

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Parts 50, 51, 55, 58, and 91**

[Docket No. FR-4954-P-01]

RIN 2501-AD11

**Amendments to HUD's Environmental Regulations**

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would update HUD's environmental regulations to implement statutory changes and make environmental compliance easier. The rule would consider the use of electronic communication for certain records and submissions. The rule would also make other changes to clarify HUD's environmental regulations and provide conforming amendments.

**DATES:** *Comment Due Date:* November 13, 2007.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Interested persons also may submit comments electronically through The Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically so that HUD can make them immediately available to the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted to HUD will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). Copies of all comments submitted are available for inspection and downloading at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Richard H. Broun, Director, Office of Environment and Energy, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7244, Washington, DC 20410, telephone

number (202) 708-2894, extension 4439 (this is not a toll-free number), (e-mail address: [Richard.Broun@hud.gov](mailto:Richard.Broun@hud.gov)) or Walter Prybyla, Environmental Review Division, Office of Environment and Energy, Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7250, Washington, DC 20410, telephone number (202) 708-1201, extension 4466 (this is not a toll-free number), (e-mail address: [Walter.Prybyla@hud.gov](mailto:Walter.Prybyla@hud.gov)). Hearing- or speech-impaired individuals may access these numbers through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

HUD's environmental regulations are found at 24 CFR parts 50, 51, 55, and 58. This rule proposes changes to each of these parts.

Part 50 implements the National Environmental Policy Act (NEPA) and provides for HUD environmental review for all HUD policy and project actions, except those subject to part 58. Part 50 also applies to activities carried out by funding recipients subject to 24 CFR part 58 where: (1) Those recipients claim lack of legal capacity to assume environmental review responsibilities under part 58 and that claim is approved by HUD, (2) where an Indian tribe does not choose to perform the environmental review under 24 CFR 1000.20, or (3) where HUD otherwise determines that it will conduct the environmental review itself.

Part 51 provides certain environmental criteria and standards for determining project acceptability and any mitigating measures that might be needed. This part covers noise abatement, siting of assisted projects near hazardous operations handling explosive or flammable materials, and siting in relation to airfields.

Part 55 comprises HUD's rules for floodplain management. This part implements Executive Order 11988—Floodplain Management. Subpart C provides procedures for making determinations on floodplain management for assisted projects located within or proposed for floodplain locations.

Part 58 contains HUD's regulations applicable to funding recipients and entities that assume environmental review responsibilities where statutorily authorized for certain programs. Under 24 CFR 58.13, each responsible entity must have a certifying officer who acts as the official responsible for compliance with NEPA and other Federal environmental laws.

This rulemaking also proposes revisions to the environmental sections of 24 CFR part 91. Part 91 governs the Consolidated Plan process, a strategy to be followed by local jurisdictions in carrying out HUD programs and a management tool for assessing performance and tracking results. The Consolidated Plan builds on a participatory process among citizens, organizations, businesses, and other stakeholders partnering to provide affordable housing and community development (Subpart B).

Section 105(d) of the Native American Housing Assistance and Self-Determination Act (NAHASDA), 25 U.S.C. 4115(d), provides for waiver of environmental review provisions in Section 105. Section 105(d) states that:

The Secretary may waive the requirements under this section if the Secretary determines that a failure on the part of a recipient to comply with provisions of this section—

(1) Will not frustrate the goals of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 *et seq.*] or any other provision of law that furthers the goals of that Act;

(2) Does not threaten the health or safety of the community involved by posing an immediate or long-term hazard to residents of that community;

(3) Is a result of inadvertent error, including an incorrect or incomplete certification provided under subsection (c)(1) of this section; and

(4) May be corrected through the sole action of the recipient.

Interim waiver procedures are contained in Notice CPD-04-08: "Waiving statutory environmental review requirements for the Indian Housing Block Grant Program for Tribes that have assumed environmental review responsibilities under 24 CFR part 58." Because of statutory requirements under NAHASDA, rulemaking on the issue of environmental waivers under NAHASDA is going to be one of the subjects of an upcoming negotiated rulemaking. (See "Indian Housing Block Grant Program; Notice of Proposed Negotiated Rulemaking Committee Membership," 71 FR 16004, 16005 (March 29, 2006).) The proposed rule resulting from that negotiated rulemaking will be published in the **Federal Register** in the future for public comment.

Recently enacted statutes provide for the use of electronic processes in government, where practicable. The Electronic Signatures in Global and National Commerce Act (ESIGN), 15 U.S.C. 7001 *et seq.*, provides for the legal validity of electronic signatures and electronic records, and also provides for consumer protection

relating to electronic disclosures of information. The Government Paperwork Elimination Act, Title XVII of Pub. L. 105-277, codified at 44 U.S.C. 3504 note (GPEA), requires that executive agencies provide for the option of electronic maintenance, submission, or disclosure of information, when practicable, instead of paper, and also that agencies allow for the use and acceptance of electronic signatures, when practicable. The E-Government Act of 2002, 44 U.S.C. 101 note, imposes certain duties on agencies regarding making information electronically available, establishes performance goals, and makes the Office of Management and Budget (OMB) responsible for governmentwide electronic initiatives. It also requires that agencies do not diminish access to government services for people that do not have access to computers or the Internet. Section 203 of the E-Government Act provides that OMB and the General Services Administration (GSA) shall take steps to allow interoperability among executive agencies when using electronic signatures, and that agencies shall ensure that their methods for use and acceptance of electronic signatures are compatible with those OMB and GSA policies.

The effort to better utilize electronic communication in the environmental review process, which HUD believes will make the process more accessible and user-friendly, is ongoing. As an initial step, the proposed rule would encourage environmental review records to be managed electronically and posted on agency Web sites to make them accessible to HUD staff and to the public.

The following item may be considered for a future rulemaking, but is not part of this proposed rule. HUD is considering modifying 24 CFR 50.3(i) (and 24 CFR 58.5(i)(2)) so that when any initial investigation by a qualified professional is required, such investigation shall be in accordance with ASTM International Standard E1527-05 entitled "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process."

## II. This Proposed Rule

### 24 CFR Part 50

HUD proposes to amend 24 CFR 50.4(b)(1) to clarify that flood insurance requirements generally must be met by purchasing insurance rather than self-insurance, except as authorized by law for state-owned projects in states

approved by the Director of the Federal Emergency Management Agency.

HUD proposes to amend 24 CFR 50.10(b) to reflect the current allocation of responsibilities for environmental policies and procedures within the Department and to improve oversight as part of HUD's compliance with NEPA and related laws and authorities. Specifically, this proposed amendment to HUD's environmental regulations would require that oversight for environmental protection be performed consistently and collaboratively with quality management reviews of field offices and on-site monitoring of clients. The name "Office of Community Viability" cited in the current regulations would be corrected to "Office of Environment and Energy" to reflect the correct institutional name of that office. The proposed rule would thereby conform the title of the office to that contained in the HUD Organizational Handbook 1100.3 REV 5, par. 5-13.

