involving the evaluation and reduction of lead-based paint hazards or abatement of asbestos can qualify under this criterion as eliminating conditions detrimental to public health and safety.

An additional change unrelated to environmental contamination is proposed for the spot slums or blight national objective criterion. HUD's OIG has expressed concern about the current list of activities that may be undertaken to address the spot slums or blight national objective criterion. Activities such as acquisition or relocation may be undertaken with CDBG or section 108 Loan Guarantee funds pursuant to this criterion, but if no other rehabilitation or redevelopment activity occurs, OIG questioned how the acquisition or relocation by itself eliminates conditions of decay or blight.

In this proposed rule, acquisition and relocation would continue to be eligible spot slums or blight-addressing activities, but only when they are a precursor to other activities that directly eliminate the conditions of blight or physical decay. The other development activities that actually address the blighting conditions would not have to be funded with funds from the CDBG program, Section 108 Loan Guarantee program, Economic Development Initiative, or Brownfields Economic Development Initiative. However, "stand-alone" acquisition of a property or relocation of occupants, with no further action to rehabilitate, redevelop, or demolish the building, would no longer qualify as meeting the spot slums or blight national objective. HUD

believes this restriction would affect only a few potential projects. HUD particularly requests comments regarding specific situations (including those to address health and safety) where such stand-alone activities should be authorized as an activity that addresses slums or blight on a spot basis where the activity is not a precursor to an actual remedial activity.

*Defining Environmental Contamination Pursuant to Changes to National Objectives and Eligibility Criteria*

In developing this proposed rule, HUD grappled with several issues: Should HUD define the types of environmental contamination that may be considered blighting influences? Should the rule specify some level of contamination that should be present? Should HUD refer to other Federal or State programs' statutory or regulatory definitions of levels and types of environmental contamination or of the term "brownfields"? Are state definitions and priority listings of contaminated sites (where they exist) sufficiently comparable to Federal provisions to provide reasonable evidence of blighting conditions? HUD's studies and consultations discussed in the Background section of this proposed rule pointed out several difficulties in trying to address these issues, which include the following:

1. HUD has neither the statutory responsibility nor the technical expertise to define levels or types of environmental contamination.
2. Referring to other State or Federal laws or regulations, such as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (Superfund Act) (42 U.S.C. 9601) would cause problems. In addition, as to CERCLA, HUD has discussed that statute's recently added definition of brownfields with EPA and has learned that some parts of the definition apply only to certain EPA programs, or other limited circumstances, and do not make sense in the context of administering CDBG assistance. To incorporate by reference a list of highly technical regulations or statutes governing other programs could be confusing to grantees.

3. Other Federal laws have different statutory purposes and limitations and may exclude certain categories of contaminants.

4. There are great variations among State laws and State-established remediation programs, where they exist at all. What might be allowable in one State might not be covered in another state.

5. Some other Federal programs (notably Superfund) are designed to deal only with the most severe cases of contamination. The CDBG program is not intended to compete with programs such as Superfund in addressing severe contamination cases. The CDBG program is likely to be most effective in addressing situations involving lower levels of contamination, or sites not eligible for treatment under programs like Superfund.

6. Some remediation-related activities may be eligible for funding under other Federal programs, but not qualify for CDBG program funding. For example, Superfund money may be used to relocate occupants away from contaminated sites or to fence off a site. The slums or blight national objective requires that activities qualifying under these criteria address the conditions that led to the designation as blighted. HUD does not consider using CDBG funds simply to fence off a contaminated site to have addressed the blighting condition because the contamination remains and is still a blighting influence, even though residents are prevented from coming into direct contact with the contamination.

Under this proposed rule, grantees are responsible for determining what constitutes a contaminated property within their program and for establishing definitions for their program. As discussed previously, HUD would object to including certain generalized types of contamination in these definitions.