The rule would add new provisions on waivers of environmental requirements. With the aim of making the compliance process more efficient and easier for recipients, the revision would include a cross-reference to 24 CFR 5.110 and a new § 50.37 that states procedures for HUD approval of waivers from environmental regulations requested by a recipient.

The proposed rule would amend 24 CFR 50.16, "Decision points for policy actions." Specifically, a new decision point (the point at which an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) or Environmental Impact Statement (EIS) must be completed) would be added. The new decision point would be HUD's approval of a waiver of environmental regulations.

The rule would amend § 50.17 by adding a decision point for HUD's determination to sign a release of a Declaration of Trust or a release of a Declaration of Restrictive Covenants regarding public housing agency (PHA) property that is the subject of an eminent domain lawsuit. PHA public housing property that has been assisted under the United States Housing Act of 1937 (1937 Act), 42 U.S.C. 1437 *et seq.*, is subject to a Declaration of Trust or Declaration of Restrictive Covenants that is recorded against the property and assures HUD that the property will be subject to the statutory long-term affordability restrictions and other HUD restrictions, including statutory prohibitions against disposition or demolition without HUD approval. When state or local agencies attempt, through eminent domain proceedings,

to take such PHA property, HUD must determine whether to voluntarily release its interests in the property. This is because state and local courts have no jurisdiction to hear suits for condemnation of federal interests in property and, therefore, HUD's interest in PHA property may not be taken in the eminent domain proceedings. However, if HUD releases its interests in PHA property, the PHA may enter into an agreement to transfer the property to the state or local agency. If the PHA does not enter into such an agreement, then since there is no longer any federal interest in the property, the state or local body may obtain title either by operation of law or by court decree that results from the filing and prosecution of the eminent domain proceeding. HUD's determination to voluntarily release its interests in the property is not itself a project or activity under the 1937 Act, and the environmental review regarding HUD's decision to release its interests is therefore not subject to 24 CFR part 58, but must be performed by HUD under part 50. The amendment to § 50.17, in establishing a decision point for this determination, reflects the applicability of part 50 to these actions.

Section 50.19(b)(15) of the currently codified rule provides a categorical exclusion for activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction. While not proposing any change to this section to specifically reference homeownership funds, this section covers homeownership vouchers because this section covers "activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction."

The proposed rule would remove 24 CFR 50.19(b)(18), a provision dealing with "improved area processing," a type of review that the Department no longer performs or requires.

The statutory prohibition on the use of HUD funds in the coastal barrier resources system at 24 CFR 50.4(c)(1) would be referenced in the following provisions: (1) Tenant-based assistance (24 CFR 50.19(b)(11)); (2) operating costs (24 CFR 50.19(b)(13)); (3) activities to assist homebuyers (24 CFR 50.19(b)(15)); and (4) housing pre-development costs. The statutory requirement to purchase and maintain national flood insurance protection for properties located within the special flood hazard area would be referenced in the provision for activities to assist homebuyers (24 CFR 50.19(b)(15)).

This proposed rule would add a new categorical exclusion at 24 CFR 50.19(b)(18), as well as at 24 CFR 58.35(b)(8), for the giving of

compensation assistance for loss during a Presidentially declared disaster. Such compensation benefit is not tied to any particular use of the funds. However, if the approval of compensation assistance imposes standards for construction or construction materials, manufactured housing, or occupancy, with respect to a beneficiary's property or a property that sustained damage or loss, but without requiring that any construction, repair, or other activity be carried out, a programmatic environmental assessment must be prepared. Such standards may be imposed by covenant on a beneficiary's property, or on a property that sustained loss or damage, as a condition of receiving compensation assistance; however, the exclusion applies only if no construction, repair, or any other particular activity is required to be performed as a condition of receiving the compensation. This categorical exclusion will enable more efficient recovery efforts by removing administrative burdens from localities during declared disasters.

The proposed rule would clarify a new 24 CFR 50.32(b) that, for Headquarters-administered programs, the field office program staff would conduct the environmental review, unless otherwise specified by the program Assistant Secretary (or Headquarters program staff). In addition, the rule would add a new 24 CFR 50.32(c) that would encourage HUD program offices to voluntarily post their environmental review record (ERR) documents on their Web sites for public review and comment and for the electronic record. Also, the rule would add a new 24 CFR 50.32(d) that would encourage HUD program offices to voluntarily use electronic submissions and notifications under this part. In order to increase Departmental electronic processing, current form HUD-4128, "Environmental Assessment and Compliance Findings for the Related Laws," and the accompanying "Sample Field Notes Checklist (SFNC)" will continue to be used for electronic communication and documentation.

The proposed rule would add a new 24 CFR 50.37 to establish circumstances under which HUD may grant a waiver of regulations in 24 CFR parts 50, 51, 55, and 58 where the standards of 24 CFR 5.110 are met and no unmitigated adverse environmental impact will result from a violation of the regulation being waived.

#### 24 CFR Part 51

The proposed rule would replace the obsolete reference to "Special Environmental Clearance" in 24 CFR

51.104 and 51.105 with the currently used term "environmental assessment." The term "Special Environmental Clearance" was used historically by HUD in the Department's regulations implementing NEPA, 24 CFR parts 50 and 58. However, HUD no longer uses that term.

For the environmental review record of responsible entities' consideration of noise criteria and standards under 24 CFR 51.101(a)(2), the proposed rule at a new 24 CFR 51.101(a)(2)(i)(B) would encourage these entities to use, for their noise assessment, the HUD-recommended procedure or a comparable procedure when considering deviation from noise criteria and standards. The current recommended procedure is provided in the publication "Noise Guidebook," which is available on HUD's environmental Web site at: <http://www.hud.gov/offices/cpd/energyenviron/environment/resources/guidebooks/noise/index.cfm>.

HUD recognizes that the Federal Highway Administration (FHWA) Traffic Noise Model® (TNM) noise analysis tool for highway noise is a useful methodology that may potentially have applicability to noise analysis for HUD-assisted projects. Toward that end and with the intent of modernizing HUD's noise analysis guidelines, the Department in partnership with FHWA has agreed to obtain special acoustical analysis and expertise from the DOT Volpe National Transportation Systems Center to determine how the FHWA TNM and HUD noise analysis guidelines may be adjusted to meet HUD's regulatory noise requirements (24 CFR part 51, subpart B).

Because the term "Runway Protection Zone" is now used on maps issued by the Federal Aviation Administration (FAA) for civil airports, the proposed rule would replace in 24 CFR part 51, subpart D, the term "Runway Clear Zone" at civil airports with the term "Runway Protection Zone." The technical change would conform to the use of the term "Runway Protection Zones" (RPZ) for civil airports established by FAA Advisory Circular for Airport Design, AC 150/5300-13, CHG 2, page 140 (02/24/92). This rule would adopt the definition used in that Circular, and would adopt a separate definition of "clear zone" for military airfields used in Department of Defense regulations at 32 CFR 256.3.