*Known Versus Suspected Contamination*

The NALGEP study recommended that the provisions of this rule not be limited to sites where environmental contamination is already known to exist. HUD accepts this recommendation. Fear of the unknown can be a powerful force for disinvestment, and a powerful disincentive to development. If a site is suspected of being contaminated, it can be a blighting influence whether or not it has been factually proven to be contaminated. HUD uses the term "known or suspected contamination" in this rule to convey this concept. However, the Department expects that a grantee will have some legitimate reason for suspecting that a site is contaminated, based on known prior uses, preliminary site studies, or proximity to sites already known to be contaminated with mobile contaminants.

Site assessment costs for a site where contamination is suspected may qualify under the proposed slums or blight

national objective criteria. Where preliminary assessments determine that a site is indeed contaminated, additional activities funded under CDBG, Section 108 Loan Guarantee program, the Brownfields Economic Development Initiative, and the Economic Development Initiative to remediate the contamination may qualify under the slums or blight criteria, either by themselves or in conjunction with further development or redevelopment activities. On the other hand, if preliminary assessments conclude that the site is in fact not contaminated, a grantee would not be able to qualify further development activities under the slums or blight criteria solely on the basis that suspected contamination is a blighting influence. Once a site is determined to be uncontaminated, it would be inappropriate to continue to claim that the unfounded perception of contamination is a blighting influence. Further development or redevelopment activity may, however, qualify under another national objective.

*Compliance With Other Environmental Requirements Pursuant to Changes to National Objectives and Eligibility Criteria*

HUD closely examined the language in the FY 1999 Appropriations Act concerning the eligibility of brownfields projects "in conjunction with the appropriate environmental regulatory agencies." HUD does not believe Congress intended this to mean that a grantee must undertake special, separate consultations with other environmental regulatory agencies prior to using CDBG funds for such a project. Further, HUD does not believe this means that such activities would be eligible for CDBG funding only if other Federal funding sources are financially participating in the activity. Rather, this language serves as a reminder that cleanup, development, or redevelopment of environmentally contaminated sites using CDBG funds must be undertaken in compliance with applicable environmental laws, regulations, procedures, and standards concerning the treatment of contaminated properties. The CDBG grantee may well need to consult with applicable Federal, State, or local regulatory agencies with respect to environmental compliance. The HCDA, the CDBG regulations, and other HUD regulations concerning environmental protection already require grantees to comply with and certify compliance with all applicable environmental laws. Therefore, HUD has determined that no additional regulatory language is needed

specifically to require grantees to comply with all applicable environmental laws.

*Request for Specific Public Comments on Additional Reporting in IDIS*

In addition to soliciting public comments generally, the Department is seeking specific comments about a potential change in the Integrated Disbursement and Information System (IDIS) that would assist in assessing the extent to which communities use CDBG funding for brownfields related activities. IDIS is the draw down and reporting system for four HUD formula grant programs: CDBG, HOME, Emergency Shelter Grants Program (ESG), and Housing Opportunities for Persons with AIDS (HOPWA). The system allows grantees to request their grant funding from HUD and report on what is accomplished with these funds.

HUD is exploring the possibility of adding a data field into IDIS to assess more effectively the amount of CDBG funds that grantees use for brownfields. This would allow the Department to aggregate accomplishments and better analyze this program's efforts in responding to grantees' brownfields needs.

**III. This Proposed Rule in Summary**

This proposed rule would revise the CDBG program eligibility regulations in subparts C, I, and M, of 24 CFR part 570. These sections address the Entitlement program, the HUD-Administered Small Cities and Insular CDBG programs; the State CDBG program; the Section 108 Loan Guarantee program, the Brownfields Economic Development Initiative program, and the Economic Development Initiative program.