#### 24 CFR Part 55

The proposed rule would revise the definition of "substantial improvement" at 24 CFR 55.2(b)(8)(ii)(B) by adding to the current exclusion for historic

properties any property eligible to be listed in the National Register of Historic Places (NRHP), provided that the alteration of the structure would not preclude the structure's continued designation as a historic structure. This exclusion would conform to the exclusion contained in the definition of "substantial improvement" for the National Flood Insurance Program (44 CFR 59.1). The revision would provide consistency with the definition of historic property under Section 106 of the National Historic Preservation Act as a property listed in or eligible for listing in the NRHP.

HUD's experience has shown that combining public notices adds to greater efficiency, and that more specific guidance in this area is necessary. The proposed rule would clarify the provision on combining environmental notices at 24 CFR 55.10(a), with cross-references to further explanatory provisions at new subparagraphs 55.20(b)(4) and 55.20(g)(3). The purpose of this change is to provide regulatory guidance on environmental notices that are suitable to be combined.

The proposed rule would extend 24 CFR 55.12(a)(3) to apply to any HUD program involving the repair, rehabilitation, modernization, or improvement of existing multifamily housing projects. The current provision applies only to HUD mortgage insurance programs. The section will also clarify that proposed actions that are "substantial improvements" are, similar to new construction, subject to the full decision-making process at § 55.20.

The proposed rule would add an exclusion to 24 CFR 55.12(b)(5) for special projects directed to the removal of architectural barriers of properties located within floodplains. It would also revise 24 CFR 55.12(b)(2) to exempt minor repairs or improvements that are categorically excluded from environmental assessment under NEPA.

The proposed rule would expand the current exclusion at 24 CFR 55.12(c)(1) to include the categorical exclusions listed at 24 CFR 58.35(b) and 24 CFR 50.19. The exclusions listed generally cover "soft costs" having no potential effects on the floodplain and, therefore, do not warrant floodplain management compliance with part 55. This amendment would merely conform the exclusion in 24 CFR part 55 to the exclusions in 24 CFR 58.35(b) and 50.19, which already indicate the inapplicability of related authorities, including Executive Order 11988 on Floodplain Management, as implemented by 24 CFR part 55.

The proposed rule would remove the obsolete provisions of 24 CFR

55.12(c)(9) and (c)(10). As to § 55.12(c)(9), HUD terminated subdivision processing and approval in a final rule published on August 3, 1993 (58 FR 41328). The reciprocity provision of subparagraph (c)(9) has not been used since that time. Section 55.12(c)(10) relates to the effect of part 55 on actions pending on May 23, 1994, the effective date of the final rule published on April 21, 1994, at 59 FR 19100. This provision is no longer necessary.

The proposed rule would revise 24 CFR 55.20 to provide guidance on combining certain legal notices related to floodplains to increase the efficiency of environmental reviews and eliminate confusion regarding which notices can be combined. Accordingly, this proposed rule would add a new subparagraph 55.20(b)(4) to provide rules for combining the floodplain management notice with the EIS or notice of availability of a draft EIS. A new subparagraph 55.20(g)(3) would provide guidance on combining the floodplain management notice with either the notice of availability of a final EIS or with the notice of FONSI. The floodplain management notice explains to the public the determination that there are no practicable alternatives to locating the proposal in the floodplain.

#### 24 CFR Part 58

The proposed rule would remove the word "pilot" from 24 CFR 58.1(b)(8). The housing finance agency risk-sharing program is now authorized as a regular HUD program at 24 CFR part 266, rather than as a pilot project.

The proposed rule at 24 CFR 58.2(a)(4) would clarify the definition of "project" for the purpose of compliance with limitations on actions during the NEPA or environmental clearance process as required by Council on Environmental Quality (CEQ) procedures (40 CFR 1506.1 and 1502.2(f)) and HUD regulations (24 CFR 58.22). NAHASDA, the Native American Housing Assistance and Self-Determination Act, would be added to the list of abbreviations at paragraph (b) of this section. The abbreviation RROF would be corrected to read RROF/C, when referring to a Request for Release of Funds and Certification.

The proposed rule would add the same clarification of flood insurance self-insurance that appears in proposed § 50.4(b)(1). Accordingly, the rule proposes to add a new § 58.6(a)(4) that contains the same clarification; that flood insurance requirements generally must be fulfilled by the purchase of insurance rather than self-insurance, except as authorized by law for assistance to state-owned projects

within states approved by the Director of FEMA.

The proposed rule would clarify the provision on certifying officers at 24 CFR 58.13. The term "certifying officer (CO)" has been interpreted to mean the "chief elected official" of the government (local, tribal, or state). The change would remove any question regarding those cases where the "chief elected official" or the legislative body of the responsible entity (RE) authorizes a substitute official provided that the substitute official has authority to provide consent on behalf of the RE to federal court jurisdiction and to bind the RE financially if there is a judgment in the performance of environmental responsibilities under this part. As required by NAHASDA (25 U.S.C. 4226), the rule would designate the Director of the Department of Hawaiian Home Lands as the certifying officer for the program of housing assistance for Native Hawaiians under NAHASDA.

The proposed rule would amend guidance on tiering of environmental reviews and assessments at 24 CFR 58.15 to emphasize the limitation on activities pending environmental clearance. The limitation applies, for example, in the case of multiyear funding cycles where recipients select sites only after the recipient has received an approval of the environmental certification and request for release of funds. The commitment or expenditure of funds would not be allowed for activities that constitute a development decision (including acquisition and disposition of real estate) that affects the physical condition of specific project areas or building sites, until the responsible entity has completed its site-specific analysis and compliance with this part and documented its environmental review record (24 CFR 58.38). At any time, the recipient may commit or expend funds for exempt activities documented, in accordance with 24 CFR 58.34(b) and categorically excluded activities under 24 CFR 58.35(b).

Section 58.35(b)(5) of the currently codified rule provides a categorical exclusion for activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction.

Proposed 24 CFR 58.19 would complement proposed 24 CFR 50.37 by providing procedures for granting a waiver of part 58 regulations in cases of violations of environmental regulations where there is good cause to grant the waiver and where no unmitigated environmental harm will result. This section does not apply to statutory waivers under NAHASDA, for which

HUD will propose a regulation in the future after negotiated rulemaking pursuant to NAHASDA's requirements (see 25 U.S.C. 4116(b)(2)) on that and other issues.

In cases where a project is assisted with funds under two or more programs that each require an RROF/C, the revision to the second sentence of 24 CFR 58.22(a) would allow a recipient or other participant in the development process to commit non-HUD funds on or to undertake an activity or project once the first RROF/C has been approved. This technical correction would remove the current limitation on commitment of funds and facilitate use of the categorical exclusion under Section 58.35(b)(7) discussed in the next paragraph.

In cases where the scope of the original project and environmental conditions remain unchanged and the Section 58.47 reevaluation of the project is determined to be unnecessary, the proposed rule would revise 24 CFR 58.35(b)(7) to permit flexibility when adding supplemental funding to a previously environmentally approved project irrespective of the source of the supplemental funding. This provision would be made to conform with HUD's long-held policy at 24 CFR 50.36, which states that a change only in the amount of financing or mortgage insurance involved does not normally require the environmental review to be re-evaluated or updated.

This proposed rule would add a new 24 CFR 58.38(c) to encourage the responsible entity to manage and post the Environmental Review Record (ERR) on its Web site. The posting should include information on where and how any relevant ERR non-electronic records are made available for public review and copying, and the name and telephone number of a point of contact that is to receive public inquiries for assistance and comment.

The proposed rule would add a new 24 CFR 58.38(d) to encourage the voluntary use of electronic submissions and notifications under this part, including existing environmental forms (or narrative letters).

The proposed rule would include in the last sentence of 24 CFR 58.43(c) a reference to locally declared emergencies. The provision for locally declared emergencies was added on September 29, 2003 (68 FR 56129) by revising 24 CFR 58.33(b). The proposed amendment to 24 CFR 58.43(c) would make this section consistent with 24 CFR 58.33(b) by including the provision for locally declared emergencies.

Finally, the proposed rule would correct and update legal citations in part

58. In § 58.1(b)(8), the citation would be updated, from a note to 12 U.S.C. 1707, to 12 U.S.C. 1715z–22(c)(9). In § 58.5(a)(1), the citation to 16 U.S.C. 470 would be restated as 16 U.S.C. 470f.

24 CFR Part 91

The proposed rule would amend the citizen participation and consultation provision for the jurisdiction’s consolidated plan. The rule would encourage jurisdictions to consult with non-profit and for-profit organizations and PHAs that receive HUD grant awards, in order to facilitate compliance with environmental review requirements for housing and

community development projects within the jurisdiction. As a service to these entities, jurisdictions would be authorized to perform the environmental review as responsible entities under 24 CFR part 58. Where jurisdictions require reimbursement of costs, remuneration for environmental review services rendered by jurisdictions may be available from the recipient’s HUD program grant, in accordance with 24 CFR 58.23.

III. Findings and Certifications

Paperwork Reduction Act

With one exception, the information collection requirements in this proposed

rule have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) and assigned OMB control number 2506–0087.

The additional information collection requirements contained in this rule have been submitted to OMB under the PRA. In accordance with the PRA, 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.

The burden of the information collections in this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Item	Number of respondents	Frequency	Total responses	Hours per response	Total hours
Form HUD 7015.15 .....	18,785	1	18,785	0.6	11,271
Waiver Requests .....	6	1	6	2.0	12
Totals .....	18,791	2	18,791	2.6	11,283

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB and HUD invite interested persons to submit comments regarding the information collection requirements in this rule. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today’s publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today’s publication. This time frame does not affect the deadline for comments to OMB and HUD on the proposed rule, however. Comments must refer to the

proposal by name and docket number (FR–4954) and must be sent to: OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax number (202) 395–6947; and Marie Young, Office of Community Planning and Development, Room 7251, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Regulatory Planning and Review

OMB reviewed this rule under Executive Order 12866, *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). The docket file is available for public inspection in the Regulations Division, Office of General Counsel, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Divisions at (202) 708–3055 (this is not a toll-free number).

Environmental Impact

A Finding of No Significant Impact (FONSI) 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 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Office of Regulations, Office of General Counsel, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at (202) 402–3055 (this is not a toll-free number).

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) 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 rule does not impose a federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

In developing the proposed rule, HUD has attempted to minimize the regulatory burden placed on responsible

entities and other recipients when complying with environmental procedures. The proposed rule would encourage, but not require, electronic submission and electronic notification of environmental documents. A major objective is to achieve efficiencies through the more rapid transmission and processing of environmental clearances of HUD financial assistance, including certifications and requests for release of funds. The rule would add some exclusions from environmental procedures. The rule would remove a current limitation and thereby improve the use of simplified procedures for subsequent supplementary assistance for a previously approved project, where one or more responsible entities other than the original responsible entity wish to provide the additional funding. The rule would make a number of corrections and remove obsolete references, thereby eliminating unclear and/or inconsistent texts. The rule proposes to authorize the use of the abbreviated process for floodplain management decision-making for all of HUD's rehabilitation programs. The current regulations limit the use of the abbreviated decision-making process to repairs financed under HUD's mortgage insurance programs.

Therefore, the undersigned certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, and that an initial regulatory flexibility analysis is not required.

Notwithstanding the determination that this rule would not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

#### *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 rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempts state law within the meaning of the Executive Order.

### List of Subjects

#### *24 CFR Part 50*

Environmental impact statements, Environmental protection, Environmental policies and review procedures, Multifamily housing programs, Grant programs for housing and community development, Reporting and recordkeeping requirements.

#### *24 CFR Part 51*

Environmental standards, Noise abatement and control.

#### *24 CFR Part 55*

Floodplains, Reporting and recordkeeping requirements.

#### *24 CFR Part 58*

Community development block grants, Environmental impact statements, Environmental protection, Grant programs—housing and community development, Reporting and recordkeeping requirements.

#### *24 CFR Part 91*

Grant programs—housing and community development, Low- and moderate-income housing, Reporting and recordkeeping requirements.

### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the programs in this rule are: 14.103–14.906.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR parts 50, 51, 55, 58, and 91 to read as follows:

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

1. The authority citation for 24 CFR 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.

#### **Subpart A—General: Federal Laws and Authorities**

2. Amend § 50.2(b) by adding the following definition of "NAHASDA" in proper alphabetical order to read as follows:

#### **§ 50.2 Terms and abbreviations.**

\* \* \* \* \*

(b) \* \* \*

**NAHASDA**—Native American Housing Assistance and Self-Determination Act.

\* \* \* \* \*

### **Subpart B—General Policy: Responsibilities and Program Coverage**

3. Revise § 50.4(b)(1) to read as follows:

#### **§ 50.4 Related federal laws and authorities.**

\* \* \* \* \*

(b) *Flood insurance, floodplain management, and wetland protection.*  
(1) Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128) and the National Flood Insurance Reform Act of 1994 (Pub. L. 103–325, 108 Stat. 2160). Flood insurance requirements, however, cannot be fulfilled by self-insurance except as authorized by law for assistance to state-owned projects within states approved by the director of FEMA.

\* \* \* \* \*

4. Revise § 50.10(b) to read as follows:

#### **§ 50.10 Basic environmental responsibility.**

\* \* \* \* \*

(b) The Assistant Secretary for Community Planning and Development (A/S CPD), represented by the Office of Environment and Energy, whose Director shall serve as the Departmental Environmental Clearance Officer (DECO), is assigned the overall Departmental responsibility for environmental policies and procedures for compliance with NEPA and the related laws and authorities. Furthermore, the A/S CPD, represented by the DECO, is responsible for Departmental oversight to ensure HUD programs are carried out in compliance with NEPA and the related laws and authorities. To coordinate environmental oversight with the quality management reviews of field offices and on-site monitoring of clients, managers of the various HUD program offices undertaking such activities shall invite the DECO or his designee to participate in such activities. To the extent permitted by applicable laws and the Council for Environmental Quality (CEQ) regulations at 40 CFR chapter V, the A/S CPD may approve waivers and exceptions or establish criteria for exceptions from the requirements of this part and 24 CFR parts 51, 55, and 58, including waivers of regulations, in accordance with §§ 5.110 and 50.37 of this chapter.