Specifically, the proposed rule would, among other things, add project-specific assessment and remediation of known or suspected environmentally contaminated sites to the list of eligible activities under § 570.201(d), which addresses clearance; would add evaluation and reduction of lead-based paint hazards and evaluation and abatement of asbestos and other contaminants to the list of eligible rehabilitation activities under § 570.202; would remove § 570.202(f) from the regulatory text as it is duplicative of § 570.202(b)(7)(iv); and would add project-specific assessment and remediation of known or suspected environmentally contaminated sites as eligible under § 570.203 and § 570.204. In addition, the national objective criteria at § 570.208 (b)(1)(ii) would be expanded to include as blighting influences the physical deterioration of improvements, known or suspected

environmental contamination, and other economic disinvestments. Grantees would be required to establish certain definitions and maintain records. In addition, the proposed rule would require that the overall slums or blighted designation be redetermined every five years for continued qualification. Areas designated less than five years prior to the effective date of the final rule would be required to be redetermined on the five-year anniversary of the original designation using the criteria in effect at that time of the redetermination. Any area designated more than five years before must be redetermined before any additional funds are budgeted for new or existing activities.

The activities to address slums or blight on a spot basis would be revised to indicate that acquisition or relocation must be a precursor to other activities that directly eliminate specific conditions of blight or physical decay.

HUD proposes that the treatment, development, or redevelopment of brownfields, one of the administration's major community development initiatives, be placed on the list of "important national interest" activities found in § 570.209(b)(2)(v) and § 570.482(f)(3)(v), thereby allowing grantees to exclude these activities from the aggregate public benefit test.

Sections 570.482–483 would be revised to reflect changes in the State program pursuant to the expansion of the national objective criteria and to require grantees to establish certain definitions and maintain records. In addition, the proposed rule would require that the overall slums or blighted designation be redetermined every five years for continued qualification.

Areas designated less than five years prior to the effective date of the final rule would be required to be redetermined on the five-year anniversary of the original designation using the criteria in effect at the time of the redetermination. Any area designated more than five years prior to the effective date must be redetermined before any additional funds are budgeted for new or existing activities.

As with the Entitlement program, the State regulations would be revised to indicate that acquisition or relocation must be a precursor to other activities that directly eliminate specific conditions of blight or physical decay when addressing slums or blight on a spot basis. Finally, § 570.703, which addresses eligible activities under the Section 108 Loan Guarantee program and the related EDI and BEDI programs, has been revised to add historic

preservation, project-specific assessment, and remediation of known or suspected environmentally contaminated sites to the list of eligible activities.

#### IV. Findings and Certifications

##### *Public Reporting Burden*

The information collection requirements contained in this proposed rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control numbers 2506–0077 and 2506–0085. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Although the information collections under this proposal have been approved by OMB, HUD invites interested parties to submit comments on the information collection requirements in this proposed rule.

##### *Environmental Impact*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding of No Significant Impact is available for public inspection weekdays between the hours of 8 a.m. and 5 p.m. in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

##### *Impact on Small Entities*

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 does 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 need to be complied with by small entities. Although HUD has determined that this proposed rule does not have a significant economic impact on a substantial number of small entities, HUD invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in the **SUPPLEMENTARY INFORMATION**.

##### *Executive Order 13132, Federalism*

Executive Order 13132, entitled "Federalism," prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. 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.

##### *Unfunded Mandates Reform Act*

Title II of 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 on the private sector. This proposed rule does not impose a Federal mandate on any State, local, or tribal government, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

##### *Regulatory Planning and Review*

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, entitled "Regulatory Planning and Review." OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the order (although not an economically significant regulatory action under the order). Any changes made to the rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Office of General Counsel, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

##### *Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance (CFDA) program numbers applicable to the various components of the CDBG program are: 14.218, Entitlement program; 14.219, HUD-Administered Small Cities program; 14.225, Insular Areas program; 14.228, State program; 14.248, Section 108 Loan Guarantee program; and 14.246, Community Development Block Grants Economic Development Initiative.