### **Subpart C—General Policy: Decision Points**

5. Revise § 50.16 to read as follows:

#### **§ 50.16 Decision points for policy actions.**

Either an Environmental Assessment (EA) and Finding of No Significant

Impact (FONSI) or an Environmental Impact Statement (EIS) on all policy actions not meeting the criteria of § 50.19 shall be completed prior to the approval action. Policy actions include all proposed **Federal Register** policy documents and other policy-related federal actions (40 CFR 1508.18). Such actions include approvals of waivers from environmental regulations. The decision as to whether a proposed policy action is categorically excluded from an EA shall be made by the Program Environmental Clearance Officer (PECO) in Headquarters as early as possible. Where the PECO has any doubt as to whether a proposed action qualifies for exclusion, the PECO shall request a determination by the A/S CPD. The EA and FONSI may be combined into a single document.

6. In § 50.17 redesignate paragraph (h) as paragraph (i) and add a new paragraph (h) to read as follows:

**§ 50.17 Decision points for projects.**

\* \* \* \* \*

(h) *HUD execution of release.* HUD's determination to execute a release of a Declaration of Trust, a release of a Declaration of Restrictive Covenants, or both, in order to release HUD's interests in public housing agency property that is the subject of an eminent domain action.

\* \* \* \* \*

**Subpart D—General Policy: Environmental Review Procedures**

7. Amend § 50.19 by revising paragraphs (b)(11), (b)(13), (b)(15), (b)(16), and (b)(18), to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(11) Tenant-based rental assistance; however, compliance with 24 CFR 50.4(c)(1) is required.

\* \* \* \* \*

(13) Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training, recruitment, and other incidental costs; however, compliance with 24 CFR 50.4(c)(1) is required and in the case of equipment, compliance with 24 CFR 50.4(b)(1) is required.

\* \* \* \* \*

(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; however, compliance with 24 CFR 50.4(b)(1) and (c)(1) is required.

(16) Housing pre-development costs including legal, consulting, developer, other costs related to site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities that do not have a physical impact; however, compliance with 24 CFR 50.4(c)(1) is required.

\* \* \* \* \*

(18) Giving of compensation assistance for loss during a Presidentially declared disaster only when that compensation benefit is not tied to any particular use of the funds. However, if the approval of compensation assistance imposes standards for construction or construction materials, manufactured housing, or occupancy, with respect to a beneficiary's property or a property that sustained damage or loss, but without requiring that any construction, repair, or other activity be carried out, a programmatic environmental assessment must be prepared. Such standards may be imposed by covenant on a beneficiary's property, or on a property that sustained loss or damage, as a condition of receiving compensation assistance; however, the exclusion applies only if no construction, repair, or any other particular activity is required to be performed as a condition of receiving the compensation.

\* \* \* \* \*

**Subpart E—Environmental Assessments and Related Reviews**

8. In § 50.32 redesignate the current undesignated paragraph as (a) and add new paragraphs (b), (c), and (d) to read as follows:

**§ 50.32 Responsibility for environmental processing.**

\* \* \* \* \*

(b) *Applications Received by Headquarters Offices.* The field office program staff is responsible for the performance of the environmental review under this part for HUD assistance administered by Headquarters program staff who are primarily responsible for receiving, evaluating, and recommending to their Assistant Secretary the approval of applications made by applicants directly to HUD Headquarters Offices. The approving official in the HUD field office shall comply with § 50.11 and, in addition, assure (unless Headquarters program procedures do not require) that the form HUD-4128 and Sample Field

Notice Checklist (SFNC) are immediately forwarded by e-mail or fax to the Headquarters program office responsible for administering the program. In addition, the approving official in the HUD field office may post these documents on the Web site of the HUD field office serving the area in which the project is located.

(c) *Posting on Web site.* HUD program offices are encouraged to voluntarily post their environmental review record (ERR) documents on their Web sites for public review and comment and for the electronic record. If the ERR includes non-electronic records for the project, the posting on the Web site should indicate where and when such records are available for public review and copying. In either case, the Web site posting should indicate the name, phone number, and e-mail address of the point of contact that is to receive public inquiries for assistance or comment.

(d) *Electronic submissions and notifications.* HUD encourages the voluntary use of electronic submissions and notifications under this part. Current form HUD-4128, Environmental Assessment and Compliance Findings for the Related Laws, and the accompanying SFNC, will be used for electronic communication and documentation according to the following procedures:

(1) Field office staff preparing form HUD-4128 and the SFNC electronically must use the electronically fillable forms in the Portable Document Format (PDF) available on HUDclips.

(2) For electronic submission, the form must be accessed, filled in, saved, and e-mailed using a HUD office computer system accessed via security protocols designed to restrict access to only authorized users. A user name and password authentication system will suffice for this purpose.

(3) The appropriate Headquarters officials must at all times be informed of the field office personnel authorized to submit the form HUD-4128 and accompanying SFNC electronically and the e-mail addresses of those personnel. Completed forms must be e-mailed from the authorized work address by the authorized personnel, using their HUD e-mail account, and submitted under their correct user name.

(4) HUD will maintain the electronic version of the forms HUD-4128 and the accompanying SFNC with all associated information in a manner accessible to the public, to the same extent as if they were non-electronic forms. HUD will retain these records for the same length of time and with the same degree of

accessibility as it does for non-electronic forms.

9. Add § 50.37 to subpart E to read as follows:

#### § 50.37 Waivers.

*Regulatory waivers.* The HUD Assistant Secretary for Community Planning and Development (A/S CPD) may grant a waiver of regulations in 24 CFR parts 50, 51, 55, and 58 using the same standards that apply to waivers granted under 24 CFR 5.110 and where no unmitigated adverse environmental impact has resulted or will result from a violation of the regulation being waived. Waiver applicants must state the following in writing: The regulation involved; all relevant facts; a chronology of events; whether a violation has occurred or will occur; and any other pertinent facts about the requirement proposed for waiver. Applicants must provide evidence that good cause exists to justify the extraordinary action of granting a waiver. The submission must be addressed to the appropriate Program Director in the HUD field office serving the area within which the project is located, or to the Administrator in the Area Office of Native American Programs for the area. In addition, waiver applicants must supply HUD with all available, relevant information necessary for HUD to perform for each property any environmental review required by this part. In the case of violations under 24 CFR part 58, see § 58.19.

### PART 51—ENVIRONMENTAL CRITERIA AND STANDARDS

10. The authority citation for 24 CFR part 51 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d), unless otherwise noted.

#### Subpart B—Noise Abatement and Control

11. In § 51.101 redesignate paragraph (a)(2)(ii) as paragraph (a)(2)(iii) and add a new paragraph (a)(2)(ii) to read as follows:

#### § 51.101 General policy.

- (a) \* \* \*
- (2) \* \* \*

(ii) For the environmental review record, responsible entities are encouraged to use for their noise assessment the current HUD recommended procedure or a comparable procedure when considering deviation from noise criteria and standards.

\* \* \* \* \*

12. In § 51.104, revise paragraphs (b)(1)(i) and (b)(1)(iii) to read as follows:

#### § 51.104 Special Requirements.

\* \* \* \* \*

- (b) \* \* \*

(1) *Normally unacceptable noise zone.* (i) All projects located in the Normally Unacceptable Noise Zone require an environmental assessment (EA), except that an EIS is required for a proposed project located in a largely undeveloped area, or where the HUD action is likely to encourage the establishment of incompatible land use(s) in this noise zone.

\* \* \* \* \*

(iii) All other projects in the Normally Unacceptable Zone require an environmental assessment (EA), except where an EIS is required for other reasons pursuant to HUD environmental policies.

\* \* \* \* \*

13. Revise § 51.105(a)(2) to read as follows:

#### § 51.105 Exceptions.

- (a) \* \* \*

(2) The project has undergone an environmental assessment (EA) and has received the concurrence of the Environmental Clearance Officer.

\* \* \* \* \*

14. Revise the heading of Subpart D to read as follows:

#### Subpart D—Siting of HUD-Assisted Projects in Runway Protection Zones at Civil Airports and Clear Zones and Accident Potential Zones at Military Airfields

15. Revise § 51.300 to read as follows:

#### § 51.300 Purpose.

It is the purpose of this subpart to promote compatible land uses around civil airports and military airfields by identifying suitable land uses for Runway Protection Zones at civil airports and Clear Zones and Accident Potential Zones at military airfields and by establishing them as standards for providing HUD assistance, subsidy, or insurance.

16. Amend 24 CFR 51.301 as follows:

- a. Redesignate current paragraph (d) as paragraph (e) and revise the newly redesignated paragraph (e); and
- b. Add a new paragraph (d) to read as follows:

#### § 51.301 Definitions.

\* \* \* \* \*

(d) *Clear Zone.* The area immediately beyond the end of a runway, which possesses a high potential for accidents, and has traditionally been acquired by the Government in fee and kept clear of obstructions to flight. The standards for Clear Zones for military airfields are

established by DOD Instruction 4165.57, 32 CFR part 256.

(e) *Runway Protection Zone.* An area off the runway end to enhance the protection of people and property on the ground. The standards for Runway Protection Zones for civil airports are established by FAA regulations at 14 CFR part 152 and FAA Advisory Circular 150/5300-13.

17. In § 51.303, revise the introductory text of paragraph (a) and paragraphs (a)(2) and (a)(3) to read as follows:

#### § 51.303 General Policy.

\* \* \* \* \*

(a) HUD policy for actions in Runway Protection Zones and Clear Zones.

\* \* \* \* \*

(2) If a project proposed for HUD assistance, subsidy, or insurance is one that will not be frequently used or occupied by people, HUD policy is to provide assistance, subsidy, or insurance only when written assurances are provided to HUD by the airport operator to the effect that there are no plans to purchase the land involved with such facilities as part of a Runway Protection Zone or Clear Zone acquisition program.

(3) Special notification requirements for Runway Protection Zones and Clear Zones. In all cases involving HUD assistance, subsidy, or insurance for the purchase or sale of an existing property in a Runway Protection Zone or Clear Zone, HUD (or the responsible entity or recipient under 24 CFR part 58) shall advise the buyer that the property is in a Runway Protection Zone or Clear Zone, what the implications of such a location are, and that there is a possibility that the property may, at a later date, be acquired by the airport operator. The buyer must sign a statement acknowledging receipt of this information.

\* \* \* \* \*

18. Revise § 51.304(b) to read as follows:

#### § 51.304 Responsibilities.

\* \* \* \* \*

(b) The following persons have the authority to approve actions in Runway Protection Zones and Clear Zones:

(1) For programs subject to environmental review under 24 CFR part 58: The Certifying Officer of the responsible entity as defined in 24 CFR part 58.

(2) For all other HUD programs: The Program Assistant Secretary.

19. In § 51.305, revise paragraphs (b), (c), and (d) to read as follows:

**§ 51.305 Implementation.**

\* \* \* \* \*

(b) Acceptable data on Runway Protection Zones, Clear Zones, and Accident Potential Zones. The only Runway Protection Zones, Clear Zones, and Accident Potential Zones that will be recognized in applying this part are those provided by the airport operators and which for civil airports are defined in accordance with FAA regulations 14 CFR part 152 or, for military airfields, DOD Instruction 4165.57, 32 CFR part 256. All data, including changes, related to the dimensions of Runway Protection Zones for civil airports shall be verified with the nearest FAA Airports District Office before use by HUD.

(c) Changes in Runway Protection Zones, Clear Zones, and Accident Potential Zones. If changes in the Runway Protection Zones, Clear Zones, or Accident Potential Zones are made, the field offices shall immediately adopt these revised zones for use in reviewing proposed projects.

(d) The decision to approve projects in the Runway Protection Zones, Clear Zones, and Accident Potential Zones must be documented as part of the environmental assessment or, when no assessment is required, as part of the project file.

**PART 55—FLOODPLAIN MANAGEMENT**

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

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

**Subpart A—General**

21. Revise § 55.2(b)(8)(ii)(B) to read as follows:

**§ 55.2 Terminology.**

\* \* \* \* \*

- (b) \* \* \*
- (8) \* \* \*
- (ii) \* \* \*

(B) Any alteration of a structure that is either listed on or eligible to be listed on the National Register of Historic Places, provided that the alteration will not preclude the structure’s continued designation as a historic structure.

\* \* \* \* \*

**Subpart B—Application of Executive Order on Floodplain Management**

22. Amend § 55.10 by adding a new sentence at the end of paragraph (a) to read as follows:

**§ 55.10 Environmental Review procedures under 24 CFR parts 50 and 58.**

(a) \* \* \* HUD encourages combining floodplain management notices and processes with other environmental notices and processes, and provides guidance on combining such notices at §§ 55.20(b)(4) and 55.20(g)(3).

\* \* \* \* \*

23. Amend § 55.12 as follows:

- (a) Revise paragraph (a)(3);
- (b) Revise paragraph (b)(2);
- (c) Add a new paragraph (b)(5);
- (d) Revise the introductory text of paragraph (c) and paragraph (c)(1);
- (e) Remove paragraphs (c)(9) and (c)(10) and redesignate paragraphs (c)(11) and (c)(12) as paragraphs (c)(9) and (c)(10), respectively, to read as follows:

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

(a) \* \* \*

(3) Actions under any HUD program involving the repair, rehabilitation, modernization, or improvement of existing multifamily housing projects (including nursing homes, board and care facilities, and intermediate care facilities) and existing one-to-four family properties, in communities that are in the Regular Program of the NFIP and are in good standing, provided that the number of units is not increased more than 20 percent, that the action does not involve a conversion from nonresidential to residential land use, and that the footprint of the structure and paved areas is not significantly increased. Proposed actions that meet the threshold of “substantial improvement” are subject to the full decision-making process at § 55.20.