##### **List of Subjects in 24 CFR Part 570**

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant

programs—housing and community development, Guam, Indians, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR part 570 to read as follows:

#### **PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS**

1. The authority citation for 24 CFR part 570 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 5302–5320.

2. Section 570.201 is amended by revising paragraph (d) to read as follows:

##### **§ 570.201 Basic eligible activities.**

\* \* \* \* \*

(d) *Clearance and remediation activities.* Clearance, demolition, and removal of buildings and improvements, including movement of structures to other sites and remediation of known or suspected environmental contamination. Demolition of HUD-assisted or HUD-owned housing units may be undertaken only with the prior approval of HUD. Remediation may include project-specific environmental assessment costs not otherwise eligible under § 570.205.

\* \* \* \* \*

3. Section 570.202 is amended by:

- Revising paragraph (a)(3) to read as set forth below;
- Revising paragraph (b)(2) to read as set forth below;
- Revising paragraph (b)(7)(iv) to read as set forth below; and
- Removing paragraph (f).

##### **§ 570.202 Eligible rehabilitation and preservation activities.**

(a) \* \* \*

(3) Publicly or privately owned commercial or industrial buildings, except that the rehabilitation of such buildings owned by a private for-profit business is limited to improvement to the exterior of the building, abatement of asbestos hazards, lead-based paint hazard evaluation and reduction, and the correction of code violations;

\* \* \* \* \*

(b) \* \* \*

(2) Labor, materials, and other costs of rehabilitation of properties, including repair directed toward an accumulation of deferred maintenance, replacement of principal fixtures and components of existing structures, installation of

security devices, including smoke detectors and dead bolt locks, and renovation through alterations, additions to, or enhancement of existing structures and improvements, abatement of asbestos hazards (and other contaminants) in buildings and improvements which may be undertaken singly, or in combination;

\* \* \* \* \*

(7) \* \* \*

(iv) Procedures concerning lead-based paint hazard evaluation and reduction, pursuant to § 570.608.

\* \* \* \* \*

4. Section 570.203 is amended by revising the introductory paragraph to read as follows:

**§ 570.203 Special economic development activities.**

A recipient may use CDBG funds for special economic development activities in addition to other activities authorized in this subpart which may be carried out as part of an economic development project. Guidelines for selecting activities to assist under this section are provided at § 570.209. The recipient must ensure that the appropriate level of public benefit will be derived pursuant to those guidelines before obligating funds under this authority. Special activities authorized under this section do not include assistance for the construction of new housing. Activities eligible under this section may include costs associated with project-specific assessment or remediation of known or suspected environmental contamination. Special economic development activities include:

\* \* \* \* \*

5. Section 570.204 is amended by adding a new sentence following the semicolon at the end of paragraph (a)(2).

**§ 570.204 Special activities by Community-Based Development Organizations (CDBOs).**

(a) \* \* \*

(2) \* \* \* activities under this paragraph may include costs associated with project-specific assessment or remediation of known or suspected environmental contamination;

\* \* \* \* \*

6. Section 570.205 is amended by revising the first sentence of paragraph (a)(4)(iv) and adding a new paragraph (a)(4)(viii) to read as follows:

**§ 570.205 Eligible planning, urban environmental design and policy-planning-management capacity building activities.**

(a) \* \* \*

(4) \* \* \*

(iv) The reasonable costs of general environmental, urban environmental

design and historic preservation studies; and general environmental assessment-and remediation-oriented planning related to properties with known or suspected environmental contamination. \* \* \*

\* \* \* \* \*

(viii) Developing an inventory of properties with known or suspected environmental contamination.

\* \* \* \* \*

7. Section 570.208 is amended by revising paragraphs (b)(1)(ii), (b)(1)(iii), and (b)(2) to read as follows:

**§ 570.208 Criteria for national objectives.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) The area also meets the conditions in either paragraph (b)(1)(ii)(A) or (B) of this section:

(A) At least 33 percent of properties throughout the area experience one or more of the following conditions:

(1) Physical deterioration of buildings or improvements;

(2) Abandonment of properties;

(3) Chronic high occupancy turnover rates or chronic high vacancy rates in commercial or industrial buildings;

(4) Significant declines in property values or abnormally low property values relative to other areas in the community; or

(5) Known or suspected environmental contamination.