(b) \* \* \*

(2) Financial assistance for minor repairs or improvements on one- to four-family properties that do not meet the thresholds for “substantial improvement” under § 55.2(b)(8) and are categorically excluded from an environmental assessment under §§ 50.20(a)(2)(i) and 58.35(a)(3)(i) of this chapter;

\* \* \* \* \*

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

(c) This part shall not apply to the following categories of proposed actions:

- (1) HUD-assisted activities described in 24 CFR 58.34, 24 CFR 58.35(b), and 24 CFR 50.19;

\* \* \* \* \*

**Subpart C—Procedures for Making Determinations on Floodplain Management**

24. Amend § 55.20 by adding new paragraphs (b)(4) and (g)(3) to read as follows:

**§ 55.20 Decision-making process.**

\* \* \* \* \*

(b) \* \* \*

(4) The floodplain management notice at paragraph (b) of this section may be combined with either the notice of intent to prepare an environmental impact statement (EIS), or the notice of availability for public comment of the draft EIS where applicable, but in either case the combined notice text must comply with requirements of paragraphs (b)(1) through (3) of this section. The title of the combined notice for public comment also must include the words “compliance with Executive Order 11988, Floodplain Management.” In addition, the floodplain management notice at paragraph (b) of this section may be published separately but contemporaneously with a notice of intent to prepare an EIS or a notice of availability for public comment of a draft EIS. All comments received must be responded to in writing prior to taking any approval action. Comments received and copies of written responses are to be maintained in the environmental review record.

\* \* \* \* \*

(g) \* \* \*

(3) The floodplain management notice at paragraph (g) of this section may be combined either with the notice of availability for public comment of the final EIS or the notice of finding of no significant impact to the environment (FONSI), where applicable, but in either case the combined notice text must comply with the requirements of paragraphs (g)(1) through (3) of this section. The title of the combined notice for public comment also must include the words “compliance with Executive Order 11988, Floodplain Management.” In addition, the floodplain management notice at paragraph (g) of this section may be published separately but contemporaneously with the notice of FONSI or the notice of availability for public comment of a final EIS for public comment. All comments received must be responded to in writing prior to taking any approval action. Comments received and copies of written responses are to be maintained in the environmental review record.

\* \* \* \* \*

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

25. The authority citation for 24 CFR part 58 continues to read as follows:

**Authority:** 12 U.S.C. 1707 note, 1715z–13a(k); 25 U.S.C. 4115 and 4226; 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 CFR 1977 Comp., p. 123.

**Subpart A—Purpose, Legal Authority, Federal Laws and Authorities**

26. Revise § 58.1(b)(8) to read as follows:

**§ 58.1 Purpose and applicability.**

\* \* \* \* \*

(b) \* \* \*

(8) The FHA Multifamily Housing Finance Agency Program under section 542(c) of the Housing and Community Development Act of 1992, in accordance with section 542(c)(9) (12 U.S.C. 1715z–22(c)(9));

\* \* \* \* \*

27. Amend 24 CFR 58.2 by:

(a) Revising paragraph (a)(4);

(b) Redesignating paragraphs (b)(10) through (b)(15) as paragraphs (b)(11) through (b)(16), respectively;

(c) Adding a new paragraph (b)(10); and

(d) Revising newly redesignated paragraph (b)(16) to read as follows:

**§ 58.2 Terms, abbreviations, and definitions.**

(a) \* \* \*

(4) *Project* means an activity or a group of integrally related activities designed by the recipient to accomplish, in whole or in part, a specific objective. The date on which a project becomes subject to the limitations on project actions under this part is: the date of receipt by HUD or a responsible entity of a proponent's proposal or application for federal assistance for identified property proposed for acquisition, disposition, rehabilitation, conversion, leasing, repair or construction, or any combination; or in the absence of such an application, the initial indication of the recipient's approval of a specific site for assistance under the program. For HUD congressional special purpose grants, it is the date the President signs into law the appropriation bill containing the grant. If there is any question, consult the Assistant Secretary for Community Planning and Development. Limitations on project actions during the NEPA or environmental clearance process are

required by CEQ regulations (40 CFR 1506.1 and 1502.2(f)) and 24 CFR 58.22.

\* \* \* \* \*

(b) \* \* \*

(10) NAHASDA—Native American Housing Assistance and Self-Determination Act of 1996, as amended;

\* \* \* \* \*

(16) RROF/C—Request for Release of Funds and Certification.

28. Revise § 58.5(a)(1) 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. 470f and 470h–2).

\* \* \* \* \*

29. Add a new § 58.6(a)(4) to read as follows:

**§ 58.6 Other requirements.**

\* \* \* \* \*

(a) \* \* \*

(4) Flood insurance requirements cannot be fulfilled by self-insurance except as authorized by law for assistance to state-owned projects within states approved by the Director of FEMA.

\* \* \* \* \*

**Subpart B—General Policy: Responsibilities of Responsible Entities**

30. Amend § 58.13 by removing the word “and” at the end of paragraph (a); replacing the period at the end of paragraph (b) with a semi-colon and the word “and”; and adding a new paragraph (c) to read as follows:

**§ 58.13 Responsibilities of the certifying officer (CO).**

\* \* \* \* \*

(c) Be the chief elected official (CEO) of the government (local, tribal, or state). The chief elected official or legislative body of the RE may authorize the Certifying Officer's legal responsibility to reside with another official of the RE if the other official is acceptable. For purposes of being authorized to carry out this responsibility, HUD requires that the substituted official provide evidence, in the form of a formal delegation by the chief elected official or resolution by the legislative body of the RE, that the substituted official has the authority to consent on behalf of the chief elected official to federal court jurisdiction and to bind the RE to satisfy any judgment entered in federal court relating to the RE's performance of

environmental responsibilities under this part. NAHASDA designates the Director of the Department of Hawaiian Home Lands as the certifying officer (25 U.S.C. 4226) for the program of housing assistance for Native Hawaiians.

31. Amend 24 CFR 58.15 by designating the current undesignated paragraph as paragraph (a) and by adding a new paragraph (b) to read as follows:

**§ 58.15 Tiering.**

\* \* \* \* \*

(b) The recipient shall not commit or expend funds for activities that constitute a development decision (including acquisition and disposition of real estate) that affects the physical condition of specific project areas or building sites, until the responsible entity has completed its site-specific analysis and compliance with this part. At any time, the recipient may commit or expend funds for exempt activities documented in accordance with § 58.34(b), as well as for categorically excluded activities under § 58.35(b).

32. Add § 58.19 to subpart B to read as follows:

**§ 58.19 Waivers.**

(a) *Regulatory waivers of requirements of part 58.* Waiver applicants must describe in writing the reason for the waiver request and comply with paragraphs (c) and (d) of this section. The waiver request should be addressed to the appropriate Program Director in the HUD field office in whose area the relevant project is located, or to the Administrator in the Area Office of Native American Programs for the area. The waiver request must contain:

(1) All relevant facts required for HUD to make the determination required in 24 CFR 50.37, including the chronology of events, the requirement proposed for waiver, the RE's ERR for the project, if any, and any other environmental information or analysis done by the recipient or a contractor;

(2) Evidence that good cause exists to justify the extraordinary action of granting a waiver;

(3) A statement citing the section of 24 CFR part 58 to be waived;

(4) Any inquiries or concerns raised by individuals or organizations that are interested in or may be affected by the environmental impacts of the project as well as any agency having legal jurisdiction over the project or expertise related to the environmental impacts of the project; and

(5) All available, relevant information necessary for HUD to perform any environmental review required by 24

CFR part 50 for approval of waivers from HUD environmental regulations.

(b) *Single waiver request.* All required information necessary for HUD to process the waiver request for project activities covered by the request must be aggregated into a single waiver request.

(c) *Prior to approval.* Until the Assistant Secretary for Community Planning and Development has approved the waiver, waiver applicants must:

(1) Not acquire, rehabilitate, demolish, convert, lease, repair, or construct property, nor commit or expend HUD or any non-HUD funds for these project activities with respect to any eligible project property, from the time the waiver request is submitted until HUD written approval of the waiver is received for the project covered by the waiver request;

(2) Cease all choice-limiting actions and require project participants (including public or private non-profit or for-profit entities, contractors, and subcontractors) under their jurisdiction or control to cease all such actions on the project once a written request for waiver is made to HUD. No choice-limiting actions may occur after that date. Work that is proceeding in accordance with pre-existing legally binding commitments is not required to be stopped unless there is little or no penalty for halting the work. Work may recommence upon receipt of written HUD approval of the waiver request; and

(3) Carry out any mitigating measures required by HUD or select an alternate eligible project property or project.

### Subpart C—General Policy: Environmental Review Procedures

33. In § 58.22, revise the second sentence of paragraph (a) to read as follows:

#### § 58.22 Limitations on activities pending clearance.

(a) \* \* \* In addition, until an RROF and 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.

\* \* \* \* \*

### Subpart D—Environmental Review Process: Documentation, Range of Activities, Project Aggregation, and Classification

34. Amend 24 CFR 58.35 by revising paragraph (b)(7) and by adding a new paragraph (b)(8) to read as follows:

#### § 58.35 Categorical exclusions.

\* \* \* \* \*

(b) \* \* \*  
(7) Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under this part or under 24 CFR part 50, if the RE for the supplemental assistance under this part determines that reevaluation of the original environmental finding is not required under § 58.47. If the RE for the supplemental assistance is not the RE for the original assistance, or if the original environmental compliance was prepared by HUD under 24 CFR part 50, the subsequent RE must review the original ERR and determine that reevaluation is not required under § 58.47 and then must adopt the original ERR, including any special conditions and environmental mitigation required for the project, and record the adoption in its own ERR.

(8) Giving of compensation assistance for loss during a Presidentially declared disaster only when that compensation benefit is not tied to any particular use of the funds. However, if the approval of compensation assistance imposes standards for construction or construction materials, manufactured housing, or occupancy, with respect to a beneficiary's property or a property that sustained damage or loss, but without requiring that any construction, repair, or other activity be carried out, a programmatic environmental assessment must be prepared. Such standards may be imposed by covenant on a beneficiary's property, or a property that sustained loss or damage, as a condition of receiving compensation assistance; however, the exclusion applies only if no construction, repair, or any other particular activity is required to be performed as a condition of receiving the compensation.

\* \* \* \* \*

35. Amend § 58.38 by adding new paragraphs (c) and (d) to read as follows:

#### § 58.38 Environmental review record.

\* \* \* \* \*

(c) *Posting on Web site.* REs are encouraged to post ERR documents on their Web sites for public review and comment and for the electronic record. If the ERR includes non-electronic

records for the project, the posting on the Web site should indicate where and when such records are available for public review and copying. In either case, the Web site posting should indicate the name, phone number, and email address of the point of contact that is to receive public inquiries for assistance or comment.

(d) *Electronic submissions and notifications.* HUD encourages the voluntary use of electronic submissions and notifications under this part. Current form HUD-7015.15, "Request for Release of Funds and Certification," as well as current form HUD-7015.16, "Authority to Use Grant Funds," (or narrative letter), will be used for electronic communication and documentation under the following procedures:

(1) The RE must identify the Certifying Officer and provide his or her email address to the relevant HUD field office. The RE must communicate to HUD immediately any and all updates or changes to this information.

(2) The RE must establish a computer system with access appropriately controlled by a reasonably secure username and password authentication protocol, and must demonstrate to HUD that it has taken reasonable steps to limit access to the computer system. HUD will have the right to conduct a security audit of the computer system at any time.

(3) The Certifying Official must use HUD-provided forms in electronically fillable Portable Document Format (PDF).

(4) The Certifying Official may electronically submit form HUD-7015.15 by downloading the electronic form from either the HUD environmental office Web site (<http://www.hud.gov/offices/cpd/energyenviron/environment/compliance/forms/index.cfm>) or HUDclips (<http://www.hudclips.org>) in PDF, filling it out on the authorized, secure computer system, saving it to that system, and emailing it to HUD as an email attachment from the access-limited, reasonably secure system described in paragraph (d)(2) of this section. The email with the forms attached must come from the Certifying Official's official email address. If the correct email address does not appear in the header of the emailed message to which the forms are attached, HUD will not accept the submission.

(5) The HUD Authorizing Official may email form HUD-7015.16 to the Certifying Officer.

(6) The electronic submission protocols described in this section are deemed to provide the same degree of

identification, authentication, and intent as a signature on paper, and will suffice for all purposes for which the forms HUD-7015.15 and 7015.16 are used.

(7) The RE must maintain the electronic version of the forms HUD-7015.15 and 7015.16 with all associated information in a manner accessible to the public, to the same extent as if they were non-electronic forms. Retention of these records is required for the same length of time and with the same degree of accessibility as for non-electronic records. The forms and associated information must be retained in a manner that allows the public to view or download them from the RE's Web site.

36. Revise the heading to subpart E to read as follows:

**Subpart E—Environmental Review Process: Environmental Assessments (EAs)**

37. Revise § 58.43(c) to read as follows:

**§ 58.43 Dissemination and/or publication of the findings of no significant impact.**

\* \* \* \* \*

(c) The responsible entity must consider the comments and make modifications, if appropriate, in response to the comments, before it completes its environmental certification and before the recipient submits its RROF/C. Where § 58.33(b) is applicable, modifications resulting from public comment, if appropriate, must be made before proceeding with the expenditure of funds that will be used in Presidentially declared disaster areas 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.

**PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS**

38. The authority citation for 24 CFR part 91 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

**Subpart B—Citizen Participation and Consultation**

39. Add § 91.100(d) to read as follows:

**§ 91.100 Consultation; local governments.**

\* \* \* \* \*

(d) *Environment.* To facilitate compliance with environmental review requirements, the jurisdiction should consult with non-profit and for-profit organizations and public housing agencies that receive HUD grant awards. The jurisdiction is authorized to perform the environmental review as the responsible entity for HUD programs that are subject to 24 CFR part 58. Where the jurisdiction requires reimbursement of costs, remuneration for environmental review services rendered by the jurisdiction may be available from the recipient's HUD program grant in accordance with 24 CFR 58.23.

Dated: August 9, 2007.

**Nelson R. Bregón,**

*General Deputy Assistant Secretary for Community Planning and Development.*

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