(B) The public improvements throughout the area are in a general state of deterioration.

(iii) Documentation is to be maintained by the recipient on the boundaries of the area and the conditions and standards used that qualified the area at the time of its designation. The recipient shall establish definitions of the conditions listed at paragraph (b)(1)(ii)(A) of this section, and maintain records to substantiate how the area met the slums or blighted criteria. The designation of an area as slum or blighted under this section is required to be redetermined every five years for continued qualification. Documentation must be retained pursuant to the recordkeeping requirements contained at § 570.506 (b)(8)(ii).

\* \* \* \* \*

(2) *Activities to address slums or blight on a spot basis.* The following activities may be undertaken on a spot basis to eliminate specific conditions of blight, physical decay, or environmental contamination which are not located in a slum or blighted area: acquisition; clearance; relocation; historic preservation; remediation of

environmentally contaminated properties; or rehabilitation of buildings or improvements. However, rehabilitation must be limited to eliminating those conditions that are detrimental to public health and safety. If acquisition or relocation is undertaken, it must be a precursor to other activities (funded with CDBG or other resources) that directly eliminate the specific conditions of blight or physical decay.

\* \* \* \* \*

8. Section 570.209 is amended by adding paragraph (b)(2)(v)(N) to read as follows:

**§ 570.209 Guidelines for evaluating and selecting economic development projects.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(v) \* \* \*

(N) Directly involves the economic development or redevelopment of environmentally contaminated properties.

\* \* \* \* \*

9. Section 570.482 is amended by:  
a. Revising paragraph (c) to read as set forth below;

b. Removing and reserving paragraph (d);

c. Adding paragraph (f)(3)(v)(N) to read as follows

**§ 570.482 Eligible activities.**

\* \* \* \* \*

(c) Special eligibility provisions. (1) Microenterprise development activities eligible under section 105(a)(23) of the Housing and Community Development Act of 1974, as amended, (42 U.S.C. 5301 *et seq.*) (the Act) may be carried out either through the recipient directly or through public and private organizations, agencies, and other subrecipients (including nonprofit and for-profit subrecipients).

(2) Provision of public services. The following activities shall not be subject to the restrictions on public services under section 105(a)(8) of the Act:

(i) Support services provided under section 105(a)(23) of the Act, and paragraph (c) of this section;

(ii) Services carried out under the provisions of section 105(a)(15) of the Act, that are specifically designed to increase economic opportunities through job training and placement and other employment support services, including, but not limited to, peer support programs, counseling, child care, transportation, and other similar services; and

(iii) Services of any type carried out under the provisions of section 105(a)(15) of the Act pursuant to a

strategy approved by a State under the provisions of § 91.315(e)(2) of this title.

(3) Environmental cleanup and economic development or redevelopment of contaminated properties. Remediation of known or suspected environmental contamination may be undertaken under the authority of section 205 of Public Law 105-276 and section 105(a)(4) of the Act. Economic development activities carried out under sections 105(a)(14), (a)(15) or (a)(17) of the Act may include costs associated with project-specific assessment or remediation of known or suspected environmental contamination.

\* \* \* \* \*

(f) \* \* \*

(3) \* \* \*

(v) \* \* \*

(N) Directly involves the economic development or redevelopment of environmentally contaminated properties.

\* \* \* \* \*

10. Section 570.483 is amended by revising paragraphs (c)(1)(ii), (c)(1)(iv), and (c)(2) to read as follows:

**§ 570.483 Criteria for national objectives.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(ii) The area also meets the conditions in either paragraph (c)(1)(ii)(A) or (c)(1)(ii)(B) of this section.

(A) At least 33 percent of properties throughout the area experience one or more of the following conditions:

(1) Physical deterioration of buildings or improvements;

(2) Abandonment of properties;

(3) Chronic high occupancy turnover rates or chronic high vacancy rates in commercial or industrial buildings;

(4) Significant declines in property values or abnormally low property values relative to other areas in the community; or

(5) Known or suspected environmental contamination.

(B) The public improvements throughout the area are in a general state of deterioration. \* \* \*

(iv) The State keeps records sufficient to document its findings that a project meets the national objective of prevention or elimination of slums and blight. The State must establish definitions of the conditions listed at paragraph (c)(1)(ii)(A) of this section and maintain records to substantiate how the area met the slums or blighted criteria. The designation of an area as slum or blighted under this section is required to be redetermined every five years for continued qualification.

Documentation must be retained pursuant to the recordkeeping requirements contained at § 570.490.

(2) *Activities to address slums or blight on a spot basis.* The following activities can be undertaken on a spot basis to eliminate specific conditions of blight, physical decay or environmental contamination which are not located in a slum or blighted area: Acquisition; clearance; relocation; historic preservation; remediation of environmentally contaminated properties; or rehabilitation of buildings or improvements. However, rehabilitation must be limited to eliminating those conditions which are detrimental to public health and safety. If acquisition or relocation is undertaken, it must be a precursor to other activities (funded with CDBG or other resources) that directly eliminate the specific conditions of blight or physical decay.

\* \* \* \* \*

11. Section 570.703 is amended by revising paragraph (e), the introductory sentence in paragraph (f), and paragraph (l) to read as follows:

**§ 570.703 Eligible activities.**

\* \* \* \* \*

(e) Clearance, demolition, and removal, including movement of structures to other sites, of buildings and improvements on real property acquired or rehabilitated pursuant to paragraphs (a) and (b) of this section; remediation of properties with known or suspected environmental contamination. Remediation may include project-specific environmental assessment costs not otherwise eligible under § 570.205.

(f) Site preparation, including construction, reconstruction, installation of public and other site improvements, utilities or facilities (other than buildings), or remediation of properties (remediation can include project-specific environmental assessment costs not otherwise eligible under § 570.205) with known or suspected environmental contamination, which is:

\* \* \* \* \*

(l) Acquisition, construction, reconstruction, rehabilitation or historic preservation, or installation of public facilities (except for buildings for the general conduct of government) to the extent eligible under § 570.201(c), and including public streets, sidewalks, other site improvements and public utilities, and remediation of known or suspected environmental contamination in conjunction with these activities. Remediation may include project-

specific environmental assessment costs not otherwise eligible under § 570.205.

\* \* \* \* \*

Dated: June 9, 2004.

**Roy A. Bernardi,**

*Assistant Secretary for Community Planning and Development.*

[FR Doc. 04-15634 Filed 7-8-04; 8:45 am]

**BILLING CODE 4210-29-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[HI 001-001b; FRL-7778-4]

**Revision to the Hawaii State Implementation Plan**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the Hawaii State Implementation Plan (SIP). The revision concerns the air quality surveillance network for particulate matter. We are proposing to approve this revision under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** Any comments on this proposal must arrive by August 9, 2004.

**ADDRESSES:** Send comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, or e-mail to [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov), or submit comments at <http://www.regulations.gov>.

You can inspect copies of the submitted SIP revisions, EPA's technical support documents (TSDs), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions by appointment at the following locations:

Hawaii Department of Public Health, Environmental Protection and Health Services Division, 1250 Punchbowl Street, Honolulu, Oahu, Hawaii 96801.

**FOR FURTHER INFORMATION CONTACT:** Julie A. Rose, EPA Region IX, (415) 947-4126, [rose.julie@epa.gov](mailto:rose.julie@epa.gov).

**SUPPLEMENTARY INFORMATION:** This proposal addresses the revision to Section XII, Air Quality Surveillance Network for the Hawaii Department of Public Health. In the Rules and Regulations section of this **Federal Register**, we are approving this revision in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we